

Age of sexual consent raised to 18

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AS of May 18 this year, the age of consent for sexual intercourse in Trinidad and Tobago is now 18.

The Children's Act of 2012 was proclaimed on May 18 and, in this legislation, the definition of "child" is now "a person under the age of 18 years".

Prior to May 18, a child was defined as persons under the age of 16 years and the Sexual Offences Act listed various offences for engaging in activities with persons under 16.

However, with the passing of the new legislation, certain sections of the Sexual Offences Act have been repealed, broadening the parameters under which persons can be charged.

During a recent interview with the *Express*, Christal Chapman, one of the senior legal associates of the Children's Authority (The Authority) explained the basic provisions of the new Act and how it affects citizens of this country.

"The Children's Act of 2012 (the Act), came into force on May 18 and when it did, it repealed the previous Children's Act, as well as certain sections in the Sexual Offences Act. Now what this Act does is it deals with child victims and child offenders and looks at treatment of children and the human rights benefits which should be accorded to them," said Chapman.

"Now the Act also seeks to put into effect certain obligations which are listed into convention regarding the rights of the child. That convention would have established international standards for treatment of children and Trinidad and Tobago would have ratified to those standards in the early 90s. So in layman's terms, the Act is putting into effect what we agreed to in this convention," she explained.

Chapman noted that one of the key changes was increasing the age of the definition of a child because this would have been one of the international standards that this country agreed to.

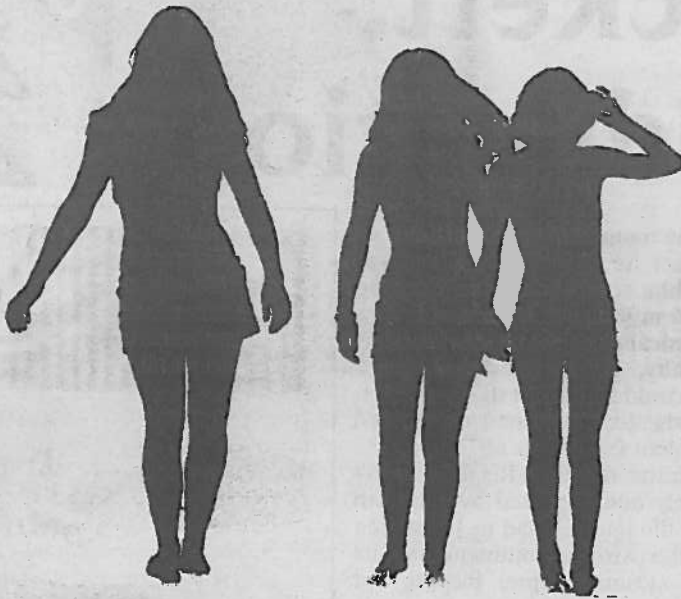
"Now, prior to this Act, take for instance persons who would be engaging in sexual intercourse, there would have been an offence committed if these persons were under 16. The Sexual Offences Act would have gone on to further specify offences for sex with a female under 14 and then sex with a female who is 14 but not yet 16, and so forth.

"All of that is done away with as of May 18. With the Act, the implications are also not just for giving consent for sex and so forth, but even persons to be charged for offences, and even reporting on children. Let us take for instance something like, previously if you were to commit a sexual assault on someone who is 17 years of age, it would not be considered an offence against a child. With the new Act, you open up the pool of persons who are considered children, and when offences are committed against a child. You have opened up that catchment area," said Chapman.

New offences

The senior advocate also noted that the Act dealt with a new series of offences, including genital mutilation.

"That offence, for instance, did not exist in our law books before. Some people ask why we have it there in law, when it is not



something normally found locally, but the fact is globalisation is a prevalent thing and people do move around quite easily. So the thinking was that the law should be prepared for situations which can arise, such as should a person from another country where this is part of their culture, for instance," Chapman said.

The attorney also explained that the offences of sex with a female, under the various categories, were now replaced by an offence known as sexual penetration of a child.

The Children's Act states that penetration of a child includes: (a) the insertion of any body part or any object into a child's bodily orifice; or (b) the insertion of a part of a child's body into a person's bodily orifice, and "penetrates" in relation to a child, shall be construed accordingly; "penis" includes scrotum.

The Act goes on to state that bodily orifice means anus, vagina, urethra, mouth, ear or nostril, and can be utilized for children of both sexes.

A person who sexually penetrates a child commits an offence and is liable on conviction on indictment to imprisonment for life.

Sexual touching

The Act also goes on to explain "sexual touching" and that it is an offence to touch sexually any child under the age of 16.

Touching or any other activity is defined as sexual in the Act if:

- (a) it is not done for medically recognised purposes; and
- (b) a reasonable person would consider that— (i) the person's purpose in relation to it, is, because of its nature, sexual; or (ii) because of its nature it may be sexual and because of its circumstances or the purposes of any person in relation to it, or both, it is sexual.

Anyone who sexually touches a child under 16 can be liable,

Section 20 of the Children Act states:—

"20. (1) A person sixteen years of age or over but under twenty-one years of age is not liable under section 18 if— (a) he is less than three years older than the child against whom he is purported to have perpetrated the offence; (b) he is not in a familial relationship with the child nor in a position of trust in relation to the child; (c) he is not of the same sex as the child; and (d) the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship. (2) A person fourteen years of age or over but under sixteen years of age is not liable under section 18 or 19 if— (a) he is less than two years older than the child against whom he is purported to have perpetrated the offence; 138 No. 12 Children 2012 Decriminalising of sexual activity between children Sexual touching of a child (b) he is not in a familial relationship with the child nor in a position of trust in relation to the child; (c) he is not of the same sex as the child; and (d) the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship. (3) A person twelve years of age or over but under fourteen years of age is not liable under section 18 or 19 if— (a) he is less than two years older than the child against whom he is purported to have perpetrated the offence; (b) he is not in a familial relationship with the child nor in a position of trust in relation to the child; (c) he is not of the same sex as the child; and (d) the circumstances do not reveal any element of exploitation, coercion, threat, deception, grooming or manipulation in the relationship."

on summary conviction, to a fine of \$50,000 and to imprisonment for ten years; or (b) on conviction on indictment to imprisonment for 20 years.

'Romeo Clause' Exception

As with all things, there are exceptions to the rules and, in this case, there are the "Romeo Clauses" of the Act which are summarised as "decriminalising of sexual activity between children".

"Under Section 20 of the Act we have something nicknamed as the Romeo Clauses. Now these clauses are not anything new. They existed in prior legislations, not quite in the same manner but they were there. The rationale behind these clauses are that children experiment... that's a reality. So you don't want to have a situation where children of close age engage in consensual activities, and are caught and then get charged for an offence that follows that child for the rest of their life," said Chapman.

"Now to be clear, the parameters are very narrow to fall under these clauses, and close in age has to be one of them and is defined accordingly. So it may be situations where police could receive a report, do their investigations and an offence is found to be committed. But because they fall within certain ages, no charge was laid against these children," she added.