

THE SEXUAL OFFENCES (AMENDMENT) ACT 2022

A BILL FOR AN ACT TO AMEND THE SEXUAL OFFENCES ACT TO ESTABLISH MARITAL RAPE AS A SEXUAL OFFENCE AND FOR CONNECTED MATTERS.

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Sexual Offences Act (*Ch. 99*), hereinafter “the principal Act”, may be cited as the Sexual Offences (Amendment) Act, 2022.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended-

- (a) by deleting the definition of “**consent**” included in the definitions which begin with the definition of “abetment”;
 - (b) by deleting the definition of “**sexual offence**” and substituting the following-
“**sexual offence**” means any offence under sections 6, 10-14, or 16 of this Act;”;
 - (c) by inserting the following definitions in their correct alphabetical order-
“**aggravating circumstances**” means the circumstances which accompany the commission of any offence under sections 7 (1), 8(2), 10-14, 16 or 17 of this Act, and include –
 - (a) the use of drugs;
 - (b) the use or threat of use of a weapon;
 - (c) the use or threat of use of violence;
 - (d) the infliction of mental or physical injury on the victim as a result of the offence;
 - (e) a repeat of an offence under section 7(1),8(2),10-14, 16 or 17 on the victim.”
- “**consent**” means the active agreement to sexual intercourse or to indecent assault, given expressly and freely, by overt acts, or words, indicating agreement by a person, who has the capacity or legal ability to consent;”;

“**indecent assault**” means an assault against another person where it is established that -

- (a) the accused-
 - (i) touches a person in a sexual way;
 - (ii) causes a person to touch him in a sexual way;
 - (iii) causes a person to touch a third party in a sexual way;
 - (iv) initiates any other sexual contact other than an act of sexual intercourse with another person;
 - (v) exposes himself to any person in a way which offends against public decency;
 - (vi) otherwise assaults another person in indecent circumstances; or
 - (vii) does anything to another person with the consent of that other person, which, but for the consent, would be an indecent assault, such consent being obtained by false and fraudulent representation as to the nature and quality of the act; and
 - (viii) does not reasonably believe that a person consents to the act of indecency;
- (b) the person assaulted, does not consent to the touching or other act which would constitute an indecent assault.

3. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is repealed and replaced by the following –

“3. Definition of rape.

Rape is the act of any person not under fourteen years of age having sexual intercourse with another person without the consent of that person where he knows that person does not consent or is reckless as to whether the person consents.

4. Insertion of a new section 3A into the principal Act

The principal Act is amended by inserting into the principal Act, the following as section 3A –

“3A. Provisions applicable to consent in sexual offences and indecent assault

- (1) A person shall not be deemed to have given consent to sexual intercourse or indecent assault, where the consent is –
 - (a) extorted by threat or fear of bodily harm to the person or to another person;
 - (b) obtained by impersonating the spouse or other person personally known to the person;

- (c) expressed by the words or conduct of another person;
 - (d) induced by abusing a position of trust, power or authority;
 - (e) given by the person originally, but withdrawn by express words or conduct and not replaced by any agreement to engage in sexual intercourse or an indecent assault;
 - (f) obtained by administering a substance without the person's consent capable of causing or enabling that person to be stupefied, put to sleep, and/ or, overpowered at the time of the act of sexual intercourse or indecent assault;
 - (g) obtained by a pattern of behavior which has the effect on that person of coercing, controlling, exploiting or limiting access to financial resources."
- (2) Consent, and the accused's belief that the person with whom he is alleged to have had sexual intercourse, or who he is alleged to have indecently assaulted, consented, shall not be inferred by-
- (a) reason of silence or lack of physical resistance on the part of that person; or
 - (b) reason of sexual arousal on the part of that person.
- (3) Whether a belief is reasonable, is to be determined having regard to all the circumstances including any steps the accused took to ascertain whether the person he had sexual intercourse with, or indecently assaulted, was consenting.
- (4) It is not a defence to a charge of a sexual offence or indecent assault, that the accused believed that the person consented to sexual intercourse or indecent assault, where –
- (a) his belief arose from his self- induced intoxication, recklessness or willful blindness;
 - (b) he did not take reasonable steps in the circumstances known to him at the time, to ascertain whether the person was consenting.
- (5) For the purposes of sections 5D, 6, 10 to 14, 16, and 17, the provisions of this section shall apply.
- (6) Nothing in this section shall be construed as limiting the circumstances in which consent may amount to no consent.

4. Amendment of section 5 D-of the principal Act.

Section 5D of the principal Act is repealed and replaced by the following-

“5 D. Indecent assault

- (1) A person who indecently assaults another, commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three years.
- (2) Subject to subsection (3), the provisions of section 3A shall apply *mutatis mutandis* to the issue of consent in this section.
- (3) It is no defence to a charge of indecent assault committed on a person under fourteen years of age, to prove that the complainant consented to the act of indecency.”

5. Amendment of section 7 of the principal Act.

Section 7 of the principal Act is repealed and replaced by the following –

“ 7. Procuration.

Any person who-

- (a) whether by electronic means or otherwise-
 - (i) procures or attempts to procure any person under eighteen years of age to have unlawful intercourse with him or with any other person, either in or outside The Bahamas;
 - (ii) procures or attempts to procure any person to become a common prostitute, either inside or outside The Bahamas,;
 - (iii) procures or attempts to procure any person to leave The Bahamas with intent that the person shall become an inmate of, or frequent, a brothel elsewhere;
 - (iv) procures or attempts to procure any person to leave his usual place of abode in The Bahamas with intent that he shall, for the purposes of prostitution, become an inmate of, or frequent, a brothel either inside or outside The Bahamas;
 - (v) by threats of intimidation, procures or attempts to procure any person to have unlawful sexual intercourse with him or any other person either inside or outside The Bahamas;
 - (vi) by false pretences or false representations, procures any person to have unlawful sexual intercourse with him or with any other person either inside or outside The Bahamas; or
- (b) applies, administers, or causes to be taken by any person, any drug, matter, or thing with intent to stupefy or overpower that person, to enable himself or any other person to have unlawful sexual intercourse with that person,
commits an offence and is liable on conviction to a term of imprisonment not exceeding fifteen years.”

6. Amendment of section 15 of the principal Act.

Section 15 of the principal Act is repealed and replaced by the following –

“15. Aggravated sexual offences.

Any person who commits a sexual offence other than rape, which is accompanied by any aggravating circumstance, is liable on conviction on information to a term of imprisonment not exceeding twenty years.”

7. Amendment of section 17 of the principal Act.

Section 17 of the principal Act is repealed and replaced by the following—

“17. Indecent assault.

- (1) A person who indecently assaults another, commits an offence and is liable on conviction on information to imprisonment for a term not exceeding eight years.
- (2) The provisions of section 3A shall apply *mutatis mutandis* to the issue of consent in this section.
- (3) It is no defence to a charge of indecent assault committed on a person under fourteen years of age, to prove that the complainant consented to the act of indecency.