

[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

21st July, 1995.

ANTIGUA AND BARBUDA

No. 9 of 1995

AN ACT to repeal and replace the laws of Antigua and Barbuda relating to sexual crimes, to the procuration, abduction and prostitution of persons and to kindred offences.

[2nd November, 1995]

ENACTED by the Parliament of Antigua and Barbuda as follows —

PART I

PRELIMINARY

1. This Act ~~may~~ be cited as the **Sexual Offences Act, 1995.** **Short title.**
2. In this Act — **Interpretation.**
 - "adult" means a person who is eighteen years of age or more;
 - "brothel" means a place resorted to by persons of either sex for the purpose of prostitution;
 - "minor" means a person under eighteen years of age;

"prostitute" means a person of either sex who engages in prostitution;

"prostitution" means the offering of the body by a person of either sex for the purpose of arousing or gratifying the sexual desire of another for payment in return.

PART II

OFFENCES AND THE PROSECUTION AND PUNISHMENT OF OFFENCES

Rape.

3. (1) A male person commits the offence of rape when he has sexual intercourse with a female person who is not his wife either —

- (a) without her consent where he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it; or
- (b) with her consent where the consent —
 - (i) is extorted by threats or fear of bodily harm to her or to another; or
 - (ii) is obtained by impersonating her husband; or
 - (iii) is obtained by false and fraudulent representations as to the nature of the act.

(2) A male person who commits the offence of rape is liable on conviction to imprisonment for life.

Sexual assault by a husband in certain circumstances.

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

- (i) a *decree nisi* of divorce;
- (ii) a decree of judicial separation;

(iii) a separation agreement; or

(iv) an order for ~~the husband~~ not to molest his wife or have sexual intercourse with her.

(2) A husband who commits the offence of sexual assault is liable on conviction to imprisonment for fifteen years.

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

5. (1) Where a male person has sexual intercourse with a female person who is under the age of fourteen years, he is guilty of an offence, whether or not the female person consented to the intercourse or whether or not at the time of the intercourse he believed her to be fourteen years of age or more, and is liable on conviction to imprisonment for life.

Sexual intercourse with a female under fourteen.

(2) Where a marriage is invalid under section 61 of the Marriage Act, the invalidity does not make the husband guilty of an offence **under** this section because he has **sexual** intercourse with his wife, if he believes her to be his wife and has reasonable cause for the belief.

Cap. 347.

6. (1) Where a male person has sexual intercourse with a female person who is not his wife with her consent and who has attained the age of fourteen years but has not yet attained the age of sixteen years, he is guilty of an offence, and is liable on conviction to imprisonment for ten years.

sexual intercourse with female between fourteen and sixteen.

(2) A male person is not guilty of an offence under subsection (1) —

(a) if he honestly believed **that** the female person was sixteen years of age or more; or

(b) if the male person is not more than three years older than the female person and the court is of the opinion that the evidence discloses that as between the male person and the female person, the male person is not wholly or substantially to blame.

7. (1) Where a female adult has **sexual** intercourse with a **male** person who is not her husband and who is under the age of sixteen

sexual intercourse with male under sixteen.

years, she is guilty of an offence, whether or not the male person consented to the intercourse, and is liable on conviction to imprisonment for seven years.

(2) A female adult is not guilty of an offence under subsection (1) —

- (a) if she honestly believed that the male person was sixteen years of age or more; or
- (b) if the female adult is not more than three years older than the male person and the court is of the opinion that evidence discloses that as between the female adult and the male person, the female adult is not wholly or substantially to blame.

Incest.

8. (1) A person commits the offences of incest knowing that another person is by blood relationship, his or her parent, child brother, sister, grandparent, grandchild, uncle, niece, aunt or nephew, as the case may be, has sexual intercourse with that person.

(2) It is immaterial that sexual intercourse referred to under subsection (1) was had with the consent of the person.

(3) A person who commits the offence of incest is liable on conviction to imprisonment —

- (a) for life, if committed by an adult with a person under fourteen years of age;
- (b) for fifteen years, if committed by an adult with a person fourteen years of age or more;
- (c) for two years, if committed between minors fourteen years of age or more.

(4) A person is not guilty of an offence under this section if that person committed the offence under restraint, duress or fear.

(5) In this section, any expression importing a relationship between two persons shall be taken to apply notwithstanding that the relationship is not traced through lawful wedlock, and "brother" includes half-brother and "sister" includes half-sister.

9. (1) An adult who has sexual intercourse with a minor who is the adult's adopted child, step-child, foster child ward or dependant in the adult's custody is guilty of an offence.

Sexual intercourse with adopted minor, etc.

(2) An adult who commits an offence under this section is liable on conviction to imprisonment —

- (a) for life, if committed with a minor under fourteen years of age;
- (b) for fifteen years, if committed with a minor fourteen years of age or more.

10. (1) An adult who has sexual intercourse with a minor who —

sexual intercourse with minor employee.

- (a) is in the adult's employment; or
- (b) is in respect of any employment or work under or in any way subject to the adult's control or direction; or
- (c) receives his or her wages or salary directly or indirectly from the adult,

is guilty of an offence and is liable on conviction to imprisonment for ten years.

(2) For the purposes of subsection (1) it is not a defence for the adult to prove that the minor employee consented to the intercourse.

(3) An adult shall not be guilty of an offence under this section if the minor is the spouse of the adult.

11. (1) Where a person under circumstances that do not amount to rape has sexual intercourse with another who is mentally subnormal and who is not the person's spouse, that person is guilty of an offence and is liable on conviction to imprisonment for fifteen years.

Sexual intercourse with mentally subnormal person.

(2) It is a defence for that person to prove that he did not know and had no reason to believe that the other person was mentally subnormal.

(3) In this section "mentally subnormal" means state of arrested or incomplete development of mind which includes a significant **impairment of intelligence** and social functioning and is irresponsible conduct on the part of the person concerned.

(4) No proceedings for an offence under this section shall be **instituted** except by or with the consent of **the Director of Public Prosecutions** who shall have regard *inter alia* as to whether **or not** any abuse in relation to the mentally **subnormal** person has been committed.

Buggery.

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

- (a) for life, if committed by an adult on a minor;
- (b) for fifteen years, if committed by an adult on another adult;
- (c) for five years, if **committed** by a minor.

(2) In this section "buggery" means sexual intercourse *per anum* by a male person with a male person or by a male person with a female person.

Bestiality.

13. (1) **A person who commits bestiality** is guilty of an offence and is liable on conviction to imprisonment for ten years.

(2) In **this** section "bestiality" means sexual intercourse *per m u m* **or** *per vaginum* by a male or female person with an animal.

Indecent assault.

14. (1) A person who indecently assaults another is guilty of an offence and is liable on conviction to imprisonment for five **years**.

(2) A person under the age of sixteen years cannot in law give any consent which would prevent **an** act being an assault for purposes of this section.

(3) In this section, "indecent assault" means an assault accompanied by words or circumstances indicating an indecent intention.

15. (1) A person who **commits** an act of serious **indecenty** on or towards another is guilty of an offence and is liable on conviction to **imprisonment** — Serious indecenty.

- (a) for ten years, if committed on or towards a minor under sixteen years of age;
- (b) for five years, if **committed on** or towards a person sixteen years of age **or** more,

(2) **Subsection (1) does not apply** to an act of serious indecenty **committed in private** between —

- (a) a husband and his wife; or
- (b) a male person and a female person each of whom is sixteen years of age or more;

both of whom consent to the commission of the act.

(3) An act of "serious indecenty" is an act, other than sexual intercourse (whether natural or unnatural), by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual & sire.

16. A **person who** —

Procuration.

- (a) procures a minor **under** sixteen years of age to have sexual **intercourse** with any person either in Antigua and Barbuda or elsewhere; or
- (b) procures another for prostitution, whether or not the person procured is already a prostitute, either in Antigua and Barbuda or elsewhere; or
- (c) procures another person to become an inmate, whether or not the person procured is already an inmate elsewhere, of or to frequent a brothel either in Antigua and Barbuda or elsewhere,

is guilty of an offence and is liable on conviction to imprisonment for fifteen years.

17. A **person who** —

Procuring
defilement of a
person.

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- (a) by threats or intimidation procures another to have sexual intercourse with any person either in Antigua and Barbuda or elsewhere; or
- (b) by deception procures another to have sexual intercourse with any person either in Antigua and Barbuda or elsewhere; or
- (c) applies, administers to or cause to be taken by any person any drug, matter or thing with intent to stupefy or overpower that person so as thereby to enable any other person to have sexual intercourse with that person,

is guilty of an offence and is liable on conviction to imprisonment for fifteen years.

Detention of a
person.

18. (1) A person who detains another against that other's will —

- (a) in or upon any premises with intent that the person detained may have sexual intercourse with any person; or
- (b) in any brothel,

is guilty of an offence and is liable on conviction to imprisonment for ten years.

(2) A magistrate who is satisfied upon oath that there is reasonable ground for believing that a person is unlawfully detained in any place for immoral purposes, may issue a warrant authorising any constable to enter (if need be by force) and search any place specified in the warrant and to remove any person so detained and apprehend any person accused of the unlawful detention.

Abduction of a
female.

19. A person who takes away or detains a female person against her will with intent —

- (a) to marry her or to have sexual intercourse with her; or
- (b) to cause her to marry or to have sexual intercourse with a male person,

is guilty of an offence **and** is liable on conviction to imprisonment for ten years.

20. (1) A person who —

- (a) being the owner, occupier or manager of premises; or
- (b) having control of premises or assisting in the management or control of premises,

Householder, etc.
permitting
defilement of a
minor under
sixteen years of
age.

permits a minor under sixteen years of age to resort to or to be in or upon the premises for the purpose of having sexual **intercourse** with any person **is** guilty of an offence and is liable on conviction to imprisonment for ten years.

(2) It is a defence for a person charged under this section to prove that he did not know or had no reason to believe or suspect that the minor **was under** the age of sixteen years.

(3) A person shall not be charged for an offence under this section if the minor is the spouse of that person.

21. A person who —

- (a) **keeps** or manages or acts or assists in the management of a brothel; or
- (b) being the tenant, lessee, occupier or person in charge of any premises, knowingly permits the **premises** or any **part** thereof to be **used as** a brothel or for the purposes of prostitution; **or**
- (c) being ~~the~~ lessor **or** landlord of any premises, or the agent of the lessor **or** landlord, lets the same or any **part** thereof with the **knowledge that** the premises or some part thereof are or is to be used **as** a brothel, or is wilfully a party to the **continued use of** the premises or any part thereof **as** a brothel,

Prohibition of
brothel.

is guilty of an offence and is liable **on** summary conviction to a fine of \$10,000 and to imprisonment for five years.

22. (1) A person who —

Persons living on
earnings of
prostitution.

(a) knowingly lives wholly or in part on the earnings of prostitution, or

(b) in any place solicits for immoral purposes,

is guilty of an offence and is liable on conviction to imprisonment for five years.

(2) If it appears to any Magistrate, by complaint on oath, that there is reason to suspect that any premises is used for purposes of prostitution and that any person residing in or frequenting the premises is living wholly or in part on the earnings of prostitution, the Magistrate may issue a warrant authorising any constable to enter (if need be by force) and search the premises and to arrest that person.

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

PART III

SUPPLEMENTAL PROVISIONS

Sexual intercourse.

23. Where in any proceedings for an offence under this Act it is necessary to prove sexual intercourse (whether natural or unnatural) it shall not be necessary to prove the completion of the intercourse by the emission of seed but the intercourse shall be deemed complete upon proof of penetration only.

Divestment of authority.

24. Where at the trial of any offence under this Act, it is proved to the satisfaction of the Court that the defilement of a minor has been caused, encouraged or favoured by the minor's father, mother, guardian or any other person who has lawful care or charge of the minor, the court may divest such person of all authority over the minor and appoint any other suitable person willing to take charge of the minor to be the guardian until the

minor becomes an adult and the Court shall have power to vary from time to time or rescind such order.

25. If at a trial for an offence under this Act the jury has to consider whether a person believed that another was consenting to sexual intercourse or to any other sexual act, the judge shall direct the jury that the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether that person so believed. **consent.**

26. Any proceedings in respect of an offence under sections 3 and 4 or in any offence involving a minor shall be heard in camera unless the court otherwise directs. **Hearing in camera.**

27. (1) In proceedings in respect of an offence under this Act no evidence shall be adduced by or on behalf of the accused concerning the sexual activity of the complainant with any person other than the accused unless the Court, on an application made by or on behalf of the accused in the absence of the jury, thinks such evidence necessary for the fair trial of the accused. **Evidence concerning sexual activity and reputation.**

(2) Save as provided in subsection (1), no evidence of sexual reputation is admissible for the purpose of challenging or supporting the credibility of the complainant.

28. The Common Law rules relating to evidence of recent complaint in sexual offence cases are abolished. **Recent complaint.**

29. (1) After a person is accused of an offence under this Act, no matter likely to lead members of the public to identify a person as the complainant or as the accused in relation to that accusation shall either be published in Antigua and Barbuda in a written publication available to the public or be broadcast in Antigua and Barbuda except — **Anonymity of complainant and accused.**

- (a) where, on the application of the complainant or the accused, the Court directs that the effect or the restriction is to impose a substantial and unreasonable restriction on the reporting of proceedings and that it is in the public interest to remove the restriction in respect of the applicant; or
- (b) in the case of an accused, after he has been tried and convicted of the offence.

(2) A person who publishes or broadcasts any matter contrary to subsection (1) is guilty of an offence and liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for two years and upon conviction on indictment to a fine of twenty-five thousand dollars and to imprisonment for five years.

(3) Subsection (2) refers to —

- (a) in the case of a publication in a newspaper or periodical, any proprietor, any editor and publisher of the newspaper or periodical;
- (b) in the case of any other publication, the person who publishes it; and
- (c) in the case of a broadcast, any body corporate which transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

(4) In subsection (1) —

"accused means —

- (a) a person named in an information laid alleging that that person has committed the offence;
- (b) a person who appear before a Court charged with the offences:

"complainant" includes in relation to a person accused of an offence under this Act, the person against whom the offence is alleged to have been committed.

Committal proceeding.

30. (1) A Magistrate's Court inquiring into an offence under this Act may, if satisfied that all the evidence before the court (whether for the prosecution or for the defence) consists of written statements tendered to the court under subsection (3), with or without exhibits, commit the accused for trial for the offence without consideration of the contents of those statements unless —

- (a) the accused or one of the accused is not represented by counsel or solicitor;
- (b) counsel or solicitor for the accused or one of the accused, as the case may be, has requested the court to consider a submission that the statements disclose insufficient evidence to put that accused on trial by jury for the offence.

(2) In committal proceedings a written statement by any person shall, if the conditions mentioned in subsection (3) are satisfied, be admissible as evidence to the like effect by that person.

(3) The conditions referred to in subsection (2) 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 knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
- (c) before that statement is tendered in evidence a copy of the statement is given, by or on behalf of the party proposing to tender it, to each of the parties to the proceedings; and
- (d) before the statement is tendered in evidence at the committal proceedings, none of the other parties objects to the statement being so tendered under this section.

(4) The following provisions also have effect in relation to any written statement tendered in evidence under this section, that is to say —

- (a) where the statement is made by a minor, it shall give his age;

- (b) where the statement is made by a person who cannot read, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and
- (c) where the statement refers to any other document as an exhibit, the copy given to any other party to the proceedings under paragraph (c) of subsection (3) 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 that document or a copy thereof.

Alternative verdict.

31. (1) If, upon the trial of any indictment for rape, or for an offence under section 4, the jury is satisfied that the defendant is guilty of an offence under section 7, 10 or 16, or of an indecent assault, but is not satisfied that the defendant is guilty of the offence charged in the indictment or of an attempt to commit the same, then and in every such case the jury may acquit the defendant of the offence and find him guilty of such offence as mentioned above or of an indecent assault. and thereupon the defendant is liable to be punished in the same manner as if he had been convicted upon an indictment for such offence as mentioned above or for the offence of indecent assault.

(2) If upon the trial of any indictment for incest by a person, the jury is satisfied that the defendant is guilty of an offence under section 4 or 10 or of an indecent assault but is not satisfied that the defendant is guilty of the charge of incest or of an attempt to commit the same then and in every such a case the jury may find him guilty of an offence under section 4 or 10 or of indecent assault as the case may be.

**Repeals and
amendments.
Cap. 21.**

32. (1) The Criminal Law Amendment Act is repealed.

(2) The enactments specified in the Schedule are amended in the manner specified therein.

Savings.

33. (1) Where immediately before the coming into operation of this Act —

- (a) any person has been charged or indicted under the repealed Act or amended law and such charge or

indictment has not been finally determined, such charge or indictment shall continue to be dealt with and completed or otherwise determined in all respects as if this Act had not been enacted; Cap.21

- (b) any order has been issued under the repealed Act or amended law, the validity of the order shall not be affected by the repeal of the Act or amended law and anything done or omitted after the repeal took effect which would have constituted an offence under the repealed Act or amended law if that Act or amended law had remained in force shall constitute an offence under that Act and be punishable accordingly.

(2) In this section "repealed Act or amended law" means the Criminal Law Amendment Act and any law amended or provision of any law repealed under section 33.

SCHEDULE

(Section 32)

Enactment.	Extent of Amendments
Female Lunatic (Protection) Act Cap. 30.	In section 3, by deleting the words, "two years" and substituting the words "twenty years"
O f f e n c e s against the Person Act, Cap. 58.	Repeal sections 46, 47, 48, 49, 50, 56, and 57.
Small Charges Act Cap. 77.	In section 18, by deleting the words "forty-eight dollars" wherever they occur and substituting the words "Twenty thousand dollars".
	In section 39,
	(a) by repealing subsections (1) and (2);
	(b) in subsection (3) by deleting the words "two months" and substituting the words "two years";
	(c) in subsection (4) by deleting the words "six months" and substituting the words "three years"; and

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(d) in subsection (5) by deleting the words "six months"
and substituting the words "two years".

Passed the House of Representatives
this 26th day of June, 1995.

Passed the Senate this 6th day of July,
1995.

B. Harris,
Speaker.

M. Percival,
President.

S. Walker,
Clerk to the House of Representatives.

S. Walker,
Clerk to the Senate.

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