

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

EXECUTIVE SUMMARY

Bill No.:	Senate Bill 11 of 2021
Introduced in:	The Senate
Introduced by:	The Honourable Faris Al-Rawi [Attorney General]
Introduced on:	07-Dec-2021
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The Sexual Offences Act, 2019 (the Act) was amended to provide for a robust system of registration of sex offenders. However, upon further examination of the Act, additional clarity was required in relation to the sex offender registry, meant for the sole use of the Trinidad and Tobago Police Service's (TTPS). This would contain detailed information for law enforcement's knowledge and information only and the sex offender website for public access. This website would contain limited information on sex offenders for the public's use in safeguarding themselves. As such, the Act was further amended by the Sexual Offences (Amendment) Act, 2021 to further distinguish between the National Sex Offender Register and the Public Sex Offender Website.

It has recently been discovered that there is a possible lacuna in the law in seeking to find appropriate criminal offence(s) that can be used by law enforcement to charge persons who are "Peeping Toms" which is known in other jurisdictions as the offence of "voyeurism", a usual precursor offence to many other detailed sexual offences.

Additionally, the increased use of smartphones and online platforms has made it easier to take photographs or film, alter or create and send images to family and friends, without the consent of the depicted person. This upsurge in the use of technology which aids the "Peeping Tom" has also been canvassed in laws of these jurisdictions and the offences also apply in situations where persons are recorded while nude or engaged in intimate activity and such images are taken or shared without that person's knowledge or consent.

As such, the Sexual Offences (Amendment) Bill, No. 3, 2021 (Voyeurism) was introduced by the Attorney General and Minister of Legal Affairs, the Honourable Faris Al-Rawi in the Senate on December 7, 2021, which seeks to amend the Sexual Offences Act, Chap. 11:28 by inserting four (4) new sections.

INTERPRETATION

The Sexual Offences (Amendment) (No.3) Bill, 2021, sought to amend the existing section 2 of the Act to include the following terms:

- computer data storage medium,
- computer system,
- device,
- internet service provider,
- intimate image,
- law enforcement officer,
- private act,
- private parts.

SECTION 22A - VOYEURISM

Under the Section 22A (1), 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. It must be done for the purpose of obtaining sexual gratification or for the purpose of causing humiliation or distress to the other person. The offence is committed by the following:

- 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 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.

Section 22A (2) proposes a penalty for commission of an offence under this section 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.

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

This section would provide for five (5) categories of offences which are as follows:

- 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;
- where there are threats to share to share an intimate image;
- for the purpose of obtaining sexual gratification;
- where a person knowingly alters the image of a person to make it appear that the image of the depicted person is an intimate one.

Section 22B (1) proposes a penalty for commission of an offence under this section 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.**

Section 22(B)(7) has indicated that Internet Service Providers would **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.

However, internet service providers must comply with any court order, injunction, writ or other legal requirement.

SECTION 22C – SHARING AN INTIMATE IMAGE

Section 22C (1) creates an offence for any person who knowingly shares an intimate image of a depicted person without the person's consent or reasonable belief of consent or in circumstances where the depicted person has the expectation that:

- he was engaging in private acts;
- there would be no visibility of their private parts to the public; or

- the depicted person’s intimate images would not be shared without their consent regardless of whether the image was taken in a public or private place.

Section 22C (2) has proposed the penalty for commission of such an offence 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.**

SECTION 22D – COMPENSATION AND RECTIFICATION

Section 22D (1) has established that The Court or body may order a person convicted of an offence under sections 22A, 22B or 22C to pay adequate compensation to the complainant which shall be a charge on the property of the person so convicted. Moreover, the convicted person may be ordered by the Court to take reasonable actions to remove, retract, recover, delete or destroy the intimate image taken or shared by the person, within a specified period.

All of the above sections provides for exceptions with respect to:

- Law enforcement in the lawful execution of their duties
- The acts were carried out for medical purposes, security monitoring, preventing or prosecuting a crime, legal proceedings, the administration of justice and in the public interest.

Additionally, the Bill also sets out a consequential amendment to the Children’s Act, by inserting a new Part VIIIA, which would provide the offence of voyeurism in relation to children.