

AS AMENDED IN THE SENATE

THE EVIDENCE (AMENDMENT) BILL, 2010

Arrangement of Clauses

Clause

1. Short title and commencement
2. Interpretation
3. Act inconsistent with Constitution
4. Sections 15AA and 15AB inserted
5. Section 15C amended
6. Section 15I amended

No. 4 of 2010

Third Session Ninth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to amend the Evidence Act, Chap. 7:02

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Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Evidence Act, Chap. 7:02, (“the Act”) to revive the common law doctrine of recent complaint (“the doctrine”). The doctrine is an exception to the general rule that a previous statement made by a witness is not admissible in order to bolster his credibility. At common law, recent complaint evidence is only admissible in trials for sexual offences and is admitted to show consistency and to rebut consent; it cannot be used as evidence of the truth of the fact that the sexual offence was committed by the defendant. In order to be admissible, the complaint must have been made voluntarily and at the first reasonable opportunity after the commission of the alleged offence.

The Sexual Offences Act, 1986 (now Chap. 11:28), by section 31, abolished the doctrine from the laws of Trinidad and Tobago. The rationale for the abolition of the doctrine was that it was premised on the archaic notion that if the victim of an alleged sexual assault did not immediately inform someone, the victim would be judged to have consented. It was recognized that many victims, particularly children, may be afraid or reluctant to make an immediate complaint.

It is proposed, however, that the Act be amended in order to expressly revive the doctrine in respect of trials for sexual offences. The abolition of the doctrine creates further difficulties as the prosecution’s case may be substantially disadvantaged, victims are deprived of an opportunity to adduce evidence in support of their credibility and a jury may assume that no complaint was made, thus prejudicing the victim’s credibility. Having regard to these considerations, the probative value of the doctrine appears to outweigh any prejudicial effect.

Clause 1 would provide the short title of this Act, for which this is the Bill.

Clause 2 would amend the Act by inserting after section 15A, sections 15AA and 15AB. The proposed section 15AA seeks to revive the doctrine of recent complaint. Additionally, the proposed section 15AB seeks to impose a requirement on the trial Judge to warn the jury that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false, since there may be good reasons why the victim of a sexual assault may refrain or hesitate from making a complaint.

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WHEREAS it is enacted by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title and commencement 1. (1) This Act may be cited as the Evidence (Amendment) Act, 2010.

(2) This Act shall come into force on a date to be fixed by the President by Proclamation.

Interpretation 2. In this Act, “the Act” means the Evidence Act.
Chap. 7:02

Act inconsistent with 3. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
Constitution

Sections 15AA and 4. The Act is amended by inserting after section 15A the following sections:
15AB inserted

“Recent complaint 15AA. Notwithstanding any other law to the contrary, the common law rules relating to evidence of recent complaint in sexual offence cases, **that were in force in England prior to 4th April 2005**, shall apply, from the date this Act comes into force, **as if those rules had not been abolished in this jurisdiction.**

Judge’s warning in absence of or delayed complaint 15AB. Where on the trial of an accused person for a sexual offence, evidence is given or a question is asked of a witness

that tends to suggest an absence of **recent** complaint in respect of the commission of the alleged offence by the person upon whom the assault is alleged to have been committed or to suggest a delay by that person in making any such complaint, the Judge shall—

- (a) give a warning to the jury that an absence of **recent** complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and
- (b) inform the jury that there may be good reason why a victim of a sexual assault may refrain from making or may hesitate in making **such** a complaint about the assault.”.

5. Section 15C of the Act is amended—

Section 15C amended

- (a) by renumbering subsections (1) to (6) as subsections (2) to (7), respectively;
- (b) by inserting before the renumbered subsection (2), the following subsection:
 - “ (1) Where a person, including an accused, gives a statement in relation to an offence, that statement may be video recorded.”.
- (c) in the renumbered subsection (2), by deleting the words “Subject to subsection (2), a statement made by a person in a document” and substituting the words “Subject to subsections (3) and

(3A), as the case may be, a statement made in a document or in a video recording by a person, who is a witness,”;

(d) in the renumbered subsection (3) by deleting the word “(1)” wherever it appears and substituting the word “(2)”;

(e) by inserting after the renumbered subsection (3), the following subsection:

“ (3A) Where under subsection (3), the Court is considering granting leave in relation to a video recorded statement, the Court shall consider the following additional factors:

(a) the interval between the time of the events in question and the time when the video recorded statement was made;

(b) the quality of the video recording; and

(c) any other factors that might affect the reliability of what the person said in the video recorded statement.”.

Section 15I amended

6. The Act is amended in section 15I—

(a) by deleting subsections (3) and (8);

(b) by renumbering subsections (1), (2), (4), (5), (6), (7) and (9) as subsections (5), (6), (7), (8), (9), (10) and (11), respectively;

(c) by inserting before the renumbered subsection (5), the following subsections:

“ (1) The existence of a written statement in relation to the same matter by the maker of a video recorded statement shall not affect the admissibility of that video recorded statement in criminal proceedings.

(2) Where a video recorded statement is admitted under this section, the statement shall be admitted as the evidence in chief of the maker of the statement where he is available to be cross-examined.

(3) A video recorded statement made by a person under this Part is admissible whether or not the statement is made on oath.

(4) Where a child gives a video recorded statement under section 15C(1), the video recorded statement shall be made in the presence of an adult chosen by the child.”;

(d) in the renumbered subsection (5)—

(i) in paragraph (a) by deleting the words “in proceedings for an indictable offence or for the summary trial of an indictable offence” and substituting the words “in criminal proceedings”;

- (ii) by deleting paragraph (f); and
- (iii) by renumbering paragraphs (g) and (h) as paragraphs (f) and (g), respectively;

(e) in the renumbered subsection (6)—

- (i) by deleting the words “(1)(g)” and substituting the words “(5)(f)”;
- (ii) in paragraph (a) by deleting the word “not”; and
- (iii) in paragraph (b)(ii) by deleting the words “subsection (3)” and substituting the words “section 15C(3) and (3A)”;

(f) in the renumbered subsection (8) by deleting the words “(1)(g)” and substituting the words “(5)(f)”.

Passed in the Senate this day of , 2010.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of 24 Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 4 of 2010

THIRD SESSION
NINTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Evidence Act,
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Received and read the

First time

Second time

Third time
