

THE EVIDENCE (AMENDMENT) (NO. 2) BILL, 2009

Arrangement of Clauses

Clause

1. Short title
2. Sections 15AA and 15AB inserted

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No. 7 of 2009

Second Session Ninth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to amend the Evidence Act, Chap. 7:02

THE EVIDENCE (AMENDMENT) (NO. 2) BILL, 2009

Explanatory Note

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

This Bill seeks to amend the Evidence Act, Chap. 7:02, (“the Act”) to revive the common law doctrine of recent complaint (“the doctrine”). The doctrine is an exception to the general rule that a previous statement made by a witness is not admissible in order to bolster his credibility. At common law, recent complaint evidence is only admissible in trials for sexual offences and is admitted to show consistency and to rebut consent; it cannot be used as evidence of the truth of the fact that the sexual offence was committed by the defendant. In order to be admissible, the complaint must have been made voluntarily and at the first reasonable opportunity after the commission of the alleged offence.

The Sexual Offences Act, 1986 (now Chap. 11:28), by section 31, abolished the doctrine from the laws of Trinidad and Tobago. The rationale for the abolition of the doctrine was that it was premised on the archaic notion that if the victim of an alleged sexual assault did not immediately inform someone, the victim would be judged to have consented. It was recognized that many victims, particularly children, may be afraid or reluctant to make an immediate complaint.

It is proposed, however, that the Act be amended in order to expressly revive the doctrine in respect of trials for sexual offences. The abolition of the doctrine creates further difficulties as the prosecution’s case may be substantially disadvantaged, victims are deprived of an opportunity to adduce evidence in support of their credibility and a jury may assume that no complaint was made, thus prejudicing the victim’s credibility. Having regard to these considerations, the probative value of the doctrine appears to outweigh any prejudicial effect.

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

Clause 2 would amend the Act by inserting after section 15A, sections 15AA and 15AB. The proposed section 15AA seeks to revive the doctrine of recent complaint. Additionally, the proposed section 15AB seeks to impose a requirement on the trial Judge to warn the jury that an absence of complaint or a delay in complaining does not necessarily indicate that the allegation that the offence was committed is false, since there may be good reasons why the victim of a sexual assault may refrain or hesitate from making a complaint.

BILL

AN ACT to amend the Evidence Act, Chap. 7:02

[, 2009]

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

1. This Act may be cited as the Evidence Short title
(Amendment) (No. 2) Act, 2009.

Sections 15AA, and
15AB inserted
Chap. 7:02

2. The Evidence Act is amended by inserting after section 15A the following sections:

“Recent
complaint

15AA. Notwithstanding any other law to the contrary, the common law rules relating to evidence of recent complaint in sexual offence cases shall apply, from the date this Act comes into force, as if they had not been abolished.

Judge’s
warning in
absence of or
delayed
complaint

15AB. Where on the trial of an accused person for a sexual offence, evidence is given or a question is asked of a witness that tends to suggest an absence of complaint in respect of the commission of the alleged offence by the person upon whom the assault is alleged to have been committed or to suggest a delay by that person in making any such complaint, the Judge shall—

- (a) give a warning to the jury 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 reason why a victim of a sexual assault may refrain from making, or may hesitate in making, a complaint about the assault.”.

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Passed in the Senate this day of , 2009.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day
of , 2009.

Clerk of the House

I confirm the above.

Speaker

No. 7 of 2009

SECOND SESSION
NINTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Evidence Act,
Chap. 7:02

Received and read the

First time

Second time

Third time