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No. 34 of 2004

Third Session Eighth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Offences Against the Person
Act, Chap. 11:08

THE OFFENCES AGAINST THE PERSON (AMENDMENT)
(HIV) BILL, 2004

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 Offences Against the Person Act, Chap. 11:08 (“the Act”) to make it an offence to intentionally or recklessly expose another to infection with HIV. Today, in many Commonwealth and non-Commonwealth jurisdictions it is recognized by legislators that HIV infected individuals who knowingly conduct themselves in ways that pose significant risk of transmission of the infection to others must be held accountable for their actions.

Clause 2 of the Bill introduces a new section 18A into the Act to make it an indictable offence if a person who knows, or ought reasonably to know, he is HIV positive does not so inform another person and engages in conduct, including intimate conduct, with that person. Other prohibited conduct would include where the infected person transfers, donates or provides his body parts for human use or where he sells or in any other way transfers to another person any intravenous or intra-muscular drug paraphernalia which he has utilized.

A person committing the offence may be convicted of intentional or reckless exposure of another to the infection and be liable to imprisonment for terms of ten or seven years respectively. Where a person is found not guilty of intentional exposure, he may be found guilty of reckless exposure. Should the conduct result in the death of the other person, the offence of manslaughter is committed.

It would be a defence that the person exposed to HIV knew from the accused person that the accused person was infected with HIV and consented to the conduct with that knowledge. The Magistrate at the preliminary inquiry may order the taking of a blood sample for forensic testing if the evidence so warrants. The Court or the jury may draw such inferences as appear proper where either party refuses to give a blood sample for testing.

Clause 3 also proposes that a new section 18B be inserted into the Act to make it an indictable offence if an individual or institution undertakes the supply or transfer, transfusion or transplantation of tissue, organs, blood, etc., to or into a person and the person becomes infected with HIV owing to gross negligence on the part of the individual or institution. An individual or institution guilty of this offence is liable to a fine of five hundred thousand dollars and the institution may, additionally, have its operating licence revoked by an order of the Court.

BILL

An Act to amend the Offences Against the Person Act,
Chap. 11:08

[, 2004]

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

1. This Act may be cited as the Offences Against the Short title
Person (Amendment) (HIV) Act, 2004.

Sections 18A and 18B
inserted
Chap. 11:08

2. The Offences Against the Person Act is amended by inserting after section 18 the following new sections:

^{“Intentional or reckless exposure to HIV infection} 18A. (1) A person who knows or ought reasonably to know that he is HIV positive and who, without so informing another person, engages in conduct with that other person, including if he—

- (a) has intimate conduct with the person;
- (b) transfers, donates, or provides his blood, tissue, semen, organs, or other potentially infectious body parts or fluids for transfusion, transplantation, insemination, or other administration to the person, as the case may be; or
- (c) dispenses, delivers, exchanges, sells, or in any other way transfers to the person any intravenous or intra-muscular drug paraphernalia which he has utilized,

commits the offence of intentional or reckless exposure of another to infection with HIV.

(2) A person convicted on indictment of the offence of intentional exposure of another to infection with HIV is liable to imprisonment for ten years.

(3) A person convicted on indictment of the offence of reckless exposure of another to infection with HIV is liable to imprisonment for seven years.

(4) A person found not guilty of the offence of intentional exposure of another to infection with HIV may be found guilty of the offence of reckless exposure of another to infection with HIV.

(5) Where an offence has been committed under subsection (1) and the other person contracts HIV and dies as a result of the conduct, the offence of manslaughter is committed.

(6) It is a defence under this section for the accused person to prove that he informed the other person that he was HIV positive and that person consented to engage in the type of conduct referred to in subsection (1).

(7) Where a person is charged for an offence under this section, a Magistrate may, having regard to the circumstances, make an order directing the accused person and the other person to each give a sample of his blood for the purpose of HIV testing.

(8) Where either person refuses without reasonable cause to give the sample of his blood—

(a) the Court in determining—

(i) whether to commit the person for trial; or

(ii) whether there is a case to answer, or

(b) the jury in determining whether the accused person is guilty of the offence charged,

may draw such inferences from the refusal as appear proper.

Negligent
transmission
of HIV

18B. (1) Where an individual, body corporate or an unincorporated institution—

(a) supplies for transferece, transplantation or transfusion; or

(b) transfers, transplants or transfuses,

to or into a person, as the case may be, tissue, organs, blood, semen or other body parts or fluids and the person becomes infected with HIV owing to the gross negligence of the individual, body corporate or unincorporated institution, the offence of negligent transmission of HIV is committed.

(2) An individual, body corporate or unincorporated institution convicted on indictment of an offence under subsection (1) is liable to a fine of five hundred thousand dollars and, in the case of a body corporate or an unincorporated institution, the Court may order that the operating licence of that body or institution be revoked.

(3) For the purposes of section 18A and this section—

“HIV” means the human immunodeficiency virus;

“intimate conduct” means the exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV;

“intravenous or intra-muscular drug paraphernalia” means any equipment, product or material of any kind which is peculiar to and marketed for use in injecting a substance into the human body; and

“body corporate” means any company, association or other body incorporated under the laws of Trinidad and Tobago.”.

Passed in the House of Representatives this
day of _____, 2004.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this _____ day of _____, 2004.

Acting Clerk of the Senate

I confirm the above.

President of the Senate

No. 34 of 2004

THIRD SESSION
EIGHTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Offences Against the
Person Act, Chap. 11:08

Received and read the

First time

Second time

Third time
