

*Legal Supplement Part C to the "Trinidad and Tobago Gazette", Vol. 43,
No. 201, 18th November, 2004*

No. 6 of 2004

Third Session Eighth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

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

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

Explanatory Note

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

The Bill would seek to amend the Offences Against the Person Act, Chap. 11:08 (the Act) by creating two new offences—the offence of harassment and, relatedly, the offence of putting a person in fear of violence. The proposed amendment aims at addressing the phenomenon of stalking.

Clause 1 of the Bill would provide for the short title and commencement of the Act.

Clause 2 would seek to amend the Act by inserting six new sections—sections 30A to 30F. The new section 30A would create the offence of harassment. The offence occurs where a person pursues a course of conduct which amounts to the harassment of another and knows or ought reasonably to know that such conduct would amount to harassment. To come within the parameters of the offence, the course of conduct complained of must occur on more than one occasion. Harassment of a person includes alarming or causing distress to that person by engaging in conduct such as following, making visual recordings of, accosting, watching, loitering near, interfering with the property of that person, telephoning or giving offensive material to the person. Acting in a similar manner towards someone with a familial or close personal relationship to the person also constitutes offensive conduct.

The new section 30B would create the offence of putting a person in fear of violence. As with the offence of harassment the course of conduct complained of must occur on more than one occasion. The alleged offender must also know or ought reasonably to know that his conduct will cause the other person to fear violence against him.

The new section 30C would provide a defence for a person charged with an offence under section 30A or 30B. In answer to a charge of an offence under either section it would only be necessary to show that his conduct was pursued in order to prevent or detect crime, to comply with any law or, in the particular circumstances, the pursuit of his conduct was reasonable.

The proposed section 30D would allow a victim of an offence under section 30A or 30B to obtain a Court Order for the purpose of protecting or compensating a victim or any other person mentioned in the Order. The Court may vary or discharge any Protection Order made under this section.

The computation of compensation is addressed at section 30E. The heads of damages for which compensation may be made include loss of earnings, medical expenses, moving and accommodation expenses and reasonable legal costs. Compensation ordered by a Court of summary jurisdiction shall not exceed the statutory maximum that such a Court has jurisdiction to award.

The proposed section 30F empowers the Court in addition to making an order for protection and compensation under the proposed section 30D to make an order, where appropriate, under the Mental Health Act.

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 and}
Person (Amendment) (Harassment) Act, 2004, and shall ^{Commencement}
come into operation on such date as is fixed by the
President by Proclamation.

2. The Offences Against the Person Act is amended by inserting after section 30 the following new sections:

“HARASSMENT

Harassment 30A. (1) For the purpose of this section—

(a) “harassment” of a person includes alarming the person or causing the person distress by engaging in a course of conduct such as—

- (i) following, making visual recordings of, stopping or accosting the person;
- (ii) watching, loitering near or hindering or preventing access to or from the person’s place of residence, workplace or any other place frequented by the person;
- (iii) entering property or interfering with property in the possession of the person;
- (iv) making contact with the person, whether by gesture, directly verbally, by telephone, computer, post or in any other way;
- (v) giving offensive material to the person, or leaving it where it will be found by, given to, or brought to the attention of, the person;

(vi) acting in any manner described in subparagraphs (i) to (v) towards someone with a familial or close personal relationship to the person; or

(vii) acting in any other way that could reasonably be expected to alarm or cause the person distress; and

(b) a “course of conduct” involves conduct of the kind referred to in paragraph (a) carried out on at least two occasions.

(2) A person who pursues a course of conduct which amounts to harassment of another and which he knows or ought reasonably to know amounts to harassment of the other is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months.

(3) A person who is charged with an offence under subsection (2) and whose course of conduct is in question is deemed to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

Putting a
person in
fear of
violence

30B. (1) A person who is accused of conduct which would constitute an offence under section 30A and which causes the other person to fear that violence will be used against him, and the person whose

course of conduct is in question knows or ought to know that his conduct will cause the other person so to fear, commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars and to imprisonment for five years or, on summary conviction, to a fine of five thousand dollars and to imprisonment for six months.

(2) For the purpose of this section, the person whose course of conduct is in question is deemed to know that it will cause another person to fear that violence will be used against him if a reasonable person in possession of the same information would think the course of conduct would cause the other person so to fear.

(3) If on trial on indictment, a person charged with an offence under this section is found not guilty, the Court may find him guilty of an offence under section 30A.

Defence 30C. It is a defence for a person charged with an offence under section 30A or 30B to show that—

- (a) his course of conduct was pursued for the purpose of preventing or detecting crime;
- (b) his course of conduct was pursued under any written or unwritten law or to comply with any condition or requirement imposed under any written or unwritten law; or
- (c) in the particular circumstances, the pursuit of the course of conduct was reasonable.

Orders for protection and compensation
Form 1 Schedule
Form 2 Schedule

30D. (1) A Court sentencing a person convicted of an offence under sections 30A or 30B may, in addition, make an Order, in the prescribed form, for protection or compensation.

Form 1 Schedule

(2) An Order for protection made under this section shall direct a person to cease from engaging in conduct which—

(a) constitutes or may constitute harassment; or

(b) will cause fear of violence,

and to comply with any other directions contained in the Order.

Form 1 Schedule
Form 4 Schedule

(3) An Order for protection shall have effect for the period specified in the Order or until such further Order, as prescribed, is made by the Court varying or discharging the original Order.

Form 3 Schedule

(4) An application for the variation or discharge of a protection Order may be made in the prescribed form by the person against whom the Order is made or any other person included in the Order.

(5) Where a person fails to comply with an Order for protection made under this section or any of the directions contained therein, he commits an offence and is liable on summary conviction to imprisonment for six months.

Award of compensation
Form 2 Schedule

30E. (1) An Order for compensation under section 30D may include—

(a) loss of earnings;

(b) medical expenses;

(c) moving and accommodation expenses; and

(d) reasonable legal costs.

(2) Any compensation ordered by a Court of summary jurisdiction under subsection (1) shall not exceed the statutory maximum amount that such a Court has jurisdiction to award.

Further Order

30F. In addition to an Order for protection or compensation made under section 30D, the Court may, where the circumstances require, make an Order under section 6 of the Mental Health Act.”.

Chap. 28:02

FORM I

OFFENCES AGAINST THE PERSON ACT, CHAP. 11:08

Section 30D(3)

PROTECTION ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of

The Court having heard the matter in respect of the conduct of

.....
(Name of Defendant)

towards.....
(Name of person to be protected)

NOW THIS COURT ORDERS, that for the period from the

day of, 20..... to the day of, 20.....

YOU
(Name of Defendant)

THE WITHIN NAMED DEFENDANT SHALL NOT ENGAGE IN THE FOLLOWING CONDUCT:

AND YOU SHALL COMPLY WITH THE FOLLOWING PROHIBITIONS AND CONDITIONS:

If you the said.....
(Name of defendant)

fail to comply with any of the terms of this Order you shall be liable on summary conviction to imprisonment for six months pursuant to section 30D(5) of the above-mentioned Act.

.....
*Justice or Clerk of the Peace of the
Magistrate's Court for the District*

Dated this.....day of

OFFENCES AGAINST THE PERSON ACT, CHAP. 11:08

Section 30D(3)

COMPENSATION ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of

The Court having heard the matter in respect of the conduct of

.....
(Name of Defendant)

towards
(Name of person to be compensated)

NOW THIS COURT ORDERS, that youshall
(Name of Defendant)

pay monetary compensation to
(Name of person to be compensated)

withinmonths of the date of this Order in the sum of

\$.00, comprised as follows:

(SPECIFY THE COMPENSATION HEADINGS, AMOUNTS UNDER EACH
HEADING AND TOTAL AMOUNT OF COMPENSATION ORDERED)

.....
*Justice or Clerk of the Peace of the
Magistrate's Court for the District*

Dated this day of

APPLICATION FOR VARIATION OR DISCHARGE OF PROTECTION ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of

Between

..... Person to be protected

v

..... Defendant

I, hereby apply for a
(Name of Applicant)

variation/discharge of the Protection Order made against

..... on the
(Name of person against whom the Order was made)

..... day of, 20..... by the Court
(a copy of which is attached to this application) in respect of certain
conduct towards

.....
(Name of person who is protected by the Order)

I ask for a discharge of the Order/variation of the Order in the
following terms:

(SPECIFY DETAILS OF VARIATION)

.....
Applicant

Dated this day of

FORM 4

OFFENCES AGAINST THE PERSON ACT, CHAP. 11:08

Section 30D(3)

ORDER VARYING OR DISCHARGING PROTECTION ORDER

REPUBLIC OF TRINIDAD AND TOBAGO

In the County of

The Court, having heard an application made under section 30D(4) of the above-mentioned Act by
(Name of Applicant)

in respect of the conduct of
(Name of Defendant)

towards..... and
(Name of person protected by the Order)

the Court having on the day of, 20..... made an Order, a copy of which is attached, prohibiting the Defendant from engaging in the conduct specified therein

Now the Court on the application of
(Name of Applicant)

does this day Order that the Protection Order be discharged with effect from
(Specify effective date of discharge)

VARIED AS FOLLOWS (SPECIFY DETAILS OF VARIATION)

.....
Justice or Clerk of the Peace of the Magistrate's Court for the District

Dated this day of

Passed in the Senate this day of ,
2004.

Acting Clerk of the Senate

I confirm the above.

President of the Senate

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

Clerk of the House

I confirm the above.

Speaker

No. 6 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.....