

THE SEXUAL OFFENCES ACT, 2009
(Act 12 of 2009)

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SCHEDULES.

JAMAICA

No. 12 - 2009

I assent,

[L.S.]

(sgd) P.R. Allen
Governor-General

October 20, 2009

AN ACT to Repeal the Incest (Punishment) Act and certain provisions of the Offences Against the Person Act; to make new provision for the prosecution of rape and other sexual offences; to provide for the establishment of a Sex Offender Registry; and for connected matters.

**The date notified by the Minister
[bringing the Act into operation]**

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

PART I. *Preliminary*

1.—(1) This Act may be cited as the Sexual Offences Act, 2009, and shall come into operation on such day or days as may be appointed by the Minister by notice published in the *Gazette*.

Short title
and com-
mencement.

(2) For the purposes of this section, different days may be appointed for the commencement of different provisions of this Act and for different purposes of the same provision.

Interpreta-
tion.

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

“adult” means a person of or over the age of eighteen years;

“child” means a person under the age of eighteen years;

“Children’s Court” means any Children’s Court established in accordance with the provisions of the Child Care and Protection Act;

“complainant” means, in relation to a sexual offence against this Act, a person who alleges that the offence was committed or attempted against that person;

“correctional institution” has the meaning assigned to it in the Corrections Act;

“grievous sexual assault” shall be construed in accordance with section 4(1);

“house of prostitution” means a building, enclosure or place that is used for the purpose of prostitution;

“mental disorder” means—

(a) a substantial disorder of thought, perception, orientation or memory which grossly impairs a person’s behaviour, judgment, capacity to recognize reality or ability to meet the demands of life, which renders a person to be of unsound mind; or

(b) mental retardation, where such a condition is associated with abnormally aggressive or seriously irresponsible behaviour;

“Register” means the Sex Offender Register maintained under section 29;

“Registry” means the Sex Offender Registry established by section 29;

“sex offender” means a person who has been convicted of a specified offence and whose particulars are entered or required to be entered in the Register, and who is required to make regular reports pursuant to this Act;

“sexual intercourse” means the penetration of the vagina of one person by the penis of another person;

“specified offence” means an offence specified in the First Schedule, to which reporting obligations under Part VII apply.

PART II. *Rape, Grievous Sexual Assault and Marital Rape*

3.—(1) A man commits the offence of rape if he has sexual intercourse with a woman—

- (a) without the woman’s consent; and
- (b) knowing that the woman does not consent to sexual intercourse or recklessly not caring whether the woman consents or not.

(2) For the purposes of subsection (1), consent shall not be treated as existing where the apparent agreement to sexual intercourse is—

- (a) extorted by physical assault or threats or fear of physical assault to the complainant or to a third person; or
- (b) obtained by false and fraudulent representation as to the nature of the act or the identity of the offender.

4.—(1) A person (hereinafter called “the offender”) commits the offence of grievous sexual assault upon another (hereinafter called the “victim”) where, in the circumstances specified in subsection (3), the offender—

- (a) penetrates the vagina or anus of the victim with—
 - (i) a body part other than the penis of the offender; or
 - (ii) an object manipulated by the offender;

- (b) causes another person to penetrate the vagina or anus of the victim by—
 - (i) a body part other than the penis of that other person; or
 - (ii) an object manipulated by that other person;
- (c) places his penis into the mouth of the victim;
- (d) causes another person to place his penis into the mouth of the victim;
- (e) places his or her mouth onto the vagina, vulva, penis or anus of the victim; or
- (f) causes another person to place his or her mouth onto the vagina, vulva, penis or anus of the victim.

(2) Subsection (1)(a) and (b) do not apply to penetration carried out in the course of a search authorized by law or for *bona fide* medical purposes.

(3) The circumstances referred to in subsection (1) are that any of the acts specified in paragraphs (a) to (f) of that subsection is—

- (a) carried out—
 - (i) without the consent of the victim; and
 - (ii) knowing that the victim does not consent to the act or recklessly not caring whether the victim consents or not; or
- (b) carried out upon a victim under the age of sixteen years.

(4) For the purposes of subsection (3), consent shall not be treated as existing where the apparent consent to the act is—

- (a) extorted by physical assault or threats or fear of physical assault to the victim or to a third person; or
- (b) obtained by false and fraudulent representation as to the nature of the act or the identity of the offender.

5.—(1) A husband commits the offence of rape against his wife if he has sexual intercourse with his wife in any of the circumstances specified in subsection (3)—

Marital Rape.

- (a) without her consent; and
- (b) knowing that she does not consent to sexual intercourse or recklessly not caring whether she consents or not.

(2) For the purposes of subsection (1), consent shall not be deemed to exist where the apparent agreement to sexual intercourse is—

- (a) extorted by physical assault or threats or fear of physical assault to the wife or to a third person; or
- (b) obtained by false and fraudulent representation as to the nature of the act or the identity of the offender.

(3) The circumstances referred to in subsection (1) are that—

- (a) the spouses have separated and thereafter have lived separately and apart within the meaning of the Matrimonial Causes Act;
- (b) there is in existence a separation agreement in writing between the spouses;
- (c) proceedings for the dissolution of the marriage or for a decree of nullity of marriage have been instituted;
- (d) there has been made or granted against the husband an order or injunction, as the case may be, for non-cohabitation, non-molestation or ouster from the matrimonial home for the personal protection of the wife; or
- (e) the husband knows himself to be suffering from a sexually transmitted infection.

Penalty for
rape and
grievous
sexual assault.

6.—(1) A person who—

- (a) commits the offence of rape (whether against section 3 or 5) is liable on conviction in a Circuit Court to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years; or
- (b) commits the offence of grievous sexual assault is liable—
 - (i) on summary conviction in a Resident Magistrate's Court, to imprisonment for a term not exceeding three years;
 - (ii) on conviction in a Circuit Court, to imprisonment for life or such other term as the court considers appropriate not being less than fifteen years.
- (c) attempts to commit the offence of rape is liable, on conviction in a Circuit Court—
 - (i) where at the time of the attempt he was armed with a dangerous or offensive weapon or instrument, to imprisonment for a term not exceeding ten years; and
 - (ii) in any other case, to imprisonment for a term not exceeding seven years;
- (d) attempts to commit the offence of grievous sexual assaults—
 - (i) where at the time of the attempt he was armed with a dangerous or offensive weapon or instrument, is liable on conviction in a Circuit Court to imprisonment for a term not exceeding ten years; and
 - (ii) in any other case, is liable—
 - (A) on summary conviction in a Resident Magistrate's Court, to imprisonment for a term not exceeding three years;

(B) on conviction in a Circuit Court to imprisonment for a term not exceeding seven years.

(2) Where a person has been sentenced pursuant to subsection (1)(a) or (b) (ii), then in substitution for the provisions of section 6(1) to (4) of the Parole Act, the person's eligibility for parole shall be determined in the following manner: the court shall specify a period of not less than ten years, which that person shall serve before becoming eligible for parole.

(3) For the purposes of this section, a firearm or an imitation firearm shall, notwithstanding that it is not loaded or is otherwise incapable of discharging any shot, bullet or other missile, be deemed to be an offensive weapon or instrument.

(4) In this section, "firearm" and "imitation firearm" have the meanings respectively assigned to them under sections 2 and 25 of the Firearms Act.

PART III. *Incest*

7.—(1) The offence of incest is committed by a male person Incest. who willingly has sexual intercourse with another person knowing that the other person is his grandmother, mother, sister, daughter, aunt, niece or granddaughter.

(2) The offence of incest is committed by a female person who willingly has sexual intercourse with another person knowing that the other person is her grandfather, father, brother, son, uncle, nephew or grandson.

(3) For the purposes of subsection (1) or (2), the relationship between the person charged with an offence under any of those subsections and the person against whom the offence is alleged to have been committed includes a relationship determined by the reference to the whole blood or half blood, as the case may be.

(4) A person who commits the offence of incest is liable on conviction in a Circuit Court to imprisonment for life.

(5) Any person who attempts to commit the offence of incest is liable on conviction in a Circuit Court to imprisonment for a term not exceeding ten years.

(6) On the conviction of any person for an offence under subsection (1) or (2) against—

- (a) a child; or
- (b) a person over the age of sixteen years who is suffering from a mental disorder,

then where the person so convicted has authority or guardianship over the victim, the Court may act in accordance with subsection (7).

(7) The Court may—

- (a) subject to paragraph (b), make an order divesting the person so convicted of all authority or guardianship over the victim, and in any such case appoint any person or persons to be the guardian or guardians of the victim during, in the case of a child, the period of minority or any lesser period; or
- (b) in any case where it considers it appropriate, refer the matter of guardianship to the Children’s Court, and that court may, at any time, vary or rescind an order made under paragraph (a) by the appointment of any other person as such guardian, or in any other respect.

PART IV. *Sexual Offences Against Children and Indecent Assault*

Sexual touching or interference.

8.—(1) In this section, “child” means a person under the age of sixteen years.

(2) An adult commits an offence where he or she, for a sexual purpose, does any act specified in subsection (3).

(3) The acts referred to in subsection (2) are—

- (a) touching, directly or indirectly, with a part of his or her body or with an object, any part of the body of the child; or

- (b) inviting, counselling or inciting a child to touch, directly or indirectly, with a part of the body or with an object, the body of—
 - (i) any person, including the body of the adult who so invites, counsels or incites; or
 - (ii) the child.

(4) For the purposes of this section an act is done for a sexual purpose 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 and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual.

(5) A person who commits an offence under subsection (2) is liable on conviction in a Circuit Court, to imprisonment for a term not exceeding ten years.

(6) On the conviction of any person for an offence under subsection (2), then where the person so convicted has authority or guardianship over the child concerned, the Court may exercise its like powers as under section 7(7).

9.—(1) An adult commits an offence if—

- (a) having met or communicated with a child on at least two earlier occasions, he or she—
 - (i) intentionally meets the child; or
 - (ii) travels with the intention of meeting the child in any part of the world;
- (b) the child is under the age of sixteen years; and
- (c) 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 Jamaica,

Sexual grooming of child.

would amount to the commission by any person of a sexual offence under this Act; and

- (ii) does not reasonably believe that the child is of or over the age of sixteen years.

(2) An adult commits 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 child is a reference to the adult having met the child in any part of the world or having communicated with the child by any means from, to or in any part of the world.

(4) A person who commits an offence under this section is liable on conviction in a Circuit Court, to imprisonment for a term not exceeding fifteen years.

Sexual
intercourse
with person
under
sixteen.

10.—(1) Subject to subsection (3), a person who has sexual intercourse with another person who is under the age of sixteen years commits an offence.

(2) Any person who attempts to have sexual intercourse with any person under the age of sixteen years commits an offence.

(3) It is a defence for a person of twenty-three years of age or under who is charged for the first time with an offence under subsection (1) or (2), to show that he or she had reasonable cause to believe that the other person was of or over the age of sixteen years.

(4) Where the person charged with an offence under subsection (1) is an adult in authority, then, he or she is liable upon conviction in a Circuit Court to imprisonment for life, or such other term as the Court considers appropriate, not being less than fifteen years, and the Court may, where the person so convicted has

authority or guardianship over the child concerned, exercise its like powers as under section 7(7).

(5) Where a person has been sentenced pursuant to subsection (4), then, in substitution for the provisions of section 6(1) to (4) of the Parole Act, the person's eligibility for parole shall be determined in the following manner: the Court shall specify a period of not less than ten years which that person shall serve, before becoming eligible for parole.

(6) In this section, "adult in authority" means an adult who—

- (a) is in a position of trust or authority in relation to a child;
- (b) is a person with whom a child is in a relationship of dependency; or
- (c) stands in *loco parentis* to a child.

11. A person commits an offence who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control thereof, induces or knowingly allows any child under the age of sixteen years to resort to or be in or upon such premises for the purpose of—

Householder
etc., in-
ducing or
encouraging
violation of
child under
sixteen.

- (a) having sexual intercourse with any man or woman; or
- (b) engaging in any act with any man or woman that constitutes grievous sexual assault upon the child.

12. Where on the trial of any offence under this Act it is proved to the satisfaction of the court that the seduction or prostitution of a girl or boy under the age of sixteen years has been caused, encouraged, or favoured by his or her parent or guardian, it shall be in the power of the court to divest such parent or guardian of all authority over the girl or boy, and to appoint any person or persons

Custody of
children
under
sixteen.

willing to take charge of such girl or boy to be her or his guardian until she or he has attained the age of eighteen years, or any age below this as the court may direct, and a Judge of the Supreme Court shall have the power, from time to time, to rescind or vary such order by the appointment of any other person or persons as such guardian, or in any other respect.

Indecent assault.

13. Any person who carries out an act of indecent assault on another person commits an offence and—

- (a) on summary conviction in a Resident Magistrate's Court, is liable to imprisonment for a term not exceeding three years;
- (b) on summary conviction in a Circuit Court, is liable to imprisonment for a term not exceeding fifteen years.

Consent of young person to be no defence in indecent assault.

14. It shall not be a defence to a charge or indictment for an indecent assault on a person under the age of sixteen years to prove that the person consented to the act of indecency.

Abduction of child under sixteen.

15. A person who unlawfully takes or causes any child, being under the age of sixteen years, to be taken out of the possession and against the will of the child's father or mother, or of any other person having the lawful care or charge of the child, commits an offence.

PART V. *Other Offences*

Violation of person suffering from mental disorder or physical disability.

16.—(1) A person commits an offence who has or attempts to have sexual intercourse with a person who is suffering from a mental disorder or physical disability (knowing that the person is suffering from such a disorder or disability) and who does not consent to the act of intercourse or is incapable of consenting to the act.

(2) A person who is suffering from a mental disorder or physical disability shall be regarded as being incapable of consenting to engage in any act where by reason of mental disorder or physical disability, the person is unable to do one or more of the following—

- (a) understand what the act is;

- (b) form a decision as to whether to engage in the act (or as to whether the act should take place);
- (c) communicate any such decision.

17. A person commits an offence who by force takes away or detains another person, against the will of that person, with intent to— Forcible abduction.

- (a) have sexual intercourse with or commit grievous sexual assault upon that person;
- (b) cause that person to be married or to have sexual intercourse with or to be subjected to an act of grievous sexual assault by another person.

18.—(1) A person commits an offence who procures or attempts to procure any other person— Procurator.

- (a) who is a child, to have sexual intercourse with or engage in an act of grievous sexual assault with any other person or persons either within or outside Jamaica;
- (b) to become, either within or outside Jamaica, a male or female prostitute;
- (c) to leave Jamaica, with the intent that the other person shall become a male or female prostitute, or an inmate of, or frequent a house of prostitution; or
- (d) to leave the other person's usual place of abode in Jamaica (such place not being a house of prostitution), with intent that the other person may, for the purposes of prostitution, become an inmate of or frequent a house of prostitution within or outside of Jamaica.

(2) Any member of the Jamaica Constabulary Force above the rank of corporal may take into custody without a warrant any person whom he has good cause to suspect of having committed, or of attempting to commit, any offence against subsection (1).

19. A person commits an offence who—

- (a) by threats or intimidation, procures or attempts to procure any person to have sexual intercourse or to engage in or be subjected to an act of grievous sexual assault, either within or outside of Jamaica; Procuring violation of person by threats or fraud or administering drugs.

- (b) by false pretences or false representations, procures any person to have sexual intercourse or to engage in or be subjected to an act of grievous sexual assault either within or outside of Jamaica;
- (c) applies, administers to, or causes to be taken by any person, any drug, matter, or thing, with intent to stupefy or overpower that person so as thereby to enable any other person to have sexual intercourse with or to engage in an act of grievous sexual assault upon that other person; or
- (d) has or attempts to have sexual intercourse with or engages or attempts to engage in an act of grievous sexual assault upon any other person, when that other person is partially or entirely stupefied or overpowered as specified in paragraph (c).

Abduction of child with intent to have sexual intercourse, *etc.*

20.—(1) A person commits an offence who takes, or causes to be taken, any unmarried child out of the possession and against the will of his or her parent or guardian, with the intent that such child should have sexual intercourse with or engage in an act of grievous sexual assault involving any other person or persons generally.

(2) It is a defence for a person charged with an offence under subsection (1) to show that the person had reasonable cause for believing that the child was of or above the age of eighteen years.

Unlawful detention with intent to have sexual intercourse, *etc.*

21.—(1) A person commits an offence who detains another person against his or her will—

- (a) in or upon premises with the intent that such person may—
 - (i) have sexual intercourse with or engage in an act of grievous sexual assault involving any other person or with persons generally; or

(ii) be subjected to grievous sexual assault by any person or by persons generally;

(b) in a house of prostitution.

(2) A person (hereinafter referred to as “the offender”) shall be deemed to detain a person—

(a) in or upon premises, who is in or upon those premises for the purpose of having sexual intercourse; or

(b) in a house of prostitution,

if, with the intent to compel or induce a person to remain in or upon the premises or in the house of prostitution—

(c) the offender withholds from the other person any clothing apparel or other property belonging to that other person; or

(d) where clothing apparel has been lent or otherwise supplied to the other person by the offender or at the offender’s direction, the offender threatens the other person with legal proceedings if the other person takes away the clothing apparel so lent or supplied.

(3) No legal proceedings, whether civil or criminal, shall be taken against any person detained as described in subsection (2), for taking away or being found in possession of any such clothing as was necessary to enable him or her to leave the premises or house of prostitution.

22.—(1) If it appears to any Justice of the Peace on information laid before him on oath relating to any person (in this section referred to as “the victim”) by— Power of search.

(a) any parent, relative or guardian, as the case may be of the victim; or

(b) any other person who, in the opinion of the Justice of the Peace, is *bona fide* acting in the interest of the victim,

that there is reasonable cause to suspect that the victim is unlawfully detained for immoral purposes by any person, in any place within the jurisdiction of such Justice, the Justice may, subject to this section, act in accordance with subsection (2).

(2) The Justice may—

- (a) issue a warrant authorizing any person named therein to search for, and, when found, to take the victim to and keep the victim in a place of safety or other lawful place, until he or she can be brought before a Justice; and
- (b) by the same or any other warrant, cause any person accused of unlawfully detaining the victim to be apprehended and brought before a Justice, for legal proceedings to be instituted against the accused person.

(3) The Justice before whom the victim is brought may cause the victim, in the case of a child, to be delivered up to his or her parents or guardians, or, in the case of an adult, to be otherwise dealt with as the circumstances may permit or require.

(4) The victim shall be deemed to be unlawfully detained for an immoral purpose if he or she is detained for the purpose of having sexual intercourse with or engaging in an act of grievous sexual assault involving any other person or with persons generally and is—

- (a) in the case of a child—
 - (i) under the age of sixteen years; or
 - (ii) of or over the age of sixteen years, so detained against his or her will or that of a parent or guardian; or
- (b) in the case of an adult, so detained against his or her will.

(5) Any person authorized by warrant under this section to search for any victim unlawfully detained as specified in this section may enter with such force as may be necessary, any house, building or other place specified in such warrant and may remove such victim therefrom.

23.—(1) Every person who—

Living on
earnings of
prostitution.

- (a) knowingly lives wholly or in part on the earnings of prostitution; or
- (b) in any place, whether public or private, persistently solicits or importunes for immoral purposes,

commits an offence and is liable—

- (i) on summary conviction in a Resident Magistrate's Court, to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three years; or
- (ii) on conviction in a Circuit Court, to a fine or to imprisonment for a term not exceeding ten years.

(2) If it is made to appear to a Resident Magistrate or Judge, as the case may require, by information on oath that there is reason to suspect that any house or any part of a house is being used for the purposes of prostitution and that any person residing in or frequenting the house is living wholly or in part on the earnings of prostitution, the Resident Magistrate or Judge may issue a warrant authorizing any constable to enter and search the house and to arrest that person.

(3) Where a person is proved to live with, or to be habitually in the company of, a prostitute, or is proved to have exercised control, direction or influence over the movements of a prostitute in such manner as to show that the person is aiding, abetting or compelling prostitution, whether with any particular person or generally, the person shall, unless the court is satisfied to the contrary, be deemed to be knowingly living on the earnings of prostitution.

(4) Subject to subsection (5), the wife or husband of a person charged with an offence under this section may be called as a witness either for the prosecution or the defence and without the consent of the person charged.

(5) Subsection (4) shall not, except to the extent specified therein, be construed as affecting any principle that the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

PART VI. *Capacity, Consent, Evidentiary Matters,
Anonymity of Complainant*

Abolition of
common law
presumption
of incapacity.

24. It is hereby declared that, subject to section 63 of the Child Care and Protection Act, the common law presumption that a boy under the age of fourteen years is incapable of committing rape or any other offence involving vaginal or anal intercourse is abolished.

Cases where
consent
immaterial.

25. For the purposes of proceedings in relation to an offence under section 7(1) or (2), 8(2), 9(1) or 10(1) or (2), it is immaterial that the act constituting the offence was done with the consent of any of the persons involved.

Warning as
to corroboration
of
evidence not
necessary for
conviction.

26.—(1) Subject to subsection (2), where a person is tried for the offence of rape or any other sexual offence under this Act, it shall not be necessary for the trial judge to give a warning to the jury as to the danger of convicting the accused in the absence of corroboration of the complainant's evidence.

(2) Notwithstanding the provisions of subsection (1), the trial judge may, where he considers it appropriate to do so, give a warning to the jury to exercise caution in determining—

- (a) whether to accept the complainant's uncorroborated evidence; and
- (b) the weight to be given to such evidence.

Restriction of
evidence at
trial for rape.

27.—(1) In any proceedings in respect of rape or other sexual offence under this Act, no evidence shall be adduced and no question shall be asked in cross examination relating to the sexual behaviour of the complainant with a person other than the accused, unless leave of the Judge is obtained on application made by or on behalf of the accused.

(2) An application for leave under subsection (1) shall be made in the absence of the jury and a copy thereof shall be served upon the complainant.

(3) Subject to subsection (4), the Judge shall not grant leave under subsection (1)—

(a) unless the evidence or question in respect of which leave is sought, is or relates to, evidence—

(i) of specific instances of the complainant's sexual behaviour which tend to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge;

(ii) of other sexual activity that took place on the same occasion as the sexual activity that forms the subject matter of the charge and relates to the consent which the accused alleges that the accused believed was given by the complainant; or

(iii) which rebuts evidence of the complainant's sexual behaviour or absence thereof that was previously adduced by the prosecution; or

(b) unless the Judge is satisfied that the exclusion of the evidence or question in respect of which leave is sought, would be unfair to the accused because of the extent to which that evidence—

(i) relates to behaviour on the part of the complainant which was similar to the alleged behaviour on the occasion of, or in relation to, events immediately preceding or following the alleged offence; and

(ii) is relevant to issues arising in the proceedings.

(4) In determining for the purposes of subsection (3) whether evidence is admissible or questioning should be allowed, the Judge shall be satisfied that the probative value of the evidence sought to be admitted or allowed is—

(a) significant; and

- (b) likely to outweigh any risk of prejudice to the proper administration of justice if it is admitted.

Anonymity
of com-
plainant, *etc.*

28.—(1) Subject to subsections (2), (3), (4) and (7), after an allegation has been made that a person has been the victim of rape or any other sexual offence under this Act—

- (a) no report of the proceedings in relation to the offence shall reveal the name or address, or include any particulars calculated to lead to the identification of the complainant either as being the person against or in respect of whom the proceedings are taken or as being a witness therein;
- (b) no picture of the complainant shall be published except in so far (if at all) as may be permitted by the direction of the court; and
- (c) where a person is charged with rape or any other sexual offence, no matter likely to lead members of the public to identify a person as the complainant in relation to that accusation shall, during the complainant's lifetime, be published in a written publication available to the public or broadcast or included in a cable programme.

(2) Nothing in subsection (1) prohibits the publication or broadcasting or inclusion in a cable programme of matter consisting only of a report of criminal 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 the offence.

(3) The trial Judge may—

- (a) on an application by the accused, direct that the prohibition against identifying the complainant be inapplicable, if he is satisfied that—
 - (i) such a direction is required for the purpose of inducing persons likely to be needed as witnesses to come forward to give evidence at the trial; and

- (ii) the defence of the accused is likely to be substantially prejudiced if such direction is not given;
- (b) direct that the prohibition against identifying the complainant be inapplicable to any matter specified in the direction, if he satisfied that—
 - (i) such a prohibition would impose a substantial and unreasonable restriction on the reporting of the trial proceedings; and
 - (ii) the removal or relaxation of the restriction would be in the public interest.

(4) Where a person has been convicted of rape or any other sexual offence under this Act and has given written notice of appeal or has made an application for leave to appeal against the conviction, the Court of Appeal may, upon the application by the convicted person, direct that the prohibition against the identification of the complainant be inapplicable, if the Court is satisfied that—

- (a) such direction is necessary for the purpose of obtaining evidence in support of the appeal; and
- (b) the applicant is likely to suffer substantial injustice if such direction is not given.

(5) A person referred to in subsection (6) who contravenes this section commits an offence and shall be liable upon summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

- (6) The person referred to in subsection (5) is—
 - (a) in the case of publication in a newspaper or periodical, any proprietor, the editor or publisher of such newspaper or periodical;
 - (b) in the case of any other publication, the person who is the publisher;
 - (c) in the case of a broadcast or cable programme—
 - (i) any body corporate which transmits the broadcast or provides the programme; and

- (ii) the person having functions in relation to the broadcast or programme corresponding to those of an editor of a newspaper.

(7) Subject to subsection (8), where a person is charged with an offence under subsection (1), it shall be a defence for the person so charged to prove that the publication, broadcast or cable programme in which the matter appeared was one in respect of which the complainant had given written consent to the appearance of matter of that description.

(8) Written consent is not a defence if it is proved that any person interfered unreasonably with the complainant's peace or comfort with intent to obtain the consent.

(9) In this section—

- (a) “broadcast” means a transmission by wireless telegraphy of visual images, sounds or other information which is capable of being received by members of the public;
- (b) “cable programme” means a transmission which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system, otherwise than by wireless telegraphy, for reception—
 - (i) at two or more places (whether for simultaneous reception or at different times in response to requests by different users); or
 - (ii) for presentation to members of the public;
- (c) “picture” includes a likeness however produced;
- (d) “written publication” includes a film, a sound track and any other record in permanent form, but does not include an indictment or other document prepared for use in particular legal proceedings.

PART VII. *Sex Offender Register and Sex Offender Registry*

Sex Offender
Register and
Registry.

29.—(1) There shall be a Sex Offender Register and a Sex Offender Registry.

(2) The Registry shall be under the day-to-day management of the Commissioner of Corrections and the Register shall be maintained therein.

(3) The Register shall consist of information supplied by persons who are required to make a report under section 30 and such other information as may be prescribed.

(4) The Minister may make regulations prescribing—

- (a) the procedure for entry of information into the Register;
- (b) the establishment and location of Sex Offender Registry Registration Centres.

30.—(1) The particulars of every conviction for a specified offence committed after the coming into operation of this Part shall be furnished, in the circumstances specified in subsection (2), to the Sex Offender Registry—

Particulars of every conviction to be furnished to Registry.

- (a) if the conviction is recorded in the Supreme Court at Kingston, by the Registrar of the Supreme Court;
- (b) if the conviction is recorded in a Circuit Court, by the Clerk of the Circuit Court; or
- (c) if the conviction is recorded in the Court of Appeal, by the Registrar of the Court of Appeal.

(2) The circumstances referred to in subsection (1) are that—

- (a) the specified offence is an incest offence;
- (b) the offender has been previously convicted for a specified offence; or
- (c) the offence has not been exempted, pursuant to subsection (3), from the registration and reporting requirements of this Part.

(3) A Judge of the Supreme Court (whether or not the Judge before whom the specified offence is tried) may direct that a person who has been convicted of a specified offence (hereinafter called “the

offender”) be exempt from any or all of the registration and reporting requirements of this Part by virtue of—

- (a) the conviction of the offender being a first time conviction for a specified offence;
- (b) the offender being a child;
- (c) the sentence imposed for the offence being of minimal severity (being of such category as may be prescribed); or
- (d) the Judge being satisfied that the effect of the imposition of such requirements on the offender, including on his privacy or liberty, would be grossly disproportionate to the public interest to be achieved by registering the offender as a sex offender.

(4) On receipt of the particulars mentioned in subsection (1), the Commissioner of Corrections shall cause to be entered in the Register—

- (a) the name of the offender; and
- (b) the particulars of the conviction.

(5) Subject to subsections (6), (7) and (8), a sex offender shall after the expiration of a period of ten years after the date of the imposition of the registration and reporting requirements, (hereinafter called “the original period”) be eligible for termination of the registration and reporting requirements imposed on the sex offender under this Part.

(6) Upon the expiration of the original period, a Judge in Chambers shall make an order determining whether the registration and reporting requirements imposed on a sex offender—

- (a) shall be terminated; or
- (b) shall continue (with or without variation) for a further period not exceeding ten years.

(7) Upon the expiration of the further period, the provisions of subsection (6) shall apply as in relation to the original period.

(8) A sex offender may apply to a Judge in Chambers for an order for termination of the registration and reporting requirements (whether imposed pursuant to subsection (6) or (7) in relation to a specified offence of which the offender has been convicted.

(9) In considering whether to make an order under subsection (6), (7) or (8), the Judge shall have regard to the matters stated in subsection (3)(d).

31. The Superintendent of every correctional institution shall—

Superintendent of correctional institution to furnish information.

- (a) notify the Sex Offender Registry and the police of the release from that correctional institution for which he is in charge of every person, whether on parole or otherwise, who was convicted of a specified offence, and who is subject to the registration and reporting requirements of this Part; and
- (b) in such form or manner as may be prescribed, inform such person of his duty to report in accordance with sections 32 and 33.

32.—(1) Every person who is—

First report by offender.

- (a) convicted of a specified offence;
- (b) in accordance with the Criminal Justice (Administration) Act, found guilty but insane so as not to be responsible according to law for his actions at the time of the act or omission charged; or
- (c) released from custody pending the determination of an appeal relating to a conviction for a specified offence,

shall, within three days of the first occasion that he falls to be categorized under paragraph (a), (b) or (c) and is not in lawful custody, report in person to the Sex Offender Registry Registration Centre that serves the area in which he resides and an entry of the report shall be made in the Sex Offender Register.

(2) No sex offender shall leave Jamaica before first reporting to the Registry his intention to leave Jamaica.

Subsequent
obligation to
report.

33.—(1) Every sex offender shall, after first reporting to the Sex Offender Registry Registration Centre in accordance with section 32 subsequently report, in the prescribed manner, to the registration centre that serves the area in which he resides—

- (a) within fourteen days after he has changed his main residence or any secondary residence;
- (b) within fourteen days after he has changed his name;
- (c) at any time between eleven months and one year after he has last reported to a registration centre.

(2) In this section and section 34—

“main residence” means the place in Jamaica where a person lives or, as the case may be, can be found most often;

“secondary residence” means a place in Jamaica other than a main residence where a person regularly lives.”

Notice about
absence.

34. Every sex offender shall notify a person who collects information at the Sex Offender Registry Registration Centre that serves the area in which the sex offender resides, of—

- (a) every address or location at which he stays or intends to stay, and of his actual or estimated dates of departure from, and return to, his main residence or a secondary residence, not later than fourteen days after departure, if he is in Jamaica but is absent from his main residence and every other residence for a period of at least fourteen consecutive days;
- (b) his actual or estimated date of departure from his main residence and any secondary residence, not later than fourteen days after departure if he is outside Jamaica for a period of at least fourteen consecutive days; and
- (c) his actual return to his main residence or any secondary residence after a departure referred to in paragraph (a) or (b), not later than fourteen days after he returns, unless he is required to report under section 33 within that period.

35. A sex offender who contravenes the reporting or notification requirements of this Part commits an offence and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Reporting offences.

PART VIII. *Miscellaneous*

36. A person who commits an offence specified in the first column of the Second Schedule shall be liable, on conviction in a Circuit Court, to the penalty specified in relation thereto in the second column of that Schedule.

Offences and penalties.
Second Schedule.

37. If upon the trial on any indictment for rape or grievous sexual assault, the jury is satisfied that the defendant is not guilty of the offence charged in the indictment or of an attempt to commit the offence, the jury may acquit the defendant of the offence charged and find him guilty of an offence under section 10 or of an indecent assault under section 13, and thereupon the defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for an offence under either section 10 or 13.

Power on indictment for rape to find the defendant guilty of a lesser offence.

38.—(1) The Minister may make regulations generally, subject to affirmative resolution, 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—

Regulations.

- (a) the reporting and notification obligations of sex offenders;
- (b) the form and contents of the Register;
- (c) the grant of access to the Register;
- (d) the functions and operations of the Registry;
- (e) the monitoring of sex offenders;
- (f) the management of and retention requirements for information recorded in the Registry;
- (g) the circumstances under which sex offenders 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 a fine not exceeding one million dollars or of imprisonment for a term not exceeding twelve months or of both such fine and imprisonment.

Power of
Minister to
amend
Schedule and
penalties.

39. The Minister may, by order, subject to affirmative resolution, amend—

- (a) any Schedule to this Act; or
- (b) any monetary penalty imposed by this Act.

Consequential
amendments
to other Acts.
Third
Schedule.

40. The enactments specified in the first column of the Third Schedule are amended in the manner respectively specified in the second column of that Schedule.

Review of
Act.

41.—(1) This Act shall be reviewed from time to time by a committee of both Houses of Parliament appointed for that purpose.

(2) The first such review shall be conducted not later than five years after the date of commencement of this Act.

Repeal of
certain
provisions of
the Offences
Against the
Person Act.

42. Sections 44 to 67 (inclusive) of the Offences Against the Person Act are repealed.

Repeal of
Incest
(Punish-
ment) Act.

43. The Incest (Punishment) Act is repealed.

Transitional.

44.—(1) This section applies where, in any proceedings—

- (a) a person (in this section referred to as “the defendant”) is charged in respect of the same conduct both with any of the offences under this Act and with an offence specified in subsection (2) (in this section referred to as “the pre-commencement offence”);
- (b) the only thing preventing the defendant from being found guilty of an offence under this Act, is the fact that it has not

been proved beyond a reasonable doubt that the time when the conduct took place was after the coming into operation of the provision under this Act providing for the offence; and

- (c) the only thing preventing the defendant from being found guilty of the pre-commencement offence is the fact that it has not been proved beyond a reasonable doubt that, that time was before the coming into operation of the repeal of the enactment providing for the offence.

(2) The offences referred to in subsection (1)(a) are the offences under the Incest (Punishment) Act and the provisions of the Offences Against the Person Act repealed respectively by sections 41 and 42 of this Act.

(3) For the purpose of determining the guilt of the defendant it shall be conclusively presumed that the time when the conduct took place was—

- (a) if the maximum penalty for the pre-commencement offence is less than the maximum penalty for the offence under this Act, a time before the coming into operation of the repeal of the enactment providing for the pre-commencement offence; and
- (b) in any other case, a time after the coming into operation of the provision under this Act providing for the offence.

(4) In subsection (3), the reference in relation to an offence, to the maximum penalty is a reference to the maximum penalty by way of fine or imprisonment or other detention that could be imposed on the defendant on conviction of the offence in the proceedings in question.

(5) This section applies to any proceedings, whenever commenced.

FIRST SCHEDULE

(Section 2)

*Specified Offences in Relation to
which Report Obligations under Part VII Apply*

1. Offences under sections 3, 4, 5, 7, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21 or 23 of this Act.
2. Offences under sections 76, 77 and 79 of the Offences Against the Person Act.
3. Offences under section 4 of the Trafficking in Persons (Prevention, Suppression and Punishment) Act.
4. Offences under section 10 of the Child Care and Protection Act.

SECOND SCHEDULE

(Section 36)

Certain Offences and Penalties

First Column		Second Column
Brief Description of Offence	Relevant Section	Penalty (maximum on conviction in a Circuit Court)
1. Sexual inter- course with child under sixteen	10(1)	Life imprisonment (subject to section 10(4) in the case of an adult in authority)
2. Attempt to have sexual intercourse with child under sixteen	10(2)	Fifteen years
3. Householder, <i>etc.</i> inducing or encouraging violation of child under sixteen	11	Fifteen years

First Column		Second Column
Brief Description of Offence	Relevant Section	Penalty (maximum on conviction in a Circuit Court)
4. Abduction of child under sixteen	15	Fifteen years
5. Violation of person suffering from mental disorder	16(1)	Fifteen years
6. Forcible abduction	17	Fifteen years
7. Procuration	18(1)(a)	Fifteen years or both fine and imprisonment
	18(1)(b)(c) and (d)	Fine or ten years or both fine and imprisonment
8. Procuring violation of person by threats or fraud, or administering drugs	19	Fifteen years
9. Abduction of person under eighteen with intent to have sexual intercourse	20(1)	Ten years
10. Unlawful detention with intent to have sexual intercourse	21(1)	Ten years

THIRD SCHEDULE

(Section 40)

*Consequential Amendments to Other Enactments*ActsAmendments**Child Care and
Protection Act**

Delete paragraph 4 of the Second Schedule and substitute therefor the following—

- “ (4) Any offence under—
- (a) any of the following sections of the Offences Against the Person Act—
 - section 28—abandoning or exposing child
 - section 69—child stealing;
 - (b) any of the following offences under the Offences Against the Person Act, committed against a child—
 - section 39—common assault
 - section 40—aggravated assault on women or children
 - section 76—unnatural crime
 - section 77—attempt to commit unnatural crime
 - section 79—outrages on decency;
 - (c) any of the following sections of the Sexual Offences Act—
 - section 8—sexual touching
 - section 9—sexual grooming
 - section 10—sexual intercourse with person under sixteen years of age
 - section 11—householder inducing violation of child
 - section 15—abduction of child under sixteen
 - section 20—abduction of child for sexual intercourse;

<u>Acts</u>	<u>Amendments</u>
	<p>(d) any of the following sections of the Sexual Offences Act, committed against a child—</p> <p style="padding-left: 40px;">section 3—rape</p> <p style="padding-left: 40px;">section 4—grievous sexual assault</p> <p style="padding-left: 40px;">section 5—marital rape</p> <p style="padding-left: 40px;">section 13—indecent assault</p> <p style="padding-left: 40px;">section 16—violation of person suffering from mental disorder</p> <p style="padding-left: 40px;">section 18—procuration</p> <p style="padding-left: 40px;">section 19—procuring violation by threats or fraud</p> <p style="padding-left: 40px;">section 21—unlawful detention in premises.”.</p>
Crime (Prevention of) Act	<p>Delete paragraph (a) of section 3 and substitute the following therefor—</p> <p>“ (a) an offence under section 3 or section 4, or section 5 or section 10 or section 13 of the Sexual Offences Act, or under section 37 or section 39 or section 40 of the Larceny Act.”.</p>
Criminal Justice Administration Act	<p>In subsection (2) of section 23—</p> <p>“ (a) delete paragraphs (a) and (b) and insert the following as paragraph (a)—</p> <p style="padding-left: 40px;">(a) offences against sections 3, 4, 5, 10, 13 and 18 of the Sexual Offences Act;”;</p> <p style="padding-left: 40px;">(b) renumber paragraph (c) as paragraph (b).</p>
Early Childhood Act	<p>In section 3(3), insert in paragraph (c), immediately after the words “Person Act” the words “, the Sexual Offences Act (other than an offence against section 28)”.</p>

Acts	Amendments
Evidence Act	<p>Delete from the First Schedule the entry in relation to the Offences Against the Person Act and substitute therefor the following in the respective columns indicated—</p> <p>“ TITLE OF ACT ENACTMENT REFERRED TO The Sexual Sections 3, 4, 5, 7 to Offences 11, 13, 15 to 21 and 23. ”.</p> <p>Act</p>
Finger Prints Act	<p>In the Second Schedule—</p> <p>(a) delete sub-paragraphs (1) to (s) of paragraph 6;</p> <p>(b) renumber paragraph 7 as paragraph 8 and insert next after paragraph 6 the following as paragraph 7—</p> <p>“ 7. Any offence against the following sections of the Sexual Offences Act—</p> <p>(a) section 3—(rape);</p> <p>(b) section 4—(grievous sexual assault);</p> <p>(c) section 5—(marital rape);</p> <p>(d) section 10—(sexual intercourse with person under sixteen);</p> <p>(e) section 15—(abduction of child under sixteen);</p> <p>(f) section 16—(violation of person suffering mental disorder);</p> <p>(g) section 17—(forcible abduction);</p>

<u>Acts</u>	<u>Amendments</u>
	<ul style="list-style-type: none"> (h) section 20—(abduction of child with intent for sexual intercourse); and (i) section 21 (unlawful detention in premises for sexual intercourse).”.
Firearms Act	<p>In the First Schedule—</p> <ul style="list-style-type: none"> (a) delete from paragraph 3 the word and numerals “, 44, 55 to 57”; and (b) renumber paragraphs 5 and 6 as paragraphs 6 and 7 and insert next after paragraph 4 the following as paragraph 5— <ul style="list-style-type: none"> “ 5. Offences against sections 3, 4, 5, 15 and 17 of the Sexual Offences Act.”; (c) delete from paragraph 7, as renumbered, the words “paragraphs (1) to (6)” and substitute therefor the words “paragraphs 1 to 7”.
Interception of Communication Act	<p>Delete paragraphs 14 and 15 of the Schedule and substitute therefor the following—</p> <ul style="list-style-type: none"> “ 14. An offence contrary to section 69 (child stealing) of the Offences Against the Person Act. 15. An offence contrary to section 8 (sexual touching or interference), 9 (sexual grooming of child), 10 (sexual intercourse with, grievous sexual assault upon person under sixteen), 15 (abduction of child under sixteen), 17 (forcible abduction), 18 (procuration), 19 (procuring violation of person by threats or fraud, or administering drugs), 20 (abduction of person under eighteen with intent to have sexual intercourse), 21 (unlawful detention with intent to have sexual intercourse) of the Sexual Offences Act.

<u>Acts</u>	<u>Amendments</u>
	16. Aiding, abetting or conspiring to commit any of the offences mentioned in paragraphs 1 to 15.”.
Judicature Resident Magistrates Act	In section 268(1)— <ul style="list-style-type: none"> (a) delete from paragraph (a) the words “37, 38 and 53” and substitute the words “37 and 38”; (b) renumber paragraph (h) as paragraph (i) and insert next after paragraph (g) the following as paragraph (h)— <ul style="list-style-type: none"> “ (h) any offence under section 10 (2) or 13 of the Sexual Offences Act;”.
Mental Health Act	In section 3, delete paragraph (d) of subsection (4) and substitute therefor the following— <ul style="list-style-type: none"> “ (d) is a person against whom an order has been made under section 12 of the Sexual Offences Act (which relates to the encouragement of seduction or prostitution of a girl or boy under the age of sixteen years) divesting that person of authority over the patient and the order has not been rescinded;”.
Parole Act	In section 6 (5)(b)— <ul style="list-style-type: none"> (a) delete the word “or” and substitute a comma therefor; (b) insert immediately after the words “Person Act” the words “or sections 6(1)(a) or 10(4)(a) of the Sexual Offences Act”.
Private Security Regulation Authority Act	In Part 1 of the Third Schedule— <ul style="list-style-type: none"> (a) delete from paragraph (h) the words “44–48 (inclusive), 50–51 (inclusive), 53, 56–59 (inclusive), 60–66 (inclusive),”;

ActsAmendments**Proceeds of
Crime Act**

(b) insert next after paragraph (h) the following as paragraph (i)—

“ (i) the following provisions of the Sexual Offences Act, namely, sections 3, 4, 5, 7–11 (inclusive), 13, 15–21 (inclusive) and section 23;”.

In the Second Schedule—

(a) delete paragraph 3(1) and substitute therefor the following—

“ (1) An offence under section 69 or 70 (child stealing, kidnapping) of the Offences Against the Person Act.”;

(b) renumber paragraph 9 as paragraph 10 and insert next after paragraph 8 the following as paragraph 9—

“ 9. An offence under any of the following provisions of the Sexual Offences Act—

(a) section 15—Abduction of child under sixteen

(b) section 17—Forcible abduction

(c) section 18—Procuration

(d) section 19—Procuring violation of person by threats or fraud or administering drugs

(e) section 20—Abduction of child with intent to have sexual intercourse, etc.

(f) section 21—Unlawful detention with intent to have sexual intercourse, etc.

(g) section 23—Living on earnings of prostitution.”.

<u>Acts</u>	<u>Amendments</u>
Trafficking in Persons (Prevention, Suppression and Punishment) Act	<p>(c) in paragraph 10 as renumbered, delete the word and numerals “1 to 8” and substitute therefor the word and numerals “1 to 9”.</p> <p>In section 11 delete paragraph (d) and substitute therefor the following—</p> <p>“ (d) is a person against whom was committed any of the offences set out in—</p> <p style="margin-left: 40px;">(i) section 76 of the Offences Against the Person Act (which relates to buggery); or</p> <p style="margin-left: 40px;">(ii) sections 3, 4, 5, 8, 9, 10, 13, 15 and 17 of the Sexual Offences Act (which relate to rape, grievous sexual assault, sexual touching, sexual grooming, sexual intercourse with person under sixteen, indecent assault and abduction).”.</p>

Passed in the House of Representatives this 31st day of March, 2009 with six (6) amendments.

DELROY CHUCK
Speaker.

Passed in the Senate this 17th day of July, 2009 with twenty-eight (28) amendments.

OSWALD G. HARDING, OJ, CD, QC
President.

On the 15th day of September, 2009 the House of Representatives agreed to the amendments made by the Senate.

DELROY CHUCK
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.

