

COMMONWEALTH OF DOMINICA**ARRANGEMENT OF SECTIONS**

Section

1. Short title.
2. Interpretation.
3. Repeal and replacement of section 3 of the Act.
4. Amendment of section 4 of the Act.
5. Amendment of section 9 of the Act.
6. Amendment of section 12 of the Act.
7. Amendment of section 14 of the Act.
8. Amendment of section 16 of the Act.
9. Insertion of new section 16A.
10. Insertion of new section 22A.
11. Amendment of section 27 of the Act.
12. Insertion of new sections 31A to 31E.
13. Amendment of section 32 of the Act.
14. Insertion of new section 36A.
15. Insertion of new section 38A.
16. Insertion of new section 39A.

COMMONWEALTH OF DOMINICA

ACT NO. 9 of 2016

I assent



CHARLES A. SAVARIN
President

23rd November, 2016

**AN ACT TO AMEND THE SEXUAL OFFENCES ACT
1998 (ACT NO. 1 OF 1998).**

(Gazetted 24th November, 2016.)

BE IT ENACTED by the Parliament of the Commonwealth
of Dominica as follows:

1. This Act may be cited as the –

Short title.

**SEXUAL OFFENCES
(AMENDMENT) ACT, 2016.**

Interpretation
Act N o. 1 of 1998.

2. In this Act the Sexual Offences Act 1998 is referred to as “the Act”.

Repeal and replacement
of section 3 of the Act.

3. Section 3 of the Act is repealed and replaced as follows:

“Rape.

3. (1) Any person who has sexual intercourse with another—

- (a) without the consent of the other person; or
- (b) without believing that the other person consents to such intercourse or is reckless as to whether the other person consents or not,

is guilty of the offence of rape and liable on conviction to imprisonment for twenty-five years and any other punishment which may be imposed by law, except that if—

- (c) the complainant is under the age of twelve years or is an elderly person;
- (d) the offence is committed by two or more persons acting in concert or with the assistance or in the presence, of a third person;
- (e) the offence is committed in a particularly heinous way or circumstances;
- (f) the complainant was pregnant at the time of the offence and the accused knew that the complainant was pregnant;

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- (g) the complainant was made pregnant as a result of the offence; or
 - (h) the accused has previously been convicted of the offence of rape,

that person, who is guilty of the offence of rape, is liable on conviction to imprisonment for the remainder of their natural life.

(2) For the purposes of subsection (1), consent is not obtained where the complainant submits or does not resist by reason of—

- (a) the application of force to the complainant or to any other person;
- (b) threats or fear of the application of force to the complainant or to any other person;
- (c) the personation of the spouse of the complainant or personation of someone else;
- (d) false and fraudulent representations as to the nature of the act;
- (e) the use of the accused's position of authority over the complainant;
- (f) the administration to the complainant of a drug, matter or thing, with intent to stupefy or overpower the complainant or causing the complainant to take the same with intent to stupefy or overpower the complainant;

(g) intimidation of any kind; *or*

(h) the unlawful detention of the complainant.

(3) A husband is guilty of the offence of rape where he has sexual intercourse with his wife without her consent by force, fear or the use of a drug or thing with intent to stupefy or overpower her.

(4) The provisions of subsection (3) apply *mutatis mutandis* to a wife who is guilty of the offence of rape.

(5) A husband or wife who is guilty of the offence of rape is liable on conviction to imprisonment for fourteen years.

(6) Notwithstanding section 35, a person under the age of fourteen years is deemed incapable of committing the offence of rape.

(7) For the purposes of this section and section 36A “elderly person” means a person who is sixty years of age or over.”

Amendment of section 4
of the Act.

4. Section 4 of the Act is amended—

(a) in subsection (1)—

(i) in paragraph (b) by inserting the words “or is reckless as to whether the other person consents or not” after the words “sexual connection”;

(ii) in paragraph (c) by inserting the following paragraph after paragraph (v):

“(vi) obtained by unlawfully detaining that other person;”

(b) in subsection (2)(b) by inserting the words “or anus” after the word “genitalia”;

(c) by inserting after subsection (3) the following new subsection (3A):

“(3A) Notwithstanding subsection (3), section 3(1)(c), (d), (e), (f) and (h) apply, *mutatis mutandis*, to the offence of unlawful sexual connection as it does to the offence of rape.”;

(d) by deleting subsection (4) and substituting the following:

“(4) A husband commits the offence of unlawful connection if he has sexual connection with his wife without her consent.”;

(e) in subsection (5) by deleting the words “who commits the offence of unlawful sexual connection”;

(f) in subsection (6) by deleting the words “Except for subsections (4) and (5), it” and substituting the word “It”;

(g) in subsection (7)(a) by deleting the figure “(v)” and substituting the figure “(vi)”.

5. Section 9(3)(b) of the Act is amended by deleting the word “ten” and substituting the word “fourteen”.

Amendment of section 9 of the Act.

6. Section 12(1) of the Act is amended by inserting the words “or section 16” immediately after the words “section 7”.

Amendment of section 12 of the Act.

7. Section 14 of the Act is amended—

Amendment of section 14 of the Act.

(a) by deleting subsection (1) and substituting the following:

“(1) Any person who commits an act of gross indecency with another person is guilty of an offence and liable on conviction to imprisonment—

- (a) if the complainant is a person sixteen years of age or more, for twelve years;
- (b) if the complainant is a minor under sixteen years of age, for fourteen years for a first offence and to imprisonment for twenty years for a subsequent offence.”;

(b) by deleting subsections (3) and (4) and substituting the following subsections:

“(3) For the purposes of subsection (2)—

- (a) an act shall be deemed not to have been committed in private if it is committed in a public place; and
- (b) a person shall be deemed not to consent to the commission of such an act if—
 - (i) the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature of the act;
 - (ii) the consent is induced by the application or administration of

any drug, matter or thing with intent to intoxicate or stupefy the person;

(iii) that person is, and the other party to the act knows or has good reason to believe that the person is suffering from a mental disorder; or

(iv) that person is a minor under sixteen years of age.

(4) In this section “gross indecency” means -

(a) an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs, breasts or anus for the purpose of arousing or gratifying sexual desire; or

(b) an act by a person that causes a minor under sixteen years of age -

(i) to watch that person or another person engaging in sexual activity or to look at an image or visual presentation of that person or another person engaging in sexual activity; or

(ii) to read or see a sexually explicit message,

for the purpose of arousing or gratifying sexual desire.”.

Amendment of section
16 of the Act.

8. Section 16(1) of the Act is deleted and substituted by the following:

“(1) A person who commits buggery is guilty of an offence and liable on conviction to imprisonment for—

- (a) twenty-five years, if committed by an adult on a minor;
- (b) ten years, if committed by an adult on another adult; or
- (c) five years, if committed by a minor, except that if,
 - (i) the complainant is fourteen years of age or more but has not attained the age of sixteen years, the convicted minor is liable on conviction to twelve years imprisonment;
 - (ii) the complainant is under fourteen years of age or the offence is committed in a particularly heinous way, the convicted minor is liable on conviction to fourteen years imprisonment;

and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for evaluation, and if necessary, treatment or counselling.”.

Insertion of new
section 16A.

9. The Act is amended by inserting after section 16 the following new section 16A:

“Voyeurism.

16A. (1) A person who—

- (a) for the purpose of obtaining sexual gratification observes another person performing a sexual act in private or a private act without the consent of that other person, and knowing that the other person does not consent to being so observed;
- (b) for the purpose of obtaining sexual gratification operates any equipment with the intention of enabling another person to observe a third person performing a sexual act in private or a private act knowing the other person does not consent to his or her operating the equipment with that intention; or
- (c) records another person performing a sexual act in private or a private act with the intention that he or she, whether or not, with others for the purpose of obtaining sexual gratification, may look at an image of the other person doing a sexual or private act knowing that the other person does not consent to his or her recording the act with that intention,

is guilty of the offence of voyeurism and is liable on conviction to a fine of ten thousand dollars and imprisonment for two years.

(2) For the purpose of subsection (1), a person is performing a sexual act in private if he or she is in a place which, in the circumstance, would reasonably be expected to provide privacy and a private act includes the person using a lavatory or where the person's genitals, buttocks or breasts are minimally covered or exposed."

Insertion of new section 22A.

10. The Act is amended by inserting after section 22 the following new section 22A:

"Sexual grooming of a minor under sixteen years of age

22A. (1) An adult person is guilty of an offence if—

- (a) having met or communicated with a minor under sixteen years of age on at least two earlier occasions, he or she—
 - (i) intentionally meets the minor; or
 - (ii) travels with the intention of meeting the minor in any part of the world; and
- (b) at the time of the meeting or travel, he or she—
 - (i) intends to do anything to or in respect of the child, during or after the meeting, in any part of the world, which, if the act were done in Dominica, would amount to the commission by a person of a sexual offence under this Act; and
 - (ii) does not reasonably believe that the minor is sixteen years of age or over.

(2) An adult is guilty of an offence if he or she causes another person to carry out the offence specified in subsection (1).

(3) In subsection (1), the reference to the adult having met or communicated with the minor is a reference to the adult having met the minor in any part of the world or having communicated with the minor by any means from, to or in any part of the world.

(4) A person who is guilty of an offence under this section is liable on conviction to imprisonment for a term of fourteen years.”.

11. Section 27(1) of the Act is amended—

Amendment of section 27 of the Act.

- (a) in paragraph (l), by deleting the word “and” appearing at the end thereof;
- (b) in paragraph (m), by deleting the full-stop at the end thereof and substituting a semi-colon followed by the word “and”; and
- (c) by inserting after paragraph (m) a new paragraph “(n)” as follows:

“(n) sexual grooming of a minor under sixteen years of age.”.

12. The Act is amended by inserting after section 31 the following new sections 31A to 31F:

Insertion of new sections 31A to 31F.

“Mandatory reporting of suspected abuse of minors.

31A. (1) Any person who—

- (a) is the parent or guardian of a minor;

-
- (b) has the actual custody, charge or control of a minor;
 - (c) has the temporary custody, care, charge or control of a minor for a special purpose, as his attendant, employer or teacher, or in any other capacity; or
 - (d) is a medical practitioner, or a registered nurse or a midwife, and has performed a medical examination in respect of a minor,

and who has reasonable grounds for believing that an offence under this Act has been committed in respect of that minor, shall report the grounds for his or her belief to a police officer as soon as reasonably practicable.

(2) Any person who without reasonable excuse fails to comply with the requirements of subsection (1) is guilty of an offence and liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for a term of five years.

(3) No report made to a police officer under the provisions of subsection (1) shall, if such report was made in good faith for the purpose of complying with those provisions, subject the person who made the report to any action, liability, claim or demand whatsoever.

Obstructing
prosecution.

31B. Where a person prevents a minor from—

- (a) giving a statement to the police; or
- (b) testifying,

in proceedings relating to a sexual offence, that person is guilty of an offence and liable on conviction to a fine of fifty thousand dollars and to imprisonment for a term of five years.

Admissibility
of minor's
statement.

31C. (1) Without prejudice to any other written law, where the Court is satisfied that a minor is being prevented from giving evidence and where a statement is made in any written form or manner by a minor, or written in any form or manner by another person on behalf of the minor, and upon the dictation of the minor, that statement may be admissible in a trial as evidence of any fact of which direct oral evidence of the minor would be admissible.

(2) The Court may admit into evidence the following statement made by a minor:

- (a) a statement made to and written by the police;
- (b) a statement made in the form of a statutory declaration;
- (c) a statement written by the minor himself or herself;
- (d) a statement written by another person on behalf of a minor who cannot write.

(3) The following provisions shall have effect in relation to any written statement of a minor tendered in evidence under this section:

- (a) the minor shall state his or her age and that an adult of his or her choice, who

shall be named, was present when it was made;

- (b) if the statement is written on behalf of a minor, it shall be signed and dated by both the minor and the person who wrote it on the date that the statement was written;
- (c) if the statement is written on behalf of a minor who cannot write, the person who wrote the statement shall read it to the minor before the minor puts his mark or thumbprint on it and it shall be accompanied by a declaration of the person who wrote it that it was read to the minor and who appeared to understand it and agreed to it;
- (d) if the statement is written on behalf of a minor who cannot read, the person who wrote the statement shall read it to the minor before the minor signs or puts his or her mark or thumb print on it and it shall be accompanied by a declaration of the person who wrote it that it was read to the minor who appeared to understand it and agreed to it;
- (e) if the statement refers to any other document, the copy of the statement given to any other party to the proceedings shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party to whom it is

given to inspect the document or a copy of it.

(4) Save where any shorter period is permitted by the court, the prosecution shall give a copy of the statement to any other party to the proceedings at least ten clear days before the prosecution tenders it into evidence.

(5) Any document or object referred to and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in Court by the witness.

(6) Where a court grants permission for a written statement to be tendered in evidence, it shall be read to the court and the words so read shall be and form part of the evidence in the case in the same manner and with the same effect as if the words had been spoken by the minor himself or herself.

(7) A minor whose written statement is tendered in evidence under this section shall be treated as a person who had been examined by the Court.

Statements prepared for purposes of criminal proceedings or investigations.

31D. (1) Without prejudice to any other written law, where a statement, referred to in section 31C, appears to the Court to have been prepared for the purposes of—

- (a) pending or contemplated criminal proceedings;
- (b) a criminal investigation,

the statement shall not be tendered in evidence in a trial without leave of the Court, and the Court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interest of justice.

(2) In considering whether the admission of a statement under subsection (1) would be in the interest of justice, the Court shall have regard—

- (a) to the contents of the statement;
- (b) to any risk of unfairness to the accused, or if there is more than one accused to any one of them, if the person making the statement does not attend to give oral evidence in the proceedings;
- (c) to any other circumstances that appear to the Court to be relevant.

(3) A written statement mentioned in this section shall be tendered in evidence by the prosecution any time before the prosecution closes its case against the defendant—

- (a) where the statement is written by the minor, by the prosecution submitting the statement to the Court; or
- (b) where the statement is written on behalf of a minor, by calling the person who wrote the statement to put the statement into evidence.

(4) Where it is proposed to tender a written statement into evidence under this section the defendant is entitled to challenge its admissibility before it is admitted into evidence.

(5) Where the defendant exercises his right under subsection (4), the Judge or Magistrate shall conduct a *voir dire* and decide whether the whole or any part of the statement is admissible into evidence.

False written
statement
tendered in
evidence.

31E. (1) A minor who, in a written statement tendered in evidence under section 31C wilfully makes a statement material in those proceedings which he or she knows to be false or does not believe to be true is guilty of an offence and liable on summary conviction to committal to a training school or some other similar institution for one year.

(2) A parent or guardian who knowingly encourages, assists or otherwise causes a minor to make a written statement which that parent or guardian knows to be false or does not believe to be done is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for a term of five years.”.

13. Section 32 of the Act is amended—

Amendment of section
32 of the Act.

(a) in subsection (2), by deleting the words “under this section” appearing after the word “offence” and substituting therefor the words “under this Act”;

(b) by repealing subsection (4) and substituting therefor the following:

“(4) A minor whose evidence has been admitted under subsection (1), who wilfully gave evidence which he or she knows to be false or does not believe to be true is guilty of an offence and liable on summary conviction to committal to a training school or some other similar institution for one year.”

Insertion of new
section 36A.

14. The Act is amended by inserting after section 36 the following new section 36A:

“Sentencing:
mandatory
minimum or
maximum.

36A. In sentencing a person for an offence under this Act, the presence of any one of the following aggravating factors shall permit a mandatory minimum sentence of two-thirds of the maximum sentence or the maximum sentence, as the court considers appropriate:

- (a) the accused committed the offence in the company of another person or persons;
- (b) at the time of or immediately before or after the commission of the offence, the defendant used or threatened to use a weapon;
- (c) at the time of or immediately before or after the commission of the offence, the defendant caused bodily harm to the complainant beyond that inherent in the commission of the offence;
- (d) the accused confined or restrained the complainant before or after the commission of the offence;
- (e) the accused in committing the offence, abused a position of trust, authority or dependency;
- (f) the accused is a member of the same family as the complainant;
- (g) the complainant is a minor under the

age of sixteen years or an elderly person ;

- (h) the complainant contracted the Human Immunodeficiency Virus or any other sexually transmitted disease or was made pregnant as a result of the offence; or
- (i) the complainant has a physical disability or mental disorder.”.

15. The Act is amended by inserting after section 38 the following new section 38A:

Insertion of
new section 38A.

“Mandatory
medical
examination.

38A. (1) Where a person is convicted of an offence under the sections to which this section applies, the Court shall require that the person be medically examined.

(2) Where upon such examination it is found that the person examined is suffering from the Human Immunodeficiency Virus (hereinafter referred to as “HIV”) or any other communicable disease, information to that effect shall be given promptly to the virtual complainant and the person examined.

(3) Subject to subsection (2), the information shall be confidential.

(4) Where it is found upon examination that the complainant has contracted HIV or any other sexually transmitted disease the Court, upon application by the complainant and upon being satisfied on a balance of probabilities that the complainant contracted the disease as a result of the offence,

may order the defendant to pay to the complainant compensation.

(5) This section applies to sections 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15 and 16.”.

Insertion of new section 39A.

16. The Act is amended by inserting after section 39 the following new section 39A:

“Regulations. **39A.** (1) The Minister may make Regulations generally, subject to negative resolution of the House, for giving effect to the provisions and purposes of this Act and without limiting the generality of the foregoing, in particular may make Regulations respecting the circumstances under which a person convicted of an offence under this Act may be required to participate in rehabilitation schemes.

(2) Regulations made under this Act may provide for the imposition of penalties for offences in contravention thereof of ten thousand dollars and of imprisonment for a term of two years.”.

Passed in the House of Assembly this 24th day of October, 2016.

MR. DANIEL JAMES
Clerk of the House of Assembly (Ag.)

DOMINICA

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