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No. 11 of 2021

Second Session Twelfth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to amend the Sexual Offences Act,
Chap. 11:28

THE SEXUAL OFFENCES (AMENDMENT) (NO. 3) BILL,
2021

Explanatory Notes

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

The purpose of this Bill is to amend the Sexual Offences Act, Chap. 11:28. The Bill contains 6 clauses.

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

Clause 2 of the Bill would provide that the Act shall come into operation on such date as is fixed by the President by Proclamation.

Clause 3 of the Bill would provide for the interpretation of the words “the Act” to mean the Sexual Offences Act, Chap. 11:28.

Clause 4 of the Bill would amend section 2 of the Act to insert definitions of certain terms such as “computer system”, “device”, “intimate image”, “private act”, “private parts”, “sexual act” and “visual recording”. These terms are used in the new sections 22A, 22B and 22C.

Clause 5 of the Bill would amend the Act by inserting after section 22, four new sections. Section 22A would provide for the offence of voyeurism. This new section would provide, *inter alia*, that a person commits the offence of voyeurism where he observes another person doing a private act without the consent of the other person, in situations where the other person would have a reasonable expectation of privacy. The section would also provide that the voyeurism must be for the purpose of obtaining sexual gratification, or for the purpose of causing humiliation or distress to the other person. The section also provides for exceptions with respect to law enforcement officers in the lawful execution of their duty, or where the alleged acts are carried out for medical purposes, security monitoring, preventing or prosecuting crime, legal proceedings, the administration of justice and in the public interest.

The new section 22B would provide for the offence of taking and sharing, or threatening to share, intimate images without consent. This section would provide for five categories of offences: where an intimate image is taken and shared without consent,

where an intimate image is taken and shared for the purpose of humiliating or causing distress to a person, or for the purpose of obtaining sexual gratification, where there are threats to share an intimate image, or where a person knowingly alters an image of a person to make it appear that the image of the depicted person is an intimate one. The section also provides for exceptions with respect to law enforcement officers in the lawful execution of their duty, or where the alleged acts are carried out for medical purposes, security monitoring, preventing or prosecuting crime, legal proceedings, the administration of justice and in the public interest.

The new section 22C would provide for the offence of sharing intimate images without consent, or in circumstances in which the depicted person had a reasonable expectation that he was doing a private act or that his intimate image would not be shared without his express permission. The section also provides for exceptions with respect to law enforcement officers in the lawful execution of their duty, or where the alleged acts are carried out for medical purposes, security monitoring, preventing or prosecuting crime, legal proceedings, the administration of justice and in the public interest.

The new section 22D would provide for the Court to order a person who has been convicted of an offence under sections 22A, 22B or 22C to pay compensation and to remove, retract, recover, delete or destroy any intimate image taken or shared by the person.

Clause 6 of the Bill would set out a consequential amendment to the Children Act, Chap. 46:01 to insert a new Part VIIIA, which would provide for the offence of voyeurism in relation to children. The provisions of this new Part would be similar to the proposed sections 22A, 22B, 22C and 22D of the Sexual Offences Act.

THE SEXUAL OFFENCES (AMENDMENT) (NO. 3) BILL,
2021

Arrangement of Clauses

Clause

1. Short title
2. Commencement
3. Interpretation
4. Section 2 amended
5. New sections 22A, 22B, 22C and 22D inserted
6. Consequential amendments

BILL

AN ACT to amend the Sexual Offences Act,
Chap. 11:28

[, 2021]

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

1. This Act may be cited as the Sexual Offences Short title
(Amendment) (No. 3) Act, 2021.
2. This Act comes into operation on such date as is Commencement
fixed by the President by Proclamation.

Interpretation
Chap. 11:28

3. In this Act, “the Act” means the Sexual Offences Act.

Section 2 amended

4. Section 2 of the Act is amended by inserting the following definitions in the appropriate alphabetical sequence:

“computer data storage medium” means anything in which information is capable of being stored, or anything from which information is capable of being retrieved or reproduced, with or without the aid of any other article or device;

“computer system” means any device or group of interconnected or related devices which follows a programme or external instruction to perform automatic processing of information or electronic data;

“device” means any electronic programmable device used, whether by itself or as part of a computer network, an electronic communications network or any other device or equipment, or any part thereof, to perform pre-determined arithmetic, logical, routing or storage operations and includes—

- (a) an input device;
- (b) an output device;
- (c) a processing device;
- (d) a computer data storage medium;
- (e) a program; or
- (f) equipment,

that is related to, connected with or used with such a device or any part thereof;

“internet service provider” means—

- (a) any public or private entity that provides to users of its service the ability to communicate by means of a computer system; or
- (b) any other entity that processes or stores computer data on behalf of such communication service or users of such service;

“intimate image” means a visual recording of a person that depicts—

- (a) the person engaged in a sexual act;
- (b) the person in a manner or context that is sexual; or
- (c) the private parts of the person;

“law enforcement officer” means—

- (a) a police officer appointed under the Police Service Act; Chap. 15:01
- (b) a constable as defined under the Supplemental Police Act; Chap. 15:02
- (c) a member of the Special Reserve Police appointed under the Special Reserve Police Act; Chap. 15:03
- (d) an employee of the Strategic Services Agency established under the Strategic Services Agency Act; Chap. 15:06
- (e) a member of the Municipal Police Service appointed under the Municipal Corporations Act; or Chap. 25:04
- (f) a member of any other agency of the State in which investigative and intelligence gathering powers,

similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested;

“private act” means an act done by a person where the person is in a place which, in the circumstances, would reasonably be expected to provide privacy and—

- (a) the private parts of the person are fully or partially exposed or covered only with underwear;
- (b) the person is using the toilet, showering or bathing; or
- (c) the person is doing a sexual act;

“private parts” means—

- (a) the genitals, pubic area or buttocks of a person; or
- (b) the breasts of a female person, whether or not the breasts are sexually developed;

“sexual act” means an act which a reasonable person would, in all the circumstances but regardless of the purpose of a person, consider to be sexual;

“share” means—

- (a) publish, distribute, transmit, stream, sell, make available or advertise;
- (b) sharing online, including on websites, via email, live-streaming or through private messaging services;
- (c) sharing offline, including through the post or distribution by hand; or

(d) showing to another person, including images stored on a device or printed copies;

“visual recording” means a—

- (a) photograph or film;
- (b) video recording; or
- (c) live-stream,

on any medium from which a still or moving image may by any means be produced or transmitted, whether or not accompanied by a soundtrack;”.

5. The Act is amended by inserting after section 22, New sections 22A, 22B, 22C and 22D inserted the following sections:

“Voyeurism” 22A. (1) Subject to subsection (3), a person commits the offence of voyeurism if, for the purpose of obtaining sexual gratification for himself or another person, or causing humiliation or distress to a person, he knowingly—

- (a) observes, whether with or without the use of equipment, that person doing a private act and he knows or ought to reasonably know that the person does not consent to being observed;
- (b) views, whether with or without the use of equipment, beneath the clothing of that person and does so—
 - (i) with the intention of enabling himself or another person to observe—

(A) the private parts of that person,

whether fully
or partially
exposed or
covered with
underwear;
or

(B) the under-
wear covering
the private
parts of that
person;

(ii) without the consent
of that person; and

(iii) without reasonably
believing that the
person consents to
being observed; or

(c) takes, captures, records,
streams, stores, publishes or
transmits through a device
or computer system, a visual
recording of the private
parts of a person without the
consent of that person in
circumstances in which that
person has a reasonable
expectation that he was
doing a private act.

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

(a) summary conviction to a
fine of two hundred and
fifty thousand dollars and to
imprisonment for two years;
or

(b) conviction on indictment to a
fine of seven hundred and

fifty thousand dollars and to imprisonment for five years.

(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—

- (a) performed by a law enforcement officer in the lawful execution of his duty;
- (b) carried out by an authorized person for medical, forensic, scientific or educational purposes;
- (c) carried out for the purposes of security monitoring—
 - (i) by a person monitoring his home; or
 - (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;
- (d) acts that the person reasonably believed were necessary for the purposes of—
 - (i) preventing, detecting, investigating or prosecuting crime;
 - (ii) legal proceedings; or
 - (iii) the administration of justice; or

(e) in the public interest.

Taking and
sharing of an
intimate
image
without
consent

22B. (1) Subject to subsections (3), (4) and (5), a person commits an offence if—

- (a) he knowingly takes and shares an intimate image of another person without the consent of the depicted person for the taking and sharing of the intimate image and without reasonably believing that the depicted person consents;
- (b) for the purpose of causing humiliation or distress to another person, he knowingly takes and shares an intimate image of that person without the consent of the depicted person;
- (c) for the purpose of obtaining sexual gratification for himself or another person, he knowingly takes and shares an intimate image of a person without the consent of the depicted person and without reasonably believing that the depicted person consents;
- (d) he knowingly threatens to share an intimate image of another person in circumstances in which he intends to cause the depicted person to fear that the threat will be carried out or he is reckless as to whether the

depicted person will fear that the threat will be carried out; or

- (e) he knowingly alters an image of a person to make it appear that the image of the depicted person is an intimate image and shares that altered image without the consent of the depicted person and without reasonably believing that the depicted person consents.

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

- (a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—

- (a) performed by a law enforcement officer in the lawful execution of his duty;
- (b) carried out by an authorized person for medical, forensic, scientific or educational purposes;
- (c) carried out for the purposes of security monitoring—
 - (i) by a person monitoring his home; or

- (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;
- (d) acts that the person reasonably believed were necessary for the purposes of—
 - (i) preventing, detecting, investigating or prosecuting crime;
 - (ii) legal proceedings; or
 - (iii) the administration of justice; or
- (e) in the public interest.

(4) A person does not commit an offence under this section if he shares an intimate image with a professional legal adviser—

- (a) in connection with the giving by the legal adviser of legal advice to the person;
- (b) in contemplation of, or in connection with, legal proceedings; or
- (c) for the purpose of legal proceedings.

(5) A professional legal adviser does not commit an offence under this section if he shares an intimate image or other matter—

- (a) with, or with a representative of, a client of his in connection with the giving by the

legal adviser of legal advice to the client; or

(b) with any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(6) Subsection (5) does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose.

(7) Subject to subsection (8), an internet service provider which provides a conduit for the transmission of information, shall not be responsible for—

(a) monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or

(b) actively seeking facts or circumstances indicating illegal activity in order to avoid criminal liability under this Act.

(8) Notwithstanding subsection (7), an internet service provider shall comply with any court order, injunction, writ or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement based on any written law.

Sharing an
intimate
image

22C. (1) Subject to subsection (3), a person commits an offence if he knowingly shares an intimate image of a depicted person—

(a) without the consent of the depicted person and without reasonably believing that the depicted person consents;
or

(b) in circumstances in which the depicted person has a reasonable expectation that—

(i) he was doing a private act;

(ii) his private parts would not be visible to the public; or

(iii) his intimate image would not be shared without his express permission,

regardless of whether the intimate image of the depicted person was taken in a public or private place.

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

(a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years;
or

(b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—

- (a) performed by a law enforcement officer in the lawful execution of his duty;
- (b) carried out by an authorized person for medical, forensic, scientific or educational purposes;
- (c) carried out for the purposes of security monitoring—
 - (i) by a person monitoring his home; or
 - (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;
- (d) acts that the person reasonably believed were necessary for the purposes of—
 - (i) preventing, detecting, investigating or prosecuting crime;
 - (ii) legal proceedings; or
 - (iii) the administration of justice; or
- (e) in the public interest.

Court may order compensation and rectification 22D. (1) The Court or body may order a person who is convicted of an offence under sections 22A, 22B or 22C—

(a) to pay to the complainant adequate compensation which shall be a charge on the property of the person so convicted; and

(b) to take reasonable actions to remove, retract, recover, delete or destroy any intimate image taken or shared by the person within a period specified by the Court.

(2) The provisions of subsection (1) shall not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order under subsection (1) into account when it makes a further award.”.

Consequential amendments

6. The written law listed in the First Column of the Schedule is amended to the extent specified in the Second Column of that Schedule:

SCHEDULE

(Section 6)

CONSEQUENTIAL AMENDMENTS

First Column

Second Column

The Children Act, Chap. 46:01 Insert after Part VIII, the following new Part:
“PART VIIIA

VOYEURISM

Voyeurism 44A. (1) Subject to subsection (3), a person commits the offence of voyeurism if, for the purpose of obtaining sexual

gratification for himself or another person, or causing humiliation or distress to a child, he knowingly—

(a) observes, whether with or without the use of equipment, that child doing a private act;

(b) views, whether with or without the use of equipment, beneath the clothing of that child and does so with the intention of enabling himself or another person to observe—

(i) the private parts of that child, whether fully or partially exposed or covered with underwear; or

(ii) the underwear covering the private parts of that child; or

(c) takes, captures, records, streams, stores, publishes or transmits through a device or computer system, a visual recording of the private parts of a child.

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

(a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or

(b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—

- (a) performed by a law enforcement officer in the lawful execution of his duty with the consent of the child's parent, guardian or a person with responsibility for the child;
- (b) carried out by an authorized person for medical, forensic, scientific or educational purposes with the consent of the child's parent, guardian or a person with responsibility for the child;
- (c) carried out for the purposes of security monitoring—
 - (i) by a person monitoring his home; or
 - (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;
- (d) acts that the person reasonably believed were necessary for the purposes of—
 - (i) preventing, detecting, investigating or prosecuting crime;
 - (ii) legal proceedings; or
 - (iii) the administration of justice; or
- (e) in the public interest.

Taking and
sharing of an
intimate
image

44B. (1) Subject to subsections (3), (4) and (5), a person commits an offence if—

- (a) for the purpose of causing humiliation or distress to a child, he knowingly takes and shares an intimate image of that child;
- (b) for the purpose of obtaining sexual gratification for himself or another person, he knowingly takes and shares an intimate image of a child;
- (c) he knowingly threatens to share an intimate image of a child in circumstances in which he intends to cause the depicted child to fear that the threat will be carried out or he is reckless as to whether the depicted child will fear that the threat will be carried out; or
- (d) he knowingly alters an image of a child to make it appear that the image of the depicted child is an intimate image and shares that altered image.

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

- (a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—

- (a) performed by a law enforcement officer in the lawful execution of his duty with the

consent of the child's parent, guardian or a person with responsibility for the child;

- (b) carried out by an authorized person for medical, forensic, scientific or educational purposes with the consent of the child's parent, guardian or a person with responsibility for the child;
- (c) carried out for the purposes of security monitoring—
 - (i) by a person monitoring his home; or
 - (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;
- (d) acts that the person reasonably believed were necessary for the purposes of—
 - (i) preventing, detecting, investigating or prosecuting crime;
 - (ii) legal proceedings; or
 - (iii) the administration of justice; or
- (e) in the public interest.

(4) A person does not commit an offence under this section if he shares an intimate image with a professional legal adviser—

- (a) in connection with the giving by the legal adviser of legal advice to the person;
- (b) in contemplation of, or in connection with, legal proceedings; or

(c) for the purpose of legal proceedings.

(5) A professional legal adviser does not commit an offence under this section if he shares an intimate image or other matter—

(a) with, or with a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or

(b) with any person—

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(6) Subsection (5) does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose.

(7) Subject to subsection (8), an internet service provider which provides a conduit for the transmission of information, shall not be responsible for—

(a) monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or

(b) actively seeking facts or circumstances indicating illegal activity in order to avoid criminal liability under this Act.

(8) Notwithstanding subsection (7), an internet service provider shall comply with any court order, injunction, writ or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement based on any written law.

Sharing an
intimate
image

44C. (1) Subject to subsection (3), a person commits an offence if he knowingly shares an intimate image of a depicted child in circumstances in which the depicted child has a reasonable expectation that—

- (a) he was doing a private act;
- (b) his private parts would not be visible to the public; or
- (c) his intimate image would not be shared,

regardless of whether the intimate image of the depicted child was taken in a public or private place.

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

- (a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

(3) A person does not commit an offence under this section if the acts that are alleged to constitute the offence are—

- (a) performed by a law enforcement officer in the lawful execution of his duty with the consent of the child's parent, guardian or a person with responsibility for the child;
- (b) carried out by an authorized person for medical, forensic, scientific or educational purposes with the consent of the child's parent, guardian or a person with responsibility for the child;

- (c) carried out for the purposes of security monitoring—
 - (i) by a person monitoring his home; or
 - (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;
- (d) acts that the person reasonably believed were necessary for the purposes of—
 - (i) preventing, detecting, investigating or prosecuting crime;
 - (ii) legal proceedings; or
 - (iii) the administration of justice; or
- (e) in the public interest.

Court may
order
compensation
and
rectification

44D. (1) The Court or body may order a person who is convicted of an offence under sections 44A, 44B or 44C—

- (a) to pay to the complainant adequate compensation which shall be a charge on the property of the person so convicted; and
- (b) to take reasonable actions to remove, retract, recover, delete or destroy any intimate image taken or shared by the person within a period specified by the Court.

(2) The provisions of subsection (1) shall not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order under subsection (1) into account when it makes a further award.

- Interpretation 44E. For the purposes of this Part—
- “computer data storage medium” means anything in which information is capable of being stored, or anything from which information is capable of being retrieved or reproduced, with or without the aid of any other article or device;
- “computer system” means any device or group of interconnected or related devices which follows a programme or external instruction to perform automatic processing of information or electronic data;
- “device” means any electronic programmable device used, whether by itself or as part of a computer network, an electronic communications network or any other device or equipment, or any part thereof, to perform pre-determined arithmetic, logical, routing or storage operations and includes—
- (a) an input device;
 - (b) an output device;
 - (c) a processing device;
 - (d) computer data storage medium;
 - (e) a program; or
 - (f) equipment,
- that is related to, connected with or used with such a device or any part thereof;
- “internet service provider” means—
- (a) any public or private entity that provides to users of its service the ability to communicate by means of a computer system; or

- (b) any other entity that processes or stores computer data on behalf of such communication service or users of such service;

“intimate image” means a visual recording of a child that depicts—

- (a) the child engaged in a sexual act;
- (b) the child in a manner or context that is sexual; or
- (c) the private parts of the child;

“law enforcement officer” means—

- (a) a police officer appointed under the Police Service Act; Chap. 15:01
- (b) a constable as defined under the Supplemental Police Act; Chap. 15:02
- (c) a member of the Special Reserve Police appointed under the Special Reserve Police Act; Chap. 15:03
- (d) an employee of the Strategic Services Agency established under the Strategic Services Agency Act; Chap. 15:06
- (e) a member of the Municipal Police Service appointed under the Municipal Corporations Act; or Chap. 25:04
- (f) a member of any other agency of the State in which investigative and intelligence gathering

powers, similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested;

“private act” means an act done by a child where the child is in a place which, in the circumstances, would reasonably be expected to provide privacy and—

- (a) the private parts of the child are fully or partially exposed or covered only with underwear;
- (b) the child is using the toilet, showering or bathing; or
- (c) the child is doing a sexual act;

“private parts” means—

- (a) the genitals, pubic area or buttocks of a child; or
- (b) the breasts of a female child, whether or not the breasts are sexually developed;

“sexual act” means an act which a reasonable person would, in all the circumstances but regardless of the purpose of a person, consider to be sexual;

“share” means—

- (a) publish, distribute, transmit, stream, sell, make available or advertise;

- (b) sharing online, including on websites, via email, live-streaming or through private messaging services;
- (c) sharing offline, including through the post or distribution by hand; or
- (d) showing to another person, including images stored on a device or printed copies;

“visual recording” means a—

- (a) photograph or film;
- (b) video recording; or
- (c) live-stream,

on any medium from which a still or moving image may by any means be produced or transmitted, whether or not accompanied by a soundtrack.”.

Passed in the Senate this day of ,
2021.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 11 of 2021

SECOND SESSION
TWELFTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Sexual Offences
Act, Chap. 11:28

Received and read the

First time

Second time

Third time