

Caribbean Community (CARICOM) Secretariat

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CARICOM MODEL LEGISLATION ON SEXUAL OFFENCES

Explanatory Memorandum:

It is well recognised in almost all CARICOM States that the trial of sexual offences often turns out to be hardest on the victims and many are therefore reluctant to report the offences or to attend court to give evidence.

The provisions of the model law are intended to effect some solution of the problems concerning the prosecution of offences of that nature, hence it contains-

- (a) a provision for *in camera* trials which may encourage more victims to attend court for trial of offenders;
- (b) restrictions regarding the adducing of evidence as to the sexual history of the complainant;
- (c) provisions empowering the court to forbid the publication of reports of certain details of the alleged act;
- (d) restrictions on reports as to the identity of both the accused and complainant in certain circumstances.

On the question of consent as regards sexual offences, provision is made whereby the offence is committed where consent is obtained by force or by means of threats or intimidation, fear of bodily harm, fraudulent misrepresentations as to the nature and quality of the act or, in the case of a married woman, by impersonating her husband.

Following the workshop held in Trinidad and Tobago, 9-12 April 1991, it was agreed that the general approach would be gender neutral and that provisions dealing with prostitution would be admitted.

The Long Title indicates the scope of the legislation which is to repeal and replace existing laws relating to sexual offences. In almost all CARICOM States these offences are included in the general law relating to offences against the person.

Subsection (3) provides that no offence is committed where the minor is the spouse of the male adult.

Clause 11 provides for an offence where an adult has sexual intercourse with a minor who is in the adult's employment, or who, by virtue of the employment is subject to the adult's direction or control or receives salary or wages directly or indirectly from the adult.

Clause 12 provides for an offence where under circumstances that do not amount to rape, a person has sexual intercourse with a mentally incapacitated person who is not the wife or husband of the person charged and who that person knows or has good reason to believe is mentally incapacitated. A maximum penalty of (ten) years is provided.

Clause 13 provides for an offence of indecent assault upon a person who is under fourteen years of age. A maximum penalty of (ten) years is provided.

Clause 14 provides for an offence of indecent assault on a person fourteen years and over. A maximum penalty of (Seven) years is provided.

Clause 15 provides for the offence of gross indecency with a maximum penalty of (five) years.

Subsection (2) makes an exception where the act is committed in private between a husband and wife and between an adult female and adult male both of whom consent.

Subsection (3) provides

- (a) that an act is deemed not to have been committed in private if more than two persons take part or are present;
- (b) consent is vitiated; by fraud or threats of bodily harm or the mental incapacity of a person with whom the act is committed.

Subsection (4) defines gross indecency.

Clause 16 deals with an offence of indecency committed by an adult woman with a girl under sixteen years of age.

Subsection (2) provides that the girl shall not be charged as a party to the offence.

Subsection (3) states that the girl's consent is no defence to such a charge.

Clause 17 deals with the offence of sodomy committed by a male person upon a female. A maximum penalty of (ten) years is provided in subsection (1).

Subsection (2) states that the act is complete upon penetration.

Subsection (3) states that the female's consent is no defence.

Clause 18 deals with the offence of procuring the defilement of a minor by a parent or guardian.

The offence attracts a maximum penalty of (ten) years if the minor is under fourteen and a maximum of (five) years if the minor is fourteen or more.

Clause 19 deals with the offence of abduction of a person against that person's will. A maximum penalty of (ten) years is provided.

Clause 20 deals with the offence of abduction of a person against that person's will. A maximum penalty of (ten) years is provided.

Clause 21 provides for the holding *in camera* trials for rape, unlawful sexual connection, incest, sexual intercourse with person under fourteen or with adopted minor, indecency with person under fourteen, indecent assault, gross indecency, indecency between woman and girl and sodomy.

An exception is made to permit the presence of any member of the public on the complainant's request.

Subsection (2) provides for the passing of sentence to be in public.

Clause 22 provides that where a parent or guardian is convicted of the offence of procuring the defilement of a minor, the court may divest that parent or guardian of legal authority over the minor.

Clause 23 provides that evidence of the sexual activity of the complainant shall not be adduced.

Clause 24 abolishes the common law rule relating to recent complaint.

Clause 25 provides for the court to prohibit a report of certain details of criminal acts in proceedings in respect of rape, unlawful sexual connection, indecent assault or sodomy if the court is of the opinion that such prohibition is required in the interest of the complainant.

Breach of an order prohibiting such report may be dealt with as a contempt of court.

Clause 26 restricts the reporting of the identity of an accused or complainant after a person has been charged with an offence except on the application of the complainant or accused to the court to permit such publication or after an accused has been tried and convicted.

THE SEXUAL OFFENCES ACT

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MODEL LEGISLATION ON SEXUAL OFFENCES

AN ACT to Repeal and replace the Laws of [] in relation to sexual offences and for related matters.

Short title

1. This Act may be cited as the Sexual Offences Act.

PART I - PRELIMINARY

2. (1) In this Act -

"adult" means a person eighteen years of age or more;

"brothel" means a place resorted to by a person of either sex for the purpose of prostitution;

"minor" means a person under the age of eighteen years.

- (2) For the purposes of this Act sexual intercourse is complete upon penetration.

PART II - SEXUAL OFFENCES

Rape

3. (1) A male person commits rape when he has sexual intercourse with a female person who is not his wife -
 - (a) without her consent; or

(b) without believing that she consents to such intercourse or is reckless as to whether she consents or not;

(c) with her consent if the consent -

(i) is extorted by threats or fear of bodily harm to her or to another, or by threats or fear of the application of force to her or to another;

(ii) is obtained by impersonating her husband; or

(iii) is obtained by false and fraudulent representations as to the nature and quality of the act.

(2) Every male person who commits rape is guilty of an offence and is liable on conviction to imprisonment for [life].

(3) A male person under the age of fourteen years is incapable of committing rape

Unlawful sexual connection

4. (1) A person has unlawful sexual connection with another person if that person has sexual connection with that other person -

(a) without the consent of the other person;

(b) without believing that the other person consents to that sexual connection;

(c) with the consent of the other person if the consent is -

(i) extorted by threats or fear of bodily harm to that other person or any other person, or by threats or fear of the application of force to that other person or any other person;

(ii) obtained by impersonating the spouse of that other person;

(iii) by false and fraudulent representations as to the nature and quality of the act.

(2) In subsection (1) "sexual connection" means -

(a) a penetration of the vagina or the anus of any person by -

(i) any part of the body of any other person; or

(ii) any object held or manipulated by any other person, otherwise than for bona fide medical purposes;

(b) connection between the mouth or tongue of any person and any part of the genitalia of any other person;

(c) the continuation of sexual connection as described in paragraph (a) or (b).

(3) A person who is convicted of unlawful sexual connection is liable to imprisonment for a term not exceeding [fourteen] years, unless the court is of the opinion that, having regard to the particular circumstances of the offence or of the offender, including the nature of the conduct constituting the offence, the offender should not be sentenced to imprisonment.

(4) A husband commits the offence of unlawful sexual connection if he has sexual connection with his wife without her consent where there is in existence in relation to them -

(a) a **decree nisi** or divorce;

(b) a decree of judicial separation;

(c) a separation agreement; or

(d) an order for the husband not to molest his wife or have sexual intercourse with her.

Matters that constitute consent to sexual intercourse or sexual connection

5. (1) The fact that a person does not protest or offer physical resistance to sexual intercourse or sexual connection does not by itself constitute consent to sexual intercourse or sexual connection for the purposes of section 3 or 4.

(2) Nothing in section 3(1)(c) or section 4(1)(c) shall limit the circumstances in which there is no consent to sexual intercourse or sexual connection.

Inducing sexual intercourse or sexual connection by force, duress, etc.

6. (1) A person commits an offence if that person induces another person to have sexual intercourse or unlawful sexual connection with any person -

(a) by force or duress;

(b) by false or fraudulent representation; or

(c) by administering to that other person or by duress etc. causing that other person to take any drug matter or thing with intent to stupefy or overpower that person.

(2) A person who is convicted of an offence described in subsection (1) is liable to imprisonment for a term not exceeding [14] years.

Incest

7. (1) Incest is sexual intercourse between -

(a) parent and child;

(b) brother and sister, whether of the whole blood or the half blood, and whether the relationship is traced through lawful wedlock or not; or

(c) grandparent and grandchild, where the person charged knows of the relationship between the parties.

(2) Every person who is convicted of incest is liable to imprisonment for a term not exceeding [ten] years.

(3) It is a defence to a person charged with incest to prove that the offence was committed by reason only that the person charged was under restraint, duress or fear of the person with whom the person charged had sexual intercourse.

Sexual intercourse with person under nineteen

8. (1) Every person who has sexual intercourse with another person who -

(a) is not the husband or wife of the first mentioned person; and

(b) is under the age of fourteen years, whether or not the other person consented and whether or not the first mentioned person believes that the other person is fourteen years of age or more, is guilty of an offence and is liable on conviction to imprisonment for [life].

(2) Where a marriage is invalid under the laws relating to marriages the invalidity does not make a person guilty of an offence under this section because that person has sexual intercourse with the husband or wife of that person, if the person believes the other person to be the husband or wife of the first mentioned person and has reasonable cause for the belief.

Sexual intercourse with a person between fourteen and sixteen

9. (1) Every person who has sexual intercourse with another person who -

(a) is not the wife or husband of the first mentioned person;

(b) is fourteen years of age or more but has not attained the age of sixteen years; is guilty of an offence and is liable on conviction to imprisonment for [5] years.

(2) It is a defence to a charge under this section if the person charged proved that -

(a) the other person consented; or

(b) the person charged -

(i) was under the age of eighteen years at the time of the commission of the offence; and

(ii) had reasonable cause to believe and did believe that the other person was sixteen years of age or more.

(3) Subsection (2) shall not apply if it is proved that the consent was obtained by false or fraudulent representations as to the nature and quality of the act.

(4) Except as provided in subsection (2), it is no defence to a charge under this section that the person consented or that the person charged believed that the person was sixteen years of age or more.

Sexual intercourse with adopted minor

10. (1) A male adult person commits an offence if he has sexual intercourse with a female minor who -

(a) is his adopted daughter, step-daughter, foster daughter or ward and is, at the time of the intercourse, living with him as a member of his family;

(b) not being his adopted daughter, step-daughter, foster-daughter or ward and not being a person living with him as his wife, is at the time of the intercourse, living with him as a member of his family and is under his care or protection.

(2) A person who commits an offence under subsection (1) is liable on conviction -

(a) if the minor is under the age of fourteen years to imprisonment for [life]; or

(b) if the minor is fourteen years of age or more to imprisonment for a term not exceeding [ten years].

(3) An adult shall not be guilty of an offence under subsection (1) if the minor is the spouse of such adult.

Sexual intercourse with minor employee

11. (1) Every adult who has sexual intercourse with a minor who -

(a) is employed by the adult;

(b) is in a common but not necessarily similar, employment with the adult and is, in respect of the minor's employment or work under or in any way subject to the adult's control or direction; or

(c) receives wages or salary directly or indirectly from the adult, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [two] years.

(2) Except in any case where the minor is under the age of fourteen years, in any proceedings for an offence under subsection (1), it is a defence for the adult to prove that the minor consented to the sexual intercourse.

(3) An adult shall not be guilty of an offence under subsection (1) if the minor is the spouse of such adult.

Sexual intercourse with mentally incapacitated person

12. A person who, under circumstances that do not amount to rape, has sexual intercourse with another person -

(a) who is not the wife or husband of the first mentioned person; and

(b) who is and who the first mentioned person knows or has good reason to believe is mentally incapacitated, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [ten] years.

Indecent assault on person under fourteen

13. Every person who -

(a) indecently assaults any person under the age of fourteen years;

(b) induces or permits any person under that age to do any indecent act with or upon the first mentioned person, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [ten] years.

Indecent assault on person

14. Every person who -

(a) indecently assaults any other person who is fourteen years of age or more; or

(b) does anything to any other person who is fourteen years or more with the consent of that other person which, but for such consent would have been indecent assault, such consent being obtained by a false or fraudulent representation as to the nature and quality of the act, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [seven] years.

Gross indecency

15. (1) Every person who commits an act of gross indecency with another person is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [five] years.

(2) Subsection (1) does not apply to an act of gross indecency committed in private between -

(a) a husband and wife;

(b) between an adult male person and an adult female person, both of whom consent to the commission of the act.

(3) For the purposes of subsection (2) -

(a) an act shall be deemed not to have been committed in private if it is committed in a public place, or if more than two persons take part or are present; and

(b) a person shall be deemed not to consent to the commission if such an act -

(i) if the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature and quality of the act; or

(ii) the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person;

(iii) if that person is, and the other party to the act knows or has good reason to believe that the person is mentally incapacitated or insane.

(4) In this section "gross indecency" is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of genital organ for the purpose of gratifying sexual desire.

Indecency between woman and girl

16. (1) Every adult woman who -

(a) does any indecent act with or upon any girl under the age of sixteen years; or

(b) induces or permits any girl under the age of sixteen years to commit any indecent act with or upon such adult woman, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [five] years.

(2) The girl shall not be charged as a party to any offence under this section.

(3) It is no defence to a charge under this section that the girl consented.

Sodomy

17. (1) Every male person who commits sodomy on a female person is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [ten] years.

(2) The act of sodomy is complete upon penetration.

(3) It is no defence to a charge under this section that the female person consented.

PART III - PROCURING ABDUCTION, ETC.

18. (1) Any person who -

(a) procures or induces a minor to have sexual intercourse with any person in [] or elsewhere; or

(b) conspires with any other person to effect the procurement of a minor as aforesaid, is guilty of an offence and is liable on conviction -

(i) if the minor is under the age of fourteen years, to imprisonment for a term not exceeding [ten] years; or

(ii) if the minor is fourteen years or more to imprisonment for a term not exceeding [five] years.

Procuring

19. Any person who -

(a) by threats or intimidation procures another person to have sexual intercourse with any person in [] or elsewhere;

(b) by deception procures another person to have sexual intercourse with any person in [] or elsewhere; or

(c) applies, administers to or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower that person in order to enable any other person to have sexual intercourse with that person, is guilty of an offence and is liable on conviction to imprisonment for [fifteen] years.

Abduction

20. (1) Any person who, with intent to commit or abet the commission of an offence under this Act -

(a) detains another person against that other person's will in or upon any premises or in any

brothel;

(b) takes or causes any other person to be taken away against that other person's will, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding [] years.

(2) A Justice who is satisfied upon oath that there is reasonable ground for believing that a person is unlawfully detained in any place for immoral purposes, may issue a warrant authorising any constable or other person named in the warrant to enter (if need be by force) and search any place specified in the warrant and to remove any person so detained and apprehend any person accused of unlawful detention.

PART IV - GENERAL

Hearings in camera

21. (1) This section applies to the following offences -

- (a) rape;
- (b) unlawful sexual connection;
- (c) incest;
- (d) sexual intercourse with person under fourteen;
- (e) sexual intercourse with adopted minor, etc.;
- (f) indecency with person under fourteen;
- (g) indecent assault;
- (h) gross indecency;
- (i) sodomy.

(2) At any proceedings in relation to an offence to which this section applies, the public shall, be excluded during the hearing but the Judge may permit the presence of any person whose presence is requested by the complainant or the accused.

(3) The passing of sentence in relation to any offence to which this section applies shall take place in public.

Court may divest parent or guardian

22. If at the trial for an offence under section 18 (which relates to the procurement of a minor) the parent or guardian of a minor is convicted of the offence the court may divest the person convicted of all authority over the minor or to be the guardian of the minor until the minor becomes an adult and the court may, from time to time, vary or rescind the order.

Evidence concerning sexual activity

23. In proceedings in respect of an offence under this Act, no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant.

Recent complaint

24. The common law rules relating to recent complaint in complaint. sexual offence cases are hereby abolished.

Court may forbid publication of report

25. (1) Where in a case involving rape, unlawful sexual connection, indecent assault or sodomy the court is of the opinion that the interests of the complainant so require, it may make an order forbidding publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or to consent to or acquiesce in.

(2) The breach of an order made under subsection (1) or any evasion or attempted evasion of it, may be dealt with as contempt of court.

Anonymity of complainant and accused

26. (1) After a person is charged with an offence under this Act, no matter which is likely to lead members of the public to identify a person as the complainant or as the accused in relation to that charge shall either be published in a written publication or be broadcast in [] except -

- (a) where, on the application of the complainant or the accused, the court directs that the effect of the restriction is to impose a substantial and unreasonable restriction on the reporting of proceedings and that it is in the public interest to remove the restriction in respect of the

applicant; or

(b) in the case of the accused, after the person has been tried and convicted of the offence.

(2) A person who publishes or broadcasts any matter in contravention of subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding [fifty thousand] dollars or to imprisonment for a term not exceeding [three] years.

(3) The person referred to in subsection (2) is -

(a) in the case of a publication in a newspaper or periodical, any proprietor, editor or publisher of such newspaper or periodical;

(b) in the case of any other publication, the person who published;

(c) in the case of a broadcast by a body corporate which transmits or provides the programme in which the broadcast is made, the person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(4) In subsection (1) -

"*accused*" means -

(a) a person named in an information alleging that the person has committed the offence;

(b) a person who appears before the court charged with the offence.

"*complainant*" in relation to a person accused of an offence includes the person against whom the offence is alleged to have been committed.

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