

PARLIAMENT OFFICE
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The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 30 of 2009

THE SEXUAL OFFENCES BILL 2009

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A BILL**Intituled**

AN ACT to reform and consolidate the laws relating to sexual offences and to provide for related matters.

A.D. 2009

Enacted by the Parliament of Guyana:-

PART 1**PRELIMINARY**

Short title and commencement.

1. This Act may be cited as the Sexual Offences Act 2009, and shall come into operation on such date as the Minister may, by order, appoint and different dates may be appointed for different provisions.

Interpretation.

2. In this Act -

- (a) "accused" includes a defendant;
- (b) "child" means a person under eighteen years of age;
- (c) "consent" means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or other sexual contact;
- (d) "image" means a moving or still image and includes an image produced by any means and, where the context permits, a three-dimensional image and references to an image of a person include references to an image of an imaginary person and references to observation (however expressed) are to observation whether direct or by looking at an image;
- (e) "learning disability" means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning; dependence on alcohol or drugs is not considered to be a disorder or disability of the mind;
- (f) "mental disorder" means any disorder or disability of the mind, including learning disability;
- (g) "penetration" means any intrusion, however slight and for however short a time, of any part of a person's body or of any object into the vagina or anus of another person, and any contact, however slight, between the mouth of

one person and the genitals or anus of another, including but not limited to sexual intercourse, cunnilingus, fellatio, anal intercourse and female to female genital contact; and -

- (i) where the penetration is by the penis, the emission of seminal fluid is not necessary to prove the penetration;
- (ii) penetration is a continuing act from entry to withdrawal;

(h) "proceedings" includes -

- (i) any proceeding relating to bail;
- (ii) a paper committal;
- (iii) where a person has previously been remanded in custody, any subsequent proceeding with respect to the remand of the person in custody for the same offence;
- (iv) any interlocutory proceeding held in connection with any criminal proceeding;
- (v) any other civil action or proceeding in the High Court;
- (vi) trial or hearing of the charge;
- (vii) a trial or a hearing of an appeal;

(i) "sexual" includes penetration, touching or any other activity if a reasonable person would consider that -

- (i) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual; or
- (ii) 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;

(j) "sexual activity" includes touching;

(k) "touching" includes touching -

- (i) with any part of the body, which includes a part surgically constructed (in particular, through gender reassignment surgery);
- (ii) with anything else;
- (iii) through anything;

(l) "vagina" includes vulva, meaning the region of the external genital organs of the female and in relation to an animal, references to the vagina or anus include references to any similar part.

PART II
OFFENCES

Rape.

3. (1) A person ("the accused") commits the offence of rape if -
- (a) the accused -
 - (i) intentionally engages in sexual penetration with another person ("the complainant"); or
 - (ii) intentionally causes the complainant to engage in sexual penetration with a third person;
 - (b) the complainant does not consent to the penetration; and
 - (c) the accused does not reasonably believe that the complainant consents.
- (2) Sections 7 and 8 (relating to presumptions about consent) apply to an offence under this section.
- (3) A person who commits the offence of rape is liable, on conviction on indictment, to imprisonment for life.

Sexual assault.

4. (1) A person ("the accused") commits the offence of sexual assault if -
- (a) the accused -
 - (i) intentionally touches another person ("the complainant") in a sexual way;
 - (ii) intentionally causes the complainant to touch him in a sexual way;
 - (iii) intentionally causes the complainant to touch a third party in a sexual way; or
 - (iv) otherwise indecently assaults the complainant within the meaning of any other law;
 - (b) the complainant does not consent to the touching or the act which would constitute indecent assault; and
 - (c) the accused does not reasonably believe that the complainant consents.
- (2) Sections 7 and 8 (relating to presumptions as to consent) apply to an offence under this section.
- (3) A person who commits an offence under subsection (1) is liable, on summary conviction, to imprisonment for five years.
- (4) And on conviction on indictment, to imprisonment for ten years.

Consent not
inferred.

5. Consent and belief in consent cannot be inferred by -

- (a) reason of silence or lack of physical resistance on the part of the complainant; or
- (b) reason of sexual arousal including orgasm and ejaculation.

Belief in consent.

6. (1) Where a defence of belief in consent is raised to the offence of rape or sexual assault, the belief must be objectively reasonable.

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

(3) It is not a defence to a charge of rape that the accused reasonably believed that the complainant consented to the sexual activity that forms the subject matter of the charge, where-

- (a) the accused's belief arose from the accused's self-induced intoxication or reckless or wilful blindness; or
- (b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.

Evidential presumptions about consent.

7. (1) If in any proceedings for an offence under section 3 or 4 it is proved that -

- (a) the accused did the sexual activity;
- (b) any of the circumstances specified in subsection (2) existed; and
- (c) the accused knew that those circumstances existed,

the complainant is to be taken not to have consented to the sexual activity unless *prima facie* evidence is adduced to raise an issue as to whether the complainant consented, and the accused is to be taken not to have reasonably believed that the complainant consented unless *prima facie* evidence is adduced to raise an issue as to whether the accused reasonably believed it.

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

- (a) any person was, at the time of the sexual activity or immediately before it began, using violence against the complainant or causing the complainant to fear that immediate violence would be used against the complainant;
- (b) any person was, at the time of the sexual activity 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 accused was not, unlawfully detained at the time of the sexual activity;

- (d) 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 sexual activity;
- (e) the presence of more than one person at the time of the sexual activity was used to intimidate the complainant;
- (f) the complainant was asleep or otherwise unconscious at the time of the sexual activity;
- (g) because of the complainant's physical disability, the complainant would not have been able at the time of the sexual activity to communicate to the accused whether the complainant consented;
- (h) (i) the complainant was, at the time of the sexual activity, unable to refuse because of or for a reason related to a mental disorder and the accused knew or could reasonably have been expected to know this;
- (ii) for the purposes of this subsection, the complainant was unable to refuse if he/she lacks the capacity to choose whether to agree to the sexual activity (whether because he/she lacks sufficient understanding of the nature or reasonably foreseeable consequences of what is being done, or for any other reason), or he/she is unable to communicate such a choice to the accused;
- (i) the complainant was otherwise incapable of consenting to the sexual activity at the time of the sexual activity;
- (j) agreement was expressed by the words or conduct of a person other than the complainant;
- (k) abuse of a position of power or authority to the extent that the complainant could not resist at the time of the sexual activity;
- (l) the complainant expressed at the time of the sexual activity a lack of agreement to engage in the sexual activity;
- (m) the complainant, having consented to engage in the sexual activity, expressed, by words or conduct at the time of the sexual activity, a lack of agreement to continue to engage in the sexual activity.

(3) In subsection (2)(a) and (b), the reference to the time immediately before the sexual activity 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.

8. (1) If in any proceedings for an offence under section 3 or 4 it is proved that the accused did the sexual activity and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed that -

(a) the complainant did not consent to the sexual activity; and
(b) the accused did not believe that the complainant consented to the sexual activity.

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

(a) the accused intentionally deceived the complainant as to the nature or purpose of the sexual activity;
(b) the accused intentionally induced the complainant to consent to the sexual activity by impersonating a person known personally to the complainant.

Non-consent offences: children and vulnerable adults

Non-consent
offences.

9. For offences under sections 10 to 26, unless expressly stated in any of offences, it is not necessary for the prosecution to prove that the complainant did not consent, and belief in consent (whether reasonable or not) is not a defence.

Child sex offences

Rape of a child
under 16 years

10. (1) A person ("the accused") commits the offence of rape of a child under sixteen years of age ("the complainant") if the accused -

(a) engages in sexual penetration with the complainant; or
(b) intentionally causes the complainant to engage in sexual penetration with a third party.

(2) It is irrelevant whether at the time of the penetration the accused believed the complainant to be sixteen years of age or over.

(3) A person who commits an offence under subsection (1) is liable on conviction on indictment to imprisonment for life.

Sexual activity
with a child
under 16 years.

11. (1) A person ("the accused") commits the offence of sexual activity with a child under sixteen years of age if the accused -

(a) engages in a sexual activity (not including sexual penetration) with a child who is under sixteen years of age ("the complainant");
(b) intentionally causes or incites the complainant to engage in a sexual activity with a third party; or

(c) intentionally causes the complainant to perform a sexual act including causing the complainant to masturbate.

(2) It is irrelevant whether at the time of the activity the accused believed the complainant to be sixteen years of age or over.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for five years and on conviction on indictment to imprisonment for ten years.

Causing a child under 16 years to watch a sexual act.

12. (1) A person ("the accused") commits the offence of causing a child to watch a sexual act if the accused intentionally causes a person, who is under sixteen years of age ("the complainant"), to watch a third person engaging in a sexual activity or to look at an image of a person engaging in a sexual activity.

(2) A person who commits an offence under subsection (1) is liable on summary conviction, to a fine of one million dollars and to imprisonment for five years and on conviction on indictment, to imprisonment for ten years.

(3) A person ("the accused") is not guilty of an offence under this section, if the accused acts for the purpose of -

- (a) protecting the complainant from a sexually transmitted infection;
- (b) protecting the physical safety of the complainant;
- (c) preventing the complainant from becoming pregnant; or
- (d) promoting the complainant'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 complainant's participation in it.

Meeting a child under 16 years following sexual grooming.

13. (1) A person eighteen years of age or over ("the accused") commits the offence of meeting a child following sexual grooming if -

- (a) having met or communicated with another person ("the complainant") on at least two earlier occasions, the accused -
 - (i) intentionally meets the complainant; or
 - (ii) travels with the intention of meeting the complainant in any part of the world;
- (b) at the time, the accused intends to do anything to or in respect of the complainant, during or after the meeting and in any part of the world, which if done will involve the commission by the accused of an offence under this Act;

- (c) the complainant is under sixteen years of age and the accused does not reasonably believe that the complainant is sixteen years of age or over.

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

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

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

Close in age
defence:
complainant age
12 to 14.

14. Where an accused is charged with an offence under sections 10, 11, 12 or 13 in respect of a complainant who is twelve years of age or over but under fourteen years of age, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused-

- (a) is less than two years older than the complainant; and
- (b) is not in a position of trust or authority towards the complainant within the meaning of section 19, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

Close in age
defence:
complainant age
14 to 16.

15. Where an accused is charged with an offence under sections 10, 11, 12 or 13 in respect of a complainant who is fourteen years of age or over but under sixteen years of age, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused -

- (a) is less than four years older than the complainant; and
- (b) is not in a position of trust or authority towards the complainant within the meaning of section 19, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.

Sexual activity
with a child
family member.

16. (1) A person ("the accused") commits the offence of sexual activity with a child family member ("the complainant") if -

- (a) the accused -
- (i) intentionally engages in sexual activity with the complainant;

- (ii) intentionally causes the complainant to engage in sexual activity with a third party; or
- (iii) intentionally causes the complainant to perform sexual acts including causing the complainant to masturbate;
- (b) the relation of the accused to the complainant is a family relation within section 17 and the accused knew or could reasonably have been expected to know that the accused's relation to the complainant was a family relation within that section; and
- (c) the complainant is under eighteen years of age.

(2) Where in proceedings for an offence under this section it is proved that the relation of the accused to the complainant was a family relation within section 17, it is to be taken that the accused knew or could reasonably have been expected to know that the accused's relation to the complainant was a family relation unless prima facie evidence is adduced to raise an issue as to whether the accused knew or could reasonably have been expected to know that it was.

- (3) A person who commits an offence under this section is liable -
- (a) where the sexual activity included sexual penetration, on conviction on indictment to imprisonment for life;
 - (b) in any other case -
 - (i) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
 - (ii) on conviction on indictment, to imprisonment for fourteen years.

(4) A person ("the accused") does not commit an offence under this section if -

- (a) at the time the complainant is eighteen years of age or over and the accused and the complainant are lawfully married; or
- (b) the relationship of the accused to the complainant is not a family relationship within section 17 and immediately before the relationship first became a relationship within section 17, a sexual relationship existed between them.

(5) Subsection (4)(b) does not apply if at the time referred to in that subsection sexual relationship between the accused and the complainant would have been unlawful.

(6) In proceedings for an offence under this section it is for the accused to prove the matters mentioned in subsection (4)(a) and (b).

Family
relationships.

17. (1) For the purposes of section 16, the relation of one person ("the accused") to another ("the complainant") is a family relation where -

- (a) one of them is the other's parent, grandparent, brother, sister, half-brother, half-sister, aunt or uncle, or the accused is or has been the complainant's foster parent.
 - (b) the accused and the complainant live or have lived in the same household, or the accused is or has been regularly involved in caring for, training, supervising or being in sole charge of the complainant, and -
 - (i) one of them is or has been the other's step-parent (whether through legal marriage or cohabitation);
 - (ii) the accused and the complainant are cousins;
 - (iii) one of them is or has been the other's stepbrother or stepsister, or
 - (iv) the parent or present or former foster parent of one of them is or has been the other's foster parent;
 - (c) the accused and the complainant live in the same household, and the accused is regularly involved in caring for, training, supervising or being in sole charge of the complainant.
- (2) For the purposes of this section -
- (a) "aunt" means the sister or half-sister of a person's parent, and "uncle" has a corresponding meaning;
 - (b) "cousin" means the child of an aunt or uncle;
 - (c) a person is a child's foster parent if so deemed under any law, agreement or court order;
 - (d) "stepbrother" and "stepsister" include the child of any step-parent.

Abuse of position of trust: sexual activity with a child

Sexual activity with a child by abusing a position of trust.

18. (1) A person ("the accused") commits the offence of sexual activity with a child under eighteen years of age by abusing a position of trust in relation to that child ("the complainant") if -

- (a) the accused -
 - (i) engages in sexual activity with the complainant;
 - (ii) intentionally causes the complainant to engage in sexual activity with a third party; or
 - (iii) intentionally causes the complainant to perform sexual acts including causing the complainant to masturbate;
- (b) the accused is in a position of trust in relation to the complainant by virtue of circumstances within section 19 (1) (a), (b) or (c), and is not in a position of trust by virtue of other circumstances; and

- (c) the accused knows or could reasonably be expected to know of the circumstances by virtue of which he/she is in a position of trust in relation to the complainant.

(2) Where in proceedings for an offence under this section it is proved that the accused was in a position of trust in relation to the complainant by virtue of circumstances within section 19 (1) (a), (b) or (c), and it is not proved that he/she was in a position of trust by virtue of other circumstances, it is to be taken that the accused knew or could reasonably have been expected to know of the circumstances by virtue of which he/she was in such a position of trust unless *prima facie* evidence is adduced to raise an issue as to whether he/she knew or could reasonably have been expected to know of those circumstances.

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

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

(4) A person ("the accused") does not commit an offence under this section if -

- (a) at the time the complainant is sixteen years of age or over and the accused and the complainant are lawfully married; or
- (b) immediately before the accused entered into a position of trust with the complainant, a sexual relationship existed between them.

(5) Subsection (4) (b) does not apply if at the time referred to in that subsection sexual intercourse between the accused and the complainant would have been unlawful.

(6) In proceedings for an offence under this section it is for the accused to prove the matters mentioned in subsections (4) (a) and (b).

Position of
trust.

19. (1) For the purposes of sections 14, 15 and 18, the positions of trust in relation to the accused and the complainant include, where -

- (a) the accused looks after persons, including the complainant, detained in an institution by virtue of a Court order or under any law;
- (b) the accused looks after persons, including the complainant, who are accommodated and cared for in one of the following institutions -
- (i) a hospital;
- (ii) an independent clinic;
- (iii) a care home, residential care home or private hospital; or

- (iv) a community home, voluntary home, children's home or orphanage;
 - (c) the accused looks after persons who are receiving education at an educational institution (whether in the role of teacher or in another role) and the complainant is receiving, and the accused is not receiving, education at that institution;
 - (d) the accused is the guardian of the complainant;
 - (e) the accused is not appointed to be guardian of the complainant but is the legal or reputed husband or wife of one of the complainant's parents or guardians;
 - (f) the complainant is in vocational training and the accused looks after the complainant on an individual basis; or
 - (g) the accused is a social worker, probation officer, coach, instructor, babysitter, child-minder or has another welfare position in relation to the complainant, and has regular unsupervised contact with the complainant.
- (2) For the purposes of subsection (1) -
- (a) the accused looks after persons under eighteen years of age if he/she is regularly involved in caring for, training, supervising or being in sole charge of such persons;
 - (b) the accused looks after the complainant on an individual basis if -
 - (i) the accused is regularly involved in caring for, training or supervising the complainant; and
 - (ii) in the course of his/her involvement, the accused regularly has unsupervised contact with the complainant (whether face to face or by any other means).

Obstructing
prosecution.

20. (1) In proceedings relating to an offence under this Act, a person commits the offence of obstructing the prosecution if that person prevents a child from -

- (a) giving a statement to the police;
- (b) giving evidence in any other way which would be admissible for the paper committal; or
- (c) testifying.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of one million dollars and to imprisonment for five years.

Arranging or facilitating commission of child sex offence.

21. (1) A person ("the accused") commits the offence of arranging or facilitating the commission of a child sex offence if the accused intentionally arranges or facilitates something that the accused 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 section 10, 11, 12, 13, 16 or 18.

(2) A person ("the accused") does not commit an offence under this section if -

- (a) the accused arranges or facilitates something that the accused believes another person will do, but that the accused does not intend to do or intend another person to do; and
- (b) any offence within subsection (1) would be an offence against a child for whose protection the accused acts.

(3) For the purposes of subsection (2), a person acts for the protection of a child if the 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, or any educational activity,

and not for the purpose of obtaining sexual gratification or for the purpose of causing or encouraging the activity constituting the offence within subsection (1) or the child's participation in it.

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

- (a) on summary conviction, to a fine of the one million dollars and to imprisonment for five years;
- (b) on conviction on indictment to imprisonment for ten years.

Vulnerable adults

Sex with adult family member

Sex with adult family member.

22. (1) A person ("the accused") sixteen years of age or over commits the offence of sex with an adult family member if the accused -

- (a) engages in sexual penetration with another person ("the complainant") who is eighteen years of age or over;
- (b) is related to the complainant as parent, grandparent, child, grandchild, brother, sister, half brother, half sister, uncle, aunt, nephew or niece; and
- (c) knew or could reasonably be expected to have known that he was related to the complainant in a manner specified in paragraph (b).

(2) Where in proceedings for an offence under this section it is proved that the accused was related to the complainant in any manner specified in subsection (1) (b), it is to be taken that the accused knew or could reasonably have been expected to know of the relationship between them unless *prima facie* evidence is adduced to raise an issue as to whether the accused knew or could reasonably have been expected to know of the relationship.

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

- (a) on summary conviction, to a fine of five hundred thousand dollars and to imprisonment for two years;
- (b) on conviction on indictment, to imprisonment for five years.

Obtaining sexual activity by inducement, threat, deception

Obtaining sexual activity with a person with a mental disorder by inducement, threat or deception.

23. (1) A person ("the accused") commits the offence of obtaining sexual activity with a person with a mental disorder by inducement, threat or deception if -

- (a) with the agreement of another person ("the complainant"), the accused -
 - (i) engages in sexual activity with the complainant;
 - (ii) intentionally causes or incites the complainant to engage in sexual activity with a third party; or
 - (iii) intentionally causes the complainant to perform sexual acts including but not limited to causing the complainant to masturbate;
- (b) the accused obtains the complainant's agreement by means of an inducement offered or given, a threat made or a deception practised by the accused for that purpose; and
- (c) the complainant has a mental disorder and the accused knows or could reasonably be expected to know that the complainant has a mental disorder.

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

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable on summary conviction to a fine of one million dollars and to imprisonment for five years, and on conviction on indictment to imprisonment for fourteen years.

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

24. (1) A person ("the accused") commits the offence of causing a person with a mental disorder to watch a sexual act or to look at an image of a person engaging in a sexual activity if -

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

(2) A person who commits an offence under this section is liable on summary conviction to a fine of one million dollars and to imprisonment for five years and on conviction on indictment to imprisonment for ten years.

(3) A person ("the accused") is not guilty of an offence under this section, if the accused acts for the purpose of -

- (a) protecting the complainant from a sexually transmitted infection;
- (b) protecting the physical safety of the complainant;
- (c) preventing the complainant from becoming pregnant; or
- (d) promoting the complainant'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 complainant's participation in it.

Care workers for persons with a mental disorder

Care worker engaging in, causing or inciting sexual activity with a person with a mental disorder.

25. (1) A person ("the accused") who is a care worker, commits the offence of a care worker engaging in, causing or inciting sexual activity with a person ("the complainant") if -

- (a) the accused -
 - (i) engages in sexual activity with the complainant;
 - (ii) intentionally causes or incites the complainant to engage in sexual activity with a third party; or

- (iii) intentionally causes or incites the complainant to perform sexual acts including but not limited to causing the complainant to masturbate;
- (b) the complainant has a mental disorder and the accused knows or could reasonably be expected to know that the complainant has a mental disorder; and
- (c) the accused is involved in the complainant's care in a way that falls within section 27.

(2) Where in proceedings for an offence under this section it is proved that the complainant had a mental disorder, it is to be taken that the accused knew or could reasonably have been expected to know that the complainant had a mental disorder unless *prima facie* evidence is adduced to raise an issue as to whether he/she knew or could reasonably have been expected to know it.

(3) A person who commits an offence under this section, if the sexual activity involved sexual penetration, is liable, on conviction on indictment, to imprisonment for life.

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

- (a) on summary conviction, to a fine one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

(5) A person ("the accused") does not commit an offence under this section if -

- (a) at the time the complainant is eighteen years of age or over, and the accused and the complainant are lawfully married; or
- (b) immediately before the accused became involved in the complainant's care in a way that falls within section 27, a sexual relationship existed between the accused and the complainant.

(6) Subsection (5) (b) does not apply if at that time sexual intercourse between the accused and the complainant would have been unlawful.

(7) In proceedings for an offence under this section it is for the accused to prove the matters mentioned in subsection (5) (a) and (b).

26. (1) A person ("the accused") commits the offence of a care worker causing a person with a mental disorder to watch a sexual act or to look at an image of any person engaging in a sexual activity if -

- (a) for the purpose of obtaining sexual gratification, the accused intentionally causes another person ("the complainant"), to watch

Care worker
causing a
person with a
mental disorder
to watch a
sexual act.

a third person engaging in a sexual activity or to look at an image of any person engaging in a sexual activity;

- (b) the complainant has a mental disorder and the accused knows or could reasonably be expected to know that the complainant has a mental disorder; and
- (c) the accused is involved in the complainant's care in a way that falls within section 27.

(2) Where, in proceedings for an offence under this section it is proved that the complainant had a mental disorder, it is to be taken that the accused knew or could reasonably have been expected to know that the complainant had a mental disorder unless *prima facie* 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 a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

(4) A person ("the accused") does not commit an offence under this section

if -

- (a) at the time the complainant is eighteen years of age or over, and the accused and the complainant are lawfully married;
- (b) immediately before the accused became involved in the complainant's care in a way that falls within section 27, a sexual relationship existed between the accused and the complainant; or
- (c) the accused acts for the purpose of -
 - (i) protecting the complainant from a sexually transmitted infection;
 - (ii) protecting the physical safety of the complainant;
 - (iii) preventing the complainant from becoming pregnant; or
 - (iv) promoting the complainant's emotional wellbeing 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 complainant's participation in it.

(5) Subsection (4)(b) does not apply if at that time sexual intercourse between the accused and the complainant would have been unlawful.

(6) In proceedings for an offence under this section it is for the accused to prove the matters mentioned in subsection (4) (a) and (b).

Interpretation of
care worker.

27. For the purposes of sections 25 and 26, a person ("the accused") is involved in the care of another person ("the complainant") in a way that falls within this section if any of the following paragraphs apply -

- (a) (i) the complainant is accommodated and cared for in a care home, community home, voluntary home or children's home; and
- (ii) the accused has functions to perform in the home in the course of employment which have brought him/her or are likely to bring him/her into regular face to face contact with the complainant.
- (b) if the complainant is a patient for whom services are provided -
 - (i) by a public health body or an independent medical agency; or
 - (ii) in an independent clinic or an independent hospital,
 and the accused has functions to perform for the body or agency or in the clinic or hospital in the course of employment which have brought him/her or are likely to bring him/her into regular face to face contact with the complainant;
- (c) if the accused is, whether or not in the course of employment, a provider of care, assistance or services to the complainant in connection with the complainant's mental disorder, and as such, has had or is likely to have regular face to face contact with the complainant.

Other offences

Exposure of the
genitals.

28. (1) A person ("the accused") commits the offence of exposure of the genitals if the accused -

- (a) intentionally exposes the accused's genitals; and
 - (b) intends that someone will see the accused's genitals and be caused alarm or distress.
- (2) A person who commits an offence under this section is liable -
- (a) on summary conviction, to a fine of five hundred thousand dollars and to imprisonment for two years;
 - (b) on conviction on indictment, to imprisonment for five years.

Voyeurism.

29. (1) A person ("the accused") commits the offence of voyeurism if -

- (a) for the purpose of obtaining sexual gratification, the accused observes another person ("the complainant") doing a private act without the express consent of the complainant to being observed for sexual gratification;

- (b) the accused installs equipment, or constructs or adapts a structure or part of a structure, with the intention of enabling himself or another person to commit an offence under paragraph (a);
 - (c) the accused operates equipment with the intention of enabling another person to observe, for the purpose of obtaining sexual gratification, a third person ("the complainant") doing a private act without the express consent of the complainant to operating equipment with that intention; or
 - (d) the accused records another person ("the complainant") doing a private act with the intention that the accused or a third person will, for the purpose of obtaining sexual gratification, look at an image of the complainant doing the act without the express consent of the complainant to record the act with that intention.
- (2) A person who commits an offence under this section is liable -
- (a) on summary conviction, to a fine of five hundred thousand dollars and to imprisonment for two years;
 - (b) on conviction on indictment, to imprisonment for five years.

Interpretation of voyeurism.

30. (1) For the purposes of section 29, 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) In section 29, "structure" includes a tent, vehicle or vessel or other temporary or movable structure.

Intercourse with an animal.

31. (1) A person commits the offence of intercourse with an animal if he, intentionally with his penis penetrates the vagina or anus of a living animal, and he knows that, or is reckless as to whether, it is the vagina or anus of a living animal that is penetrated.

(2) A person commits an offence of intercourse with an animal if she intentionally causes, or allows, her vagina or anus to be penetrated by the penis of a living animal, and she knows that, or is reckless as to whether, it is the penis of an animal she is being penetrated by.

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

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for two years;
- (b) on conviction on indictment, to imprisonment for five years.

Preparatory offences

Administering a substance with intent.

32. (1) A person ("the accused") commits the offence of administering a substance with intent if the accused intentionally administers a substance to, or causes a substance to be taken by, another person ("the complainant") -

- (a) knowing that the complainant does not consent; and
- (b) with the intention of stupefying or overpowering the complainant, so as to enable any person to engage in a sexual activity that involves the complainant.

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

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

Committing an offence with intent to commit a sexual offence.

33. (1) A person commits the offence of committing an offence with intent to commit a sexual offence if the person commits any offence with the intention of committing a sexual offence under this Act.

(2) 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.

(3) Unless subsection (2) applies, a person guilty of an offence under this section is liable -

- (a) on summary conviction, to a fine of one million dollars and to imprisonment for five years;
- (b) on conviction on indictment, to imprisonment for ten years.

Trespass with intent to commit a sexual offence.

34. (1) A person commits an offence of trespass with intent to commit a sexual offence if the person -

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

- (2) In this section -
- (a) "premises" includes a structure or part of a structure;
 - (b) "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 a fine of one million dollars and to imprisonment for five years;
 - (b) on conviction on indictment, to imprisonment for ten years.

Offences
outside Guyana.

35. (1) Subject to subsection (2), any act done by a person in a country or a territory outside Guyana constitutes a sexual offence under the law of Guyana if the act -

- (a) constituted an offence under the law in force in that country or territory; and
- (b) would constitute a sexual offence under this Act if it had been done in Guyana.

(2) Proceedings by virtue of this section may be brought only against a person who is a Guyanese citizen or resident in Guyana.

(3) For the purposes of this section, an act punishable under the law in force in any country or territory outside Guyana constitutes an offence under that law, however it is described in that law.

(4) Subject to subsection (5), the condition in subsection (1) (a) is to be taken to be met unless, not later than rules of Court may provide, the accused serves on the prosecution a notice -

- (a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the accused opinion met;
- (b) showing grounds for that opinion; and
- (c) requiring the prosecution to prove that it is met.

(5) The Court, if it thinks fit, may permit the accused to require the prosecution to prove that the condition is met without service of a notice under subsection (4).

(6) In the High Court the question whether the condition is met is to be decided by the judge alone.

Conspiracy, attempt, incitement, aiding, etc.

36. Notwithstanding anything contained in any other written law, every person who -

Punishment of
attempt to
commit, etc.
offence against
this Act.

- (a) attempts to commit;
- (b) conspires with any other person to commit;
- (c) solicits, incites, aids, abets or counsels or attempts to solicit, incite, aid abet or counsel any other person to commit; or
- (d) causes or procures, or attempts to cause or procure the commission of,

any offence, whether summary or indictable, against this Act may be charged with, tried, convicted and punished in all respects as if that person were a principal offender.

Supplementary and general

Marital and other relationships.

37. (1) Unless where specifically stated in this Act, a marital or other relationship, previous or existing, is not a defence to a charge of any offence under this Act.

(2) A proposal of marriage, made by the accused or any other party, to the complainant is not a defence to, nor does it have any bearing on, a charge of any offence under this Act.

Abolition of presumption that male under 14 years incapable of sexual intercourse.

38. The presumption of criminal law that a male under fourteen years of age is incapable of sexual intercourse is abolished.

Charge laid under law in force when offence committed.

39. A person who committed an offence before the commencement of this Act and which is an offence under this Act shall be charged, tried and punished under the law in force immediately before the coming into operation of this Act.

Divestment of authority over child.

40. Where at the trial of any offence under this Act, it is proved to the satisfaction of the Court that an offence under this Act committed against a child has been caused, encouraged or favoured by the child's father, mother, guardian or any other person who has lawful care or charge, the Court may divest that person of all authority over the child and appoint any other suitable person willing to take charge of the child to be the guardian until the child becomes an adult, and the Court shall have power to vary from time to time or rescind such order.

PART III INVESTIGATION

Mandatory
record and
investigation.

41. (1) Where an offence under this Act is reported to the police, the police shall, in every case record the report and conduct an investigation.

(2) Within three months of a complaint being made under subsection (1) -

(a) a charge shall be laid in respect of the report; or

(b) the file shall be sent to the Director of Public Prosecutions for advice.

(3) Failure to comply with section 1(2) constitutes neglect of duty by the commander of the division of the Guyana Police Force in which the report was made and he/she shall be liable to answer disciplinary charges.

No confronta-
tion to be held.

42. (1) Where a report is made of an offence under this Act, at no point during investigation shall the complainant be required to recount the complaint or any part thereof, in the presence of the accused.

(2) The complainant shall not be required to view or be in the presence of any person referred to in the complaint as having perpetrated any offence under this Act save for the purposes of an identification parade and then only -

(a) by way of audio visual link;

(b) by way of a two way mirror; or

(c) in any other manner sensitive to the complainant's well-being.

PART IV PROCEDURE AT COURT *Procedure in Paper Committals*

Paper
committals.

43. Where an offence is charged under this Act, there shall be no oral preliminary inquiry and instead a paper committal shall be held in accordance with the procedure set out in the First Schedule.

First
Schedule

Sex offences
court.

44. The National Task Force for Prevention of Sexual Violence, established under section 91, shall report to the Minister within one year of the date of commencement of this Act on proposals for a special court environment to try cases in relation to offences under this Act.

Exclusion of public from hearing

Exclusion of public in certain cases.

45. In proceedings where the accused is charged with an offence under this Act, the presiding judge or magistrate shall order the exclusion of members of the public (including the media) from the Court room for the duration of the proceedings, unless the judge or magistrate is of the opinion that such an order is not necessary in the interests of the proper administration of justice to -

- (a) ensure all relevant evidence is heard;
- (b) ensure that the interests of witnesses under eighteen years of age are safeguarded in all proceedings; or
- (c) ensure the justice system participants who are involved in the proceedings are protected.

Factors to be taken into account.

46. In making a determination under section 45, the Court shall take into account -

- (a) the nature of sexual offences and the consequences of public disclosure of the details of such offences on the life of the complainant in the particular case and on society's interest in encouraging the reporting of sexual offences in general;
- (b) the balance between the interests of justice in generally holding criminal proceedings in public, and the potential prejudice to the complainant's personal dignity and right of privacy of doing so in cases of sexual violence;
- (c) the right of the complainant and of every individual to personal security and to the full protection and benefit of the law; and
- (d) any other factor that the judge or magistrate considers relevant.

Persons not excluded.

47. The accused, complainant (and support person/s), attorneys-at-law representing either party and any necessary interpreter shall not be excluded under section 45.

Reasons to be stated.

48. If an accused is charged with an offence under this Act and the Court orders that the public shall not be excluded from the proceedings, the Court shall state, by reference to the circumstances of the case, the reason for making such an order.

Representations before determination.

49. The Court shall, at the first Court appearance, and may at any other stage, bring section 45 to the attention of the prosecution and ask the complainant directly if he/she wishes to give oral or written evidence on the question of whether the public should be excluded from the hearing before the judge or magistrate makes a determination.

Public and jury excluded.

50. The Court shall consider any representations on whether to make a determination under section 45 with the public and jury excluded.

Passing of sentence in public.

51. Where an order has been made under section 45 the passing of sentence shall take place in public.

Behaviour and reactions of rape victims

Behaviour and reactions of victims of sexual offences.

52. Where on the trial of an accused person for an offence under this Act evidence is given or a question is asked of a witness about the behaviour or reaction of the complainant during or after the alleged offence the judge shall inform the jury that victims of sexual offences display a wide range of responses, and that the absence of behaviour that they might expect a victim of a sexual offence to display should not be taken as evidence that the offence charged did not take place.

Special Measures

Special measures directions.

53. (1) At any proceedings in relation to an offence under this Act, unless the complainant requests that no such protection be put in place, the Court shall direct that the complainant be protected when giving evidence by one or more of the special measures set out in sections 55 to 59.

(2) A special measures direction shall specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(3) In this Part "special measures direction" means a direction under this section.

(4) Nothing in this Part is to be regarded as affecting any power of a Court to make an order or give leave of any description (in the exercise of its inherent jurisdiction or otherwise) in relation to witnesses in proceedings for an offence under this Act.

Further provisions about directions.

54. (1) Subject to subsection (2) a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either -

- (a) determined (by acquittal, conviction or otherwise); or
- (b) abandoned,

in relation to the accused or (if there is more than one) in relation to each of the accused.

(2) The Court may discharge or vary (or further vary) a special measures direction if it appears to the Court to be in the interests of justice to do so, and may do so either -

- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) of its own motion.

(3) In subsection (2) "the relevant time" means -

- (a) the time when the direction was given; or
- (b) if a previous application has been made under that subsection, the time when the application (or last application) was made.

(4) The Court shall state in open Court its reasons for -

- (a) giving or varying;
- (b) refusing an application for, or for the variation or discharge of; or
- (c) discharging,

a special measures direction and, if it is a magistrates' court, shall cause them to be entered in the record.

(5) Rules of Court may make provision -

- (a) for uncontested applications to be determined by the Court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;
- (c) for expert evidence to be given in connection with an application for, or for the variation or discharge of such a direction;
- (d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

Screening
witness from
accused.

55. (1) A special measures direction may provide for the witness, while giving testimony or being sworn in Court, to be prevented by means of a screen or other arrangement from seeing the accused.

(2) The screen or other arrangement referred to in subsection (1) shall not prevent the witness from being able to see, and to be seen by -

- (a) the judge or magistrate and the jury (if there is one);
- (b) attorneys-at-law acting in the proceedings; and
- (c) any interpreter or other person appointed (in pursuance of the direction or otherwise) to assist the witness.

(3) Where two or more attorneys-at-law are acting for a party to the proceedings, subsection (2) (b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

Evidence by
audio visual
link.

56. (1) A special measures direction may provide for the witness to give evidence by means of audio visual link facilities.

Cap. 5:03

(2) Where a special measures direction is given under subsection (1), sections 73A and 73B of the Evidence Act shall apply, except that -

- (a) section 73A(3)(b) shall not apply; and
- (b) section 73A(5)(a) and (b) shall not apply, and shall be substituted for the purposes of application to proceedings for an offence under this Act, by the following -

"the person giving evidence to see and hear, and to be seen and heard by, the magistrate or judge, at least one attorney-at-law representing the prosecution and one the defence, and where the jury is present, the jury."

Removal of
gowns.

57. A special measures direction may provide for the wearing of gowns to be dispensed with during the giving of the witness's evidence.

Examination of
witness through
intermediary.

58. (1) A special measures direction may provide for any examination of a child witness (however and wherever conducted) to be conducted through an interpreter or other person approved by the Court for the purposes of this section ("an intermediary").

- (2) The function of an intermediary is to communicate -
 - (a) to the witness, questions put to the witness; and
 - (b) to any person asking such questions, the answers given by the witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness in pursuance of subsection (1) shall take place in the presence of such persons as rules of Court or the direction may provide, but in circumstances in which -

- (a) the judge or magistrate and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary; and
- (b) the jury (if there is one) are able to see and hear the examination of the witness.

(4) Where two or more legal representatives are acting for a party to the proceedings, subsection (3) (a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by rules of Court, that he/she will faithfully perform his/her function as intermediary.

Cap. 8:01

(6) Sections 324 to 331 of the Criminal Law (Offences) Act shall apply to intermediaries under this section.

Use of anatomically correct dolls.

59. A special measures direction may provide for the use of anatomically correct dolls in the taking of evidence from a child witness.

Status of evidence given under special measures direction.

60. Where a statement is made by a witness in criminal proceedings in accordance with a special measures direction, and is not made by the witness in direct oral testimony in Court but forms part of the witness's evidence in those proceedings, the statement shall be treated as if made by the witness in direct oral testimony in Court.

Presentation of victim's views and concerns

Opportunity for presentation of victim's views and concerns.

61. (1) The Court shall provide an opportunity to a victim of an offence under this Act, if the victim desires it, to present the victim's views and concerns at appropriate stages of criminal proceedings against the accused, in a manner not prejudicial to the rights of the accused.

(2) For the purposes of subsection (1), appropriate stages of criminal proceedings include the bail hearing and before passing of sentence.

Protection of witness from cross-examination by the accused in person

No cross-examination of complainant by the accused in person.

62. A person charged with a sexual offence under this Act shall not in any criminal proceedings cross-examine in person a witness who is the complainant, either -

- (a) in connection with that offence; or
- (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

No cross-examination of child witness by the accused in person.

63. (1) A person charged with an offence under this Act shall not in any criminal proceedings cross-examine in person a witness who was under eighteen years of age at the time of the alleged offence and is alleged to have been a witness to the commission of that offence, either -

- (a) in connection with that offence; or
- (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings.

(2) For the purpose of this section "witness" includes a witness who is charged with an offence in the proceedings.

Defence
representation
for purposes of
cross-
examination.

64. (1) This section applies where an accused is prevented from cross-examining a witness in person by virtue of sections 62 or 63.

(2) Where it appears to the Court that this section applies, it shall -

- (a) invite the accused to arrange for an Attorney-at-Law to act for him/her for the purpose of cross-examining the witness; and
- (b) require the accused to notify the Court by the end of such period as it may specify, whether a legal representative is to act for him/her for that purpose.

(3) If by the end of the period mentioned in subsection (2) (b) either -

- (a) the accused has notified the Court that no legal representative is to act for him/her for the purpose of cross-examining the witness; or
- (b) no notification has been received by the Court and it appears to the Court that no legal representative is to so act,

the Court shall consider whether it is necessary in the interests of justice for the witness to be cross-examined by a legal representative appointed to represent the interest of the accused.

(4) If the Court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the Court shall appoint an Attorney-at-Law to cross-examine the witness, and the appointment shall be only for that purpose.

Warning to jury.

65. (1) Where on a trial on indictment an accused is prevented from cross-examining a witness in person by virtue of sections 62 or 63, the Judge shall give the jury such warning (if any) as the Judge considers necessary to ensure that the accused is not prejudiced by any inferences that might be drawn simply from the fact that the accused has been prevented from cross-examining the witness in person.

Anonymity for the complainant

Anonymity for complainant in press reporting.

66. (1) The publication in any document, or the broadcasting, or transmission in any way, of any information that could identify the complainant or witness to an offence under this Act is prohibited.

(2) This section does not apply in respect of the disclosure of information -

(a) in the course of the administration of justice; or

(b) in the provision of medical services or psychological treatment to the complainant, when it is not the purpose of the disclosure to make the information known in the community.

(3) Every person who publishes in any document, or broadcasts, or transmits in any way, any information that could identify the complainant or a witness contrary to subsection (1) of this section is guilty of a summary offence and liable to a fine of two million dollars.

(4) Where a person is charged with an offence under subsection (3) in respect of the publication in any document, or the broadcasting, or transmission in any way, of any information that could identify the complainant or a witness, it shall be a defence, subject to subsection (5), to prove that the publication, broadcast, or transmission in which the matter appeared was one in respect of which the complainant had given written consent.

(5) 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.

Anonymity for the complainant in Court.

67. When called to give evidence in Court the complainant's name and address shall not be stated, and the Court shall advise the complainant before the complainant gives evidence that the complainant may not do so.

PART V EVIDENCE

Competence of witness and capacity to be sworn

Competence of witness to give evidence.

68. (1) Subject to subsections (2) and (3), at every stage in criminal proceedings under this Act all persons are competent to give evidence.

(2) A person is not competent to give evidence in criminal proceedings under this Act if it appears to the Court that he/she is not a person who is able to —

- (a) understand questions put to him/her as a witness; and
- (b) give answers to them which can be understood.

(3) A person charged with an offence under this Act is not competent to give evidence for the prosecution in the proceedings for the offence (whether the person is the only person, or is one of two or more persons, charged with the offence).

(4) In subsection (3) the reference to a person charged with an offence under this Act does not include a person who is not, or is no longer, liable to be convicted of any offence in the proceedings (whether as a result of pleading guilty or for any other reason).

Determining competence of witness.

69. (1) Any question whether a witness in criminal proceedings under this Act is competent to give evidence in the proceedings shall be determined by the Court in accordance with this section, whether raised -

- (a) by a party to the proceedings; or
- (b) by the Court of its own motion.

(2) It is for the party calling the witness to satisfy the Court that, on a balance of probabilities, the witness is competent to give evidence in the proceedings.

(3) In determining the question mentioned in subsection (1) the Court shall treat the witness as having the benefit of any directions under section 53 which the Court has given, or proposes to give, in relation to the witness.

(4) Any proceedings held for the determination of the question shall take place in the absence of the jury.

(5) Where the Court is in doubt as to whether the witness is competent, the Court may receive evidence from anyone it deems fit, including a social worker or duly qualified medical practitioner.

(6) Any questioning of the witness (where the Court considers that necessary) shall -

(a) be conducted by the Court in the presence of the parties and any social worker or support person accompanying the witness; and

(b) be conducted with the benefit of any special measures the Court deems necessary under sections 53 and 54.

Determining
whether witness to
be sworn.

70. (1) Any question whether a witness in criminal proceedings under whether this Act may be sworn for the purpose of giving evidence on oath, shall be determined by the Court in accordance with this section, whether raised -

(a) by a party to the proceeding; or

(b) by the Court of its own motion.

(2) The witness may not be sworn for that purpose unless the witness has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

(3) The witness shall, if the witness is able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced.

(4) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the Court that on a balance of probabilities, the witness has a sufficient appreciation of the matters mentioned in subsection (2).

(5) Any proceedings held for the determination of the question mentioned in subsection (1) shall take place in the absence of the jury.

(6) Where the Court is in doubt as to whether the witness can be sworn, the Court may receive evidence from anyone it deems fit, including a social worker or duly qualified medical practitioner.

(7) Any questioning of the witness (where the Court considers that necessary) shall –

(a) be conducted by the Court in the presence of the parties and any social worker or support person accompanying the witness; and

(b) be conducted with the benefit of any special measures the Court deems necessary under section 53.

(8) For the purposes of this section a person is able to give intelligible testimony if the person is able to –

(a) understand questions put to him/her as a witness; and

(b) give answers to them which can be understood.

Reception of
unsworn evidence.

71. (1) Subsections (2) and (3) apply to a person who is competent to give evidence in criminal proceedings under this Act, but (by virtue of section 70) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.

(2) The evidence in criminal proceedings under this Act of a person to whom this subsection applies shall be given unsworn.

(3) A deposition of unsworn evidence given by a person to whom this subsection applies may be taken for the purposes of criminal proceedings under this Act as if that evidence had been given on oath.

(4) A Court in criminal proceedings under this Act shall accordingly receive in evidence any evidence given unsworn in pursuance of subsection (2) or (3).

(5) Where a person ("the witness") who is competent to give evidence in criminal proceedings under this Act gives evidence in such proceedings unsworn, no conviction, verdict or finding in those proceedings shall be taken to be unsafe for the purposes of any statute or other law by reason only that it appears to the Court of Appeal or any other Court that the witness was a person falling within section 70 (and should accordingly have given his/her evidence on oath).

Penalty giving the false unsworn evidence.

72. (1) This section applies where a person gives unsworn evidence in criminal proceedings under section 71.

(2) If a person, as referred to in subsection (1), wilfully gives false evidence in circumstances that, had the evidence been given on oath, the person would have committed perjury, the person commits an offence and is liable -

(a) where the criminal proceedings related to an indictable offence punishable with imprisonment for life, on indictment to imprisonment for life;

(b) where the criminal proceedings related to any case not mentioned in the preceding subsection, on indictment to seven years imprisonment.

Corroboration.

73. (1) No corroboration of the evidence of the complainant or the sworn or unsworn evidence of a child shall be required for a conviction of an offence under this Act, and the judge shall not instruct the jury that it is unsafe to find the accused guilty in absence of corroboration.

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Compellability.

(2) Section 61(3) and 71(3) of the Evidence Act shall not apply to this Act.

74. The spouse of a person charged with an offence under this Act may be called as a witness for either the prosecution or defence and without the consent of the person charged, and if so called, notwithstanding any other law, is a compellable witness.

Warning to jury.

Previous consistent statements

75. Where on the trial of an accused person for an offence under this Act evidence is given or a question is asked of a witness which tends to suggest an absence of complaint in respect of the commission of the alleged offence by the person upon whom the offence is alleged to have been committed or to suggest delay by that person in making any such complaint, the judge or magistrate shall -

- (a) give a warning to the jury to the effect that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false; and
- (b) inform the jury that there may be good reasons why a victim of a sexual offence may hesitate in making or may refrain from making a complaint about the assault.

Recent complaint.

76. (1) In considering whether a recent complaint was made as soon as could reasonably be expected, the Court shall consider the following factors -

- (a) the nature of sexual abuse and the stigma or humiliation often thought to go with them, and that they are commonly found difficult to report (particularly child sexual abuse);
- (b) the relationship of the victim and accused;
- (c) the particular characteristics of the person in relation to whom the abuse is alleged to have been committed; and
- (d) all other relevant circumstances.

(2) Whether the complaint was made as soon as could reasonably be expected will depend on the facts of the particular case, and there is no outer time limit.

Evidence of
statement of child
admissible where

77. (1) Evidence of a statement made by a child complainant in relation to an offence under this Act is admissible where the child does not give direct oral testimony at the trial.

Admissibility of
child's statement.

(2) Sections 78 and 79 shall apply to the admissibility of evidence under subsection (1) of this section.

(3) Where a statement is tendered in evidence under subsection (1), the accused shall not be convicted on the basis of that evidence alone.

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

(2) The Court may admit into evidence the following statement made by a child -

- (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 child himself/herself;
- (d) a statement written by another person on behalf of a child where the child cannot write.

(3) The following provisions shall have effect in relation to any written statement of a child admissible in evidence under this section -

- (a) the child shall state his/her age and that an adult of his/her choice was present with him/her when it was made;
- (b) if the statement is written on behalf of a child, it shall be signed by both the child and the person who wrote it and it shall be dated;

- (c) if the statement is written on behalf of a child who cannot write, the person who wrote the statement shall read it to the child before he/she puts his/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 child and that he/she appears to understand it and he/she agreed to it;
- (d) if the statement is written on behalf of a child who cannot read, the person who wrote the statement shall read it to the child before the child signs it and it shall be accompanied by a declaration of the person who wrote it that it was read to the child and the child appeared to understand it and the child 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) The prosecution shall give a copy of the statement to any other party to the proceedings reasonably in advance of the prosecution tendering 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) A child whose written statement is tendered in evidence in a trial under this section shall be treated as a person who had been examined by the Court.

79. (1) Without limiting any other written law, where a statement, referred to in section 78, appears to the Court to have been prepared for the purposes of:

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

Statements in documents that appear to have been prepared for purposes of criminal proceedings or investigations.

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 it is likely that the statement can be controverted and 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 accused -

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

(4) Where a statement is tendered into evidence under subsection (2), it shall be read to the Court, and the accused is entitled to challenge its admissibility before it is admitted into evidence or laid over at paper committal.

(5) Where the accused exercises his/her right under subsection (4), the Court shall conduct a short hearing in the absence of the jury and public and decide whether the whole or any part of the statement is admissible into evidence.

80. Where a statement is tendered in evidence under sections 78 or 79, the accused shall not be convicted on the basis of that evidence alone.

No conviction on statement alone.

Evidence of sexual activity where complainant under 16 years.

Evidence of sexual activity

81. (1) Where the complainant in proceedings for an offence under this Act is under 16 years of age, no evidence shall be adduced that the complainant has engaged in any sexual activity (with the accused or with any other person) other than the sexual activity that forms the subject matter of the charge unless the Court determines in accordance with the procedure set out in the Second Schedule, that the evidence -

- (a) is of criminal sexual activity involving the complainant, and there is evidence of a conviction of a third party for this abuse;
- (b) is to be used to show that inappropriate sexual knowledge was not learnt from the accused, or that the complainant had a motive to lie; and
- (c) is of facts sufficiently similar to the facts in issue to have significant relevance.

Evidence of sexual
activity, reputation,
inferences.

(2) Any evidence or questioning referred to in subsection (1) shall only be admitted to the extent that the Court finds that the proposed evidence is material to a fact in issue in the case and that its probative value is not outweighed by its inflammatory nature or potential prejudice to the proper administration of justice or the complainant's personal dignity and right of privacy.

82. (1) In proceedings in respect of a sexual offence, evidence as to the sexual activity reputation of the complainant is not admissible, and the defence shall not be allowed to cross-examine on the matter.

(2) In proceedings in respect of a sexual offence, evidence that the complainant has engaged in sexual activity, whether with the accused or with any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant -

Evidence of sexual
activity in general.

- (a) is more likely to have consented to the sexual activity that forms the subject-matter of the charge; or
- (b) is less worthy of belief.

Second
Schedule,

83. (1) Where the complainant in proceedings for an offence under this sexual Act is sixteen years of age or over, no evidence shall be adduced that the complainant has engaged in sexual activity (with the accused or with any other person) other than the sexual activity that forms the subject-matter of the charge, unless the Court determines, in accordance with the procedure set out in the Second Schedule, that the evidence -

(a) is of specific instances of sexual activity; and

(b) (i) tends to rebut evidence that was previously adduced by another party to the proceedings;

(ii) where the accused denies sexual penetration, tends to explain the presence of semen or the source of pregnancy or disease or any injury to the complainant, where it is relevant to a fact in issue; or

(iii) is evident of consensual sexual activity of the complainant with the accused where this is reasonably contemporaneous with the date of the alleged offence.

Previous
allegations of
sexual offences.

(2) Any evidence or questioning referred to in subsection (1) shall only be admitted to the extent that the Court finds that the proposed evidence is material to a fact in issue in the case and that its probative value is not outweighed by its inflammatory nature or potential prejudice to the proper administration of justice or the complainant's personal dignity and right of privacy.

84. (1) The defence shall not introduce evidence directly or ask questions in cross-examination suggesting previous allegations of sexual offences by the complainant may have been false without the prior permission of the Court.

(2) The Court shall not give such permission unless -

(a) the defence can adduce concrete evidence that the previous allegation was in fact false; and

- (b) the relevance of the evidence to the accused's case is demonstrated to the satisfaction of the Court.

PART VI

BAIL

85. (1) Where the Court is required to determine whether to grant bail in respect of an offence under this Act the Court shall take into account -

- (a) the need to secure the health, safety and well-being of the victim or any witness;
- (b) the need to secure the health, safety and well-being of any child affected by the offence or by the decision on bail;
- (c) any hardship that may be caused to the accused or to the members of his/her family if bail is not granted;
- (d) the accused's record with regard to the commission of violent acts and whether there is evidence in or on the record of physical or psychological abuse to children;
- (e) whether there are substantial grounds for believing that the accused, if released on bail would -
 - (i) fail to surrender to custody;
 - (ii) commit an offence while on bail; or
 - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (f) any other matters which may be relevant to the case in question.

Bail for sexual
offences.

86. (1) Where an accused -

- (a) is charged with an offence under this Act which includes penetration, and has a prior sexual offence conviction, or

(b) is charged with committing a sexual offence with a child under section 10, 11, 12, 13, 16, 18 or 21,

the Court shall order that the accused be detained in custody until dealt with according to law, unless the accused, having been given a reasonable opportunity to do so, shows just cause why the accused's detention in custody is not justified.

(2) For the purposes of subsection (1), just cause will be shown where the accused demonstrates that -

- (a) detention is not necessary to ensure the accused's attendance in Court in order to be dealt with according to law;
- (b) detention is not necessary for the protection or safety of the public, including for the protection of any victim of any or witness to the offence;
- (c) there is not a substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and
- (d) detention is not necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including -
 - (i) the apparent strength of the prosecution's case;
 - (ii) the gravity of the offence;
 - (iii) the circumstances surrounding the commission of the offence, including whether a weapon was used; and
 - (iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment.

Conditions of bail.

87. (1) Where the accused is charged with an offence under this Act, the Court, in granting bail, may also order that the recognisance be subject to any of the following further conditions as the Court considers appropriate -

- (a) that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order except in accordance with the conditions specified in the order as the judge considers necessary;
- (b) that the accused not harass or molest, or cause another person to harass or molest, a specified person, including the victim or any relevant child;
- (c) that the accused not be in a locality in which are situated the premises in which a specified person, including the victim or any relevant child, resides, works or is frequently present at;
- (d) that the accused not be on premises which are or in a locality in which is situated the place of education of a specified person named in the order, including the victim or any relevant child;
- (e) where the accused continues to reside, work or attend a place of education with a specified person, including the victim or any relevant child, that the accused do not enter or remain in the place of residence, employment, or education while under the influence of alcohol or a drug;
- (f) that the accused report at such times as are specified at a specified police station;
- (g) that the accused remain within a territorial jurisdiction specified in the order;
- (h) that the accused notify the police officer or other person designated in the order of any change in his/her address or his/her employment or occupation;
- (i) that where the accused is the holder of a passport, the accused deposit it as specified in the order; and

- (j) that the accused comply with any other condition specified in the order that the Court considers necessary to ensure the safety and security of any victim of or witness to the offence or in the interest of the public.

Victim to be notified if accused released on bail.

(2) Where a police officer believes on reasonable grounds that a person who has been granted bail subject to one or more of the conditions set out in subsection (1) has failed to comply with a condition of the recognizance, the police officer may apprehend the person without a warrant.

Orders following conviction.

- (3) Where bail has been granted to a person on a condition imposed under subsection (1) and the person contravenes or fails to comply with the condition, the bail is forfeited and the accused is liable to be arrested.

88. If an accused charged with an offence under this Act is released on bail, the prosecutor shall immediately inform the victim of that fact, and any conditions of bail.

PART VII

SENTENCING

89. Where an accused is convicted of an offence under this Act, in addition to passing sentence the Court may -

- (a) order that the accused pay civil compensation to the victim; and

- (b) make one or more of the following orders -

(i) drug treatment and testing order;

(ii) rehabilitation order;

(iii) protection and safety order; and

Health worker to report child's

- (iv) where the offence for which the accused has been convicted suggests risk of Human Immunodeficiency Virus (HIV) transmission to the complainant, a HIV testing order and disclosure of the results to the court and complainant.

National Task Force for Prevention of Sexual Offences.

PART VIII

MEDICAL CARE AND SUPPORT FOR VICTIM

90. Where a health worker treats a child and finds evidence that the child has been sexually abused, notwithstanding any law relating to medical confidentiality, the health worker shall report the suspected abuse to the police and keep a record of having done so.

**PART IX
PREVENTION**

91. (1) There shall be established an inter-agency task force to be known as the National Task Force for the Prevention of Sexual Violence which shall have the duty to develop and implement a national plan for the prevention of sexual violence.

(2) The President shall appoint the members of the task force, which shall include the Ministers of Legal Affairs, Home Affairs, Human Services and Social Security, Amerindian Affairs, Education, Health, Local Government, Youth, Sport and Culture, senior public officers with responsibility for law enforcement, health and human and social services and persons from non-governmental organisations.

(3) The task force shall carry out the following activities either directly or by one or more of the constituent ministries as appropriate -

(a) develop and publish within one year of the coming into force of this Act, the National Plan for the Prevention of Sexual Offences, which shall include the necessary steps to eradicate sexual violence in Guyana;

(b) develop initiatives for prevention of sexual violence;

(c) co-ordinate the implementation of the National Plan;

Sexual Violence Unit

- (d) commission and co-ordinate the collection, publication and sharing of data among government agencies;
- (e) establish policies to enable the Government to work with non-governmental organisations, faith-based organisations, community-based organisations and other elements of civil society to prevent sexual violence and provide assistance to victims of sexual violence;
- (f) provide guidance to the Sexual Violence Unit;
- (g) develop national policy guidelines for victims of sexual violence and address matters relating to police services, prosecution, medical services, social services, probation service and prison service;
- (h) monitor the implementation of this Act, the National Plan and the National Policy Guidelines;
- (i) co-ordinate national education and awareness programmes;
- (j) focus special attention on the issues of sexual violence in remote areas, including access to police support and medical attention, court services;
- (k) determine the effectiveness of public awareness exercises and measures to be taken to ensure effectiveness;
- (l) provide guidance on the development of training programmes specified under section 96;
- (m) within one year of this Act coming into force, publish a paper on integration of reports to be made, seeking medical care and evidence gathering and recommend either the establishment of a special centre, or a unit at hospitals or at police stations, and setting out the necessary steps to establish any integrated services;

(n) in general, ensure acceptable and uniform treatment of all sexual offence matters;

(o) produce an annual report updating data and statistics, reporting on the implementation of the Act, National Plan and National Policy Guidelines, and other prevention activities.

Regional
committees.

(4) The Task Force shall meet at least once every three months.

92. (1) The Minister shall establish a sexual violence unit in the Ministry of Human Services and Social Security.

Data.

(2) The Sexual Violence Unit, or until it is established, the Director of Social Services shall support the Task Force in carrying out the provisions of section 91(3).

93. (1) Each Regional Democratic Council shall establish a local Committee for the Prevention of Sexual Violence and the Committee shall comprise such members, who may be ordinary members of the community, as determined by the Regional Democratic Council, and who are capable of ensuring the effective implementation of this Act and of taking prevention measures in the local community.

(2) The Committee shall involve the local community in developing a local plan for the prevention of sexual violence in the local community, and coordinate local prevention initiatives.

Public awareness.

94. (1) All data collected shall respect the privacy of victims or complainants of sexual offences.

(2) Data shall include, but shall not be limited to, number of reports to the police, number of arrests, prosecutions and successful convictions, gender and age of victims, geographical locations where offences are alleged to have happened, number of persons seeking medical care, types of injuries received by victims, relationship of victim to accused, number of matters withdrawn from Court and number of matters where victims chose not to proceed further.

95. (1) The Minister, in co-operation with other appropriate governmental agencies and appropriate non-governmental organisations shall prepare and disseminate public awareness programmes designed to educate victims and potential victims of sexual offences and their families of the risk of victimisation.

(2) Awareness programmes referred to in subsection (1) shall include but shall not be limited to -

(a) information regarding care arrangements for children, appropriate and inappropriate behaviour including touching and words, safe and preventative practices;

(b) sex education;

(c) exposure to and treatment of Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome and other sexually transmitted diseases;

(d) information relating to the psychological harm to a victim of sexual offences;

(e) the measures and services in place to ensure the safety of victims;

(f) information on how to contact relevant law enforcement authorities;

(g) information about the rights of victims and potential victims of sexual violence; and

(h) information about how to recognise sexual abuse and where to seek help.

(3) The Minister in co-operation with other appropriate governmental agencies and appropriate non-governmental organisations shall prepare and disseminate public awareness programmes designed to discourage behaviour that fosters the abuse of persons that leads to sexual violence.

(4) Awareness programmes referred to in subsection (3) shall include, but shall not be limited to -

Education and
training.

(a) materials that include the impact of sexual violence on individual victims; and

(b) aggregate information on sexual violence world wide and domestically as well as warnings of the potential for criminal consequences for engaging in sexual violence or any offence under this Act.

(5) Materials used in the public awareness programmes shall include as appropriate pamphlets, brochures, posters, advertisements in mass media, and any other methods appropriate for reaching victims of sexual violence.

(6) Any material used under this section shall preserve the privacy of the victim and the victim's family.

Rules of court and
regulations.

96. (1) The Ministers of Legal Affairs, Home Affairs, Health, Human Services and Social Security shall ensure that training programmes on sexual violence are developed and delivered to police, prosecutors, magistrates and judges, health workers, probation officers, social workers and the prison service, whether directly or by collaboration with other appropriate governmental agencies and non-governmental organisations.

Law inconsistent
with this Act.

(2) The Judicial Service Commission shall ensure that training is provided to magistrates and judges not only on implementation of the Act, but also on existing laws, procedures and obligations relating to sexual offences, for example regulating requests for adjournments, cross-examination of the victim, and on sexual offences in general, including rape myths.

Laws to be
applied.

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PART X

MISCELLANEOUS

97. (1) Rules of Court may be made for the purpose of regulating the practice and procedure of the Court in proceedings under this Act.

Repeal and
Savings.

Third
Schedule.

(2) The Minister may make regulations for carrying out the provisions of this Act and for prescribing anything that needs to be prescribed.

98. Where any provision of any law is in conflict or inconsistent with any provision of this Act, the provision of this Act shall prevail.

Interpretation.

99. Except as otherwise provided by this Act, the Evidence Act and the Criminal Law (Procedure) Act shall apply to this Act where necessary with such modifications, adaptations and qualifications that may be needed for the due administration of this Act.

100. (1) The enactments specified in the first column of the Third Schedule are repealed to the extent mentioned in the second column of that Schedule.

Paper committal to
be held by single
magistrate.

(2) Notwithstanding the repeal under subsection (1), if before the date on which this section comes into force there are any pending proceedings instituted, the proceedings shall be disposed of or continued under the law as it stood immediately before the commencement of this section.

FIRST SCHEDULE s. 43

PAPER COMMITTALS FOR SEXUAL OFFENCES

1. In this Schedule -

“document” means anything in which information of any description is recorded;
and

“paper committal” means committal proceedings held in accordance with this Schedule.

Adjournment.

2. Paper committals are to be held by a single magistrate, and sections 45 to 51 relating to the exclusion of the public shall apply.

3. A magistrate may proceed with a paper committal in the absence of the accused if-

Evidence which is
admissible.

- (a) the magistrate considers that by reason of the accused's disorderly conduct before the magistrate it is not practicable for the evidence to be laid over in the accused's presence; or
- (b) the accused cannot be present for reasons of health but is represented by an attorney-at-law and has consented to the evidence being laid over in the accused's absence.

4. (1) A magistrate may, before beginning a paper committal or at any time during the proceedings, adjourn the proceedings, and if the magistrate does so shall remand the accused.

(2) The Court shall when adjourning fix the time and place at which the proceedings are to be resumed and the time fixed shall be that at which the accused is required to appear or be brought before the Court in pursuance of the remand.

5. (1) Evidence falling within subparagraph (2), and only that evidence, shall be held admissible by a magistrate holding a paper committal.

(2) Evidence falls within this subparagraph if it -

- (a) is filed by or on behalf of the prosecutor; and
- (b) falls within subparagraph (3).

Written statements.

(3) The following evidence falls within this subparagraph -

- (a) written statements complying with paragraph 6;
- (b) the documents or other exhibits (if any) referred to in the written statements;
- (c) depositions complying with paragraph 7;
- (d) the documents or other exhibits (if any) referred to in the depositions;
- (e) statements complying with paragraph 8;

(f) documents falling within paragraph 9.

6. (1) For the purposes of paragraph 5, a written statement complies with this paragraph if-

(a) the conditions falling within subparagraph (2) are met; and

(b) any of the conditions falling within subparagraph (3) as apply are met.

(2) The conditions falling within this subparagraph are that -

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his/her knowledge and belief and that he/she made the statement knowing that, if it were laid over in evidence, he/she would be liable to prosecution if he/she wilfully stated in it anything which he/she knew to be false or did not believe to be true;

(c) before the statement is laid over in evidence a copy of the statement is given, by or on behalf of the prosecutor, to each of the other parties to the proceedings.

(3) The conditions falling within this subparagraph are that -

(a) if the statement is made by a person under 18 years of age, it gives the person's age;

(b) if it is made by a person who cannot read it, it is read to him before he signs it and is accompanied by a declaration by the person who so read the statement to the effect that it was so read;

Depositions.

(c) if it refers to any other document as an exhibit, the copy given to any other party to the proceedings under subparagraph (2)(c) is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it.

(4) So much of any statement as is admitted in evidence by virtue of this paragraph shall, unless the Court commits the accused for trial by virtue of paragraph 11(2) or the Court otherwise directs, be read aloud at the hearing; and where the Court so directs a summary or description shall be given of so much of any statement as is not read aloud.

(5) Any document or other object referred to as an exhibit and identified in a statement admitted in evidence by virtue of this paragraph shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

7. (1) For the purposes of paragraph 5 a deposition complies with this paragraph if-

- (a) a copy of it is sent by the prosecutor to the clerk to the magistrate concerned as soon as is reasonably practicable;
- (b) the condition falling within subparagraph (2) is met; and
- (c) the condition falling within subparagraph (3) is met, in a case where it applies.

(2) The condition falling within this subparagraph is that before the magistrate begins the paper committal a copy of the deposition is filed, by or on behalf of the prosecutor, and served to each of the other parties to the proceedings.

(3) The condition falling within this subparagraph is that, if the deposition refers to any other document as an exhibit, the copy given to any other party to the proceedings under subparagraph (2) is accompanied by a copy of that document or by such information as may be necessary to enable the party to whom it is given to inspect that document or a copy of it.

(4) So much of any deposition as is admitted in evidence by virtue of this paragraph shall, unless the Court commits the accused for trial by virtue of paragraph 11(2) or the Court otherwise directs, be read aloud at the hearing; and where the Court so directs a summary or description shall be given of so much of any deposition as is not read aloud in full.

Other statements.

(5) Any document or other object referred to as an exhibit and identified in a deposition admitted in evidence by virtue of this paragraph shall be treated as if it had been produced as an exhibit and identified in Court by the person whose evidence is taken as the deposition.

8. (1) For the purposes of paragraph 5 a statement complies with this paragraph if the conditions falling within subparagraphs (2) to (4) are met.

(2) The condition falling within this subparagraph is that, before the committal proceedings begin, the prosecutor notifies the magistrate and each of the other parties to the proceedings that the prosecutor believes -

- (a) that the statement might by virtue of section 91 or section 92 of the Evidence Act be admissible as evidence if the case came to trial; and
- (b) that the statement would not be admissible as evidence otherwise than by virtue of section 91 or section 92 of the Evidence Act if the case came to trial.

(3) The condition falling within this subparagraph is that -

Other documents.

- (a) the prosecutor's belief is based on information available to him at the time the prosecutor makes the notification;
- (b) the prosecutor has reasonable grounds for his/her belief; and
- (c) the prosecutor gives the reasons for his/her belief when he/she makes the notification.

(4) The condition falling within this subparagraph is that when the Court or a party is notified as mentioned in subparagraph (2) a copy of the statement is given, by or on behalf of the prosecutor, to the Court or the party concerned.

(5) So much of any statement as is in writing and is admitted in evidence by virtue of this paragraph shall, unless the Court commits the accused for trial by virtue of paragraph 11(2) or the Court otherwise directs, be read aloud at the hearing; and where the Court so directs a summary or description shall be given of so much of any statement as is not read aloud in full.

9. (1) The documents that fall within this paragraph are documents which by virtue of any law -

Proof by
production of
copy.

- (a) are admissible as evidence in criminal proceedings;
- (b) are admissible, or may be used, or are to be admitted or received, in or as evidence in such proceedings;
- (c) may be considered in such proceedings;
- (d) by their production, constitute proof in such proceedings;
- (e) by their production, evidence may be given in such proceedings.

(2) In subparagraph (1) references to evidence include references to *prima facie* evidence.

(3) So much of any document as is admitted in evidence by virtue of this paragraph shall, unless the Court commits the accused for trial by virtue of paragraph 11(2) or the Court otherwise directs, be read aloud at the hearing; and where the Court so directs a summary or description shall be given orally of so much of any document as is not read aloud in full.

10. (1) Where a statement, deposition or document is admissible in evidence by virtue of paragraphs 6, 7, 8 or 9 it may be proved by the production of -

Committal for trial
or discharge.

- (a) the statement, deposition or document; or
- (b) a copy of it or the material part of it.

(2) Subparagraph (1)(b) applies whether or not the statement, deposition or document is still in existence.

(3) It is immaterial for the purposes of this paragraph how many removes there are between a copy and the original.

- (4) in this paragraph "copy", in relation to a statement, deposition or document, means anything onto which information recorded in the statement, deposition or document has been copied, by whatever means and whether directly or indirectly.

11. (1) Subject to any other law relating to the summary trial of indictable offences, a magistrate holding a paper committal shall on consideration of the evidence

Record of reasons.

- (a) commit the accused for trial if the magistrate is of the opinion that a prima facie case is made out to put the accused on trial for any indictable offence; or

Discharge means charge is void.

- (b) discharge the accused if the magistrate is not of that opinion and the accused is in custody for no other cause than the offence under inquiry.

Summons or warrant as to paper committal.

(2) If a magistrate holding a paper committal is satisfied that all the evidence filed by or on behalf of the prosecutor falls within paragraph 5(3), the magistrate may commit the accused for trial for the offence without consideration of the contents of any statements, depositions or other documents, and without consideration of any exhibits which are not documents, unless -

- (a) the accused or one of the accused has no attorney-at-law acting for him in the case; or
- (b) an attorney-at-law acting for the accused, or one of the accused, as the case may be, has requested the Court to consider a submission that there is insufficient evidence to put that accused on trial by jury for the offence.

12. The magistrate shall record the reasons in writing for committing or discharging the accused.

13. If the accused is discharged, the charge is void and there is no restriction on the prosecution bringing the same or other charges against the accused in future.

14. (1) Subparagraph (2) applies where a magistrate is satisfied that -

- (a) any person is likely to be able to make on behalf of the prosecutor a written statement containing material evidence, or produce on behalf of the prosecutor a document or other exhibit likely to be material evidence, for the purposes of proceedings before a magistrate holding a paper committal; and
- (b) it is in the interests of justice to issue a summons under this paragraph to secure the attendance of that person to give evidence or to produce the document or other exhibit.

(2) In such a case the magistrate shall issue a summons directed to that person referred to in subparagraph (1) requiring the person to attend before a magistrate at the time and place appointed in the summons to have that person's evidence taken as a deposition or to produce the document or other exhibit.

(3) If a magistrate is satisfied by evidence on oath of the matters mentioned in subparagraph (1), and also that it is probable that a summons under subparagraph (2) would not procure the result required by it, the magistrate may instead of issuing a summons issue a warrant to arrest the person concerned and bring the person before a magistrate at the time and place specified in the warrant.

(4) A magistrate may issue a warrant to arrest a person and bring the person before the magistrate at a time and place specified in the warrant if -

(a) the person fails to attend before a magistrate in answer to a summons under this paragraph;

(b) the magistrate is satisfied by evidence on oath that the person is likely to be able to make a statement or produce a document or other exhibit as mentioned in subparagraph (1)(a);

(c) it is proved on oath, or in such other manner as may be prescribed, that the person has been duly served with the summons and that a reasonable sum has been paid or laid over to the person for costs and expenses;

Procedure.

(d) it appears to the magistrate that there is no just excuse for the failure.

(5) Where a summons is issued under subparagraph (2) or a warrant is issued under subparagraph (3), and the summons or warrant is issued with a view to securing that a person's evidence is taken as a deposition, the time appointed in the summons or specified in the warrant shall be such as to enable the evidence to be taken as a deposition before a magistrate begins the paper committal.

(6) If in pursuance of this paragraph a person has his/her evidence taken as a deposition, the clerk of Court for the magistrate concerned shall as soon as is reasonably practicable send a copy of the deposition to the prosecutor.

(7) If in pursuance of this paragraph a person produces an exhibit which is a document, the clerk of Court for the magistrate concerned shall as soon as is reasonably practicable send a copy of the document to the prosecutor.

(8) If in pursuance of this paragraph a person produces an exhibit which is not a document, the clerk of Court for the justice concerned shall as soon as is reasonably practicable inform the prosecutor of the fact and of the nature of the exhibit.

Evidence laid over
submissions.

15. (1) This rule applies to paper committals where the accused has an attorney-at-law acting for him in the case and where the Court has been informed that all the evidence falls within paragraph 5(2).

(2) A magistrates court holding a paper committal shall cause the charge to be written down, if this has not already been done, and read to the accused and shall then ascertain whether the accused wishes to submit that there is insufficient evidence to put the accused on trial by jury for the offence charged.

(3) If the Court is satisfied that the accused or, as the case may be, each of the accused does not wish to make such a submission as is referred to in paragraph (2) it shall, after receiving any written evidence falling within paragraph 5(3), determine whether or not to commit the accused for trial, and where it determines not to so commit the accused it shall proceed in accordance with paragraph 16.

16. (1) This rule does not apply to committal proceedings where under paragraph 11(2) a magistrates court commits a person for trial.

(2) The magistrate may permit the prosecutor to make an opening address to the Court, if he so wishes, before any evidence is laid over after the magistrate has ascertained -

- (a) that the accused has no legal representative in the case; or
- (b) that the accused attorney-at-law has requested the Court to consider a submission that there is no prima facie evidence to put the accused on trial by jury for the offence charged.

(3) After such opening address, if any, the Court shall cause evidence to be laid over in accordance with paragraphs 7, 8, 9 and 10, that is to say by being read out aloud, except where the Court otherwise directs or to the extent that it directs that a summary or description shall be given of so much of any statement as is not read aloud.

(4) The Court may view any exhibits produced before the Court and may take possession of them.

(5) After the evidence has been laid over the Court shall hear any submission which the accused may wish to make as to whether there is prima facie evidence to put him on trial by jury for any indictable offence.

(6) The Court shall permit the prosecutor to make a submission -

- (a) in reply to any submission made by the accused in pursuance of subparagraph (5); or
- (b) where the accused has not made any such submission but the Court is nevertheless minded not to commit him for trial.

(7) After hearing any submission made in pursuance of subparagraph (5) or (6) the Court shall, unless it decides not to commit the accused for trial, cause the charge to be written down, if this has not already been done, and, if the accused is not represented by an attorney-at-law, shall read the charge to him and explain it in ordinary language.

Power of Director
of Public
Prosecutions to
give directions.

Evidence after

17. (1) In any case where the magistrate discharges an accused person, the Director of Public Prosecutions may require the magistrate to send to the Director of Public Prosecutions the statements, documents, depositions, and exhibits laid over in connection with the cause.

(2) After the discharge of the accused person, the Director of Public Prosecutions may, if after the receipt of those statements, documents, depositions, and exhibits the Director of Public Prosecutions is of the opinion that a prima facie case is made out to put the accused on trial for any indictable offence under this Act, remit those statements, depositions, and exhibits to the magistrate with directions to reopen the paper committal and to commit the accused for trial, and may give such further directions as the Director of Public Prosecutions may think proper.

(3) Any directions given by the Director of Public Prosecutions under this paragraph shall be in writing signed by him, and shall be followed by the magistrate, who shall have all necessary power for that purpose.

(4) The Director of Public Prosecutions may at any time add to, alter, or revoke any of his/her directions.

18. (1) Where subparagraph (2) has been complied with, any person or persons whose statements, depositions, documents, or exhibits were not laid over into evidence by the prosecutor during paper committal proceedings may give evidence at the trial of an accused person.

Factors that Court
must consider.

(2) Where the party seeking to adduce the evidence is the prosecution, the prosecution must serve the evidence, in the form of a statement, deposition or document which would be admissible under paragraphs 7, 8, 9 or 10, on the other parties to the proceedings 7 days before the witness will be cross-examined at trial, or before the contents of the statement, deposition or other document will be entered into evidence.

SECOND SCHEDULE s. 81,83**PART I s.83****PROCEDURE FOR APPLYING TO ADMIT EVIDENCE
OF SEXUAL ACTIVITY WHERE COMPLAINANT
IS OVER 16 YEARS OF AGE**

Application to
admit evidence of
sexual activity.

1. In determining whether evidence is admissible under section 83, the Court shall take into account -

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

Form and content
of application.

2. (1) Application may be made to the Court by the prosecution or defence for a hearing to determine whether evidence is admissible under section 83.

(2) In this Schedule, "hearing" means a *voir dire* as carried out by the Court in the absence of the jury during criminal proceedings.

Application to
cross examine.

3. An application referred to in paragraph 2 must be made in writing and set out -

Jury and public excluded.

(a) detailed particulars of the evidence that the applying party seeks to adduce, including that of specific instances of sexual activity; and

Court may hold a hearing.

(b) the relevance of that evidence to an issue at trial, including -

(i) how the evidence tends to rebut evidence that was previously adduced by another party to the proceedings;

(ii) where the accused denies sexual penetration, how the evidence tends to explain the presence of semen or the source of pregnancy or disease or any injury to the complainant, where it is relevant to a fact in issue; or

(iii) that the evidence is of consensual sexual activity of the complainant with the accused where this is reasonably contemporaneous with the date of the alleged offence and how the evidence is relevant to a fact in issue.

Complainant not compellable.

4. In the case of an application to cross-examine the complainant, the application must also set out -

Judge's determination and reasons.

(a) the initial questions sought to be asked of the complainant; and

(b) the scope of the questioning sought to flow from the initial questioning.

5. The Court shall consider the applications under paragraphs 2 and 4 (including any hearing under paragraph 6) with the jury and the public excluded.

6. Where the Court is satisfied -

(a) that the application was made in accordance with paragraph 3 or 4 as relevant;

Publication. (b) that a copy of the application has been given to the prosecutor, clerk of Court and the Director of Public Prosecutions; and

(c) that the evidence sought to be adduced is capable of being admissible under section 83,

the Court shall grant the application for a hearing and hold that hearing, having allowed sufficient time for the prosecution to consider the contents of the application.

7. The complainant is not a compellable witness at the hearing.

8. At the conclusion of the hearing, the Court shall determine whether the evidence, or any part of the evidence, is admissible under section 83 and shall provide reasons for that determination, and the reasons must state -

Instruction to jury.

(a) where not all of the evidence is to be admitted, the part of the evidence that is to be admitted;

(b) the factors referred to in paragraph 1 of this Schedule that affected the determination; and

(c) where all or any part of the evidence is to be admitted, the manner in which that evidence is expected to be relevant to an issue at trial.

Factors that Court must consider.

9. The reasons provided under paragraph 8 shall be entered in the record of the proceedings or, where the proceedings are not recorded, shall be provided in writing.

10. (1) For the avoidance of doubt, no person shall publish in any document, or broadcast or transmit in any way, any of the following -

(a) the contents of an application made under paragraph 2;

(b) any evidence taken, the information given and the representations made at an application under paragraph 2 or at a hearing under paragraph 6;

(c) the determination made and the reasons provided under paragraph 8.

(2) Every person who contravenes subparagraph (1) commits an offence and is liable on summary conviction to a fine of two million dollars.

13. Where evidence is admitted at trial pursuant to a determination made under paragraph 8, the Court shall instruct the jury as to the uses that the jury may and may not make of that evidence.

PART II s. 81

PROCEDURE FOR APPLYING TO ADMIT EVIDENCE OF SEXUAL ACTIVITY WHERE COMPLAINANTS UNDER 16 YEARS OF AGE

14. Paragraphs 1 to 13 of Part I of this Schedule shall apply, except that -

- (a) under paragraph 1, the judge shall also take into account the interest of society in preventing child sexual abuse, and the overriding duty of the Court to protect child witnesses from inappropriate and traumatic questioning;
- (b) in place of the requirements of paragraph 3, an application referred to in paragraph 2 must set out -
 - (i) details of the conviction of a third party for criminal sexual activity involving the complainant;
 - (ii) how the evidence is intended to be used to show that inappropriate sexual knowledge was not learnt from the accused, or that the complainant had a motive to lie; and
 - (iii) the similarities between the evidence sought to be adduced and the facts in issue in the case, and why these similarities are sufficient to cause the evidence to have material relevance to those facts.

THIRD SCHEDULE S.100

LAWS REPEALED

LAWS REPEALED	EXTENT OF REPEAL
	Section
<p>Criminal Law (Offences) Act</p> <p>Cap. 8:01</p>	<p>7, 65-71, 72, 73(a), 74, 75, 76, 77, 77A, 78, 84-90</p>
<p>Criminal Law (Procedure) Act</p> <p>Cap 10:01</p>	<p>31</p>
<p>Summary Jurisdiction (Offences) Act</p> <p>Cap. 8:02</p>	<p>24</p>
<p>Evidence Act</p> <p>Cap. 5:03</p>	<p>82</p>

EXPLANATORY MEMORANDUM

Part I of the Bill contains the short title and commencement and in the interpretation clause defines a number of terms to be found in the Bill.

Part II deals with the sexual offences. These offences include rape, sexual assault, sexual activity with a child under 16 years of age and meeting a child following sexual grooming. This Part deals with the concepts of position of trust and obstructing the prosecution. Other offences are exposure of the genitals, voyeurism and intercourse with an animal.

As regards the offence of rape, in line with reform around the world and to maximize protection, the Bill widens the definition of rape to cater for those offensive activities we know are happening — any intrusion however slight of any part of a person's body or any object into the vagina or anus of another person.

As regards consent, this cannot be inferred by reason of silence or sexual arousal and belief in consent is not a defence.

As regards children and vulnerable adults, for offences under clauses 10 to 27, unless expressly stated in any of those offences, it is not necessary for the prosecution to prove that the complainant did not consent.

All reforms in this Bill will benefit child victims as well as adults, but some, including those listed in clauses 9 to 15 address the particular problems of child victims and child witnesses.

Clauses 25 to 27 deal with certain vulnerable adults - persons with mental disorders. An offence of sex with an adult relative will cover sexual activity between certain adult blood relatives - parent, child, sibling, grandparent and grandchild. Similar to the abuse of a position of trust offence in relation to children these clauses create a new offence of breach of relationship of care with a view to prohibiting sexual activity between those in position of authority in care relationships or in custodial contexts such as hospitals, care homes, police stations and prisons, and the people they look after. The aim is to protect vulnerable adults from exploitative behaviour caused by familiarity with the carer.

In the worst cases, indecent exposure or "flashing" can be very traumatic, causing fear, shock, disgust and a powerful fear of being raped. Research has shown that many rapists start by committing non-contact behaviour of this kind. Clauses 28 to 31 include a gender-neutral offence of indecent exposure relating to the indecent exposure of both male and female genitalia in circumstances where the accused intended to cause or where it was reasonably likely that the behaviour would cause alarm or distress. Clause 31 includes a separate offence of bestiality, to make a clear distinction between offending against people and animals.

Clauses 32 to 39 retain the offence of administration of drugs or other substances with intent to stupefy a victim in order that they can be subjected to sexual acts without their consent.

Clause 37 specifically states that a marital or other relationship, previous or existing, is not a defence to a charge of any offence under this Act. A court in Guyana has not ruled on this point, so it is still the law in Guyana that a husband could not be guilty of raping his wife. This clause changes that law.

Clause 38 abolishes the presumption that a male under 14 years of age is incapable of sexual intercourse.

Part III makes it mandatory for the police, where a report of sexual violence is made, to investigate the matter promptly and either charge the accused or forward the file to the DPP within three months.

Part IV deals with procedure in paper committals. Where an offence is charged under this Act there shall be no oral preliminary inquiry and instead a paper committal shall be held in accordance with a procedure set out in the First Schedule. In Guyana the oral preliminary stage frequently lasts for a considerable period and is usually conducted like a full trial, then the whole trial is then played out again in the High Court. Moving to paper committals would speed up criminal trials and also free the magistrates' courts to deal with other matters and reduce the back log of cases.

Clauses 45 to 51 create a presumption to hear matters in camera. That presumption is rebuttable if it is in the interest of justice to hear matters in public. Support persons will be allowed at the request of the victim. This is the position in India and is recommended by the CARICOM model legislation on sexual offences. Defendants may of course have their legal representative in court with them, and, if they are children, a parent or guardian, or other support person of their choice.

Clauses 52 to 60 introduce special measures to assist victims to give evidence in sexual offences cases. Judges will be obliged to order the use of one or more of the measures in all sexual offences unless the victim requests to give evidence unassisted. Perhaps in this regard a statement of a New Zealand High Court Judge would put the concept of special measures in its true perspective –

"The extreme distress of a complainant giving evidence in a rape case and relieving the trauma of the ordeal can be seen in the courtroom at anytime... there can be no justice in a practice which brutalizes the victim of a crime in a way which is repugnant to all civilized persons."

- New Zealand High Court Judge

Other measures in clauses 58, 59 and 60, include allowing children to give evidence by video-link through an intermediary, use of anatomically correct dolls, allow written evidence where the child is prevented from testifying, and allow hearsay evidence to build up a circumstantial case where the child cannot testify.

Clause 61 allows the victim to make a "victim impact statement" at the hearing of a bail application as well as after conviction but before sentence and the court shall take the victim's view into consideration when making a decision in those circumstances.

Recognising the trauma caused to victims who are forced to face the questions from the person those victims claim have caused them pain and injury, clauses 62 to 65 disallow the accused from cross examining in person the victim of an offence charged under this Act as well as the witnesses who were at the time of the commission of the offence children. If the accused does not have a lawyer, the Court if it is the interest of justice shall appoint an attorney-at-law for the purpose of cross examining the victim or complainant in a trial of any offence under this Act as is provided in clause 64. The Judge shall be required to warn the jury that no adverse meaning shall be inferred from the fact that the accused is not being allowed to cross examine the victim as is provided for in clause 65.

The Bill includes a simplified and modernised anonymity provision to ensure that all forms of communication to the public are covered, including the internet. There will be no exceptions to the rule that the anonymity of the victim must be preserved, and breach of the rules will remain a criminal offence. Clauses 66 and 67 make these provisions possible.

Part V in clauses 68 to 71 introduce a simplified definition of competence to ensure that as many child witnesses and witnesses with mental disabilities as possible who are capable of giving evidence are allowed to do so.

Clause 73 also abolishes the corroboration rule for the sworn and unsworn evidence of children. Again, the judge will be free to direct the jury if there are particular reasons to doubt the credibility or reliability of the evidence, and the jurors are free to judge the credibility of each witness themselves.

Clause 74 provides that a spouse is now a compellable witness for either the prosecution or the defence.

As regards previous consistent statements, clause 75 places an obligation on the court to warn the jury that there can be good reasons why a victim makes no complaint or why there is a long delay in making a complaint. Clauses 76 and 77 make clear that recent complaint evidence can be evidence of the incident complained of; not just evidence to support the credibility of the witness.

Part VI in clauses 85 to 88 includes rules of bail in sexual offences. The general rule is that where bail is applied for there are certain factors the court must consider in the exercise of its discretion. However, where the charge is a child sex offence or where the accused had a previous conviction of any sexual offence the onus shall be reversed and it shall be the accused who has to satisfy the court that it is in the interest of justice for him to be granted bail.

Clause 88 provides that the police is to notify the victim if and when the accused is released on bail and provides the means by which this is to be done.

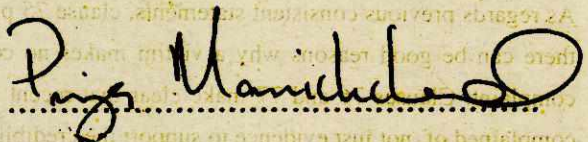
As regards sentencing, Part VII in clause 89 provides for the various types of orders that can be made upon the conviction of an accused person. In addition to the prescribed penalties under specific offences, courts can now make other orders including orders for drug testing, HIV/AIDS testing, monetary compensation, protection and occupation orders, orders for counseling, etc.

Part VIII in section 90 makes it mandatory that a health worker shall report to the police a case where a child has been sexually abused and keep a record of having done so.

Part IX in clauses 91 to 96 sets out the framework for a national strategy to eradicate sexual violence. In considering prevention it is important to bear in mind that most sexual violence is committed by a person known to the victim, that the violence often takes place at the home of the victim or the accused, that most victims are female, and that children — boys and girls, young women, and women in poor or rural areas are particularly vulnerable. These clauses require the establishment of a National Task Force for Prevention of Sexual Violence with named members and the establishment of a sexual violence unit.

Part X deals with miscellaneous matters. Clause 97 empowers the making of Rules of Court and also empowers the Minister to make regulations. Clause 98 deals with the laws to be applied in relation to this Act. Clause 99 specifies how laws inconsistent with this Act shall be treated. Clause 100 deals with repeals and savings.

The First Schedule deals with paper committals, the Second Schedule provides the procedure to determine evidence of sexual activity where the complainant is over or under sixteen years of age and the Third Schedule mentions the laws that are repealed.



Hon. Minister of Human Services and Social Security

Ms. Priya Manickchand MP