



BILL ESSENTIALS

BILL ESSENTIALS NO.6 2021–2022

2ND SESSION, 12TH PARLIAMENT

The Sexual Offences (Amendment) (No. 3) Bill, 2021

THE PARLIAMENT OF
TRINIDAD AND TOBAGO

BILL ESSENTIALS

Date Introduced: December 7, 2021

House: Senate

Minister: The Honourable Attorney
General

Senate Bill No: 11 of 2021

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Links: The links to the Bill, and its
progress can be found on the Bill's
home page through the Parliament's
Website



<http://www.ttparliament.org/publications.php?mid=28&id=930>

BACKGROUND

1. The **Sexual Offences (Amendment) (No. 3) Bill, 2021**¹ (“the Bill”) was introduced in the Senate by the Honourable Attorney General on December 7, 2021.
2. The Bill seeks to amend the **Sexual Offences Act, Chap. 11:28**² (“the Act”) and to provide for other related matters. The Act was previously amended in 2019 by the **Sexual Offences (Amendment) Act, 2019**³ and in 2021 by the **Sexual Offences (Amendment) Act, 2021**.⁴
3. Additionally, the **Sexual Offences (Amendment) (No. 2) Bill, 2021**⁵ was introduced in the House of Representatives on November 24, 2021 by the Honourable Attorney General and is still awaiting Second Reading.
4. The Bill therefore proposes to make amendments to provisions contained within the Sexual Offences (Amendment) Acts of 2019 and 2021, which has not yet been included in the parent Act, since the Law Review Commission last updated the Laws on December 31, 2016.
5. The Bill will come into effect on such date as fixed by the President by Proclamation.

KEY FEATURES OF THE BILL

INTERPRETATION

6. **Clause 4** of the Bill seeks to amend existing section 2 of the Act to include the following new terms alphabetically, *inter alia*: computer data storage medium, computer system, device, internet service provider, intimate image, law enforcement officer, private act, private parts.
7. Such definition of “*Law Enforcement Officer*” includes:
 -  A police officer appointed under the **Police Service Act**⁶;
 -  A constable as defined under the **Supplemental Police Act**⁷ which means any member of the supplemental bodies of Police as established or any person appointed a special constable;

¹ <http://www.ttparliament.org/legislations/b2021s11g.pdf>

² **Chap. 11:28** - <https://agla.gov.tt/downloads/laws/11.28.pdf>





³ **Act No. 19 of 2019** - <http://www.ttparliament.org/legislations/a2019-19g.pdf>

⁴ **Act No. 13 of 2021** - <http://www.ttparliament.org/legislations/a2021-13g.pdf>

⁵ <http://www.ttparliament.org/publications.php?mid=28&id=930>

⁶ **Chap 15:01** - <https://agla.gov.tt/downloads/laws/15.01.pdf>




⁷ **Chap 15:02** - <https://agla.gov.tt/downloads/laws/15.02.pdf>

-  A member of the Special Reserve Police appointed under the **Special Reserve Police Act**⁸;
-  An employee of the Strategic Services Agency established under the **Strategic Services Agency Act**⁹;
-  A member of the Municipal Police Service appointed under the **Municipal Corporations Act**¹⁰; or
-  Any member of any other State Agency in which investigative and intelligence gathering powers are lawfully vested with, similar to those exercisable by any police officer under the Police Service Act.

SECTION 22 AMENDED

8. **Clause 5** of the Bill seeks to amend the Act by inserting new **sections 22A, 22B, 22C and 22D** after existing **section 22**.






NEW SECTION 22A - VOYEURISM

9. **Section 22A(1)** establishes the offence of voyeurism where one engages in the Act for the purpose of deriving sexual gratification for themselves or another or for the purpose of causing humiliation and distress to another person and knowingly:
-  observing another engaged in a private act without reasonable consent with or without the use of equipment;
 -  viewing beneath the clothing of another with or without equipment with the intention of viewing the private parts of said person whether covered or uncovered without consent or without reasonably believing that the person gave reasonable consent;
 -  taking, capturing, recording, streaming, storing, publishing or transmitting through any device or computer an image-based recording of the private parts of another without consent or reasonable consent where said person has a reasonable expectation of privacy.
10. **Section 22A(2)** establishes the penalty for commission of an offence under this section most notably, on **summary conviction** to a **fine of Two hundred and Fifty Thousand Dollars (\$250,000.00) and two (2) years imprisonment** or upon **conviction on indictment** to a **fine of Seven Hundred and Fifty Thousand Dollars (\$750,000.00) and five (5) years' imprisonment**.
11. **Section 22(A)(3)** establishes certain exceptions in which it shall not be deemed an offence for any person to engage in voyeurism as established within the bill. Such acts include:

⁸ Chap 15:03 - <https://agla.gov.tt/downloads/laws/15.03.pdf>





⁹ Chap 15:06 - <https://agla.gov.tt/downloads/laws/15.06.pdf>













¹⁰ Chap 25:04 - <https://agla.gov.tt/downloads/laws/25.04.pdf>

-  where they are performed by a law enforcement officer in the lawful execution of their duty;
-  where they are carried out for medical, forensic, scientific or educational purposes by an authorized individual;
-  where they are carried out for the purposes of security monitoring inclusive of instances whereby one is monitoring their home or where there are signs prominently and visibly displayed to alert persons to the fact that the premises or portions of it are under surveillance;
-  where the act was carried out because there was a reasonable belief of necessity for the preventing, detecting, investigating or prosecuting of any crime in the course of legal proceedings or in the administration of justice; or
-  in the public interest.

12. Given that advancements in technology and social media have made it easier for persons to engage in acts like that of voyeurism to the harm of others, this clause marks a positive step in the direction to protect the privacy of persons and their bodies from harm by others.







SECTION 22B – TAKING AND SHARING OF AN INTIMATE IMAGE WITHOUT CONSENT



13. **Section 22B(1)** establishes an offence for any person to engage in conduct amounting to the capturing and distribution of intimate images, without the consent and reasonable belief of consent from the individual who forms the subject matter of said image. A person further commits an offence if they engage in similar conduct with the intention of:
-  causing humiliation or distress to another person;
 -  obtaining sexual gratification for themselves or another person;
 -  threatening to share said intimate image with another in circumstances in which such person intends to cause the depicted person fear of said threat being carried out or such person is reckless as to whether the depicted person would fear that the threat would be carried out; or
 -  knowingly altering the image of a person to make it appear to be an intimate photo and sharing said photo without the consent and reasonable belief of consent from the individual who forms the subject matter of said photo.
14. **Section 22(B)(2)** establishes the penalty for commission of such an offence most notably, on *summary conviction* to a **fine of Two Hundred and Fifty Thousand Dollars (\$250,000.00) and two (2) years imprisonment** or upon *conviction on indictment* to a **fine of Seven Hundred and Fifty Thousand Dollars (\$750,000.00) and five (5) years' imprisonment**.

15. **Section 22(B)(3)** establishes certain exceptions in which it shall not be deemed an offence for any person to engage in such conduct identified (**section 22(B)(1)**). Such conduct includes:
-  where it is engaged in by a law enforcement officer in the lawful execution of their duty;
 -  where it is carried out by an authorised individual for medical, forensic, scientific or educational purposes;
 -  where it is carried out for the purposes of security monitoring of one's home or on any premises where there are signs affixed to notify one of surveillance of the property or portions of the property;
 -  whereby the conduct is carried out by a person who reasonably believes that it is necessary for the preventing, detecting, investigating or prosecuting of any crime in the course of legal proceedings or in the administration of justice; or
 -  where it is in the public interest.
16. **Section 22(B)(4)** establishes a further exception whereby a person shall not be deemed liable for having committed an offence where they share an intimate image with a professional legal adviser:
-  in connection with the provision of legal advice by the legal adviser to the person.
 -  in contemplation of or in connection with proposed legal proceedings; or
 -  for the purpose of legal proceedings.
17. **Section 22(B)(5)** creates a further specific exception by establishing that a legal adviser does not commit an offence where they share said intimate image or other matter:
-  with, or with a representative of a client in connection with the provision of legal advice; or
 -  with any person in connection or contemplation with proposed legal proceedings or for the purposes of those proceedings.
18. **Section 22(B)(6)** does not extend the exception at subsection five (5) to circumstances where the intimate image is shared with a view to the furthering of any criminal purpose.
19. **Section 22(B)(7)** establishes that Internet Service Providers which usually acts as a conduit for the transmission of information, shall not be responsible for:
-  monitoring information which it stores on behalf of another to determine whether its processing would qualify or give rise to liability under this Act; or
 -  actively seeking facts or circumstances indicating illegal activity to avoid criminal liability under this Act.

20. Whilst this section does absolve an internet service provider from liability in matters related to this Act, this exclusion is not absolute. **Section 22(B)(8)** establishes a mandate on all Internet Service Providers for compliance with any court order, injunction, writ, or legal requirement, which requires that said provider terminate or prevent infringement of any written law.
21. Given that there have been significant advancements made in image capturing, such advancements have made it virtually possible for any person to capture and record intimate photos and displays of another with or without their knowledge or consent. Consequently, this provision will serve as a positive step in restricting the use of these devices to honest circumstances.

SECTION 22C – SHARING AN INTIMATE IMAGE

22. **Section 22C(1)** makes it an offence for any person to knowingly share an intimate image of another person (depicted person) without their consent or reasonable belief of consent of the depicted person or in circumstances where the depicted person has a reasonable expectation of privacy in relation to:
-  engagement in private acts;
 -  no visibility of their private parts to the public; or
 -  the sharing of intimate images of the depicted person without express consent, regardless of whether the image was taken in a public or private place.
23. **Section 22C(2)** establishes the penalty for commission of such an offence most notably, on **summary conviction** to a **fine of Two Hundred and Fifty Thousand Dollars (\$250,000.00) and two (2) years imprisonment** or upon **conviction on indictment** to a **fine of Seven Hundred and Fifty Thousand Dollars (\$750,000.00) and five (5) years' imprisonment**.
24. **Section 22C(3)** establishes certain exceptions in which it shall not be deemed an offence for any person to engage in such conduct described above. Such conduct includes:
-  where it is engaged in by a law enforcement officer in the lawful execution of their duty;
 -  where it is carried out by an authorised individual for medical, forensic, scientific or educational purposes;
 -  where it is carried out for the purposes of security monitoring of one's home or on any premises where there are signs affixed to notify one of surveillance of the property or portions of the property;

-  whereby the conduct is carried out by a person who reasonably believes that it is necessary for the preventing, detecting, investigating or prosecuting of any crime in the course of legal proceedings or in the administration of justice; or
-  where it is in the public interest.

25. This provision will play a critical role in treating with the growing issue of revenge porn and also addresses the lacuna in the law as noted by the Honourable Mr. Justice Frank Seepersad in the case of *Therese Ho -v- Lendl Simmons*.¹¹

SECTION 22D – COURT MAY ORDER COMPENSATION AND RECTIFICATION

26. **Section 22D(1)** establishes the appropriate punishment for persons convicted of an offence under sections 22A, 22B and 22C of the Bill. It will empower the Court to order the convicted person to pay adequate compensation to the victims of such offences (which shall also attach as a charge upon any property belonging to the convicted person). Additionally, the convicted person may be required to take all reasonable steps to remove, retract, recover, delete or destroy the intimate image taken or shared by the person, within a specific period as specified by the Court.

27. **Section 22(D)(2)** establishes a non-jurisdictional bar, whereby it is immaterial as to whether compensation is paid to the complainant in accordance with the provisions under this Bill, a complainant may also petition any other court for further compensation. This is subject to the other court taking awards made under this subsection into account when making any further award.

SCHEDULE

28. **Clause 6** of the Bill seeks to consequentially amend the *Children Act*¹² by inserting a new Part VIIIA after the existing Part VIII. Part VIIIA will seek to extend the protections of the new offences created and outlined in this Bill, namely those related to voyeurism, to children.

REFERENCES

KEY LEGISLATION










 **The Sexual Offences Act, Chap. 11:28**

https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/11.28.pdf

¹¹ CV 2014-01949 Therese Ho -v- Lendl Simmons

(http://webopac.ttlawcourts.org/LibraryJud/Judgments/HC/seepersad/2014/cv_14_01949DD26oct2015.pdf)

¹² Chap 46:01 - <https://agla.gov.tt/downloads/laws/46.01.pdf>

-  **The Sexual Offences (Amendment) Act, 2019**
<http://www.ttparliament.org/legislations/a2019-19g.pdf>
-  **The Sexual Offences (Amendment) Act, 2021**
<http://www.ttparliament.org/legislations/a2021-13g.pdf>
-  **The Sexual Offences (Amendment) (No. 2) Bill, 2021**
<http://www.ttparliament.org/legislations/b2021h11.pdf>
-  **The Police Service Act, Chap. 15:01**
https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/15.01.pdf
-  **The Supplemental Police Act, Chap. 15:02**
https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/15.02.pdf
-  **Special Reserve Police Act, Chap. 15:03**
https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/15.03.pdf
-  **The Strategic Services Agency Act, Chap 15:06**
https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/15.06.pdf
-  **The Municipal Corporations Act, Chap 25:04**
https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/25.04.pdf
-  **The Children Act, Chap 46:01**
https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/46.01.pdf



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