



EXTRAORDINARY

OFFICIAL GAZETTE

THE BAHAMAS

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No. 29 of 2008

**AN ACT TO AMEND THE SEXUAL OFFENCES AND
DOMESTIC VIOLENCE ACT AND
FOR INCIDENTAL MATTERS.**

[Date of Assent – 9th December, 2008]

Enacted by the Parliament of The Bahamas.

**Short title
and com-
mencement.**

1. (1) This Act, which amends the Sexual Offences and Domestic Violence Act, may be cited as the Sexual Offences and Domestic Violence (Amendment) Act, 2008.

(2) This Act shall come into force on such day as may be appointed by notice by the Minister.

**Insertion of
new sections
5A – 5D
into
the principal
Act.**

2. The principal Act is amended by the insertion immediately after section 5 of the following new sections -

“ *Summary Sexual Offences*
Voyeurism. 5A. (1) Any person who -
(a) surreptitiously
observes including
by mechanical or
electronic means; or
(b) makes a visual
recording of a
person,

in circumstances that give rise to a

reasonable expectation of privacy,
commits an offence if -

- (i) the person is in a place which a person can reasonably be expected to be fully or partially nude, to expose his or her genital organs or other intimate parts or to be engaged in explicit sexual activity;
- (ii) the person is fully or partially nude, is exposing his or her genital organs or other intimate parts or is engaged in explicit sexual activity, and the observation or recording is done

for the purpose
of observing or
recording a
person in such a
state or engaged
in such an
activity; or

(iii) the observation
or recording is
done for a sexual
purpose.

(2) For the purposes of this
section, “visual recording” includes a
photographic film or video recording
made by any means.

(3) Any person who knowing
that a recording was obtained by the
commission of an offence under
subsection (1) prints, copies, publishes,
distributes, circulates, sells, advertises
or makes available the recording or
has the recording in his possession for
the purpose of printing, copying,
publishing, distributing, circulating,
selling or advertising or making it
available, commits an offence.

(4) Subsection (1) does not
apply to a peace officer who is acting
in the course of his duties.

(5) A person who is guilty of an offence under this section is liable on summary conviction to a term of imprisonment of three years.

(6) No person shall be convicted of an offence under this section if the acts that are alleged to constitute the offence serve the public good and do not extend beyond what serves the public good.

(7) For the purposes of subsection (6) -

- (a) it is a question of law whether an act serves the public good and whether there is evidence that the act alleged goes beyond what serves the public good, but is a question of fact whether the act does or does not extend beyond what serves the public good;

(b) the motives of an accused are irrelevant.

Sexual
inter-
course
in a
public
place.

5B. (1) Any adult who has sexual intercourse with another adult in a public place (whether male or female), is guilty of a sexual offence and liable to a term of imprisonment of two years.

(2) Notwithstanding the commission by any person of an act which amounts to an offence under this section or sections 5C or 16, that person is not guilty of the offence if he committed the act under restraint, duress or fear.

(3) No prosecution of a person under the age of twenty-one years shall be commenced for an offence under this section or sections 5C or 16 without the consent of the Attorney-General.

Sexual
inter-
course
with an
animal.

5C. (1) Any person who commits an act of unnatural connection with any animal is guilty of an offence and liable to a term of imprisonment for five years.

replacement
of section 6
of the
principal
Act.

“Rape. 6. Any person who -
(a) commits rape;
(b) attempts to commit rape;
or
(c) assaults any person with
intent to commit rape,
is guilty of an offence and liable to
imprisonment for life.”.

Repeal
and
replacement
of section 7
of the
principal
Act.

4. Section 7 of the principal Act is repealed and
replaced as follows -

“Procu- 7. Any person who -
ration. (a) whether by electronic
means or otherwise -
(i) procures or attempts
to procure any
person under
eighteen years of
age to have
unlawful sexual
intercourse, either
in or outside The
Bahamas, or with
any other person;
(ii) procures or attempts
to procure any
person to become,
either in or outside
The Bahamas, a
common prostitute;

- (iii) procures or attempts to procure any person to leave The Bahamas with intent that he may become an inmate of or frequent a brothel elsewhere;
- (iv) procures or attempts to procure any person to leave his usual place of abode in The Bahamas with intent that he may, for the purposes of prostitution, become an inmate of or frequent a brothel either in or outside The Bahamas;
- (v) by threats or intimidation, procures or attempts to procure any person to have unlawful sexual intercourse

either in or outside
The Bahamas;

(vi) by false pretences or
false representations,
procures any person
to have any unlawful
sexual intercourse
either in or outside
The Bahamas; or

(b) applies, administers or
causes to be taken by
any person any drug,
matter or thing with
intent to stupefy or
overpower, so as thereby
to enable any other
person to have unlawful
sexual intercourse with
such first-mentioned
person,

is guilty of an offence and liable to a
term of imprisonment of fifteen
years.”.

**Repeal
and
replacement
of section 10
of the**

5. Section 10 of the principal Act is repealed
and replaced as follows -

“Sexual 10. (1) Any person who -

inter- (a) has unlawful sexual
course intercourse with a person

principal
Act.

with a
person
under
fourteen
years.

under fourteen years of
age, whether with or
without the consent of
the person with whom he
had unlawful sexual
intercourse; or

- (b) attempts to have unlawful
sexual intercourse with a
person under fourteen
years of age, whether
with or without the
consent of the person
with whom he had
unlawful sexual inter-
course,

is guilty of an offence and liable to
imprisonment for life.

Ch. 84.

(2) Notwithstanding the
provision of section 96 of the Penal
Code, it is no defence to a charge under
this section that the person did not know
or believe or had not the means of
knowing that the other person was under
fourteen years of age.”

Repeal
and

6. Section 11 of the principal Act is repealed
and replaced as follows -

replacement
of section 11
of the
principal
Act.

“Sexual inter-
course
with a
person
between
fourteen
and
sixteen
years.

11. (1) Any person who -
(a) has unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or

(b) attempts to have unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse,

is guilty of an offence and liable to imprisonment for life.

(2) It shall be a sufficient defence to a charge under this section if it is made to appear to the court or jury before whom the charge shall be brought that the person so charged, being a person not over the age of twenty-one years and not previously convicted of the same offence, had reasonable cause to believe that the person with whom he had sexual intercourse was of or above sixteen years of age.

(3) No prosecution of a person under the age of twenty-one years for an offence under this section shall be commenced without the consent of the Attorney-General.”.

**Repeal
and
replacement
of section 12
of the
principal
Act.**

7. Section 12 of the principal Act is repealed and replaced as follows -

“Sexual 12. (1) Any person who -
inter- (a) has unlawful sexual
course intercourse with any
with a person who is suffering
person from a mental disorder,
suffer- whether with or without
ing the consent of that person,
from a under circumstances

mental
dis-
order.

which prove that the
accused person knew or
had reasonable cause to
suspect that, at the time
of the commission of the
offence that the person
with whom he had
unlawful sexual intercourse
was a person suffering
from a mental disorder;
or

(b) attempts to have
unlawful sexual inter-
course with any person
who is suffering from a
mental disorder, whether
with or without the
consent of that person,
under circumstances
which prove that the
accused person knew, or
had reasonable cause to
suspect that, at the time
of the commission of the
offence the person with
whom he attempted to

have unlawful sexual intercourse was a person suffering from a mental disorder,

is guilty of an offence and liable to imprisonment for life.

(2) In this section, "mental disorder" means severe subnormality or subnormality within the meanings respectively assigned to those expressions under subsection (1) of section 2 of the Mental Health Act."

Ch. 230.

**Repeal
and
replacement
of section 13
of the
principal
Act.**

8. Section 13 of the principal Act is amended by the repeal and replacement of -

(a) subsection (1) (a) as follows -

"(a) if he is an adult who commits the offence with a minor, for life;"

(b) subsection (2) (a) as follows -

"(a) if he is an adult who commits the offence with a minor, for life;"

(c) subsection (5) as follows -

" (5) No prosecution of a person under the age of twenty-one years shall be commenced for an

offence under paragraph (c) of subsection (1) of subsection (2) without the consent of the Attorney-General.”.

Repeal

9. Section 14 of the principal Act is repealed

and

and replaced as follows -

replacement

“Sexual 14. (1) Any adult who -

of section 14

inter-

(a) has unlawful sexual

of the

course

intercourse with his

principal

with a

dependent child, whether

Act.

depen-

with or without the

dent.

consent of the child; or

(b) attempts to have unlawful

sexual intercourse with

his dependent child,

whether with or without

the consent of the child,

is guilty of an offence and liable to imprisonment for life.

(2) In this section -

“dependent child” means a

minor who is not related

by blood to the alleged

offender but -

(a) is his adopted child,

step-child, foster

child or ward;

- (b) has been treated by him as a child of his family;
- (c) is being maintained, either wholly or partly, by him;
- (d) is in his actual custody; charge or control; or
- (e) in relation to which minor he holds a position of trust.”.

**Amends
section 15
of the
principal
Act.**

10. Subsection (2) of section 15 is repealed and replaced as follows -

“ (2) No prosecution of a person under the age of twenty-one years shall be commenced for an offence under this section without the consent of the Attorney-General.”.

**Repeal
and
replacement
of section 16
of the
principal
Act.**

11. Section 16 of the principal Act is repealed and replaced as follows -

“Sexual 16. (1) Any adult male who has inter- sexual intercourse with another male who is a minor, whether with or without the consent of that other minor male, is guilty of a sexual offence of same and liable to imprisonment for life.
sex.

(2) Any adult female who has sexual intercourse with another female who is a minor, whether with or without the consent of that other female, is guilty of a sexual offence and liable to imprisonment for life.

Child 16A. (1) Any person who produces, whether for the purpose of publication or not, any child pornography, is guilty of an offence and liable to imprisonment for life.

(2) Any person who -

- (a) receives or disseminates for the purpose of distribution or sale any child pornography;
- (b) possesses any child pornography;
- (c) intentionally causes or incites any person under the age of eighteen to be involved in pornography,

is guilty of an offence and liable to imprisonment for a term of twenty years.

(3) In this section, “child pornography” means -

(a) a photographic, film, video or other visual representation whether or not it was made or transmitted by electronic or mechanical means -

(i) that shows a person who is, or is depicted as being, under the age of eighteen years engaged in explicit sexual activity; or

(ii) the dominant characteristic of which is the depiction, of a sexual organ or the buttocks of a person under the age of eighteen years; or

(b) any written material or visual representation that advocates sexual activity with a person under the age of eighteen years.

(4) It is no defence to a charge under subsection (1) that the person did not know or believe or had not the means of knowing that the person depicted in the representation that constitutes child pornography was under eighteen years of age.

(5) It shall be a defence to a charge under this section that the representation or written material that is alleged to constitute child pornography was intended for an educational, scientific or medical purpose, save that any dissemination or publication of that representation or material was at that time for any such purpose.”.

Amends
section 26
of the
principal
Act.

12. Subsection (4) of section 26 is repealed and replaced as follows -

“ (4) No prosecution of a person under the age of twenty-one years shall be commenced for an offence under this section without the consent of the Attorney-General.”.

**Amends
Third
Schedule to
Ch. 91.**

13. Part IV of the Third Schedule to the Criminal Procedure Code is amended by the deletion of the words "15 to 17" and the substitution of the words "15 and 16".



No. 30 of 2008

AN ACT TO AMEND THE MENTAL HEALTH ACT

[Date of Assent – 9th December, 2008]

Enacted by the Parliament of The Bahamas.

Short title and commence- ment. Amend- ment of section 41 of Ch. 230.	<p>1. (1) This Act may be cited as the Mental Health (Amendment) Act, 2008.</p> <p>(2) This Act shall come into force on such day as may be appointed by notice by the Minister.</p> <p>2. Sections 41(2) and (3) of the Mental Health Act are repealed and replaced as follows -</p> <p>“ (2) Any person who has unlawful-sexual intercourse with any mentally disordered person under care or treatment in a hospital or on leave of absence therefrom, or with any mentally disordered person subject to his guardianship or otherwise in his care or custody under this Act, is guilty of an offence and liable on conviction on information to imprisonment for life.</p>
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(3) Any person who attempts to have unlawful sexual intercourse with any mentally disordered person under care or treatment in a hospital or on leave of absence therefrom or with any mentally disordered person subject to his guardianship or otherwise in his care or custody under this Act, is guilty of an offence and liable on conviction on information to imprisonment for life.”.