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Trinidad and Tobago

SENATE

BILL

AN ACT to amend the Sexual Offences Act, Chap. 11:28

THE SEXUAL OFFENCES (AMENDMENT) BILL, 2024

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of this Bill is to amend the Sexual Offences Act, Chap. 11:28. The Bill contains seven clauses.

Clause 1 of the Bill would provide the short title of the Act for which this is the Bill.

Clause 2 of the Bill would provide that the Act shall come into operation on such date as is fixed by the President by Proclamation.

Clause 3 of the Bill would provide for the interpretation of the words “the Act” to mean the Sexual Offences Act, Chap. 11:28.

Clause 4 of the Bill would amend section 2 of the Act to insert definitions of certain terms such as “computer data”, “computer”, “device”, “internet service provider”, “intimate image”, “private act”, “private parts”, “sexual act” and “visual recording”. These terms are used in the new sections 22A to 22Q.

Clause 5 of the Bill would amend the Act by inserting after section 22, seventeen new sections. Section 22A would provide for the offence of voyeurism. This new section would provide, *inter alia*, that a person commits the offence of voyeurism where he observes another person doing a private act without the consent of the other person, in situations where the other person would have a reasonable expectation of privacy. The section would also provide that the voyeurism must be for the purpose of obtaining sexual gratification, or for the purpose of causing humiliation or distress to the other person.

The new section 22B would provide for the offence of taking and sharing, or threatening to share, intimate images without consent. This section would provide for five categories of offences: where an intimate image is taken and shared without consent, where an intimate image is taken and shared for the purpose of humiliating or causing distress to a person, or for the purpose of obtaining sexual gratification, where there are threats to share an intimate image, or where a person knowingly alters an image of a person to make it appear that the image of the depicted person is an intimate one.

The new section 22C would provide for the offence of sharing intimate images without consent, or in circumstances in which the depicted person had a reasonable expectation that he was doing a private act or that his intimate image would not be shared without his express permission.

The new section 22D would provide for exceptions with respect to law enforcement officers in the lawful exercise of their duty, or where the alleged acts are carried out for medical purposes, security monitoring, preventing or prosecuting crime, legal proceedings, the administration of justice and in the public interest.

The new section 22E would provide for the jurisdiction of the Courts in Trinidad and Tobago as it would relate to its territorial limits under the Act.

The new section 22F would empower a District Court Judge, Master or Registrar to authorise the search and seizure of apparatus and computer data necessary for establishing an offence or which has been acquired by a person as a result of the commission of an offence.

The new section 22G would empower a District Court Judge, Master or Registrar to order an internet service provider or other entity with a domain name server to remove or disable computer data that is being stored or transmitted in contravention of the Act.

The new section 22H would empower a District Court Judge, Master or Registrar to make a production order relating to computer data that is required for a criminal investigation or criminal proceedings.

The new section 22I empowers a District Court Judge, Master or Registrar to order the expedited preservation of computer data if he has reasonable grounds to believe that the data is susceptible to modifications.

The new section 22J would impose liability on an internet service provider who intentionally and without lawful excuse discloses the details of an Order of a Court.

The new section 22K would give authority to a District Court Judge, Master or Registrar, who has reasonable grounds to believe that data stored in a computer is required for a criminal investigation, to order the partial disclosure of traffic data.

The new section 22L would provide that a Judge may authorise a police officer to utilise remote forensic tools if he reasonably believes that evidence cannot be collected without the use of such tools.

The new 22M would provide for the Court to make an interim order, prohibiting the person charged from sharing the intimate image, pending the hearing and determination of the proceedings, if it appears necessary or appropriate to do so in order to ensure the safety and protection of the complainant.

The new 22N would provide that the Court may request a mental assessment report from a psychiatrist where it is of the view that an enquiry ought to be made into a person's mental condition before sentence is passed.

The new section 22O would provide for the Court to make additional orders such as a probation order or a community service order in addition to any other penalty that may be imposed.

The new section 22P would provide that a child does not commit an offence under section 22A, 22B or 22C where the Court would consider the conduct of the child acceptable given, *inter alia*, the nature of the image, the circumstances, the age and intellectual capacity of the child etc.

The new section 22Q would provide for the Court to order a person who has been convicted of an offence under sections 22A, 22B and 22C to pay compensation and to remove, retract, recover, delete or destroy any intimate image taken or shared by the person.

Clause 6 of the Bill would amend Schedule 2 of the Act to insert the new offences created under sections 22A, 22B and 22C of the Sexual Offences Act and under sections 44A, 44B and 44C of the Children Act as offences for which a person under the age of twelve years is incapable of committing.

Clause 7 of the Bill would insert a consequential amendment to the Children Act, Chap. 46:01 to include the offence of voyeurism in a new Part VIIIA as provided for in the proposed sections 22A to 22Q of the Sexual Offences Act.

THE SEXUAL OFFENCES (AMENDMENT) BILL, 2024

Arrangement of Clauses

Clause

1. Short title
2. Commencement
3. Interpretation
4. Section 2 amended
5. New sections inserted
6. Schedule 2 amended
7. Consequential amendments

BILL

AN ACT to amend the Sexual Offences Act, Chap. 11:28

[, 2024]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:

1. This Act may be cited as the Sexual Offences Short title
(Amendment) Act, 2024.
2. This Act comes into operation on such date as is Commencement
fixed by the President by Proclamation.
3. In this Act, “the Act” means the Sexual Offences Interpretation
Act. Chap. 11:28

Section 2 amended

4. Section 2 of the Act is amended by inserting the following definitions in the appropriate alphabetical sequence:

“apparatus” includes—

- (a) a computer or part of a computer; or
- (b) a computer data storage medium;

“computer” means any device or group of interconnected or related devices which follows a programme or external instruction to perform automatic processing of information or data;

“computer data” means any representation of—

- (a) facts;
- (b) concepts;
- (c) machine-readable code or instructions; or
- (d) information, including text, sound, image or video,

that is in a form suitable for processing in a computer and is capable of being sent, received or stored, and includes a program that can cause a computer to perform a function;

“computer data storage medium” means anything in which computer data is capable of being stored, or anything from which computer data is capable of being retrieved or reproduced, with or without the aid of a computer;

“device” means any electronic programmable apparatus used, whether by itself or as part of a computer network, an electronic communications network or any other apparatus or equipment, or any part

thereof, to perform pre-determined arithmetic, logical, routing or storage operations and includes—

- (a) an input device;
- (b) an output device;
- (c) a processing device;
- (d) a computer data storage medium;
- (e) a program; or
- (f) equipment,

that is related to, connected with or used with such a device or any part thereof;

“internet service provider” means—

- (a) any public or private entity that provides to users of its service the ability to communicate by means of a computer; or
- (b) any other entity that processes or stores computer data on behalf of such communication service or users of such service;

“intimate image” means a visual recording of a person that depicts—

- (a) the person engaged in a sexual act;
- (b) the person in a manner or context that is sexual; or
- (c) the private parts of the person;

“law enforcement officer” means—

- (a) a member of the prison service established under the Prison Service Act; Chap. 13:02
- (b) a police officer appointed under the Police Service Act; Chap. 15:01
- (c) a constable as defined under the Supplemental Police Act; Chap. 15:02

- Chap. 15:03 (d) a member of the Special Reserve Police appointed under the Special Reserve Police Act;
- Chap. 15:06 (e) an employee of the Strategic Services Agency established under the Strategic Services Agency Act;
- Chap. 25:04 (f) a member of the Municipal Police Service appointed under the Municipal Corporations Act; or
- (g) a member of any other agency of the State in which investigative and intelligence gathering powers, similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested;

“private act” means an act done by a person where the person is in a place which, in the circumstances, would reasonably be expected to provide privacy and—

- (a) the private parts of the person are fully or partially exposed or covered only with underwear;
- (b) the person is using the toilet, showering or bathing; or
- (c) the person is doing a sexual act;

“private parts” means—

- (a) the genitals, pubic area or buttocks of a person; or
- (b) the breasts of a female person, whether or not the breasts are sexually developed;

“remote forensic tools” means any software, programme or hardware installed on or attached to a computer in order to gain access to perform an investigation;

“sexual act” means an act which a reasonable person would, in all the circumstances but regardless of the purpose of a person, consider to be sexual;

“share” means—

- (a) publish, distribute, transmit, stream, sell, make available or advertise;
- (b) sharing online, including on websites, via email, live-streaming or through private messaging services;
- (c) sharing offline, including through the post or distribution by hand; or
- (d) showing to another person, including images stored on a device or printed copies;

“traffic data” means computer data that—

- (a) relates to a communication by means of a computer;
- (b) is generated by a computer that is part of the chain of communications; and
- (c) shows the communication’s origin, destination, route, time, date, size, duration or the type of underlying services,

and references to traffic data being attached to a communication include references to the data and the communications being logically associated with each other;

“visual recording” means a—

- (a) photograph or film;
- (b) video recording; or

(c) live-stream,
 on any medium from which a still or
 moving image may be produced or
 transmitted by any means, whether or not
 accompanied by a soundtrack;”.

New sections
 inserted

5. The Act is amended by inserting after section 22,
 the following sections:

“Voyeurism 22A. (1) Subject to section 22D, a
 person commits the offence of voyeurism
 if, for the purpose of obtaining sexual
 gratification for himself or another
 person, or causing humiliation or distress
 to a person, he knowingly—

(a) observes, whether with or without
 the use of a device, that person
 doing a private act and he
 knows or is reckless as to
 whether the person does not
 consent to being observed;

(b) observes, whether with or without
 the use of a device, beneath the
 clothing of that person and does
 so—

(i) with the intention of
 enabling himself or
 another person to
 observe—

(A) the private
 parts of
 that person,
 whether fully
 or partially
 exposed or
 covered with
 underwear; or

(B) the underwear covering the private parts of that person; and

(ii) without the consent of that person, or he is reckless as to whether the person consents to being observed; or

(c) takes, captures, records, streams, stores, publishes or transmits through a device or computer, a visual recording of the private parts of a person without the consent of that person, or is reckless as to whether the person consents, in circumstances in which that person has a reasonable expectation that he was doing a private act.

(2) A person who commits an offence under subsection (1) is liable on—

(a) summary conviction to a fine of five hundred thousand dollars and to imprisonment for three years; or

(b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

Taking and sharing of an intimate image without consent

22B. (1) Subject to section 22D, a person commits an offence if—

(a) he knowingly takes and shares an intimate image of another person without the

consent of the depicted person for the taking and sharing of the intimate image or is reckless as to whether the depicted person consents;

- (b) for the purpose of causing humiliation or distress to another person, he knowingly takes and shares an intimate image of that person without the consent of the depicted person or is reckless as to whether the depicted person consents;
- (c) for the purpose of obtaining sexual gratification for himself or another person, he knowingly takes and shares an intimate image of a person without the consent of the depicted person or is reckless as to whether the depicted person consents;
- (d) he knowingly threatens to share an intimate image of another person in circumstances in which he intends to cause the depicted person to fear that the threat will be carried out or he is reckless as to whether the depicted person will fear that the threat will be carried out;
or
- (e) he knowingly alters an image of a person to make it appear that the image of the depicted person is an intimate image

and shares that altered image without the consent of the depicted person or is reckless as to whether the depicted person consents.

(2) A person who commits an offence under subsection (1) is liable on—

- (a) summary conviction to a fine of five hundred thousand dollars and to imprisonment for three years; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

Sharing an
intimate
image

22C. (1) Subject to section 22D, a person commits an offence if he knowingly shares an intimate image of a depicted person—

- (a) without the consent of the depicted person or is reckless as to whether the depicted person consents; or
- (b) in circumstances in which the depicted person has a reasonable expectation that—
 - (i) he was doing a private act;
 - (ii) his private parts would not be visible to the public; or
 - (iii) his intimate image would not be shared without his express permission,

regardless of whether the intimate image of the depicted person was taken in a public or private place.

(2) A person who commits an offence under subsection (1) is liable on—

- (a) summary conviction to a fine of five hundred thousand dollars and to imprisonment for three years; or
- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

Exemptions

22D. (1) For the purposes of section 22A, 22B or 22C a person does not commit an offence if the act that is alleged to constitute the offence is—

- (a) performed by a law enforcement officer in the lawful execution of his duty;
- (b) carried out by an authorised person for medical, forensic, scientific or educational purposes;
- (c) carried out for the purposes of security monitoring—
 - (i) by a person monitoring his home; or
 - (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;

- (d) an act that the person reasonably believed was necessary for the purposes of—
- (i) preventing, detecting, investigating or prosecuting crime;
 - (ii) legal proceedings; or
 - (iii) the administration of justice; or
- (e) in the public interest.

(2) For the purposes of section 22A, 22B or 22C a person does not commit an offence if he shares an intimate image with a professional legal adviser—

- (a) in connection with the giving by the legal adviser of legal advice to the person;
- (b) in contemplation of, or in connection with, legal proceedings; or
- (c) for the purpose of legal proceedings.

(3) For the purposes of section 22A, 22B or 22C a professional legal adviser does not commit an offence if he shares an intimate image or other matter—

- (a) with, or with a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or
- (b) with any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(4) Subsection (3) does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose.

(5) For the purposes of section 22A, 22B or 22C and subject to subsection (6), an internet service provider is not liable for—

- (a) monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or
- (b) actively seeking facts or circumstances which would indicate illegal activity in order to avoid criminal liability under this Act.

(6) Notwithstanding subsection (5), an internet service provider shall comply with any court order, injunction, or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement under section 22A, 22B or 22C.

Jurisdiction

22E. (1) A Court in Trinidad and Tobago shall have jurisdiction in respect of an offence under section 22A, 22B or 22C where the act constituting the offence is carried out—

- (a) wholly or partly in Trinidad and Tobago;

(b) by a citizen of Trinidad and Tobago, whether in Trinidad and Tobago or elsewhere; or

(c) by a person on board a vessel or aircraft registered in Trinidad and Tobago.

(2) For the purpose of subsection (1)(a), an act is carried out in Trinidad and Tobago if—

(a) the person is in Trinidad and Tobago at the time when the act is committed;

(b) a computer located in Trinidad and Tobago or computer data on a computer data storage device located in Trinidad and Tobago is affected by the act; or

(c) the effect of the act, or the damage resulting from the act, occurs within Trinidad and Tobago.

Search and
seizure

22F. (1) A District Court Judge, Master or Registrar who is satisfied on the basis of information on oath by a police officer that there is reasonable ground for believing that there is in any building, aircraft, vessel, vehicle, box, receptacle, computer, device or place, an apparatus or computer data—

(a) in respect of which an offence under section 22A, 22B or 22C has been or is suspected to have been committed;

- (b) which there is reasonable ground for believing will afford evidence as to the commission of an offence under section 22A, 22B or 22C; or
- (c) which there is reasonable ground for believing is intended to be used for the purpose of committing an offence under section 22A, 22B or 22C,

may at any time issue a warrant under his hand authorising a police officer, with such assistance as may be necessary, to search such building, aircraft, vessel, vehicle, box, receptacle, computer, device or place for any such apparatus or computer data and to seize and carry it before the District Court Judge, Master or Registrar issuing the warrant or some other District Court Judge, Master or Registrar, to be dealt with by him according to law.

(2) A warrant issued under this section may be issued and executed at any time and may be issued and executed on a Sunday.

(3) A police officer who undertakes a search under this section shall secure any apparatus and maintain the integrity of any computer data that is seized.

(4) When any such apparatus or computer data is seized and brought before a District Court Judge, Master or Registrar, he may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the

matter and if any person is committed for trial, he may order it to be further detained for the purpose of evidence on trial.

(5) Where a person is not committed for trial, the District Court Judge, Master or Registrar shall direct that the seized apparatus and computer data be restored to the person from whom it was taken unless he is authorised or required by law to dispose of it otherwise.

Order for
removal or
disablement
of data

22G. If a District Court Judge, Master or Registrar is satisfied on the basis of information on oath by a police officer that an internet service provider or any other entity with a domain name server is storing, transmitting or providing access to information in contravention of section 22A, 22B or 22C, he may order the internet service provider or other entity with a domain name server to immediately remove, or disable access to, the information.

Production
Order

22H. If a District Court Judge, Master or Registrar is satisfied on the basis of information on oath by a police officer that computer data, a printout or other information is reasonably required for the purpose of a criminal investigation or criminal proceedings, he may order—

- (a) a person in Trinidad and Tobago who is in control of an apparatus, to produce from the apparatus computer data or a printout or other intelligible output of the computer data; or

- (b) an internet service provider in Trinidad and Tobago to produce information about a person who subscribes to, or otherwise uses his service.

Expedited
preservation

22I. (1) A District Court Judge, Master or Registrar may, if satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above, that there are grounds to believe that computer data that is reasonably required for the purpose of a criminal investigation is vulnerable to loss or modification, authorise the police officer of the rank of Superintendent or above to require a person in control of the computer data, by notice in writing, to preserve the data for such period not exceeding ninety days as is stated in the notice.

(2) A District Court Judge, Master or Registrar may, on an *ex parte* application by a police officer of the rank of Superintendent or above, authorise an extension of the period referred to in subsection (1) by a further specified period not exceeding ninety days.

Disclosure of
details of an
order

22J. (1) If an order under section 22H or a notice under section 22I stipulates that confidentiality is to be maintained, a person who is the subject of the order or notice and who intentionally and without lawful excuse or justification discloses—

- (a) the fact that the order or notice has been made;
- (b) the details of the order or notice;

(c) anything done pursuant to the order or notice; or

(d) any data collected or recorded pursuant to the order,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

(a) on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or

(b) on conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for five years.

Disclosure of
traffic data

22K. If a District Court Judge, Master or Registrar is satisfied on the basis of information on oath by a police officer, that there are reasonable grounds to believe that computer data stored in an apparatus is reasonably required for the purpose of a criminal investigation into a data message, he may require a person to disclose sufficient traffic data about the data message to identify—

(a) the internet service provider; or

(b) the path,

through which the data message was transmitted.

Remote
forensic tools

22L. (1) If a Judge is satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above, that there are reasonable grounds to believe

that computer data which is required for the purpose of a criminal investigation into an offence under section 22A, 22B or 22C cannot be collected without the use of a remote forensic tool, the Judge may authorise a police officer of the rank of Superintendent or above, with such assistance as may be necessary, to utilise such tool for the investigation.

(2) An application made under subsection (1) shall contain the following information:

- (a) the name, and if possible, the address of the person who is suspected of committing the offence;
- (b) a description of the targeted computer;
- (c) a description of the required tool and the extent and duration of its utilisation; and
- (d) reason for the use of the tool.

(3) Where an application is made under subsection (1), the Judge may order an internet service provider to furnish at its own cost, such information, facilities or technical assistance as may be necessary to support the installation of the remote forensic tool.

(4) Where a remote forensic tool is utilised under this section—

- (a) modifications to a computer shall be limited to those that are necessary for the investigation;

- (b) modifications to a computer shall be undone, so far as possible, after the investigation; and
- (c) the following information shall be logged:
 - (i) the technical means used;
 - (ii) the time and date of the application;
 - (iii) the identification of the computer and details of the modification undertaken; and
 - (iv) the information obtained.

(5) The police officer responsible for a criminal investigation in which a remote forensic tool is utilised under this section shall ensure that any information obtained by the utilisation of the remote forensic tool is protected against modification, unauthorised deletion and unauthorised access.

(6) An authorisation that is granted under this section shall cease to apply where—

- (a) the computer data sought is collected;
- (b) there is no longer any reasonable ground for believing that the computer data sought exists; or
- (c) the conditions of the authorisation are no longer present.

(7) For the purpose of this section, “utilise” includes—

- (a) accessing a computer;
- (b) developing a remote forensic tool;
- (c) adopting a remote forensic tool; or
- (d) acquiring a remote forensic tool.

Court may
make interim
order

22M. (1) On an application by the complainant the Court may, upon being satisfied on a balance of probabilities, make an interim order prohibiting the person charged from sharing an intimate image pending the hearing and determination of the proceedings where—

- (a) that person has been charged with an offence under section 22A, 22B or 22C; and
- (b) it appears necessary or appropriate to do so in order to ensure the safety and protection of the complainant.

(2) An interim order may be made by the Court at any time either before or during the hearing of the proceedings whether or not the person charged—

- (a) is present at the proceedings;
or
- (b) has been given notice of the proceedings.

(3) An interim order may be made for such period of time as the Court considers necessary and may be extended pending the determination of the proceedings.

(4) A person who without reasonable excuse contravenes an order made under subsection (1) commits an offence and is liable on—

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

22N. Where a person is convicted of an offence under section 22A, 22B or 22C and the Court is of the view that an enquiry ought to be made into his mental condition before sentence is passed, the Court may request a mental assessment report from a psychiatrist.

Court may request mental assessment report

22O. (1) Where a person is convicted of an offence under section 22A, 22B or 22C the Court may, in addition to any other penalty that may be imposed, make the following orders:

Court may make additional orders

- (a) a probation order made under the Probation of Offenders Act; or
- (b) a community service order or a combination order made under the Community Service Orders Act.

Chap. 13:51

Chap. 13:06

(2) The Court in making an order under subsection (1) shall take into account—

- (a) the findings of the mental assessment report referred to in section 22N, where the report was requested;

- (b) the nature and gravity of the offence;
- (c) whether the offender has been charged or convicted of a registrable offence;
- (d) the risk of reoffending;
- (e) the risk of harm to the victim or any other person;
- (f) whether the victim was a child or a person with a mental disorder;
- (g) whether the offender was in a position of care, authority or supervision of the victim;
- (h) whether the employment and residence status of the offender are stable; and
- (i) any other compelling reasons in the circumstances of the case.

Considerations
regarding
liability of
child

22P. A child does not commit an offence under section 22A, 22B or 22C where the Court considers the conduct of the child acceptable, having regard to the following:

- (a) the nature and content of the intimate image;
- (b) the circumstances in which the intimate image was taken or shared;
- (c) the age, intellectual capacity, vulnerability or other relevant circumstances of the depicted person;
- (d) the degree to which the child's actions affect the privacy of the depicted person; and

- (e) the relationship between the child and the depicted person.

Order for
payment of
compensation
and
rectification

22Q. (1) Where a person is convicted of an offence under section 22A, 22B or 22C and the Court is satisfied that the complainant has suffered loss or damage as a result of the commission of the offence it may, in addition to any other penalty imposed, order the person convicted to—

- (a) pay a fixed sum as compensation to the complainant for the loss or damage caused, or likely to be caused, as a result of the commission of the offence, which shall be a charge on the property of the person so convicted; and
- (b) take reasonable actions to remove, retract, recover, delete or destroy any intimate image of the complainant which was taken or shared by the person within a period specified by the Court.

(2) An order made under subsection (1) shall—

- (a) be without prejudice to any other remedy which the complainant may have under any other law; and
- (b) not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order into account when it makes a further award.

(3) The Court may make an order under this section of its own motion or upon application of a person who has suffered damage as a result of the commission of the offence.

(4) A person who makes an application under subsection (3) shall do so before sentence is passed on the person against whom the order is sought.

(5) A person who, without reasonable excuse, contravenes an order made under subsection (1) commits an offence and is liable on—

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

Schedule 2 amended

6. Schedule 2 to the Act is amended—

(a) in paragraph (a), by inserting in the appropriate numerical sequence the following offences:

“22A Voyeurism.

22B Taking and sharing of an intimate image without consent.

22C Sharing an intimate image.”; and

(b) in paragraph (c), by inserting in the appropriate numerical sequence the following offences:

“44A Voyeurism.

44B Taking and sharing of an intimate image.

44C Sharing an intimate image.”.

7. The written law listed in the First Column of the Schedule is amended to the extent specified in the Second Column of that Schedule: ^{Consequential amendments}

SCHEDULE

(Section 7)

CONSEQUENTIAL AMENDMENTS

First Column

Second Column

The Children Act, Chap. 46:01 Insert after Part VIII, the following new Part:

“PART VIIIA

VOYEURISM

Voyeurism 44A. (1) Subject to section 44D, a person commits the offence of voyeurism if, for the purpose of obtaining sexual gratification for himself or another person, or causing humiliation or distress to a child, he knowingly—

(a) observes, whether with or without the use of a device, that child doing a private act;

(b) observes, whether with or without the use of a device, beneath the clothing of that child and does so with the intention of enabling himself or another person to observe—

(i) the private parts of that child, whether fully or partially exposed or covered with underwear; or

(ii) the underwear covering the private parts of that child; or

(c) takes, captures, records, streams, stores, publishes or transmits through a device or computer, a visual recording of the private parts of a child.

*First Column**Second Column*

(2) A person who commits an offence under subsection (1) is liable on—

(a) summary conviction to a fine of five hundred thousand dollars and to imprisonment for three years; or

(b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.

Taking and sharing of an intimate image 44B. (1) Subject to section 44D, a person commits an offence if—

(a) for the purpose of causing humiliation or distress to a child, he knowingly takes and shares an intimate image of that child;

(b) for the purpose of obtaining sexual gratification for himself or another person, he knowingly takes and shares an intimate image of a child;

(c) he knowingly threatens to share an intimate image of a child in circumstances in which he intends to cause the depicted child to fear that the threat will be carried out or he is reckless as to whether the depicted child will fear that the threat will be carried out; or

(d) he knowingly alters an image of a child to make it appear that the image of the depicted child is an intimate image and shares that altered image.

(2) A person who commits an offence under subsection (1) is liable on—

(a) summary conviction to a fine of five hundred thousand dollars and to imprisonment for three years; or

*First Column**Second Column*

- (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.
- Sharing an intimate image 44C. (1) Subject to section 44D, a person commits an offence if he knowingly shares an intimate image of a depicted child in circumstances in which—
- (a) the depicted child was doing a private act;
 - (b) the private parts of the depicted child were not visible to the public; or
 - (c) the parent, guardian or person with responsibility for the child has a reasonable expectation that the intimate image of the child would not be shared without their express permission,
- regardless of whether the intimate image of the depicted child was taken in a public or private place.
- (2) A person who commits an offence under subsection (1) is liable on—
- (a) summary conviction to a fine of five hundred thousand dollars and to imprisonment for three years; or
 - (b) conviction on indictment to a fine of seven hundred and fifty thousand dollars and to imprisonment for five years.
- Exemptions 44D. (1) For the purposes of section 44A, 44B or 44C a person does not commit an offence if the act that is alleged to constitute the offence is—
- (a) performed by a law enforcement officer in the lawful execution of his duty;
 - (b) carried out by an authorised person for medical, forensic, scientific or educational purposes;

*First Column**Second Column*

- (c) carried out for the purposes of security monitoring—
 - (i) by a person monitoring his home; or
 - (ii) in premises where there are signs prominently displayed informing persons that the premises or designated portions of the premises are under surveillance;
- (d) an act that the person reasonably believed was necessary for the purposes of—
 - (i) preventing, detecting, investigating or prosecuting crime;
 - (ii) legal proceedings; or
 - (iii) the administration of justice; or
- (e) in the public interest.

(2) For the purposes of section 44A, 44B or 44C a person does not commit an offence if he shares an intimate image with a professional legal adviser—

- (a) in connection with the giving by the legal adviser of legal advice to the person;
- (b) in contemplation of, or in connection with, legal proceedings; or
- (c) for the purpose of legal proceedings.

(3) For the purposes of section 44A, 44B or 44C a professional legal adviser does not commit an offence if he shares an intimate image or other matter—

- (a) with, or with a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or

*First Column**Second Column*

(b) with any person—

(i) in contemplation of,
or in connection with,
legal proceedings;
and

(ii) for the purpose of those
proceedings.

(4) Subsection (3) does not apply in relation to an intimate image or other matter which is shared with a view to furthering any criminal purpose.

(5) For the purposes of section 44A, 44B or 44C and subject to subsection (6), an internet service provider is not liable for—

(a) monitoring the information which it stores on behalf of another in order to ascertain whether its processing would constitute or give rise to liability under this Act; or

(b) actively seeking facts or circumstances which would indicate illegal activity in order to avoid criminal liability under this Act.

(6) Notwithstanding subsection (5), an internet service provider shall comply with any court order, injunction, or other legal requirement, which obliges the internet service provider to terminate or prevent an infringement under section 44A, 44B or 44C.

Jurisdiction 44E. (1) A Court in Trinidad and Tobago shall have jurisdiction in respect of an offence under section 44A, 44B or 44C where the act constituting the offence is carried out—

(a) wholly or partly in Trinidad and Tobago;

(b) by a citizen of Trinidad and Tobago, whether in Trinidad and Tobago or elsewhere; or

(c) by a person on board a vessel or aircraft registered in Trinidad and Tobago.

*First Column**Second Column*

(2) For the purpose of subsection (1)(a), an act is carried out in Trinidad and Tobago if—

- (a) the person is in Trinidad and Tobago at the time when the act is committed;
- (b) a computer located in Trinidad and Tobago or computer data on a computer data storage device located in Trinidad and Tobago is affected by the act; or
- (c) the effect of the act, or the damage resulting from the act, occurs within Trinidad and Tobago.

Search and
seizure

44F. (1) A District Court Judge, Master or Registrar who is satisfied on the basis of information on oath by a police officer that there is reasonable ground to believe that there is in any building, aircraft, vessel, vehicle, box, receptacle, computer, device or place, an apparatus or computer data—

- (a) in respect of which an offence under section 44A, 44B or 44C has been or is suspected to have been committed;
- (b) which there is reasonable ground for believing will afford evidence as to the commission of an offence under section 44A, 44B or 44C; or
- (c) which there is reasonable ground for believing is intended to be used for the purpose of committing an offence under section 44A, 44B or 44C,

may at any time issue a warrant under his hand authorising a police officer, with such assistance as may be necessary, to search such building, aircraft, vessel, vehicle, box, receptacle, computer, device or place for any such apparatus or computer data and to seize and carry it before the District Court

*First Column**Second Column*

Judge, Master or Registrar issuing the warrant or some other District Court Judge, Master or Registrar, to be dealt with by him according to law.

(2) A warrant issued under this section may be issued and executed at any time, and may be issued and executed on a Sunday.

(3) A police officer who undertakes a search under this section shall secure any apparatus and maintain the integrity of any computer data that is seized.

(4) When any such apparatus or computer data is seized and brought before a District Court Judge, Master or Registrar, he may detain it or cause it to be detained, taking reasonable care that it is preserved until the conclusion of the matter and if any person is committed for trial, he may order it further to be detained for the purpose of evidence on trial.

(5) Where a person is not committed for trial, the District Court Judge, Master or Registrar shall direct that the seized apparatus and computer data be restored to the person from whom it was taken unless he is authorised or required by law to dispose of it otherwise.

Order for
removal or
disablement
of data

44G. If a District Court Judge, Master or Registrar is satisfied on the basis of information on oath by a police officer that an internet service provider or any other entity with a domain name server is storing, transmitting or providing access to information in contravention of section 44A, 44B or 44C, he may order the internet service provider or other entity with a domain name server to immediately remove, or disable access to, the information.

Production
Order

44H. If a District Court Judge, Master or Registrar is satisfied on the basis of information on oath by a police officer that computer data, a printout or other information is reasonably required for the purpose of a criminal investigation or criminal proceedings, he may order—

- (a) a person in Trinidad and Tobago who is in control of an apparatus, to produce from the apparatus computer data or a printout or other intelligible output of the computer data; or

*First Column**Second Column*

- (b) an internet service provider in Trinidad and Tobago to produce information about a person who subscribes to, or otherwise uses his service.

Expedited
preserva-
tion

44I. (1) A District Court Judge, Master or Registrar may, if satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above, that there are grounds to believe that computer data that is reasonably required for the purpose of a criminal investigation is vulnerable to loss or modification, authorise the police officer of the rank of Superintendent or above, to require a person in control of the computer data, by notice in writing, to preserve the data for such period not exceeding ninety days as is stated in the notice.

(2) A District Court Judge, Master or Registrar may, on an *ex parte* application by a police officer of the rank of Superintendent or above, authorise an extension of the period referred to in subsection (1) by a further specified period not exceeding ninety days.

Disclosure
of details
of an order

44J. (1) If an order under section 44H or a notice under section 44I stipulates that confidentiality is to be maintained, a person who is the subject of the order or notice and who intentionally and without lawful excuse or justification discloses—

- (a) the fact that the order or notice has been made;
- (b) the details of the order or notice;
- (c) anything done pursuant to the order or notice; or
- (d) any data collected or recorded pursuant to the order,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or

*First Column**Second Column*

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

Disclosure
of traffic
data

44K. If a District Court Judge, Master or Registrar is satisfied on the basis of information on oath by a police officer, that there are reasonable grounds to believe that computer data stored in an apparatus is reasonably required for the purpose of a criminal investigation into a data message, he may require a person to disclose sufficient traffic data about the data message to identify—

- (a) the internet service provider;
or

- (b) the path,

through which the data message was transmitted.

Remote
forensic
tools

44L. (1) If a Judge is satisfied on an *ex parte* application by a police officer of the rank of Superintendent or above, that there are reasonable grounds to believe that computer data which is required for the purpose of a criminal investigation into an offence under section 44A, 44B or 44C cannot be collected without the use of a remote forensic tool, the Judge may authorise a police officer of the rank of Superintendent or above, with such assistance as may be necessary, to utilise such tool for the investigation.

(2) An application made under subsection (1) shall contain the following information:

- (a) the name, and if possible, the address of the person who is suspected of committing the offence;
- (b) a description of the targeted computer;
- (c) a description of the required tool and the extent and duration of its utilisation; and
- (d) reason for the use of the tool.

First Column *Second Column*

(3) Where an application is made under subsection (1), the Judge may order an internet service provider to furnish at its own cost, such information, facilities or technical assistance as may be necessary to support the installation of the remote forensic tool.

(4) Where a remote forensic tool is utilised under this section—

(a) modifications to a computer shall be limited to those that are necessary for the investigation;

(b) modifications to a computer shall be undone, so far as possible, after the investigation; and

(c) the following information shall be logged:

(i) the technical means used;

(ii) the time and date of the application;

(iii) the identification of the computer and details of the modification undertaken; and

(iv) the information obtained.

(5) The police officer responsible for a criminal investigation in which a remote forensic tool is utilised under this section shall ensure that any information obtained by the utilisation of the remote forensic tool is protected against modification, unauthorised deletion and unauthorised access.

(6) An authorisation that is granted under this section shall cease to apply where—

(a) the computer data sought is collected;

(b) there is no longer any reasonable ground for believing that the computer data sought exists; or

*First Column**Second Column*

(c) the conditions of the authorisation are no longer present.

(7) For the purpose of this section, “utilise” includes—

(a) accessing a computer;

(b) developing a remote forensic tool;

(c) adopting a remote forensic tool; or

(d) acquiring a remote forensic tool.

Order for
payment of
compensa-
tion and
rectifica-
tion

44M. (1) On an application by the complainant, the Court may, upon being satisfied on a balance of probabilities, make an interim order prohibiting the person charged from sharing the intimate image, pending the hearing and determination of the proceedings where—

(a) that person has been charged with an offence under section 44A, 44B or 44C; and

(b) it appears necessary or appropriate to do so in order to ensure the safety and protection of the complainant.

(2) An interim order may be made by the Court at any time either before or during the hearing of the proceedings whether or not the person charged—

(a) is present at the proceedings; or

(b) has been given notice of the proceedings.

(3) An interim order may be made for such period of time as the Court considers necessary and may be extended pending the determination of the proceedings.

(4) A person who without reasonable excuse contravenes an order made under subsection (1) commits an offence and is liable on—

(a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or

*First Column**Second Column*

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

Court may
make
Interim
Order

44N. Where a person is convicted of an offence under section 44A, 44B or 44C and the Court is of the view that an enquiry ought to be made into his mental condition before sentence is passed, the Court may request a mental assessment report from a psychiatrist.

Court may
request
mental
assessment
report

44O. (1) Where a person is convicted of an offence under section 44A, 44B or 44C the Court may, in addition to any other penalty that may be imposed, make the following orders:

Chap. 13:51

- (a) a probation order made under the Probation of Offenders Act; or

Chap. 13:06

- (b) a community service order or a combination order made under the Community Service Orders Act.

(2) The Court in making an order under subsection (1) shall take into account—

- (a) the findings of the mental assessment report referred to in section 44N, where the report was requested;
- (b) the nature and gravity of the offence;
- (c) whether the offender has been charged or convicted of a registrable offence;
- (d) the risk of reoffending;
- (e) the risk of harm to the victim or any other person;
- (f) whether the victim was a child or a person with a mental disorder;
- (g) whether the offender was in a position of care, authority or supervision of the victim;
- (h) whether the employment and residence status of the offender are stable; and

*First Column**Second Column*

- (i) any other compelling reasons in the circumstances of the case.
- Court may make additional orders
- 44P. (1) Where a person is convicted of an offence under section 44A, 44B or 44C and the Court is satisfied that the complainant has suffered loss or damage as a result of the commission of the offence it may, in addition to any other penalty imposed, order the person convicted to—
- (a) pay a fixed sum as compensation to the complainant for the loss or damage caused, or likely to be caused, as a result of the commission of the offence, which shall be a charge on the property of the person so convicted; and
 - (b) take reasonable actions to remove, retract, recover, delete or destroy any intimate image taken or shared by the person within a period specified by the Court.
- (2) An order made under subsection (1) shall—
- (a) be without prejudice to any other remedy which the complainant may have under any other law; and
 - (b) not deprive the complainant of the right to claim compensation in any other Court, save that the Court that awards further compensation may take the order into account when it makes a further award.
- (3) The Court may make an order under this section of its own motion or upon application of a person who has suffered damage as a result of the commission of the offence.
- (4) A person who makes an application under subsection (3) shall do so before sentence is passed on the person against whom the order is sought.

*First Column**Second Column*

(5) A person who, without reasonable excuse, contravenes an order made under subsection (1) commits an offence and is liable on—

(a) summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for two years; or

(b) conviction on indictment to a fine of five hundred thousand dollars and to imprisonment for five years.

Interpreta-
tion

44Q. For the purposes of this Part—

“apparatus” includes—

(a) a computer or part of a computer; or

(b) a computer data storage medium;

“computer” means any device or group of interconnected or related devices which follows a programme or external instruction to perform automatic processing of information or data;

“computer data” means any representation of—

(a) facts;

(b) concepts;

(c) machine-readable code or instructions; or

(d) information, including text, sound, image or video,

that is in a form suitable for processing in a computer and is capable of being sent, received or stored and includes a program that can cause a computer to perform a function;

“computer data storage medium” means anything in which computer data is capable of being

First Column *Second Column*

stored, or anything from which computer data is capable of being retrieved or reproduced, with or without the aid of a computer;

“device” means any electronic programmable apparatus used, whether by itself or as part of a computer network, an electronic communications network or any other apparatus or equipment, or any part thereof, to perform pre-determined arithmetic, logical, routing or storage operations and includes—

- (a) an input device;
- (b) an output device;
- (c) a processing device;
- (d) a computer data storage medium;
- (e) a program; or
- (f) equipment,

that is related to, connected with or used with such a device or any part thereof;

“internet service provider” means—

- (a) any public or private entity that provides to users of its service the ability to communicate by means of a computer; or
- (b) any other entity that processes or stores computer data on behalf of such communication service or users of such service;

“intimate image” means a visual recording of a child that depicts—

- (a) the child engaged in a sexual act;
- (b) the child in a manner or context that is sexual; or

*First Column**Second Column*

(c) the private parts of the child;

“law enforcement officer” means—

Chap. 13:02 (a) a member of the Prison Service established under the Prison Service Act;

Chap. 15:01 (b) a police officer appointed under the Police Service Act;

Chap. 15:02 (c) a constable as defined under the Supplemental Police Act;

Chap. 15:03 (d) a member of the Special Reserve Police appointed under the Special Reserve Police Act;

Chap. 15:06 (e) an employee of the Strategic Services Agency established under the Strategic Services Agency Act;

Chap. 25:04 (f) a member of the Municipal Police Service appointed under the Municipal Corporations Act; or

(g) a member of any other agency of the State in which investigative and intelligence gathering powers, similar to those exercisable by a police officer appointed under the Police Service Act, are lawfully vested;

“private act” means an act done by a child where the child is in a place which, in the circumstances, would reasonably be expected to provide privacy and—

(a) the private parts of the child are fully or partially exposed or covered only with underwear;

(b) the child is using the toilet, showering or bathing; or

First Column *Second Column*

- (c) the child is doing a sexual act;

“private parts” means—

- (a) the genitals, pubic area or buttocks of a child; or
 (b) the breasts of a female child, whether or not the breasts are sexually developed;

“remote forensic tools” means any software, programme or hardware installed on or attached to a computer in order to gain access to perform an investigation;

“sexual act” means an act which a reasonable person would, in all the circumstances but regardless of the purpose of a person, consider to be sexual;

“share” means—

- (a) publish, distribute, transmit, stream, sell, make available or advertise;
 (b) sharing online, including on websites, via email, live-streaming or through private messaging services;
 (c) sharing offline, including through the post or distribution by hand; or
 (d) showing to another person, including images stored on a device or printed copies;

“traffic data” means computer data that—

- (a) relates to a communication by means of a computer;
 (b) is generated by a computer that is part of the chain of communication; and
 (c) shows the communication’s origin, destination, route, time, date, size, duration or the type of underlying services,

First Column

Second Column

and references to traffic data being attached to a communication include references to the data and the communication being logically associated with each other;

“visual recording” means a—

- (a) photograph or film;
- (b) video recording; or
- (c) live-stream,

on any medium from which a still or moving image may be produced or transmitted by any means, whether or not accompanied by a soundtrack.”.

Passed in the Senate this _____ day of _____, 2024.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this _____ day of _____, 2024.

Clerk of the House

I confirm the above.

Speaker

No. 1 of 2024

FOURTH SESSION
TWELFTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Sexual Offences
Act, Chap. 11:28

Received and read the

First time

Second time

Third time