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COMMONWEALTH OF DOMINICA

ACT NO. 1 OF 1998

I assent



C.A. SORHAINDO
President.

22nd April, 1998.

AN ACT TO REVISE AND REFORM THE LAW RELATING TO
SEXUAL OFFENCES.

(Gazetted 30th April, 1998.)

BE IT ENACTED by the Parliament of the Commonwealth of
Dominica as follows:

PRELIMINARY

1. This Act may be cited as the –

SEXUAL OFFENCES ACT 1998.

Short title.

Interpretation.

2. (1) In this Act –

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

“brothel” means a place resorted to by persons of either sex for the purpose of prostitution;

“minor” means, subject to section 34, a person under the age of eighteen years;

“spouse” means lawful husband or wife as the case may be.

(2) For the purposes of this Act sexual intercourse shall be deemed complete upon proof of penetration of the vagina, to any extent, by the penis.

PART I

SEXUAL OFFENCES

Rape.

3. (1) Any person who has sexual intercourse with another –

(a) without the consent of the other person; or

(b) without believing that the other person consents to such intercourse or is reckless as to whether the other person consents or not,

is guilty of the offence of rape and liable on conviction to imprisonment for twenty-five years.

(2) For the purposes of subsection (1), consent is not obtained where the complainant submits or does not resist by reason of –

(a) the application of force to the complainant or to any other person;

(b) threats or fear of the application of force to the complainant or to any other person;

(c) the personation of the spouse of the complainant;

(d) false and fraudulent representations as to the nature of the act;

(e) the use of the accused's position of authority over the complainant;

- (f) the administration to the complainant of a drug, matter or thing, with intent to stupefy or overpower the complainant or causing the complainant to take the same with intent to stupefy or overpower the complainant; or

- (g) intimidation of any kind.

(3) A husband is guilty of the offence of rape where he has sexual intercourse with his wife without her consent by force, fear or the use of a drug or thing with intent to stupefy or overpower her, where there is in existence in relation to them –

- (a) a *decree nisi* of divorce;
- (b) a decree of judicial separation;
- (c) a separation agreement; or
- (d) an order for the husband not to molest his wife or have sexual intercourse with her.

(4) The provisions of subsection (3) apply *mutatis mutandis* to a wife who commits the offence of rape.

(5) A husband or wife who is guilty of the offence of rape is liable on conviction to imprisonment for fourteen years.

(6) Notwithstanding section 35, a person under the age of fourteen years is deemed incapable of committing the offence of rape.

4. (1) A person is guilty of the offence of unlawful sexual connection with another person if that person has sexual connection with that other person –

Unlawful sexual connection.

- (a) without the consent of the other person;
- (b) without believing that the other person consents to that sexual connection;
- (c) with the consent of the other person if the consent is –
 - (i) obtained from a person under the age of sixteen years;

- (ii) extorted by threats or fear of bodily harm to that other person or any other person, or by threats or fear of the application of force to that other person or any other person;
 - (iii) obtained by impersonating the spouse of that other person;
 - (iv) obtained by false and fraudulent representations as to the nature of the act;
 - (v) obtained by the use of the accused's position of authority over that other person;
- (d) by the administration to that other person of a drug, matter or thing, with intent to stupefy or overpower that other person or causing that other person to take the same with intent to stupefy or overpower that other person.
- (2) In subsection (1) "sexual connection" means –
- (a) the introduction, to any extent, into the vagina or the anus of any person of –
 - (i) any part of the body of any other person; or
 - (ii) any object held or manipulated by any other person, otherwise than for *bona fide* medical purposes;
 - (b) connection between the mouth or tongue of any person and any part of the genitalia of any other person.
- (3) A person who is guilty of the offence of unlawful sexual connection is liable on conviction –
- (a) to imprisonment for fourteen years; or
 - (b) to imprisonment for twenty-five years where the sexual connection is as described in subsection (2)(a)(ii),

unless the Court is of the opinion that, having regard to the particular circumstances of the offence or of the offender, includ-

ing the nature of the conduct constituting the offence, the offender should not be sentenced to imprisonment.

(4) A husband is guilty of the offence of unlawful sexual connection if he has sexual connection with his wife without her consent where there is in existence in relation to them –

- (a) a *decree nisi* of divorce;
- (b) a decree of judicial separation;
- (c) a separation agreement; or
- (d) an order for the husband not to molest his wife or have sexual intercourse with her.

(5) The provisions of subsection (4) apply *mutatis mutandis* to a wife who commits the offence of unlawful sexual connection.

(6) Except for subsections (4) and (5), it is a defence to a charge under this section if the person charged proves that –

- (a) the other person consented; and
- (b) the person charged –
 - (i) was not more than twenty-one years of age at the time of the commission of the offence and has not been previously charged with the same or similar offence; and
 - (ii) had reasonable cause to believe and did believe that the other person was sixteen years of age or more.

(7) Subsection (6) shall not apply if it is proved that –

- (a) consent was obtained in the manner specified in subsection (1)(c)(ii) to (v);
- (b) the offence was committed under subsection (1)(d);
or
- (c) the other person is under the age of fourteen years.

5. (1) A person is guilty of an offence if that person induces another person to have sexual intercourse or unlawful sexual connection with any person –

Inducing sexual intercourse or sexual connection by force, duress, etc.

- (a) by force or duress;
- (b) by false or fraudulent representation as to the nature of the act; or
- (c) by administering, to that other person, or by causing that other person to take, any drug, matter or thing with intent to stupefy or overpower that person.

(2) A person who is guilty of an offence under subsection (1) is liable on conviction to imprisonment for fourteen years.

Incest.

6. (1) The offence of incest is sexual intercourse or sexual connection between –

- (a) parent and child;
- (b) brother and sister, whether of the whole blood or the half blood, and whether the relationship is traced through lawful wedlock or not;
- (c) uncle and niece or aunt and nephew, as the case may be; or
- (d) grandparent and grandchild,

where the person charged knows of the relationship between the parties.

(2) It is immaterial that the sexual intercourse or sexual connection referred to under subsection (1) occurred with the consent of the other person.

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

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

(4) It is a defence to a person charged with the offence of incest to prove that the offence was committed by reason only that

the person charged was under restraint, duress or fear of the person with whom the person charged had sexual intercourse or sexual connection.

7. (1) Any person who has sexual intercourse with another person who –

Sexual intercourse with a person under fourteen.

- (a) is not the spouse of the first mentioned person; and
- (b) is under the age of fourteen years, whether or not the other person consented and whether or not the first mentioned person believes that the other person is fourteen years of age or more,

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

(2) Where a marriage is declared invalid by a court of competent jurisdiction the invalidity does not make a person guilty of an offence under this section because that person has sexual intercourse with a person who he or she believes to be his or her spouse, and has reasonable cause for the belief.

8. (1) Any person who has sexual intercourse with another person who –

Sexual intercourse with a person between fourteen and sixteen.

- (a) is not the spouse of the first mentioned person; and
- (b) is fourteen years of age or more but has not attained the age of sixteen years,

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

(2) It is a defence to a charge under this section if the person charged proves that –

- (a) the other person consented; and
- (b) the person charged –
 - (i) was not more than twenty-one years of age at the time of the commission of the offence and has not been previously charged with the same or similar offence; and

- (ii) had reasonable cause to believe and did believe that the other person was sixteen years of age or more.

(3) Subsection (2) shall not apply if it is proved that the consent was obtained by false or fraudulent representations as to the nature of the act.

(4) Except as provided in subsection (2), it is no defence to a charge under this section that the person consented or that the person charged believed that the person was sixteen years of age or more.

(5) Where a marriage is declared invalid by a court of competent jurisdiction the invalidity does not make a person guilty of an offence under this section because that person has sexual intercourse with a person who he or she believes to be his or her spouse, and has reasonable cause for the belief.

Sexual intercourse with
an adopted minor, etc.

9. (1) An adult person is guilty of an offence if the adult has sexual intercourse with a minor who –

- (a) is the adult's adopted child, step-child, foster child, ward or dependant; or
- (b) not being the adult's adopted child, step-child, foster child, ward or dependant is at the time of the intercourse living with the adult as a member of the family or is under the adult's care or protection.

(2) It is immaterial that the sexual intercourse referred to under subsection (1) occurred with the consent of the minor.

(3) A person who is guilty of an offence under subsection (1) is liable on conviction –

- (a) if the minor is under the age of fourteen years to imprisonment for twenty-five years; or
- (b) if the minor is fourteen years of age or more to imprisonment for ten years.

(4) An adult is not guilty of an offence under subsection (1) if the minor is the spouse of the adult.

(5) Where a marriage is declared invalid by a court of competent jurisdiction the invalidity does not make a person guilty of an offence under this section because that person has sexual intercourse with a person who he or she believes to be his or her spouse, and has reasonable cause for the belief.

10. (1) Any adult who has sexual intercourse with a minor who – Sexual intercourse with a minor employee.

- (a) is employed by the adult;
- (b) is in a common but not necessarily similar employment with the adult and is, in respect of the minor's employment or work, under or in any way subject to the adult's control or direction; or
- (c) receives wages or salary directly or indirectly from the adult,

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

(2) Except in any case where the minor is under the age of sixteen years, in any proceedings for an offence under subsection (1), it is a defence for the adult to prove that the minor consented to the sexual intercourse.

(3) An adult is not guilty of an offence under subsection (1) if the minor is the spouse of the adult.

(4) Where a marriage is declared invalid by a court of competent jurisdiction the invalidity does not make a person guilty of an offence under this section because that person has sexual intercourse with a person who he or she believes to be his or her spouse, and has reasonable cause for the belief.

11. (1) A person who, under circumstances that do not amount to rape, has sexual intercourse with another person – Sexual intercourse with a person suffering from a mental disorder.

- (a) who is not the spouse of the first mentioned person;
- and

(b) who is and who the first mentioned person knows or has good reason to believe is suffering from a mental disorder,

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

(2) Where a marriage is declared invalid by a court of competent jurisdiction the invalidity does not make a person guilty of an offence under this section because that person has sexual intercourse with a person who he or she believes to be his or her spouse, and has reasonable cause for the belief.

Alternative verdict.

12. (1) If upon the trial of any indictment for rape or an offence under section 7, the jury is satisfied that the defendant is guilty of an offence under section 4, 5, 8, 9, or 10 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 charged and find the defendant guilty of the offence as aforesaid or of an indecent assault; and thereupon the defendant is liable to be punished in the same manner as if convicted upon an indictment for the offence aforesaid, 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 7, 8, 9, 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 case the jury may find the defendant guilty of an offence under section 7, 8, 9, or 10 or of an indecent assault; and thereupon the defendant is liable to be punished in the same manner as if convicted upon an indictment for the offence aforesaid, or for the offence of indecent assault.

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

13. (1) Any person who indecently assaults another is guilty of an offence and liable on conviction to imprisonment – ^{Indecent assault.}

- (a) for ten years, if committed on a person under the age of fourteen;
- (b) for seven years, if committed on a person of fourteen years of age or more but who has not yet attained the age of sixteen years; or
- (c) for five years, if committed on a person who is sixteen years of age or more.

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

(3) In this section “indecent assault” means an assault or battery accompanied by words or circumstances indicating an indecent intention.

14. (1) Any person who commits an act of gross indecency with another person is guilty of an offence and liable on conviction to imprisonment for five years. ^{Gross indecency.}

(2) Subsection (1) does not apply to an act of gross indecency committed in private between an adult male person and an adult female person, both of whom consent.

(3) For the purposes of subsection (2) –

- (a) an act shall be deemed not to have been committed in private if it is committed in a public place; and
- (b) a person shall be deemed not to consent to the commission of such an act if –
 - (i) the consent is extorted by force, threats or fear of bodily harm or is obtained by false and fraudulent representations as to the nature of the act;
 - (ii) the consent is induced by the application or administration of any drug, matter or thing with intent to intoxicate or stupefy the person; or

(iii) that person is, and the other party to the act knows or has good reason to believe that the person is suffering from a mental disorder.

(4) In this section "gross indecency" is an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.

Indecency between a woman and a girl.

15. (1) Any adult woman who –

- (a) does any indecent act with or upon any girl under the age of sixteen years; or
- (b) induces or permits any girl under the age of sixteen years to commit any indecent act with or upon such adult woman,

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

(2) The girl shall not be charged as a party to any offence under this section.

(3) It is no defence to a charge under this section that the girl consented.

Buggery.

16. (1) A person who commits buggery is guilty of an offence and liable on conviction to imprisonment for –

- (a) twenty-five years, if committed by an adult on a minor;
- (b) ten years, if committed by an adult on another adult; or
- (c) five years, if committed by a minor;

and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment.

(2) Any person who attempts to commit the offence of buggery, or is guilty of an assault with intent to commit the same

is guilty of an offence and liable to imprisonment for four years and, if the Court thinks it fit, the Court may order that the convicted person be admitted to the psychiatric hospital for treatment.

(3) 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.

17. (1) A person who commits bestiality is guilty of an offence and liable on conviction to imprisonment for ten years and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment. ^{Bestiality.}

(2) A person who, by the use of force or drugs, causes another to commit bestiality is guilty of an offence and liable on conviction to imprisonment for twenty-five years.

(3) In this section “bestiality” means sexual intercourse per anum or per vaginum by a male or female person with an animal.

PART II

PROCURING, ABDUCTION, ETC.

18. A person who –

^{Procuration.}

- (a) procures or induces a minor to have sexual intercourse with any person in Dominica or elsewhere;
- (b) conspires with any other person to effect the procurement of a minor as aforesaid;
- (c) procures another for prostitution, whether or not the person procured is already a prostitute, in Dominica or elsewhere; or
- (d) procures another to become an inmate of a brothel, whether the person procured is already an inmate of a brothel in Dominica or elsewhere,

is guilty of an offence and liable on conviction to imprisonment for –

- (e) fourteen years for an offence contrary to paragraphs (c) and (d); and
- (f) twenty-five years for an offence contrary to paragraphs (a) and (b).

Procuring defilement
of a person.

19. A person who –

- (a) by threats or intimidation procures another person to have sexual intercourse with any person in Dominica or elsewhere;
- (b) by deception procures another person to have sexual intercourse with any person in Dominica or elsewhere;
or
- (c) applies, administers to or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower that person in order to enable any other person to have sexual intercourse with that person,

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

Unlawful detention of
a person with intent
to have sexual
intercourse.

20. (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 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 police officer 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 or suspected of unlawful detention.

(3) A police officer referred to under subsection (2) shall cause the person apprehended under that subsection to be brought

before the Magistrate and proceedings shall be taken for punishing the person according to law.

21. Where, on the trial of any person under this Act, it is proved to the satisfaction of the Court that the procurement, seduction or prostitution 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 shall divest such person of all authority over the minor, and appoint any person or persons willing to take charge of the minor to be the guardian, until the minor attains the age of eighteen, or any age below this as the Court may direct. And the Court may from time to time rescind or vary the order by the appointment of any other person or persons as the guardian, or in any other respect.

Divestment of authority.

22. (1) Any person who unlawfully takes away or causes to be taken away or detains another person against the will of that other person with intent –

Abduction, etc.

- (a) to commit or to aid or abet the commission of an offence under this Act;
- (b) to marry or to have sexual intercourse with the other person; or
- (c) to cause the person to marry or to have sexual intercourse with any other person,

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

(2) It is no defence to a charge under subsection (1) that the person consented to be taken away or detained, if that person is a minor under the age of sixteen years.

(3) 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 police officer 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 or suspected of unlawful detention.

(4) A police officer referred to under subsection (3) shall cause the person apprehended under that subsection to be brought before the Magistrate and proceedings shall be taken for punishing the person according to law.

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

23. (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,

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

(2) It is a defence to any charge under this section if it is made to appear to the Court or jury, before whom the charge is brought, that the person charged had reasonable cause to believe that the minor was of or above 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.

Suppression of
brothels.

24. A person who –

(a) keeps, manages, acts or assists in the management of a
brothel;

(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,

is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for five years.

25. (1) A person who –

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

Person living on earnings of prostitution.

is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to imprisonment for five years.

(2) If it appears to a 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 police officer to enter, if need be by force, and search the premises and to arrest that person.

(3) Where a person is proved to –

- (a) live with or to be habitually in the company of a prostitute; or
- (b) 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.

26. A person who for purposes of gain, exercises control, direction or influence over the movements of a prostitute in a way which shows that the person is aiding, abetting or compelling the prostitution is guilty of an offence and liable on summary conviction to imprisonment for five years.

Person aiding in prostitution.

PART III
GENERAL

Hearings in camera.

27. (1) This section applies to the following offences:

- (a) rape;
- (b) unlawful sexual connection;
- (c) incest;
- (d) sexual intercourse with a person under fourteen;
- (e) sexual intercourse with a person between fourteen and sixteen;
- (f) sexual intercourse with an adopted minor, etc.;
- (g) sexual intercourse with a minor employee;
- (h) sexual intercourse with a person suffering from a mental disorder;
- (i) inducing sexual intercourse or sexual connection by force, duress, etc.;
- (j) indecent assault;
- (k) gross indecency;
- (l) indecency between a woman and a girl; and
- (m) buggery.

(2) At any proceedings in relation to an offence to which this section applies, the public shall be excluded during the hearing **but** the Judge may permit the presence of any person whose presence is requested by the complainant or the accused.

(3) Sentencing in relation to any offence to which this section applies shall take place in public.

Corroboration.

28. Subject to section 32, where an accused is charged with an offence under this Act, corroboration is not required for a convic-

tion and the Judge shall not instruct the jury that it is unsafe to find the accused guilty in the absence of corroboration, but may direct the jury as follows:

“Testimony which you believe, given by one witness, is sufficient for the proof of any fact. However, before finding any fact to be proved solely by the testimony of a single witness, you should carefully review all the testimony upon which the proof of the fact depends.”

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

Spouse, parent or guardian a compellable witness.

(2) The parent or guardian of a minor in respect of whom an offence has been committed may be called as a witness for the prosecution or the defence without the consent of the person charged; and if so called, notwithstanding any other law to the contrary, is a compellable witness.

30. (1) In proceedings in respect of an offence under this Act, evidence shall not 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 is necessary for a fair trial of the accused.

Evidence concerning sexual activity and reputation.

(2) Save as provided in subsection (1), evidence of sexual reputation is not admissible for the purpose of challenging or supporting the credibility of the complainant.

31. Where on the trial of an accused person for a sexual offence, 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 shall –

Recent complaint.

- (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 assault may hesitate in making or may refrain from making a complaint about the assault.

Oath by a minor.

32. (1) Where upon the hearing of a complaint under this Act, a minor in respect of whom the offence is alleged to have been committed or any other minor of tender years who is tendered as a witness does not in the opinion of the Court understand the nature of an oath, the evidence of the minor may be received though not given upon oath, if, in the opinion of the Court –

- (a) the minor is possessed of sufficient intelligence to justify the reception of the evidence; and
- (b) the minor understands the duty of speaking the truth.

(2) A person is not liable to be convicted of an offence under this section unless the testimony admitted by virtue of subsection (1) and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused, and such corroboration may consist of evidence other than oral evidence.

(3) The unsworn evidence of a minor may not be corroborated by the unsworn evidence of another minor.

(4) Any witness whose evidence has been admitted under subsection (1) is liable to be convicted on indictment and punished for perjury in all respects as if the witness had been sworn.

Admissibility of video recorded evidence.

33. (1) In proceedings under this Act involving a minor, a video recording of an interview conducted between an adult and a minor who is not the accused, or one of the accused, and which is related to any matter in the proceedings, may with leave of the Court, subject to subsection (3), be given in evidence.

(2) Where a video recording is admitted in evidence under subsection (1), cross examination of the minor shall be done by means of an electronic device linking the voice and imagery of the accused or his attorney-at-law with the voice and imagery of the minor who it is alleged –

(a) is the person against whom the offence was committed; or

(b) witnessed the commission of the offence.

(3) Where a video recording is tendered in evidence under subsection (1), the Court may, subject to the exercise of any power to exclude evidence which is otherwise admissible, give leave under subsection (1) unless –

(a) it appears that the minor will not be available for cross examination;

(b) the Court is of the opinion, having regard to the circumstances of the case, that in the interest of justice, the recording ought not to be admitted;

(c) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the Court.

(4) Where leave is granted under subsection (3) the Court may direct that any part of the recording be excluded if it thinks it would not be in the interest of justice to allow its admission.

(5) Where a video recording is admitted the minor whose statement was recorded shall be called by the party who tendered the recording in evidence but the minor shall not be examined-in-chief on any matter which in the opinion of the Court has been dealt with adequately in the recorded statement.

(6) Any statement made by a minor which is disclosed by the video recording given in evidence under subsection (1) shall be treated as direct oral testimony and any such statement is admissible evidence of any fact of which such testimony from the minor would be admissible; but no such statement is capable of corroborating any other evidence given by the minor.

(7) In estimating the weight, if any, to be attached to such statement referred to in this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn.

Interpretation for the purposes of section 33.

34. For the purposes of section 33 –

“minor” means a person who was sixteen years of age or under at the time when the video was made and who has not attained the age of eighteen at the time of the cross examination;

“video recording” means any recording on any medium from which a moving image may by any means be produced and includes the accompanying sound track;

“proceedings” includes any trial or inquiry;

“statement” includes any representation of fact, whether made in words or otherwise.

Age.

35. A person who –

(a) is under the age of twelve years is deemed incapable of committing an offence under this Act;

(b) is under the age of sixteen years shall not be imprisoned on conviction for an offence under this Act.

Power of Court to make prohibition order.

36. (1) Where a minor is convicted of an offence under sections 6 or 16, the Court may make a probation order, but before making such an order the Court shall explain to the minor in ordinary language the effect of the order and that, if the order is not complied with or another offence is committed under this Act, he or she shall be sentenced, such sentence to take effect when the minor attains the age of eighteen.

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Ch. 12:35.

(2) For the purposes of this section, the provisions of sections 4 to 12 of the Probation of Offenders Act and section 5 of the Criminal Justice (Reform) Act shall apply to a probation order under this section *mutatis mutandis* as they apply to probation orders under those Acts.

Court may forbid publication of report.

37. (1) Where in a case involving any offence referred to under section 27(1), the Court is of the opinion that the interests of the

complainant so require, it may make an order forbidding publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or to consent to or acquiesce in.

(2) The breach of an order made under subsection (1) or any evasion or attempted evasion of it, may be dealt with as contempt of court.

38. (1) After a person is charged with an offence under this Act, any matter that is likely to lead members of the public to identify a person as the complainant or as the accused in relation to that charge shall not be published in a written publication or be broadcast in Dominica except –

Anonymity of
complainant and
accused.

- (a) where, on the application of the complainant or the accused, the Court directs that the effect of 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 the accused, after the person has been tried and convicted of the offence.

(2) A person who publishes or broadcasts any matter in contravention of subsection (1) is guilty of an offence and liable on conviction to a fine of fifty thousand dollars and to imprisonment for three years.

(3) The person referred to in subsection (2) is in the case of –

- (a) a publication in a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical;
- (b) any other publication, the person who published;
- (c) a broadcast by a body corporate which transmits or provides the programme in which the broadcast is made, the 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 alleging that the person has committed the offence;
- (b) a person who appears before the Court charged with the offence;

“complainant” in relation to a person accused of an offence includes the person against whom the offence is alleged to have been committed.

Rules of Court for the purposes of section 33.

39. Rules of Court may be made for the purposes of regulating the operation of section 33 and for such matters as are necessary for giving full effect to the provisions of that section.

Repeal of former Act. Ch. 10:36. Schedule.

40. (1) The Sexual Offences Act is repealed.

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

Savings.

41. (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 the charge or indictment has not been finally determined, the 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;
- (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 or amendment took effect which would have constituted an offence under the repealed 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 Sexual Offences Act and any law amended under section 40 and the Schedule.

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Schedule.

SCHEDULE

(Section 39).

Enactments	Extent of Amendments
Offences Against the Person Act, Chap. 10:31.	Parts VI and XI of the Act are repealed
Small Charges Act, Chap. 10:39	Sections 20 and 39 of the Act are repealed

Passed in the House of Assembly this 24th day of March, 1998.

ALEX F. PHILLIP (MRS.)
Acting Clerk of the House of Assembly.

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