



THE PARLIAMENT OF
TRINIDAD AND TOBAGO

BILL ESSENTIALS

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General and Minister of Legal Affairs

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<http://www.ttparliament.org/legislations/b2021s05.pdf>

BILL ESSENTIALS

BILL ESSENTIALS NO. 19 2020–2021

1ST SESSION, 12TH PARLIAMENT

The Sexual Offences (Amendment) Bill, 2021

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BACKGROUND

1. The **Sexual Offences (Amendment) Bill, 2021** (“the Bill”) aims to amend the **Sexual Offences Act, Chap. 11:28** (“the Act”)¹.
2. This Bill was introduced in the Senate by the Honourable Attorney General on March 23, 2021.
3. The Bill will come into effect on such date as fixed by the President by Proclamation.

KEY FEATURES OF THE BILL

SECTION 2 AMENDED- INTERPRETATION

4. **Clause 4** of the Bill amends **section 2** of the Act to define the term “website” which means “*the Public Sex Offender Website established under section 46A(b)*”.

SECTION 45 AMENDED- APPLICATION OF PART IV SEX OFFENDERS REGISTERS

5. **Clause 6** of the Bill will amend section 45 of the Act² to widen the application of PART IV of the Act, i.e. the Sex Offender Registers. Part IV of the Act will now also apply to a sex offender who is convicted of a registrable offence³ within or outside of Trinidad and Tobago.
6. **Clause 7** of the Bill provides for the establishment of two registers; the **National Sex Offender Register** and the **Public Sex Offender Website**.

¹ The Act was amended in the year 2019 by the **Sexual Offences (Amendment) Act, 2019**. The 2019 Act established the National Sex Offender Register. The Bill proposes in large part, to make amendments to provisions introduced by the 2019 amendment Act. It should therefore be noted that some of the amendments referenced have been made pursuant to the **Sexual Offences (Amendment) Act, 2019** and are not yet included in the Act which was last updated to December 31, 2016 by the Law Review Commission.

² Section 45 of the Act was inserted by the **Sexual Offences (Amendment) Act, 2019**.

³ A registrable offence is an offence listed in Schedule 1 of the Act. Schedule 1 of the Act was inserted by the **Sexual Offences (Amendment) Act, 2019**.

SECTION 47 REPEALED AND REPLACED- NATIONAL SEX OFFENDER REGISTER

7. **Clause 8** of the Bill proposes to amend the Act by repealing and replacing section 47 of the Act⁴. **New section 47**, although similar to the existing section 47, mandates that the National Sex Offender Register will not be accessible to the public. Existing section 47 provides that the Register will not be accessible to the public, subject to a Court making an order stating whether or not the information on the sex offender shall be published on the website.

SECTION 48 REPEALED AND REPLACED- ACCESS TO INFORMATION ON THE PUBLIC SEX OFFENDER WEBSITE

8. **Clause 9** of the Bill proposes to amend the Act by repealing and replacing section 48⁵. Some of the provisions are similar to the existing section 48 and the salient changes are highlighted below.
9. **New section 48(1)** confers control of the Public Sex Offender Website to the Commissioner of Police.
10. The public shall have access to the Public Sex Offender Website, which will set out specified information on sex offenders. However, where a sex offender has appealed his conviction the Court shall withhold making a determination on whether the offender shall register or report⁶.
11. **New section 48(3)** provides for the Commissioner of Police to maintain the Public Sex Offender Website and ensure that the information published is accurate. **New section 48(5)** requires the Commissioner of Police to make reasonable security arrangements to protect the information published on the website from unauthorised access, collection, misuse, alteration and disclosure or disposal.
12. **New section 48(4)** requires the name, date of birth, photograph and convictions of the sex offender but now prohibits the publication of the main and secondary address of the sex offender. **New section 48(4)(a)(iv)** now requires the locality in which the offender lives to be published on the website and not the offender's specific address.

⁴Section 47 was inserted into the Act by the Sexual Offences (Amendment) Act, 2019:

<http://www.ttparliament.org/legislations/a2019-19g.pdf>

⁵ Section 48 was inserted into the Act by the Sexual Offences (Amendment) Act, 2019:

<http://www.ttparliament.org/legislations/a2019-19g.pdf>

⁶ Section 50, Sexual Offences (Amendment) Act, 2019

SECTION 49 AMENDED

13. **Clause 10(a)** empowers the Court to order an offender to report to a police station within a specified time (pursuant to section 54(1) of the Act)⁷.
14. Section 49(2) of the Act is repealed and replaced and will now prescribe that until the completion of a person's appeal of their conviction the Court must withhold on making an Order for an offender to report to a police station within a specified time (pursuant to section 54(1) of the Act).
15. **Clause 10(d)** of the Bill seeks to amend section 49(4) by removing the requirement for the Court to state whether or not information pertaining to a sex offender should be stated on the website, where the Court makes an Order requiring a person to register as a registered sex offender.

SECTION 50 REPEALED AND REPLACED- INFORMATION ON SEX OFFENDER TO BE PUBLISHED ON WEBSITE

16. **Clause 11** of the Bill proposes to amend the Act by repealing and replacing section 50⁸.
17. **New section 50(1)** provides that where a person has appealed his conviction for a registrable offence the Court must:
 - (a) order that the information contained in section 48(4)(a) of the Act in relation to a sex offender be published on the website, within seven (7) days from the date the conviction was upheld; and
 - (b) direct that the Registrar forward this information to the Commissioner of Police for publication.
18. **New section 50(1)** further provides that where a person has not appealed his conviction for a registrable offence the Court must:
 - (a) order that the information contained in section 48(4)(a) of the Act in relation to a sex offender be published on the website, within thirty (30) days after the date of conviction; and

⁷ Section 54(1) was inserted into the Act by the Sexual Offences (Amendment) Act, 2019
<http://www.ttparliament.org/legislations/a2019-19g.pdf>

⁸ Section 50 was inserted into the Act by the Sexual Offences (Amendment) Act, 2019:
<http://www.ttparliament.org/legislations/a2019-19g.pdf>

(b) direct that the Registrar forward this information to the Commissioner of Police for publication.

19. **New sections 50(2) and (3)** permit a sex offender convicted of a registrable offence to apply to the Court to be exempted from having his information published on the Public Sex Offender Website. Before making a determination on this application, the Court can request a mental assessment report from a psychiatrist concerning the sex offender.

20. **New section 50(4)** mandates that before deciding on an application to exempt a convicted sex offender from having his information published on the Public Sex Offender Website, the Court must consider the following information, *inter alia*:

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

SECTION 52 AMENDED- POLICE TO BE NOTIFIED OF DISCHARGE OF SEX OFFENDER

21. **Clause 12** of the Bill proposes to amend section 52(1) of the Act by mandating the Commissioner of Prisons or the Psychiatric Hospital Director to notify the Commissioner of Police in writing of the release date of a sex offender, within four (4) months before the sex offender is released from a prison or psychiatric hospital.


SECTION 54 AMENDED – INITIAL REPORT OF A SEX OFFENDER


22. **Clause 14** of the Bill amends section 54(2) of the Act by permitting any sex offender with a mental disorder, whether he be registered or not, to be accompanied by a representative of his choice when he is reporting to the police station nearest to his main or secondary address, pursuant to section 54(1) of the Act.

SECTION 61 AMENDED- EXEMPTION FROM REGISTERING OR REPORTING




23. **Clause 16(a)** of the Bill will amend section 61(3) of the Act by the deleting the word “shall” and substituting it with the word “may”. The effect of this amendment is that it would no longer be mandatory for the High Court to request a mental assessment report from a psychiatrist before determining the application of a sex offender to be exempted from being registered as a sex offender or from reporting to the police⁹.

24. **Clause 16(b)** of the Bill amends Section 61(4) of the Act regarding the factors the High Court considers in determining applications for exemption from reporting to the police or registering as a sex offender. **Clause 16(b)** seeks to ensure that each factor for determining an application for an exemption from registering as a sex offender or an exemption from having report to the police applies to both the registered sex offender and the unregistered sex offender. The changes to the section are outlined below:

 Inserting the words “*where the report was requested*” which would require the High Court to take into account the findings of a mental assessment report in an application of a sex offender to be exempted from registering as a sex offender or reporting to the police only in instances where the mental assessment report was requested.

 Inserting the words “*or registered sex offender*” after the words “*sex offender*” in paragraph (g) which would enable the High Court to consider whether both registered and unregistered sex offenders were in a position of care, authority or supervision when determining their application for exemption.

⁹ Pursuant to Section 54(1) a sex offender must initially report to the police station nearest to his main or secondary address within a stipulated amount of time after being discharged from prison or a psychiatric hospital or before entry into Trinidad and Tobago or after being convicted and given a non-custodial sentence, depending on the offender’s circumstances.

-  Inserting the words “sex offender or” after the words “whether the” in paragraph (h) which allows the High Court to take into consideration for both registered and unregistered sex offenders whether they have a positive and prosocial family support and other sources of support in determining the application to be exempted from reporting to the police.
-  Deleting the existing paragraph (i) and replacing it with a new paragraph that would enable the High Court to take into consideration whether the employment and residence status are stable when determining the application of an unregistered sex offender to be exempted from registering as a sex offender or reporting to the police.
-  By inserting the words “of the sex offender” after “conviction” in paragraph (j). This amendment would now allow the High Court to consider whether the conviction of both a registered and an unregistered sex offender was overturned or pardoned under section 87 of the Constitution¹⁰ when determining the application for ending their reporting period.

SECTION 62 AMENDED- APPLICATION TO COURT FOR CESSATION OF REPORTING PERIOD

25. **Clause 17(a)** of the Bill, seeks to amend Section 62 (4) of the Act by deleting the word “shall” and substituting the word “may”. Similar to amended **section 61(3)**, it will no longer be mandatory for the High Court to request a mental assessment report from a psychiatrist when determining the application of a registered sex offender to terminate their reporting period.

Clause 17 (b) would amend Section 62 (5) allowing the High Court to consider the findings of the mental assessment report when the report was requested.

¹⁰ Under Section 87 of the Constitution, the President has the power to pardon any person of any offence committed against the laws of Trinidad and Tobago either before or after the person is charged and before the person is convicted.

SECTION 63 AMENDED- INFORMATION TO BE EXPUNGED FROM REGISTER

26. **Clause 18** of the Bill aims to amend Section 63 of the Act, also granting the High Court the discretion to request a mental assessment report in the case of a registered sex offender who applies to have their information removed from the Register. Like amended sections 61 and 62, it is no longer mandatory for a mental assessment report of the sex offender to be requested by the High Court when determining the application of a sex offender to have their information removed from the Register.

SECTION 68 AMENDED

27. **Clause 20** of the Bill aims to amend Section 68(3) allowing for harsher punishments for contravening Regulations made under the Act. This amendment would increase the fine of a summary conviction under the Regulations of the Act from fifty thousand dollars to **two hundred and fifty thousand dollars** and increase the imprisonment period from six months to **five years**.

CONSEQUENTIAL AMENDMENTS TO OTHER LEGISLATION

29. **Clause 21** provides for consequential amendments to Section 34(3) Administration of Justice (Deoxyribonucleic Acid) Act which would increase the fine of a summary conviction under the Regulations of the Administration of Justice (Deoxyribonucleic Acid) Act from fifty thousand dollars to **two hundred and fifty thousand dollars** and increase the imprisonment period from six months to **five years**.

30. Section 3 of the Police Service Act is also amended by removing the definition of “registered sex offender” and substituting it with a new definition which would state that the definition of “sex offender” has the meaning assigned to it under section 2 of the Sexual Offences Act;”.

31. The Police Service Act is also consequentially amended by removing the word “registered” in section 50 (1) and 50A(1)(a), empowering the police to take and record the measurements, photograph and fingerprint of a sex offender as well.

REFERENCES

KEY LEGISLATION

**The Sexual Offences (Amendment) Bill, 2021**

<http://www.ttparliament.org/legislations/b2021s05.pdf>

**The Sexual Offences Act**

https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/11.28.pdf

**The Sexual Offences (Amendment) Act, 2019**

<http://www.ttparliament.org/legislations/a2019-19g.pdf>



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