

No. of 2025

VIRGIN ISLANDS
SEXUAL OFFENCES BILL, 2025
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No. of 2025

Sexual Offence Act, 2025

Virgin
Islands

I Assent

Governor.
, 2025

VIRGIN ISLANDS
No. of 2025

A BILL FOR

AN ACT TO PROVIDE FOR THE CREATION OF SEXUAL OFFENCES; AND FOR RELATED MATTERS.

[Gazetted , 2025]

ENACTED by the Legislature of the Virgin Islands as follows:

PART I
PRELIMINARY

Short title [and commencement]

1. [(1)]This Act may be cited as the Sexual Offences Act, 2025.

[(2) This Act shall come into force on a date the Governor may, by Proclamation published in the *Gazette*, appoint.]

Interpretation

2. In this Act, unless the context otherwise requires,

“brothel” means a house, room or any other place resorted to by more than one prostitute for the purposes of prostitution, and the fact that one of the women is the owner or tenant and the occupier of the premises is immaterial;

“child” has the meaning provided in section 2 of the Children and Young Persons Act;

“child abuse material” includes audio recordings, and material that visually depicts a

- (a) child engaged in sexually explicit conduct;
- (b) person who appears to be a child engaged in sexually explicit conduct; or
- (c) child in the nude or in a sexually explicit manner;

“image” means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image;

“intimate photograph or film”—

- (a) a moving or still image that depicts—
 - (i) a person engaged in an intimate sexual activity that is not ordinarily done in public;
 - (ii) a person’s genital or anal region, when it is bare or covered only by underwear; or
 - (iii) a person’s ;
- (b) includes an image that has been altered to appear to show any of the things mentioned in paragraph (a); and
- (c) includes an image depicting a thing mentioned in paragraph (a), even if the thing has been digitally obscured, if the person is depicted in a sexual way;

“man” includes a boy;

“mental disorder” has the meaning given by section 2 of the Mental Health Act;

“penetration” means the continuing act from entry to withdrawal;

“prostitute” means a person who on at least one occasion and whether or not compelled to do so engages, or offers to engage, in sexual activity with another person in return for payment or a promise of payment to that person or a third person, and “prostitution” shall be construed accordingly.

“publish” includes to distribute, transmit, disseminate, circulate, deliver, exhibit, procure, lend for gain, exchange, barter, sell or offer for sale, let on hire or offer to let on hire, offer in any other way, or make available in any way;

“sexual disease” means Acquired Immune Deficiency Syndrome, Hepatitis B or Human Immunodeficiency Virus, gonorrhoea, syphilis, herpes or any other sexually transmitted disease;

“sexual offence” means an offence under this Act;

“touching” includes touching—

- (a) with any part of the body;
- (b) with anything else;
- (c) through anything,

and in particular includes touching amounting to penetration;

“woman” includes a girl; and

“vagina” includes vulva.

(2) For the purposes of this Act, penetration, touching or any other activity is sexual if a reasonable person would consider that—

- (a) whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual, or
- (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual,

(3) References to a part of the body include references to a part surgically constructed (in particular, through gender reassignment surgery).

(5) References to an image of a person include references to an image of an imaginary person.

(6) References to observation (however expressed) are to observation whether direct or by looking at an image.

(7) In relation to an animal, references to the vagina or anus include references to any similar part.

(8) Where upon the trial of an offence under this Act it is necessary to prove intercourse (whether natural or unnatural) it shall not be necessary to prove the completion of intercourse by the emission of seed, but the intercourse shall be deemed to be complete upon proof of penetration only.

Application to offences committed partly within and partly beyond the jurisdiction

3. When an act which, if done wholly within the jurisdiction of the court, would be an offence against this Act, is done partly within, and partly beyond the jurisdiction, every person who within the jurisdiction does or takes any part in such act may be tried and punished under this Act in the same manner as if the act had been done wholly within the jurisdiction.

PART II

RAPE AND SEXUAL ASSAULT OFFENCES

Rape

4. (1) A man commits an offence if he intentionally penetrates the vagina, anus or mouth of another person with his penis and

(a) the other person does not consent to the penetration; or

(b) he does not reasonably believe that the other person consents to the penetration or he is reckless as to whether the other person consents to it.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps he has taken to ascertain whether the other person consents.

(3) If at a trial for a rape offence the jury has to consider whether a man believed that the other person was consenting to sexual intercourse, the presence or absence of reasonable grounds for such belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters in considering whether he so believed.

(4) In subsection (3) a “rape offence” means rape or attempted rape, or aiding, abetting, counselling or procuring rape or attempted rape, or incitement to rape.

(5) For the purposes of this section, a person is deemed not to have consented to sexual intercourse if that person acquiescence is obtained by threat of force or use of force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false representations as to the nature of the act or, in the case of a spouse, by personating that person’s spouse.

(6) On a trial for rape, the jury may find the accused guilty of—

(a) sexual assault indecent assault, under section 6 of this Act;

(b) serious sexual assault, under section 8 of this Act;

(c) aggravated sexual assault, under section 9 of this Act;

- (d) indecent assault, under section 11 of this Act;
 - (e) causing a person to engage in sexual activity without consent under section 12 of this Act;
 - (f) paying for sexual services of a prostitute subjected to force etc under section 70 of this Act;
 - (g) administering drugs to obtain or facilitate intercourse, under section 76 of this Act; or
 - (h) common assault, under section 195 of the Criminal Code.
- (7) Sections 88 and 89 apply to an offence under this section.
- (8) A man who commits an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Assault by penetration

- 5.** (1) A person commits an offence if that person intentionally penetrates the vagina, anus or mouth of another person with a part of that person's body, or anything else, and the penetration is of a sexual nature and
- (a) the other person does not consent to the penetration; or
 - (b) that person does not reasonably believe that the other person consents to the penetration or that person is reckless as to whether the other person consents to it.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps that person has taken to ascertain whether the other person consents.
- (3) Sections 88 and 89 apply to an offence under this section.
- (4) A person who commits an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Sexual assault

- 6.** (1) A person commits an offence if that person intentionally touches another person and the touching is of a sexual nature and
- (a) the other person does not consent to the touching; or
 - (b) that person does not reasonably believe that the other person consents or is reckless as to whether the other person consents to it.
- (2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps that person has taken to ascertain whether the other person consents.
- (3) Sections 88 and 89 apply to an offence under this section.
- (4) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Sexual assault by a person with a sexual disease

7. A person commits an offence if that person

- (a) knowing that that person has a sexual disease, does a sexual act which
 - (i) involves contact between any part of that person's body and any part of the body of another person whether or not the other person consents to the act; and
 - (ii) is capable of resulting in the transfer of bodily fluids to the other person; and
- (b) before that person does the act does not inform the other person that that person has a sexual disease and identifying the sexual disease and making it clear to the other person the nature of the sexual disease.

(2) A person who commits an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Serious sexual assault.

8. (1) A person commits a serious sexual assault offence if that person, in committing a sexual assault,

- (a) carries, uses, or threatens to use, a weapon or an imitation weapon;
- (b) causes bodily harm to the person who has been assaulted;
- (c) threatens to cause bodily harm to a person other than the person who has been assaulted; or
- (d) is a party to the offence with another person.

(2) A person also commits a serious sexual offence if, knowing that he has a sexual disease, he commits a sexual assault other than a sexual assault under section 7.

(3) A person who commits an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Aggravated sexual assault

9. (1) A person commits an aggravated sexual assault offence if, in committing a sexual assault on another person, that person wounds, maims or disfigures that other person or endangers that person's life.

(2) A person who commits an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Sexual assault by husband in certain circumstances

10. (1) A husband commits the offence of sexual assault if he has sexual intercourse with his wife without her consent by force or fear where there is in existence in relation to them—

- (a) a decree nisi of divorce;
- (b) a decree of judicial separation;
- (c) a separation agreement;
- (d) a protection order made under the Domestic Violence Act; or

(e) any other order for the husband not to molest his wife or have sexual intercourse with her.

(2) A husband who commits the offence of sexual assault is liable on conviction on indictment to imprisonment for a term not exceeding ten years.

(3) No proceedings for an offence under this section shall be instituted except by or with the consent of the Director of Public Prosecutions.

Indecent assault

11. (1) Subject to the provisions of this section, a person who makes an indecent assault on another person commits an offence and is liable

(a) on summary conviction to imprisonment for a term not exceeding five years;

(b) on conviction on indictment, if on a person of or under the age of 13 years old, to imprisonment for a term not exceeding ten years; or

(c) on conviction on indictment, in any other case, to imprisonment for a term not exceeding seven years.

(2) A person under the age of 16 years old cannot in law give consent which would prevent an act being an assault for the purpose of this section.

(3) Where a marriage is invalid under section 24A of the Marriage Act because the wife is under the age of 16 years old, the invalidity of the marriage does not make the husband who commits an offence under this section by reason of her incapacity to consent while under that age, if he believes her to be his wife and has reasonable cause for the belief.

(4) A person who is a lunatic, or a mental defective who is receiving treatment for mental or psychopathic disorder, cannot in law give consent which would prevent an act being an assault for the purposes of this section, but a person is only to be treated as guilty of an indecent assault under this section by reason of such incapacity to consent, if that person knew or had reason to know that the person was a lunatic or mental defective receiving treatment.

Causing a person to engage in sexual activity without consent

12. (1) A person commits an offence if that person intentionally causes another person to engage in an activity and the activity is of a sexual nature and

(a) the other person does not consent to engaging in the activity; or

(b) that person does not reasonably believe that the other person consents or is reckless as to whether the other person consents to it.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps that person has taken to ascertain whether the other person consents.

(3) Sections 88 and 89 apply to an offence under this section.

(4) A person who commits an offence under this section, if the activity caused involved—

(a) penetration of the other person's anus or vagina;

(b) penetration of the other person's mouth with the penis of a third person;

(c) penetration of a third person's anus or vagina with a part of the other person's body or by the other person with anything else; or

(d) penetration of a third person's mouth with the other person's penis

is liable on conviction on indictment, to imprisonment for a term not exceeding ten years

(5) Unless subsection (4) applies, a person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

PART III

SEXUAL OFFENCES INVOLVING CHILDREN

Rape of a child under 13

13. (1) A man commits an offence if that man intentionally penetrates the vagina, anus or mouth of another person with his penis and the other person is under 13 years old.

(2) It is immaterial in the case of a charge for an offence under this section that the intercourse was had with the consent of the person concerned who was under 13 years old.

(3) A person who commits an offence under this section is liable, on conviction on indictment, to imprisonment for a term for life.

(4) On a trial for rape under this section, the jury may find the accused guilty of

- (a) assault of a child under 13 by penetration, under section 14;
- (b) sexual assault of a child under 13, under section 15;

Assault of a child under 13 by penetration

14. (1) A person commits an offence if that person intentionally penetrates the vagina or anus of another person with a part of that person's body or anything else .

(2) It is immaterial in the case of a charge for an offence under this section that the penetration was had with the consent of the person under 13 years old.

(3) A person who commits an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Sexual assault of a child under 13

15. (1) A person commits an offence if that person intentionally touches another person and the touching is of a sexual nature and the other person is under 13 years old.

(2) It is immaterial in the case of a charge for an offence under this section that the touching was had with the consent of the person under 13 years old.

(3) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Causing or inciting a child under 13 to engage in sexual activity

16. (1) A person commits an offence if that person intentionally causes or incites another person to engage in an activity and the activity is of a sexual nature and the other person is under 13 years old.

(2) A person is who commits an offence under this section, if the activity caused or incited involved—

- (a) penetration of the other person's anus or vagina;
- (b) penetration of the other person's mouth with the penis of a third person;
- (c) penetration of a third person's anus or vagina with a part of the other person's body or by the other person with anything else; or
- (d) penetration of a third person's mouth with the other person's penis

is liable on conviction on indictment, to imprisonment for a term not exceeding ten years.

(3) Unless subsection (2) applies, a person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Rape of a child 13 but under 16

17. (1) A man commits an offence if that man intentionally penetrates the vagina, anus or mouth of another person with his penis and the other person is 13 years old but under 16 years old.

(2) It is immaterial in the case of a charge for an offence under this section that the intercourse was had with the consent of the person concerned who was 13 years old but under 16 years old.

(3) A person who commits an offence under this section is liable, on conviction on indictment, to imprisonment for a term for life.

(4) Where a marriage is void under section 24A of the Marriage Act because the wife is under the age of 16 years old, the invalidity of the marriage does not make the husband who commits an offence under this section because he had sexual intercourse with her, if at the time he believed her to be his wife and had reasonable cause for that belief.

(5) A man shall not be convicted of an offence under this section because he has sexual intercourse with a girl 13 years old but under 16 years old if he is under the age of 21 years old. and has not previously been charged with a like offence, and he believes her to be of the age of 16 years old or over and has reasonable cause for the belief.

(6) On a trial for rape under this section, the jury may find the accused guilty of sexual activity with a child, under section 18.

Sexual activity with a child

18. (1) A person over the age of 18 years old commits an offence if that person intentionally touches another person and the touching is of a sexual nature and the other person is 13 years old but under 16 years old.

(2) A person is who commits an offence under this section, if the touching involved—

- (a) penetration of the other person's anus or vagina;
- (b) penetration of the other person's mouth with the penis of a third person;
- (c) penetration of a third person's anus or vagina with a part of the other person's body or by the other person with anything else; or
- (d) penetration of a third person's mouth with the other person's penis

is liable on conviction on indictment, to imprisonment for a term not exceeding ten years.

(3) Unless subsection (2) applies, a person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Causing or inciting a child to engage in sexual activity

19. (1) A person over the age of 18 years old commits an offence if that person intentionally causes or incites another person and the activity is of a sexual nature and the other person is 13 years old but under 16 years old.

(2) A person who commits an offence under this section, if the activity caused or incited involved—

- (a) penetration of the other person's anus or vagina;
- (b) penetration of the other person's mouth with the penis of a third person;
- (c) penetration of a third person's anus or vagina with a part of the other person's body or by the other person with anything else; or
- (d) penetration of a third person's mouth with the other person's penis

is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years.

(3) Unless subsection (2) applies, a person who commits an offence under this section is liable —

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Engaging in sexual activity in the presence of a child

20. (1) A person over the age of 18 years old commits an offence if that person intentionally engages in an activity and the activity is of a sexual nature and that person engages in it for the purpose of obtaining sexual gratification

- (a) when another person is present or is in a place from which that person can be observed; and
- (b) knowing or believing that another person is aware, or intending that another person should be aware, that that person is engaging in it, and

and the other person is under 16 years old and the person does not reasonably believe that the other person is 16 years old or older.

- (2) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Causing a child to watch a sexual act

21. (1) A person over the age of 18 years old commits an offence if for the purpose of obtaining sexual gratification, that person intentionally causes another person to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity and the activity is of a sexual nature and the other person is under 16 years old.

- (2) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Child sex offences committed by children or young persons

22. (1) A person under the age of 18 years old commits an offence if that person does anything which would be an offence under any of sections 18 to 21 if that person were aged 18 years old.

- (2) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

Arranging or facilitating commission of a child sex offence

23. (1) A person commits an offence if the person intentionally arranges or facilitates something that the person intends to do, intends another person to do, or believes that another person will do, in any part of the world and doing it will involve the commission of an offence under this Part.

(2) A person does not commit an offence under this section if the person arranges or facilitates something that the person believes another person will do, but that the person does not intend to do or intend another person to do and any sexual offence would be an offence against a child for whose protection the person acts.

(3) For the purposes of subsection (2), a person acts for the protection of a child if that person acts for the purpose of—

- (a) protecting the child from sexually transmitted infection;
- (b) protecting the physical safety of the child;
- (c) preventing the child from becoming pregnant; or
- (d) promoting the child's emotional well-being by the giving of advice, and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within this Part or the child's participation in it.

(4) A person who commits an offence under this section is liable to the penalty to which the person would be liable on conviction of the offence under this Part.

Sexual communication with a child

24. (1) A person over the age of 18 years old commits an offence if for the purpose of obtaining sexual gratification, intentionally communicates with another person and the communication is of a sexual nature or is intended to encourage another person to make (whether to that person or a third person) a communication that is of a sexual nature and the other person is under 16 years old and that person does not reasonably believe that the other person is over 16 years old.

(2) For the purposes of this section, a communication is sexual if—

- (a) any part of it relates to a sexual activity; or
- (b) a reasonable person would, in all the circumstances but regardless of any person's purpose, consider any part of the communication to be sexual,

and in paragraph (a) “sexual activity” means an activity that a reasonable person would, in all the circumstances but regardless of any person's purpose, consider to be sexual.

(3) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Meeting a child following sexual communications etc.

25. (1) A person aged 18 years old or over commits an offence if

- (a) that person has met or communicated with another person on one or more occasions and subsequently—
 - (i) that person intentionally meets that other person; and
 - (ii) that person travels with the intention of meeting that other person in any part of the world or arranges to meet that other person in any part of the world; or
 - (iii) that other person travels with the intention of meeting that person in any part of the world;
- (b) that person intends to do anything to or in respect of that other person, during or after the meeting mentioned in paragraph (a)(i) to (iii) and in any part of the world, which if done will involve the commission by that person of a relevant offence;
- (c) that other person is under 16 years old; and
- (d) that person does not reasonably believe that that other person is 16 years old or over.

(2) In subsection (1)—

- (a) the reference to the person having met or communicated with another person is a reference to that person having met that other person in any part of the world or having communicated with that other person by any means from, to or in any part of the world;

- (b) “relevant offence” means—
 - (i) an offence under this Part; or
 - (ii) anything done outside the Virgin Islands which is not an offence within sub-paragraph (i) but would be an offence within sub-paragraph (i) if done in the Virgin Islands.
- (3) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

PART IV
SEXUAL ACTIVITY WITH FAMILY MEMBERS

Sexual activity with a child family member

- 26.** (1) A person commits an offence if
- (a) that person intentionally touches another person;
 - (b) the touching is sexual;
 - (c) that person is related to the other person as specified in section 31;
 - (d) that person knows or could reasonably be expected to know that the other person is related to that person; and
 - (e) either—
 - (i) the other person is under 18 years old and that person does not reasonably believe that the other person is 18 years old or over; or
 - (ii) the other person is under 13 years old.

(2) Where in proceedings for an offence under this section it is proved that the other person was under 18 years old, the defendant is to be taken not to have reasonably believed that that person was 18 years old or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a specification falling within section 31, it is to be taken that the defendant knew or could reasonably have been expected to know that the defendant relation to the other person was of that specification unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know that it was.

(4) A person who commits an offence under this section, if aged 18 years old or over at the time of the offence, is liable—

- (a) where subsection (6) applies, on conviction on indictment to imprisonment for a term not exceeding fourteen years ;
- (b) in any other case—
 - (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

(5) Unless subsection (4) applies, a person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding five years.

(6) This subsection applies where the touching involved—

(a) penetration of the other person's anus or vagina with a part of the person's body or anything else;

(b) penetration of the other person's mouth with the person's penis,

(c) penetration of the person's anus or vagina with a part of the other person's body, or

(d) penetration of the person's mouth with the other person's penis.

Inciting a child family member to engage in sexual activity

27. (1) A person commits an offence if—

(a) that person intentionally incites another person to touch, or allows another person to touch that person;

(b) the touching is sexual;

(c) that person is related to the other person as specified in section 31;

(d) that person knows or could reasonably be expected to know that that person's relation to the other person is of a description falling within section 30; and

(e) either—

(i) the other person is under 18 years old and that person does not reasonably believe that the other person is 18 years old or over; or

(ii) the other person is under 13 years old.

(2) Where in proceedings for an offence under this section it is proved that the other person was under 18 years old, the defendant is to be taken not to have reasonably believed that that person was 18 years old or over unless sufficient evidence is adduced to raise an issue as to whether that person reasonably believed it.

(3) Where in proceedings for an offence under this section it is proved that the relation of the defendant to the other person was of a specification falling within section 31, it is to be taken that the defendant knew or could reasonably have been expected to know that the defendant's relation to the other person was of that specification unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know that it was.

(4) A person who commits an offence under this section, if he was aged 18 years old or over at the time of the offence, is liable—

(a) where subsection (6) applies, on conviction on indictment to imprisonment for a term not exceeding fourteen years;

(b) in any other case—

- (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (ii) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

(5) Unless subsection (4) applies, a person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

(6) This subsection applies where the touching to which the incitement related involved—

- (a) penetration of the other person's anus or vagina with a part of the person's body or anything else;
- (b) penetration of the other person's mouth with the person's penis;
- (c) penetration of the person's anus or vagina with a part of the other person's body; or
- (d) penetration of the person's mouth with the other person's penis.

Sex with an adult family member: penetration

28. (1) A person aged 16 years old or over (subject to subsection (2)) commits an offence if—

- (a) he intentionally penetrates another person's vagina or anus with a part of his body or anything else, or penetrates another person's mouth with his penis;
- (b) the penetration is sexual;
- (c) the other person is aged 18 years old or over;
- (d) he is related to the other person as specified in section 31; and
- (e) he knows or could reasonably be expected to know that he is related to the other person in that way.

(2) Where subsection (1) applies in a case where that person is related to the other person as the other person's adopted child, that person does not commit an offence under this section unless that person is 18 years old or over.

(3) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(5) A person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding ten years.

Sex with an adult family member: consenting to penetration

29. (1) A person aged 16 years old or over (subject to subsection (2)) commits an offence if—

- (a) another person penetrates that person's vagina or anus with a part of the other person's body or anything else, or penetrates that person's mouth with the other person's penis;
- (b) that person consents to the penetration;
- (c) the penetration is sexual;
- (d) the other person is aged 18 years old or over;
- (e) that person is related to the other person as specified in section 31; and
- (f) that person knows or could reasonably be expected to know that he is related to the other person in that way.

(2) Where subsection (1) applies in a case where the person is related to the other person as the other person's adopted child, the person does not commit an offence under this section unless the person is 18 years old or over.

(4) Where in proceedings for an offence under this section it is proved that the defendant was related to the other person, it is to be taken that the defendant knew or could reasonably have been expected to know that that person was related unless sufficient evidence is adduced to raise an issue as to whether that person knew or could reasonably have been expected to know that that person was.

(5) A person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding ten years.

Family relationships

30. (1) The relation of one person to another person is within this Part if one of them is the other's

- (a) parent;
- (b) grandparent;
- (c) step-parent;
- (d) child;
- (d) grandchild;
- (e) step child
- (f) brother;
- (g) sister;
- (g) half-brother;
- (h) half-sister;
- (i) step-brother;
- (j) step-sister
- (k) uncle;
- (l) aunt;
- (m) nephew;
- (m) niece; or
- (o) cousin.

- (2) For the purposes of this section—
- (a) “parent” includes an adoptive parent;
 - (b) “child” includes a person adopted pursuant to the Adoption of Children Act;
 - (c) “uncle” means the brother of a person’s parent, and “aunt” has a corresponding meaning;
 - (d) “nephew” means the child of a person’s brother or sister, and “niece” has a corresponding meaning.
 - (e) “step-parent” includes a parent’s partner and “stepbrother” and “stepsister” include the child of a parent’s partner.
 - (f) a person is another person’s partner (whether they are of different sexes or the same sex) if they live together as partners in an enduring family relationship; and
 - (g) “cousin” means the child of an aunt or uncle;

Sections 26 and 27: exception for spouses

31. (1) Conduct by a person which would otherwise be an offence under section 26 or 27 against another person is not an offence under that section if at the time the other person is 16 years old or over and the person and the other person are lawfully married to each other.

(2) In proceedings for such an offence it is for the defendant to prove that the defendant and the other person were at the time lawfully married.

Sections 26 and 27: sexual relationships which pre-date family relationships

32.(1) Conduct by a person which would otherwise be an offence under section 26 or 27 against another person is not an offence under that section if

- (a) the relation of the person to the other person is not within section 30; or
- (b) immediately before the person became related to the other person within section 30, a sexual relationship existed between the person and the other person.

(2) Subsection (1) does not apply if at the time referred to in subsection (1)(b) sexual intercourse between the person and the other person would have been unlawful.

(3) In proceedings for an offence under section 26 or 27 it is for the defendant to prove the matters mentioned in subsection (1)(a) and (b).

PART V

SEXUAL ACTIVITY WITH A PERSON WITH A MENTAL DISORDER

Sexual activity with a person with a mental disorder impeding choice

33. (1) A person commits an offence if

- (a) the person intentionally touches another person ;
- (b) the touching is sexual;
- (c) the other person is unable to refuse because of or for a reason related to a mental disorder; and

- (d) the person knows or could reasonably be expected to know that the other person has a mental disorder and that because of it or for a reason related to it the other person is likely to be unable to refuse.
- (2) The other person is unable to refuse if—
 - (a) that person lacks the capacity to choose whether to agree to the touching (whether because that person lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason); or
 - (b) that person is unable to communicate such a choice to the person.
- (3) A person who commits an offence under this section, if the touching involved—
 - (a) penetration of the other person’s anus or vagina with a part of the person’s body or anything else;
 - (b) penetration of the other person’s mouth with the other person’s penis;
 - (c) penetration of the person’s anus or vagina with a part of the other person’s body; or
 - (d) penetration of the person’s mouth with the other person’s penis,is liable, on conviction on indictment, to imprisonment for life.
- (4) Unless subsection (3) applies, a person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity

- 34.** (1) A person commits an offence if—
- (a) the person intentionally causes or incites another person to engage in an activity;
 - (b) the activity is sexual;
 - (c) the other person is unable to refuse because of or for a reason related to a mental disorder; and
 - (d) the person knows or could reasonably be expected to know that the other person has a mental disorder and that because of it or for a reason related to it the other person is likely to be unable to refuse.
- (2) The other person is unable to refuse if—
- (a) that person lacks the capacity to choose whether to agree to engaging in the activity caused or incited (whether because that person lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason); or
 - (b) that person is unable to communicate such a choice to the person.
- (3) A person who commits an offence under this section, if the activity caused or incited involved—
- (a) penetration of the other person’s anus or vagina with a part of the person’s body or anything else;
 - (b) penetration of the other person’s mouth with the other person’s penis;

(c) penetration of the person's anus or vagina with a part of the other person's body;
or

(d) penetration of the person's mouth with the other person's penis,

is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, a person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Engaging in sexual activity in the presence of a person with a mental disorder impeding choice

35. (1) A person commits an offence if—

(a) the person intentionally engages in an activity;

(b) the activity is sexual;

(c) for the purpose of obtaining sexual gratification, the person engages in it—

(i) when another person is present or is in a place from which the person can be observed; and

(ii) knowing or believing that the other person is aware, or intending that the other person should be aware, that the person is engaging in it;

(d) the other person is unable to refuse because of or for a reason related to a mental disorder; and

(e) the person knows or could reasonably be expected to know that the other person has a mental disorder and that because of it or for a reason related to it the other person is likely to be unable to refuse.

(2) The other person is unable to refuse if—

(a) that person lacks the capacity to choose whether to agree to being present (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason); or

(b) that person is unable to communicate such a choice to the person.

(3) A person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Causing a person, with a mental disorder impeding choice, to watch a sexual act

36. (1) A person commits an offence if—

(a) for the purpose of obtaining sexual gratification, that person intentionally causes another person to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;

(b) the activity is sexual;

(c) the other person is unable to refuse because of or for a reason related to a mental disorder; and

(d) the person knows or could reasonably be expected to know that the other person has a mental disorder and that because of it or for a reason related to it the other person is likely to be unable to refuse.

(2) The other person is unable to refuse if—

- (a) that person lacks the capacity to choose whether to agree to watching or looking (whether because he lacks sufficient understanding of the nature of the activity, or for any other reason); or
- (b) that person is unable to communicate such a choice to the person.

(3) A person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding ten years.

Inducement, threat or deception to procure sexual activity with a person with a mental disorder

37. (1) A person commits an offence if—

- (a) with the agreement of another person the person intentionally touches that person;
- (b) the touching is sexual;
- (c) the person obtains the other person's agreement by means of an inducement offered or given, a threat made or a deception practised by the person for that purpose;
- (d) the other person has a mental disorder; and
- (e) the person knows or could reasonably be expected to know that the other person has a mental disorder.

(2) A person who commits an offence under this section, if the touching involved—

- (a) penetration of the other person's anus or vagina with a part of the person's body or anything else;
- (b) penetration of the other person's mouth with the other person's penis;
- (c) penetration of the person's anus or vagina with a part of the other person's body; or
- (d) penetration of the person's mouth with the other person's penis,

is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, a person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception

38. (1) A person commits an offence if—

- (a) by means of an inducement offered or given, a threat made or a deception practised by the person for this purpose, the person intentionally causes another person to engage in, or to agree to engage in, an activity;
- (b) the activity is sexual;
- (c) the other person has a mental disorder; and
- (d) the person knows or could reasonably be expected to know that the other person has a mental disorder.

(2) A person who commits an offence under this section, if the activity caused or agreed to involved—

- (a) penetration of the other person's anus or vagina with a part of the person's body or anything else;
- (b) penetration of the other person's mouth with the other person's penis;
- (c) penetration of the person's anus or vagina with a part of the other person's body; or
- (d) penetration of the person's mouth with the other person's penis,

is liable, on conviction on indictment, to imprisonment for life.

(4) Unless subsection (3) applies, a person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder

39. (1) A person commits an offence if—

- (a) the person intentionally engages in an activity,
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, the person engages in it—
 - (i) when another person is present or is in a place from which the person can be observed; and
 - (ii) knowing or believing that the other person is aware, or intending that the other person should be aware, that the person is engaging in it;
- (d) the other person agrees to be present or in the place referred to in paragraph (c)(i) because of an inducement offered or given, a threat made or a deception practised by the person for the purpose of obtaining that agreement;
- (e) the other person has a mental disorder; and
- e) the person knows or could reasonably be expected to know that the other has a mental disorder.

(2) A person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding ten years.

Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception

40. (1) A person commits an offence if—

- (a) for the purpose of obtaining sexual gratification, the person intentionally causes another person to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
- (b) the activity is sexual;
- (c) the other person agrees to watch or look because of an inducement offered or given, a threat made or a deception practised by the person for the purpose of obtaining that agreement;
- (d) the other person has a mental disorder; and
- (e) the person knows or could reasonably be expected to know that the other person has a mental disorder.

(2) A person who commits an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding ten years.

PART VI

ABUSE OF POSITIONS OF TRUST

Abuse of position of trust: sexual activity with a child

41. (1) A person aged 18 years old or over commits an offence if that person intentionally touches another person and the touching is sexual and that person is in a position of trust in relation to the other person and the other person is.

- (a) under 18 years old and the person does not reasonably believe that the other person is 18 years old or over; or
- (b) the other person is under 13 years old.

(2) Where in proceedings for an offence under this section it is proved that the other person was under 18 years old, the defendant is to be taken not to have reasonably believed that that person was 18 years old or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(3) Where in proceedings for an offence under this section is proved that the defendant was in a position of trust in relation to the other person, it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which the defendant was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know of those circumstances.

(4) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

Abuse of position of trust: causing or inciting a child to engage in sexual activity

42. (1) A person aged 18 years old or over commits an offence if that person intentionally causes or incites another person to engage in an activity and that activity is sexual and the person is a position of trust in relation to the other person who is;

- (a) under 18 years old and the person does not reasonably believe that the other person is 18 years old or over; or
- (b) the other person is under 13 years old.

(2) Where in proceedings for an offence under this section it is proved that the other person was under 18 years old, the defendant is to be taken not to have reasonably believed that that person was 18 years old or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(3) Where in proceedings for an offence under this section is proved that the defendant was in a position of trust in relation to the other person, it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which the defendant was in such a position of trust unless sufficient evidence is adduced to raise an issue

as to whether the defendant knew or could reasonably have been expected to know of those circumstances.

- (4) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

Abuse of position of trust: sexual activity in the presence of a child

43. (1) A person aged 18 years old or over commits an offence if the person intentionally engages in an activity and the activity is sexual, for the purpose of obtaining sexual gratification, and the person engages in it

- (a) when another person is present or is in a place from which the person can be observed the person engages in it; or
- (b) knowing or believing that the other person is aware, or intending that the other person should be aware, that the person is engaging in it

and the person is in a position of trust in relation to the other person who is;

- (c) under 18 years old and the person does not reasonably believe that the other person is 18 years old or over; or
- (d) the other person is under 13 years old.

(2) Where in proceedings for an offence under this section it is proved that the other person was under 18 years old, the defendant is to be taken not to have reasonably believed that that person was 18 years old or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(3) Where in proceedings for an offence under this section it is proved that the defendant was in a position of trust in relation to the other person, it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which the defendant was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know of those circumstances.

- (4) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

Abuse of position of trust: causing a child to watch a sexual act

44. (1) A person aged 18 years old or over commits an offence if for the purpose of obtaining sexual gratification, he intentionally causes another person to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity and the activity is sexual, and the person is a position of trust in relation to the other person who is;

- (a) under 18 years old and the person does not reasonably believe that the other person is 18 years old or over; or
- (b) the other person is under 13 years old.

(2) Where in proceedings for an offence under this section it is proved that the other person was under 18 years old, the defendant is to be taken not to have reasonably believed that that person was 18 years old or over unless sufficient evidence is adduced to raise an issue as to whether the defendant reasonably believed it.

(3) Where in proceedings for an offence under this section it is proved that the defendant was in a position of trust in relation to the other person, it is to be taken that the defendant knew or could reasonably have been expected to know of the circumstances by virtue of which the defendant was in such a position of trust unless sufficient evidence is adduced to raise an issue as to whether the defendant knew or could reasonably have been expected to know of those circumstances.

(4) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years.

Abuse of position of trust: sexual activity with a person with a mental disorder

45. (1) A person commits an offence if

- (a) that person intentionally touches another person;
- (b) the touching is sexual;
- (c) the other person has a mental disorder;
- (d) that person knows or could reasonably be expected to know that the other person has a mental disorder; and
- (e) that person is involved in the other person's care in a way that falls within sections 49 or 50.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person who commits an offence under this section, if the touching involved—

- (a) penetration of the other person's anus or vagina with a part of the person's body or anything else;
- (b) penetration of the other person's mouth with the person's penis;
- (c) penetration of the person's anus or vagina with a part of the other person's body;
or
- (d) penetration of the person's mouth with the other person's penis.

is liable, on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

(4) Unless subsection (3) applies, a person guilty of who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Abuse of position of trust: causing or inciting sexual activity with a person with a mental disorder

46. (1) A person commits an offence if—

- (a) the person intentionally causes or incites another person to engage in an activity;
- (b) the activity is sexual;
- (c) the other person has a mental disorder;
- (d) the person knows or could reasonably be expected to know that the other person has a mental disorder, and
- (e) the person is involved in the other person's care in a way that falls within sections 49 or 50.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

(3) A person who commits an offence under this section, if the activity caused or incited involved—

- (a) penetration of the other person's anus or vagina with a part of the person's body or anything else;
- (b) penetration of the other person's mouth with the person's penis;
- (c) penetration of the person's anus or vagina with a part of the other person's body; or
- (d) penetration of the person's mouth with the other person's penis.

is liable, on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

(4) Unless subsection (3) applies, a person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Abuse of position of trust: sexual activity in the presence of a person with a mental disorder

47. (1) A person commits an offence if

- (a) that person intentionally engages in an activity;
- (b) the activity is sexual;
- (c) for the purpose of obtaining sexual gratification, the person engages in it—
 - (i) when another person is present or is in a place from which that person can be observed; and
 - (ii) knowing or believing that the other person is aware, or intending that the other person should be aware, that the person is engaging in it;

- (d) the other person has a mental disorder;
- (e) the person knows or could reasonably be expected to know that the other person has a mental disorder; and
- (f) the person is involved in the other person's care in a way that falls within sections 49 or 50.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

- (3) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.

Abuse of position of trust: causing a person with a mental disorder to watch a sexual act

- 48.** (1) A person commits an offence if—
- (a) for the purpose of obtaining sexual gratification, the person intentionally causes another person to watch a third person engaging in an activity, or to look at an image of any person engaging in an activity;
 - (b) the activity is sexual;
 - (c) the other person has a mental disorder;
 - (d) the person knows or could reasonably be expected to know that the other person has a mental disorder; and
 - (e) the person is involved in the other person's care in a way that falls within sections 49 or 50.

(2) Where in proceedings for an offence under this section it is proved that the other person had a mental disorder, it is to be taken that the defendant knew or could reasonably have been expected to know that that person had a mental disorder unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know it.

- (3) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.

Positions of trust

49. (1) For the purposes of this Part, a person is in a position of trust in relation to another person if—

- (a) the person looks after persons under 18 years old and is regularly involved in caring for, training, supervising or being in sole charge of the other person;

- (b) the person looks after persons under 18 years old who are detained in an institution by virtue of a court order or under an enactment, and the other person is so detained in that institution;
- (c) the person looks after persons under 18 years old who are resident in a home or other place and the other person is a resident and is provided with accommodation and maintenance in that place;
- (d) the person looks after persons under 18 years old who are receiving education at an educational institution (but is not receiving education at that institution) and the other person is receiving education at that institution;
- (e) the person, whether or not in the course of employment, is a provider of care, assistance or services to the other person in connection with the other person's mental disorder;
- (f) the person, whether or not in the course of employment, is the provider of counselling or mentoring services to the other person and regularly has unsupervised contact with the other person (whether face to face or by any other means) in the provision of those services;
- (g) the person, has functions to perform in the course of employment in a home or premises specified in Schedule , the home or the premises which have brought the person or is likely to bring the person into regular face to face contact with the other person;
- (h) the person, has functions to perform in the course of employment in a hospital which have brought the person or is likely to bring the person into regular face to face contact with the other person.

(2) A person looks after another person if the person is regularly involved with the other person and in the course of the person's involvement, the person regularly has unsupervised contact with the other person (whether face to face or by any other means).

(3) A person receives education at an educational institution if—

- (a) that person is registered or otherwise enrolled as a pupil or student at the institution; or
- (b) that person receives education at the institution under arrangements with another educational institution at which that person is so registered or otherwise enrolled.

Further positions of trust

50. (1) For the purposes of this Part, a person is in a position of trust in relation to another person if—

- (a) the person coaches, teaches, trains, supervises or instructs the other person, on a regular basis, in a sport or a religion; and
- (b) the person knows that they coach, teach, train, supervise or instruct the other person, on a regular basis, in that sport or religion.

(2) In subsection (1)—

“sport” includes—

- (a) any game in which physical skill is the predominant factor; and
- (b) any form of physical recreation which is also engaged in for purposes of competition or display;

“religion” includes—

- (a) a religion which involves belief in more than one god; and
- (b) a religion which does not involve belief in a god.

Sections 41 to 48: exception for spouses

51. (1) Conduct by a person which would otherwise be an offence under section 41 to 48 against another person is not an offence under that section if at the time the other person is 16 years old or over and the person and the other person are lawfully married to each other.

(2) In proceedings for such an offence it is for the defendant to prove that the defendant and the other person were at the time lawfully married.

Sections 41 to 48: sexual relationships which pre-date position of trust

52. (1) Conduct by a person which would otherwise be an offence under any of sections 41 to 48 against another person is not an offence under that section if, immediately before the position of trust arose, a sexual relationship existed between the person and the other person.

(2) Subsection (1) does not apply if at the time referred to in subsection (1) sexual intercourse between the person and the other person would have been unlawful.

(3) In proceedings for an offence under section 41 to 48 it is for the defendant to prove the matters mentioned in subsection (1).

PART VII

SEXUAL IMAGES AND PORNOGRAPHY

Using a computer for child pornography.

53. (1) A person commits an offence if that person intentionally

- (a) produces, adopts or modifies child abuse material for the purpose of its publication through a computer;
- (b) publishes child abuse material through a computer; or
- (c) possesses child abuse material in a computer or on any computer data storage medium;
- (d) cultivate, entice or induce a child to an online relationship with another child or an adult on a computer, for a sexually explicit act or in a manner that may offend a reasonable adult;
- (e) facilitate abusing a child online; or
- (f) record in an electronic form own abuse or that of others pertaining to sexually explicit act with a child.

(2) A person who commits an offence under subsection (1) is liable on conviction on indictment to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding fourteen years, or both.

(3) It is a defence to a charge for an offence under subsection (1) (b) if the person establishes to the satisfaction of the court that the child abuse material was for a bona fide scientific, research, medical or law enforcement purpose.

(4) It is a defence to a charge for an offence under subsection (1) (c) if the person establishes to the satisfaction of the court that the child abuse material was

- (a) for a bona fide scientific, research, medical or law enforcement purpose; or
- (b) sent to that person without any prior request made by that person or on that person's behalf and that that person did not keep it for an unreasonable time after that person had become aware of it.
 - (ii) have in possession or custody, or under control, for the purpose of doing an act referred to in subparagraph (i); or
 - (iii) print, photograph, film, copy or make in any other manner, whether of the same or of a different kind or nature, for the purpose of doing an act referred to in sub-paragraph (i).

(5) Where a person is charged under subsection (1) for an offence, the court may, whether or not the person has been convicted for the offence, make an order

- (a) for the removal of the child abuse material from the computer or any computer data storage medium in such manner as it may direct; and
- (b) forfeiting to the Crown the computer used, and any other material associated with the use of the computer, to produce or publish the child abuse material.

Violation of privacy

54. (1) A person commits an offence if that person, knowingly or without lawful excuse or justification, captures, publishes or transmits an image of a private area of another person, without his or her consent, under circumstances violating the privacy of that person.

(2) A person commits an offence if that person, knowingly or without lawful excuse or justification, captures, publishes or transmits an image of a private area of a mentally or physically impaired person.

- (3) A person who commits an offence under subsections (1) or (2) is liable
 - (a) on summary conviction to a fine not exceeding two hundred thousand dollars or to a term of imprisonment not exceeding seven years or to both; or
 - (b) on conviction on indictment to a fine not exceeding five hundred thousand dollars or to a term of imprisonment not exceeding fourteen years or to both.
- (4) For the purposes of this section
 - (a) "capture" means to videotape, photograph, film or record by any means;
 - (b) "private area" means the naked or undergarment clad genitals, pubic area, buttocks, or female breast;
 - (c) "publishes" means reproduction in the printed or electronic form and making it available publicly;
 - (d) "transmit" means to electronically send a visual image with the intent that it be viewed by a person or persons;
 - (e) "under circumstances violating privacy" means circumstances in which a person can have a reasonable expectation that
 - (i) that person could disrobe in privacy, without being concerned that an image or that person's private area was being captured; or

- (ii) any part of that person's private area would not be visible to the public, regardless of whether that person is in a public or private place.”.

Indecent images of persons aged 16 or 17

55. (1) A person commits an offence if that person —

- (a) takes, or permit to be taken or to make, any indecent photograph or pseudo-photograph of a child; or
- (b) distributes or shows such indecent photographs or pseudo-photographs; or
- (c) has in that person's possession such indecent photographs or pseudo-photographs, with a view to their being distributed or shown by that person or others; or
- (d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs, or intends to do so.

(2) For purposes of this Act, a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(4) Where a person is charged with an offence under subsection (1)(b) or (c), it shall be a defence for that person to prove—

- (a) that that person had a legitimate reason for distributing or showing the photographs or pseudo-photographs or (as the case may be) having them in that person's possession; or
- (b) that that person had not seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

Section 55: exception for spouses

56. (1) Conduct by a person which would otherwise be an offence under section 55 against another person is not an offence under that section if at the time the other person is 16 years old or over and the person and the other person are lawfully married to each other.

(2) In proceedings for such an offence it is for the defendant to prove that the defendant and the other person were at the time lawfully married.

(3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

(4) In the case of an offence under section 55(1)(a), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being taken or made, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.

(5) In the case of an offence under section 55(1)(b), the defendant is not guilty of the offence unless it is proved that the showing or distributing was to a person other than the child.

(6) In the case of an offence under section 55(1)(c), if sufficient evidence is adduced to raise an issue both—

- (a) as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented; and
- (b) as to whether the defendant had the photograph in his possession with a view to its being distributed or shown to anyone other than the child,
the defendant is not guilty of the offence unless it is proved either that the child did not so consent and that the defendant did not reasonably believe that the child so consented, or that the defendant had the photograph in his possession with a view to its being distributed or shown to a person other than the child.

Section 55: exception for criminal proceedings, investigations etc..

57. In proceedings for an offence under section 55(1)(a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that—

- (a) it was necessary for that person to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world; or
- (b) at the time of the offence charged he was a member of the Royal Virgin islands Police Force, and it was necessary for that person to make the photograph or pseudo-photograph for the exercise of any of the functions of the Royal Virgin islands Police Force.

Sending etc photograph or film of genitals

58. (1) A person who intentionally sends or gives a photograph or film of any person's genitals to another person commits an offence if—

- (a) that person intends that the other person will see the genitals and be caused alarm, distress or humiliation; or
- (b) that person sends or gives such a photograph or film for the purpose of obtaining sexual gratification and is reckless as to whether the other person will be caused alarm, distress or humiliation.

(2) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding [] years or a fine (or both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

(3) References to sending or giving such a photograph or film to another person include, in particular—

- (a) sending it to another person by any means, electronically or otherwise;
- (b) showing it to another person; and
- (c) placing it for a particular person to find.

(4) "Photograph" includes the negative as well as the positive version.

(5) "Film" means a moving image.

(6) References to a photograph or film also include—

- (a) an image, whether made or altered by computer graphics or in any other way, which appears to be a photograph or film;
- (b) a copy of a photograph, film or image within paragraph (a); and
- (c) data stored by any means which is capable of conversion into a photograph, film or image within paragraph (a).

Sharing or threatening to share intimate photograph or film

- 59.** (1) A person commits an offence if—
- (a) that person intentionally shares a photograph or film which shows, or appears to show, another person in an intimate state;
 - (b) the other person does not consent to the sharing of the photograph or film; and
 - (c) that person does not reasonably believe that the other person consents.
- (2) A person commits an offence if—
- (a) that person intentionally shares a photograph or film which shows, or appears to show, another person in an intimate state;
 - (b) that person does so with the intention of causing the other person alarm, distress or humiliation; and
 - (c) the other person does not consent to the sharing of the photograph or film.
- (3) A person commits an offence if—
- (a) that person intentionally shares a photograph or film which shows, or appears to show, another person in an intimate state;
 - (b) that person does so for the purpose of that person or another person obtaining sexual gratification;
 - (c) the other person does not consent to the sharing of the photograph or film; and
 - (d) that person does not reasonably believe that the other person consents.
- (4) A person commits an offence if—
- (a) that person threatens to share a photograph or film which shows, or appears to show, another person in an intimate state; and
 - (b) that person does so—
 - (i) with the intention that the other person or another person who knows the other person will fear that the threat will be carried out; or
 - (ii) being reckless as to whether the other person or another person who knows the other person will fear that the threat will be carried out.
- (5) Subsections (1) to (4) are subject to section 60 (exemptions).
- (6) For the purposes of subsections (1) to (3) and section 60(3)(b)—
- (a) “consent” to the sharing of a photograph or film includes general consent covering the particular act of sharing as well as specific consent to the particular act of sharing; and
 - (b) whether a belief is reasonable is to be determined having regard to all the circumstances including any steps the person has taken to ascertain whether the other person consents.

(7) Where a person is charged with an offence under subsection (4), it is not necessary for the prosecution to prove—

- (a) that the photograph or film mentioned in the threat exists; or
- (b) if it does exist, that it is in fact a photograph or film which shows or appears to show a person in an intimate state.

(8) It is a defence for a person charged with an offence under subsection (1) to prove that the person had a reasonable excuse for sharing the photograph or film.

(9) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the [] years or a fine (or both).

(10) A person who commits an offence under subsection (2), (3) or (4) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding [] years or a fine (or both);
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

(11) If on the trial of a person charged with an offence under subsection (2) or (3) a magistrates' court or jury finds the person not guilty of the offence charged, the magistrates' court or jury may find the person guilty of an offence under subsection (1).

(12) The High Court has the same powers and duties in relation to a person who is by virtue of subsection (11) convicted before it of an offence under subsection (1) as a magistrates' court would have on convicting the person of the offence.

Sharing or threatening to share intimate photograph or film: exemptions

60. (1) A person who shares a photograph or film which shows, or appears to show, another person in an intimate state does not commit an offence under section 59(1), (2) or (3) if—

- (a) the photograph or film was taken in a place to which the public or a section of the public had or were permitted to have access (whether on payment or otherwise);
- (b) the other person had no reasonable expectation of privacy from the photograph or film being taken; and
- (c) the other person was, or that person reasonably believes that the other person was, in the intimate state voluntarily.

(2) For the purposes of subsection (1)(b), whether a person had a reasonable expectation of privacy from a photograph or film being taken is to be determined by reference to the circumstances that the person sharing the photograph or film reasonably believes to have existed at the time the photograph or film was taken.

(3) A person who shares a photograph or film which shows, or appears to show, another person in an intimate state does not commit an offence under section 59(1), (2) or (3) if—

- (a) the photograph or film had, or that person reasonably believes that the photograph or film had, been previously publicly shared; and
- (b) the other person had, or that person reasonably believes that the other person had, consented to the previous sharing.

(4) A person who shares a photograph or film which shows, or appears to show, another person in an intimate state does not commit an offence under section 59(1) if—

- (a) the other is a person under 16;

- (b) the other person lacks, or that person reasonably believes that the other person lacks, capacity to consent to the sharing of the photograph or film, and
- (c) the photograph or film is shared—
 - (i) with a healthcare professional acting in that capacity; or
 - (ii) otherwise in connection with the care or treatment of the other person by a healthcare professional.

(5) A person who shares a photograph or film which shows, or appears to show, a child in an intimate state does not commit an offence under section 59(1) if the photograph or film is of a kind ordinarily shared between family and friends.

(6) A person who threatens to share a photograph or film which shows, or appears to show, another person in an intimate state does not commit an offence under section 59(4) if, by reason of this section, the person would not commit an offence under section 59(1), (2) or (3) by sharing the photograph or film in the circumstances conveyed by the threat.

Sharing or threatening to share intimate photograph or film: interpretation

61. (1) This section applies for the purposes of sections 59 and 60.

(2) A person “shares” something if the person, by any means, gives or shows it to another person or makes it available to another person.

(3) But a provider of an internet service by means of which a photograph or film is shared is not to be regarded as a person who shares it.

(4) “Photograph” and “film” have the same meaning as in section 58(4) to (6) of that section).

(5) Except where a photograph or film falls within subsection (8), a photograph or film shows, or appears to show, another person in an intimate state if it shows or appears to show—

- (a) the person participating or engaging in an act which a reasonable person would consider to be a sexual act;
- (b) the person doing a thing which a reasonable person would consider to be sexual;
- (c) all or part of the person’s exposed genitals, buttocks or breasts;
- (d) the person in an act of urination or defecation; or
- (e) the person carrying out an act of personal care associated with the person’s urination, defecation or genital or anal discharge.

(6) For the purposes of subsection (5)(c) the reference to all or part of a person’s “exposed” genitals, buttocks or breasts includes—

- (a) a reference to all or part of the person’s genitals, buttocks or breasts visible through wet or otherwise transparent clothing;
- (b) the case where all or part of the person’s genitals, buttocks or breasts would be exposed but for the fact that they are covered only with underwear; and
- (c) the case where all or part of the person’s genitals, buttocks or breasts would be exposed but for the fact that they are obscured, provided that the area obscured is similar to or smaller than an area that would typically be covered by underwear worn to cover a person’s genitals, buttocks or breasts (as the case may be).

(7) In subsection (6)(c) “obscured” means obscured by any means, other than by clothing that a person is wearing, including, in particular, by an object, by part of a person’s body or by digital alteration.

(8) A photograph or film falls within this subsection if (so far as it shows or appears to show a person in an intimate state) it shows or appears to show something, other than breastfeeding, that is of a kind ordinarily seen in public.

(9) For the purposes of subsection (8) “breastfeeding” includes the rearranging of clothing in the course of preparing to breastfeed or having just finished breastfeeding.

PART VIII

PROSTITUTION AND SEXUAL EXPLOITATION

Paying for sexual services of a child

62. (1) A person commits an offence if—

- (a) that person intentionally obtains for that person the sexual services of another person;
- (b) before obtaining those services, that person has made or promised payment for those services to another person or a third person, or knows that a third person has made or promised such a payment; and
- (c) either—
 - (i) the other person is under 18 years old, and that person does not reasonably believe that the other person is 18 years old or over; or
 - (ii) the other person is under 13 years old.

(2) In this section, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

(3) A person who commits who commits an offence under this section, against a person under 13 years old where the conditions under subsection (6) applies, is liable on conviction on indictment to imprisonment for life.

(4) Unless subsection (3) applies, a person who commits an offence under this section against a child under 16 is liable—

- (a) where subsection (6) applies, on conviction on indictment, to imprisonment for a term not exceeding fourteen years;
- (b) in any other case—
 - (i) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

(5) Unless subsection (3) or (4) applies, a person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.
- (6) This subsection applies where the offence involved—
 - (a) penetration of the child's anus or vagina with a part of the person's body or anything else;
 - (b) penetration of the child's mouth with the person's penis;
 - (c) penetration of the person's anus or vagina with a part of the child's body or by the child with anything else; or
 - (d) penetration of the person's mouth with the child's penis.

Causing or inciting sexual exploitation of a child

- 63.** (1) A person commits an offence if—
- (a) that person intentionally causes or incites another person to be sexually exploited in any part of the world; and
 - (b) either—
 - (i) the other person is under 18 years old, and the person does not reasonably believe that the other person is 18 years old or over; or
 - (ii) the other person is under 13 years old.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Controlling a child in relation to sexual exploitation

- 64.** (1) A person commits an offence if—
- (a) that person intentionally controls any of the activities of another person relating to that other person's sexual exploitation in any part of the world; and
 - (b) either—
 - (i) the other person is under 18 years old, and the person does not reasonably believe that the other person is 18 years old or over; or
 - (ii) the other person is under 13 years old.
- (2) A person who commits who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Arranging or facilitating sexual exploitation of a child

- 65.** (1) A person commits an offence if—

- (a) that person intentionally arranges or facilitates the sexual exploitation in any part of the world of another person; and
- (b) either—
 - (i) the other person is under 18 years old, and the person does not reasonably believe that the other person is 18 years old or over; or
 - (ii) the other person is under 13 years old.
- (2) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years.

Sections 62 to 65: Interpretation

66. (1) For the purposes of sections 62 to 65, a person is sexually exploited if—

- (a) on at least one occasion and whether or not compelled to do so, that person offers or provides sexual services to another person in return for payment or a promise of payment to that person or a third person; or
- (b) an indecent image of that person is recorded or streamed or otherwise transmitted; and
- (c) “sexual exploitation” is to be interpreted accordingly.

(2) In subsection (1), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

Soliciting

67. (1) It is an offence for a person in a street or public place to solicit another person for the purpose of obtaining that person’s sexual services as a prostitute.

(2) The reference to a person in a street or public place includes a person in a vehicle in a street or public place.

(3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding [] dollars.

Causing or inciting prostitution for gain

68. (1) A person commits an offence if—

- (a) that person intentionally causes or incites another person to become a prostitute in any part of the world; and
- (b) that person does so for or in the expectation of gain for that person or a third person.

(2) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.

Controlling prostitution for gain

- 69.** (1) A person commits an offence if—
- (a) that person intentionally controls any of the activities of another person relating to that person’s prostitution in any part of the world; and
 - (b) that person does so for or in the expectation of gain for that person or a third person.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.

Paying for sexual services of a prostitute subjected to force etc.

- 70.** (1) A person commits an offence if—
- (a) that person makes or promises payment for the sexual services of a prostitute;
 - (b) a third person has engaged in exploitative conduct of a kind likely to induce or encourage a prostitute to provide the sexual services for which that person has made or promised payment; and
 - (c) the third person engaged in that conduct for or in the expectation of gain for the third person or another person.
- (2) The following are irrelevant—
- (a) where in the world the sexual services are to be provided and whether those services are provided;
 - (b) whether the person is, or ought to be, aware that the third person has engaged in exploitative conduct.
- (3) A third person engages in exploitative conduct if—
- (a) that person uses force, threats (whether or not relating to violence) or any other form of coercion; or
 - (b) that person practises any form of deception.
- (4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding []dollars.

Sections 67 to 70: interpretation

- 71** (1) In sections 67 to 70, “gain” means—
- (a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or
 - (b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.
- (2) In subsection (2) and section 70, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

Human trafficking

72. (1) A person commits an offence if the person arranges or facilitates the travel of another person with the intention of that person being sexually exploited.

(2) It is irrelevant whether the person consents to the travel and whether the person is an adult or a child.

(3) A person may in particular arrange or facilitate another person's travel by recruiting the person, transporting or transferring the person, harbouring or receiving the person, or transferring or exchanging control over the person.

(4) A person arranges or facilitates another person's travel with a view to that person being sexually exploited only if—

- (a) the person intends to sexually exploit that person (in any part of the world) during or after the travel, or
- (b) the person knows or ought to know that a third person is likely to sexually exploit that person (in any part of the world) during or after the travel.

(5) "Travel" means—

- (a) arriving in, or entering, any country,
- (b) departing from any country,
- (c) travelling within any country.

(6) A person who is a Belonger or resident of the Virgin Islands commits an offence under this section regardless of—

- (a) where the arranging or facilitating takes place, or
- (b) where the travel takes place.

(7) A person who is not a Belonger or resident of the Virgin Islands commits an offence under this section if—

- (a) any part of the arranging or facilitating takes place in the Virgin Islands, or
- (b) the travel consists of arrival in or entry into, departure from, or travel within, the Virgin Islands.

Keeping a brothel used for prostitution

73. A person who knowingly keeps, manages, or acts or assists in the management of, a brothel to which people resort for practices involving prostitution (whether or not also for other practices) commits an offence and is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Letting premises for use as brothel

74. (1) A person who is the owner or lessor, or who is the occupier or in control of any premises, or that person's agent, who lets or arranges for the letting of the premises as a brothel, commits an offence and is liable on summary conviction to imprisonment for a term not exceeding two years or to a fine not exceeding two thousand dollars, or both.

(2) Upon the conviction of a person for an offence under subsection (1), after having been previously convicted of an offence under that subsection, that person shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding three thousand dollars, or both.

Living on earnings of prostitution

75. A person who knowingly lives wholly or in part on the earnings of prostitution commits an offence and is liable

- (a) on summary conviction, to imprisonment for a term not exceeding twelve months or a fine not exceeding []dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

PART IX

FACILITATION OFFENCES

Administering a substance with intent

76. (1) A person commits an offence if that person intentionally administers a substance to, or causes a substance to be taken by, another person —

- (a) knowing that the other person does not consent; and
 - (b) with the intention of stupefying or overpowering the other person, so as to enable any person to engage in a sexual activity that involves the other person.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Committing an offence with intent to commit a sexual offence

77. (1) A person commits an offence under this section if that person commits any offence with the intention of committing a relevant sexual offence.

(2) In this section, “relevant sexual offence” means any offence under this Act (including an offence of aiding, abetting, counselling or procuring such an offence).

(3) A person who commits an offence under this section is liable on conviction on indictment, where the offence is committed by kidnapping or false imprisonment, to imprisonment for life.

(4) Unless subsection (3) applies, a person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

Trespass with intent to commit a sexual offence

78. (1) A person commits an offence if—

- (a) that person is a trespasser on any premises;
- (b) that person intends to commit a relevant sexual offence on the premises; and
- (c) that person knows that, or is reckless as to whether, that person is a trespasser.

(2) In this section—

“premises” includes a structure or part of a structure;

“relevant sexual offence” has the same meaning as in section 77;

“structure” includes a tent, vehicle or vessel or other temporary or movable structure.

(3) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years.

PART X INDECENCY

Indecent exposure

79. (1) A person commits an offence if—

- (a) that person intentionally exposes that person’s genitals; and
- (b) that person intends that someone will see them and be caused alarm or distress.

(2) A person who commits an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Sexual activity in a public lavatory

80. (1) A person commits an offence if—

- (a) that person is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise;
- (b) that person intentionally engages in an activity; and
- (c) the activity is sexual.

(2) For the purposes of this section, an activity is sexual if a reasonable person would, in all the circumstances but regardless of any person’s purpose, consider it to be sexual.

(3) A person who commits an offence under this section is liable on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both.

Voyeurism

81. (1) A person commits an offence if—

- (a) for the purpose of obtaining sexual gratification, that person observes another person doing a private act; and
 - (b) that person knows that the other person does not consent to being observed for that person's sexual gratification.
- (2) A person commits an offence if—
- (a) that person operates equipment with the intention of enabling another person to observe, for the purpose of obtaining sexual gratification, a third person doing a private act; and
 - (b) that person knows that the other person does not consent to that person operating equipment with that intention.
- (3) A person commits an offence if—
- (a) that person records another person doing a private act;
 - (b) that person does so with the intention that that person or a third person will, for the purpose of obtaining sexual gratification, look at an image of the other person doing the act; and
 - (c) that person knows that the other person does not consent to that person recording the act with that intention.
- (4) A person commits an offence if that person installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling that person or another person to commit an offence under subsection (1).
- (5) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Voyeurism: additional offences

- 82.** (1) A person commits an offence if—
- (a) that person operates equipment beneath the clothing of another person;
 - (b) that person does so with the intention of enabling that person or a third person, for a purpose mentioned in subsection (3), to observe—
 - (i) another person's genitals or buttocks (whether exposed or covered with underwear); or
 - (ii) the underwear covering another person's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible; and
 - (c) that person does so—
 - (i) without the other person's consent; and
 - (ii) without reasonably believing that the other person consents.
- (2) A person commits an offence if—
- (a) that person records an image beneath the clothing of another person;
 - (b) the image is of—

- (i) the other person's genitals or buttocks (whether exposed or covered with underwear); or
 - (ii) the underwear covering the other person's genitals or buttocks, in circumstances where the genitals, buttocks or underwear would not otherwise be visible;
 - (b) that person does so with the intention that that person or another person will look at the image for a purpose mentioned in subsection (3); and
 - (c) that person does so—
 - (i) without the other person's consent; and
 - (ii) without reasonably believing that the other person consents.
- (3) A person commits an offence if—
- (a) that person operates equipment;
 - (b) that person does so with the intention of enabling that person or another person, for a purpose mentioned in subsection (5), to observe the other person while the other person is breast-feeding a child; and
 - (c) that person does so—
 - (i) without the other person's consent; and
 - (ii) without reasonably believing that the other person consents.
- (4) A person commits an offence if—
- (a) that person records an image of another person while that other person is breast-feeding a child;
 - (b) that person does so with the intention that that person or another person will look at the image for a purpose mentioned in subsection (5); and
 - (c) that person does so—
 - (i) without the other person's consent; and
 - (ii) without reasonably believing that the other person consents.
- (5) The purposes referred to in subsections (1) to (4) are—
- (a) obtaining sexual gratification (whether for that person or another person);
 - (b) humiliating, alarming or distressing the other person.
- (6) In this section a reference a person breast-feeding a child includes that person re-arranging that person's clothing—
- (a) in the course of preparing to breast-feed the child; or
 - (b) having just finished breast-feeding the child.
- (7) It is irrelevant for the purposes of subsections (3) and (4)—
- (a) whether or not the person is in a public place while the person is breast-feeding the child;
 - (b) whether or not the person's breasts are exposed while the person is breast-feeding the child; and
 - (c) what part of the person's body—
 - (i) is, or is intended by that person to be, visible in the recorded image; or

- (ii) is intended by that person to be observed.
- (8) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine, or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Voyeurism: interpretation

83. (1) For the purposes of section 80, a person is doing a private act if the person is in a place which, in the circumstances, would reasonably be expected to provide privacy, and—

- (a) the person's genitals, buttocks or breasts are exposed or covered only with underwear;
- (b) the person is using a lavatory; or
- (c) the person is doing a sexual act that is not of a kind ordinarily done in public.

(2) For the purposes of sections 80 and 81 "operating equipment" includes enabling or securing its activation by another person without that person's knowledge.

(2) In section 80, "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

PART

UNNATURAL SEXUAL ACTS

Intercourse with an animal

- 84.** (1) A person commits an offence if—
- (a) he intentionally performs an act of penetration with his penis;
 - (b) what is penetrated is the vagina or anus of a living animal; and
 - (c) he knows that, or is reckless as to whether, that is what is penetrated.
- (2) A person commits an offence if—
- (a) that person intentionally causes, or allows, that person's vagina or anus to be penetrated;
 - (b) the penetration is by the penis of a living animal; and
 - (c) that person knows that, or is reckless as to whether, that is what that person is being penetrated by.
- (3) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

Sexual penetration of a corpse

- 85.** (1) A person commits an offence if—

- (a) that person intentionally performs an act of penetration with a part of that person's body or anything else;
 - (b) what is penetrated is a part of the body of a dead person;
 - (c) that person knows that, or is reckless as to whether, that is what is penetrated; and
 - (d) the penetration is sexual.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding [] dollars or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years.

PART XII

MISCELLANEOUS

Exceptions to aiding, abetting and counselling

86. (1) A person is not guilty of aiding, abetting or counselling the commission against a child of an offence to which this section applies if that person acts for the purpose of—

- (a) protecting the child from sexually transmitted infection;
- (b) protecting the physical safety of the child;
- (c) preventing the child from becoming pregnant; or
- (d) promoting the child's emotional well-being by the giving of advice,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence or the child's participation in it.

(2) This section applies to offences under Part III.

(3) This section does not affect any other enactment or any rule of law restricting the circumstances in which a person is guilty of aiding, abetting or counselling an offence under this Act.

“Consent”

87. For the purposes of this Act, a person consents if that person agrees by choice, and has the freedom and capacity to make that choice.

Evidential presumptions about consent

88. (1) If in proceedings for an offence to which this section applies it is proved—

- (a) that the defendant did the relevant act;
- (b) that any of the circumstances specified in subsection (2) existed; and
- (c) that the defendant knew that those circumstances existed,

the complainant is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

- (2) The circumstances are that—
- (a) any person was, at the time of the relevant act or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against that person;
 - (b) any person was, at the time of the relevant act or immediately before it began, causing the complainant to fear that violence was being used, or that immediate violence would be used, against another person;
 - (c) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act;
 - (d) the complainant was asleep or otherwise unconscious at the time of the relevant act;
 - (e) because of the complainant’s physical disability, the complainant would not have been able at the time of the relevant act to communicate to the defendant whether the complainant consented;
 - (f) any person had administered to or caused to be taken by the complainant, without the complainant’s consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the relevant act.

(3) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

Conclusive presumptions about consent

89. (1) If in proceedings for an offence to which this section applies it is proved that the defendant did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed—

- (a) that the complainant did not consent to the relevant act; and
 - (b) that the defendant did not believe that the complainant consented to the relevant act.
- (2) The circumstances are that—
- (a) the defendant intentionally deceived the complainant as to the nature or purpose of the relevant act;
 - (b) the defendant intentionally induced the complainant to consent to the relevant act by impersonating a person known personally to the complainant.

Sections 88 and 89: relevant acts

90. In relation to an offence to which sections 88 and 89 apply, references in those sections to the relevant act and to the complainant are to be read as follows—

Offence

An offence under section 4 (rape).

Relevant Act

The defendant intentionally penetrating, with his penis, the vagina, anus or mouth of another person (“the complainant”).

An offence under section 5 (assault by penetration).	The defendant intentionally penetrating, with a part of his body or anything else, the vagina or anus of another person (“the complainant”), where the penetration is sexual.
An offence under section 6 (sexual assault).	The defendant intentionally touching another person (“the complainant”), where the touching is sexual.
An offence under section 12 (causing a person to engage in sexual activity without consent).	The defendant intentionally causing another person (“the complainant”) to engage in an activity, where the activity is sexual.

Corroboration not required

91. The rules requiring corroboration in sexual offences are abrogated and, accordingly, where an accused is charged with a sexual offence—

- (a) is not required for a conviction; and
- (b) the judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration.

Rules about recent complaint abrogated

92. The rules relating to evidence of recent complaint are abrogated with respect to sexual offences.

Evidence of complainant’s sexual activity

93. (1) If at a trial a person is for the time being charged with a sexual offence, no evidence shall be adduced, and no question in cross-examination shall be asked, at the trial about any sexual activity of the complainant, other than the sexual activity that forms the subject-matter of the charge, whether with the accused or with any other person or with any animal or thing, unless the judge gives leave therefor on the grounds that the evidence or question—

- (a) relates to specific instances of sexual activity; and
- (b) is relevant to an issue in the case; and
- (c) has significant probative value or relevance that is not substantially outweighed by the danger of prejudice to the proper administration of justice. .

(2) Where before a special court or at a preliminary inquiry any person is for the time being charged with a sexual offence, no evidence shall be adduced or any question asked about any sexual activity of the complainant, other than the sexual activity that forms the subject-matter of the charge, whether with the accused or with any other person or with any animal or thing, unless the chairman or the magistrate gives leave therefor on the grounds specified in paragraphs (a) to (c) of subsection (1).

(3) A judge shall not give leave under subsection (1), and a chairman or magistrate shall not give leave under subsection (2), except on a special application made to that person, and shall, in deciding whether or not to give such leave, take into account—

- (a) the interests of justice, including the right of the accused to make a full answer and defence;

- (b) where the evidence or question is to be considered by a jury, the risk that the evidence or question may unduly arouse sentiments of prejudice, sympathy or hostility in the jury;
- (c) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law;
- (d) need to remove from the fact-finding process any discriminatory belief or bias;
- (e) the potential prejudice to the complainant's personal dignity and right of privacy;
- (f) whether there is a reasonable prospect that the evidence or question will assist in arriving at a just determination in the case;
- (g) society's interest in encouraging the reporting of sexual offences; and
- (h) any other factor that the judge or the chairman or the magistrate considers relevant.

(4) An application referred to in subsection (3) is an application for a hearing, and must be made in writing and set out—

- (a) detailed particulars of the evidence that the accused seeks to adduce or of the question or questions that he seeks to ask; and
- (b) relevance of that evidence or that question or those questions to an issue in the case; and

a copy of the application must be delivered to the prosecutor and to the clerk of the court not less than two clear days before the hearing of the application.

(5) At the hearing of such an application—

- (a) the jury, where a jury are involved, and the public, shall be excluded; and
- (b) the complainant is not a compellable witness.

Reputation evidence

94. In proceedings in respect of a sexual offence, evidence of sexual reputation, whether general or specific, is not admissible for the purpose of challenging or supporting the credibility of the complainant.

Restrictions on publicity in relation to trial of sexual offences

95. (1) After a person has been arrested and charged with a sexual offence, no matter likely to lead members of the public to identify a person as the complainant in relation to that charge shall be published in a written publication available to the public, or be broadcast, except as authorized by a direction given under this section.

(2) If, before the commencement of a trial at which a person is charged with a sexual offence, that person or another person against whom the complainant may be expected to give evidence at the trial applies to a judge for a direction under this subsection and satisfies the judge—

- (a) that the direction is required for the purpose of inducing persons to come forward who are likely to be needed as witnesses at the trial; and
- (b) that the conduct of the applicant's defence or case at the trial is likely to be substantially prejudiced if the direction is not given,

the judge shall direct that subsection (1) shall not, by virtue of the accusation alleging the sexual offence in question, apply in relation to the complainant.

(3) If at a trial at which a person is charged with a sexual offence the judge is satisfied—

(a) that the effect of subsection (1) is to impose a substantial and unreasonable restriction upon the reporting of proceedings at the trial; and

(b) that it is in the public interest that the restriction should be removed or relaxed,

the judge shall direct that subsection (1) shall not apply to such matter relating to the complainant as is specified in the direction; but a direction shall not be given under this subsection by reason only of an acquittal of an accused at the trial.

(4) If a person who has been convicted of a sexual offence and has given notice of appeal to the Court of Appeal against the conviction, or notice of an application for leave so to appeal, applies to the Court of Appeal for a direction under this subsection and satisfies that Court—

(a) that the direction is required for the purpose of obtaining evidence in support of the appeal; and

(b) that that person is likely to suffer substantial injustice if the direction is not given,

that Court shall direct that subsection (1) shall not, by virtue of an accusation which alleges a sexual offence and is specified in the direction, apply in relation to a complainant so specified.

(5) If any matter is published or broadcast in contravention of subsection (1) or (6), each of the following persons, namely—

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

(b) the case of any other publication, the person who publishes the publication;

(c) the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made, and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

commits a summary offence, and is liable on conviction to a fine of ten thousand dollars.

(6) After a person has been charged with a sexual offence, no matter likely to lead members of the public to identify that person as the person against whom the accusation has been made shall be published in a written publication available to the public, or be broadcast, unless and until that person has been convicted or a direction allowing publication or broadcasting has been made under subsection (7) or (8).

(7) If at a preliminary inquiry, or before a trial, or during a trial, at which a person is charged with a sexual offence an accused person applies to the magistrate, a judge or the trial judge for a direction that subsection (6) shall not apply in relation to that person, the magistrate or judge shall so direct unless the magistrate or judge is satisfied that such a direction will prejudice another accused.

(8) If at the trial of a person charged with a sexual offence the judge is satisfied that the effect of subsection (6) is to impose a substantial and unreasonable restriction upon the reporting of the proceedings and that it is in the public interest that the restriction should be removed, the judge shall direct that subsection (6) shall not apply in relation to that person.

(9) If after the commencement of a trial at which a person is charged with a sexual offence a new trial is ordered, any direction under this section shall not have effect in respect of the new trial; and if such a direction is wished a fresh application shall be made.

(10) Nothing in this section—

- (a) prohibits the publication or broadcasting, in consequence of an accusation alleging a sexual offence, of matter consisting only of a report of legal proceedings other than proceedings at, or intended to lead to, or on an appeal arising out of, a trial at which the accused is charged with that offence; or
- (b) affects any prohibition or restriction imposed by virtue of any other enactment upon a publication or broadcast.

SCHEDULE

[Section 49]

SPECIFIED HOMES OR PREMISES

INSTRUCTIONS ARE REQUIRED FOR THE SPECIFIED HOMES OR PREMISES

DRAFT

OBJECTS AND REASONS

This Bill seeks to make provisions for the creation of sexual offences and related matters.

Part I of the Bill makes provision for the preliminary clauses providing for the short title, commencement, interpretation and application provisions.

Part II of the Bill makes provision for rape and other sexual assault offences. In addition to the normal rape and sexual assault offences provisions has been made for distinguishing serious and aggravated sexual assault and for the offence of sexual assault by a person with a sexual disease.

Part III provides for sexual offences involving children. The Part provides for enhanced offences to give greater protection for children. Offences in respect of “grooming” such as sexual communications with a child and meeting a child following sexual communications has prohibited.

Part IV provides for offences with respect to sexual activities with a family member. The Part provides for the prohibited categories of familiar relations in respect of sexual activities and makes special provisions to protect child family members.

Part V provides for offences with respect to sexual activities with a person with a mental disorder. The Part provides for enhanced offences to offer greater protection to persons with a mental disorder.

Part VI makes provision for abuse of positions of trust. Offences have been provided for in relation to the abuse of trust in relationships involving children, persons with mental disorders and other relationships. Positions of trust has been widely defined to include caregivers, persons employed in government institutions and detention centres, educators, sports coaches and religious leaders among others.

Part VII provides for offences involving the sharing of sexual images and pornography. Offences to deal with “revenge pornography” and violation of privacy have been provided for.

Part VIII makes provisions for offences involving prostitution and sexual exploitation. Human trafficking provisions have also been provided for.

Part IX makes provision for facilitation offences such as administering a substance with intent to commit a sexual act. It also makes provision for offences where other offences are being committed and a sexual offence is committed along with that offence for example trespass and makes it an indictable offence where kidnapping or false imprisonment occurs.

Part X provides for offences of indecency. These include indecent exposure and sexual activities in public places. Provision is also made for Voyeurism.

Part XI makes provision for unnatural sexual acts and provides that intercourse with an animal and sexual penetration of a corpse are offences.

Part XII provides for miscellaneous provisions. These include exceptions to the offence of aiding, abetting and counselling in specific circumstances. It also provides for evidential and conclusive presumptions in respect of consent in respect of sexual offences. Provision is also made for the protection of complainants such as the treatment of reputational evidence, the introduction of the complainant's sexual activity and the placing of restrictions on publicity in respect to trials for sexual offences to provide protections for the victims.

DRAFT