

JAMAICA

No. 19 - 2013

I assent,

[L.S.]

19/8/13 P. L. Allen
Governor-General.

31st day of August 2013

AN ACT to Amend the Trafficking in Persons (Prevention, Suppression and Punishment) Act.

[31st day of August 2013]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Trafficking in Persons (Prevention, Suppression and Punishment) (Amendment) Act, 2013 and shall be read and construed as one with the Trafficking in Persons (Prevention, Suppression and Punishment) Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title
and
construction.

[No.] *The Trafficking in Persons (Prevention, Suppression and Punishment) (Amendment) Act, 2013*

Amendment of section 2 of principal Act.

2. Section 2(1) of the principal Act is amended—

- (a) by inserting next after the definition of “child pornography” the following definition—

““debt bondage” means the status or condition of a debtor arising from a pledge or the use by the debtor of his personal services or those of a person under his control as security for or payment of a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited or defined;”;

- (b) in the definition of “exploitation” by inserting next after paragraph (e) the following as paragraph (f)—

“(f) keeping a person in debt bondage;”.

Amendment of section 4 of principal Act.

3. Section 4 of the principal Act is amended by—

- (a) deleting from subsection (6) the word “ten” and substituting therefor, the word “twenty”;
- (b) deleting from subsection (8), the word “ten” and substituting therefor, the word “twenty”; and
- (c) inserting next after subsection (8), the following as subsection (8A)—

“ (8A) A person commits an offence where that person conspires with any other person to commit an offence of trafficking in persons and shall be liable on conviction on indictment before a Circuit Court to a fine or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment.”.

Insertion of new section 4A in principal Act.

4. The principal Act is amended by inserting next after section 4 the following as section 4A—

“ Aggravating circumstances.

4A.—(1) Where a person is convicted of an offence under section 4, the Court shall determine whether any of the aggravating circumstances specified in

subsection (2) are present in the course of committing the offence and if so, having regard to those circumstances the court may impose, in addition to the penalty prescribed under section 4, an additional term of imprisonment not exceeding ten years.

(2) The aggravating factors to be taken into account by the court are that—

- (a) the convicted person has been previously convicted for an offence under this Act;
- (b) the convicted person used, threatened to use, or caused another person to use or threaten to use—
 - (i) an offensive weapon;
 - (ii) an explosive; or
 - (iii) a biological or chemical agent;
- (c) in the course of the offence of trafficking in persons or any subsequent exploitation, the convicted person caused the victim to be exposed to a life threatening illness;
- (d) a wrongful act of a sexual nature was committed against the victim;
- (e) where the trafficking in persons occurred by means of the abuse of power or a position of vulnerability as specified in section 4(2)(d), the abuse was carried out by an adult in authority;
- (f) the offence involved serious injury to, or a grave risk of death to, another person, or caused the death of the victim or another person, including death as a result of suicide;

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- (g) the victim suffers from a mental disorder or a physical disability;
- (h) the offence involved more than one victim;
- (i) the offence involved a series of criminal acts;
- (j) the offence was part of an activity of a criminal organization;
- (k) drugs, medication or an offensive weapon were used in the commission of the offence;
- (l) the victim is a child;
- (m) the convicted person is a public officer and the offence was committed while the public officer was acting or purporting to act in his official capacity;
- (n) the convicted person has been in an intimate relationship with the victim;
- (o) the convicted person has participated in a ceremony with the victim purporting to be a marriage ceremony, whether or not the result of the ceremony is a marriage that is legally valid; and
- (p) there exists any other factor that affects the relative seriousness of the offence.

(3) The factors specified in subsection (2) are in addition to any other factors or matters that are required or permitted to be taken into account by the Court under this Act or any rule of law.

(4) For the purposes of this section—

“adult in authority” means an adult who—

- (a) is in a position of trust or authority in relation to a child;

- (b) is a person with whom a child is in a relationship of dependency; or
- (c) stands in *loco parentis* to a child;

“convicted person” means a person who has been convicted of an offence under this Act;

“criminal organization” means any gang, group, alliance, network, combination or other arrangement among three or more persons (whether formally or informally affiliated or organized and whether or not operating through one or more bodies corporate or other association)—

- (a) that has as one of its purposes the commission of one or more serious offences;
- (b) whose members individually, jointly or collectively have engaged in unlawful activity in order to obtain directly or indirectly, a financial or other material benefit or to gain power or influence;
- (c) whose members issue threats or engage in conduct to create fear and intimidation or to exert power or influence in communities, or over other persons; or
- (d) whose members utilize or operate under a common name or identifying sign, symbol, tattoo or other physical marking, colour or style of dress, or use

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mannerisms or graffiti or erect monuments, murals, paintings or other artwork to promote or facilitate their criminal activities;

“explosives” has the meaning assigned to it under the *Explosives (Control of Manufacture) Act*;

“mental disorder” has the meaning assigned to it in the *Mental Health Act*;

“offensive weapon” means an offensive weapon as defined in section 2(1) of the *Offensive Weapons Act* and includes a firearm as defined in section 2(1) of the *Firearms Act*;

“serious offence” means an offence for which the maximum term of imprisonment prescribed by law is a period of three years or more.

Amendment of section 5 of principal Act.

5. Section 5(1) of the principal Act is amended by deleting the word “ten” and substituting therefor the word “twenty”.

Amendment of section 6 of principal Act.

6. Section 6 of the principal Act is amended—

(a) by deleting subsection (1) and substituting therefor the following—

“ (1) Where a person is convicted of the offence of trafficking in persons, the court shall, in the same proceedings in which the person is convicted of the offence, order the person to pay restitution to the victim.”;

(b) by deleting subsection (3) and substituting therefor the following—

“ (3) Restitution shall be paid to the victim from any property of the convicted person including as far as possible property forfeited under the provisions of the

Proceeds of Crime Act for an offence of trafficking in persons or the proceeds thereof.”.

7. Section 7 of the principal Act is repealed.

Repeal of section 7 of principal Act.

8. Section 14 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 14 of principal Act.

“ Powers of search and seizure of evidence and powers of search for victims.

14.—(1) Where a Justice of the Peace is satisfied by information on oath, and such further information as he may in the circumstances require, that there are reasonable grounds for suspecting that—

- (a) evidence of or relating to an offence under this Act is to be found on any premises specified in the information;
- (b) a victim is unlawfully detained for purposes of or relating to an offence under this Act in any place within the jurisdiction of the Justice of the Peace,

the Justice of the Peace may, subject to this section, act in accordance with subsection (2).

(2) The Justice of the Peace may issue a warrant authorizing the constable named therein to enter the premises specified therein, with such assistance and by the use of such force as is necessary and reasonable to—

- (a) enter upon the premises;
- (b) search the premises for evidence of or relating to an offence under this Act;
- (c) search the premises for any victim unlawfully detained for purposes of or relating to an offence under this Act; and

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(d) in the case of—

- (i) paragraph (b), seize any property found in the course of the search that the constable believes on reasonable grounds to be evidence of or relating to an offence under this Act; and
- (ii) paragraph (c), take the victim to or keep the victim in a place of safety or other lawful place, until the victim can be brought before the Justice of the Peace.

(3) The Justice of the Peace before whom the victim is brought may cause the victim to be dealt with as the circumstances may permit or require for the protection and welfare of the victim and in accordance with the proper administration of justice.

(4) For the purposes of this section “an offence under this Act” refers to an offence which has been committed or is about to be committed.”.

Repeal of
Schedule to
principal
Act.

9. The Schedule to the principal Act is repealed.

Passed in the Honourable House of Representatives this 9th day of July 2013.

LLOYD B. SMITH
Deputy Speaker.

Passed in the Honourable Senate this 19th day of July 2013 with four (4) amendments.

FLOYD E. MORRIS
President.

The Trafficking in Persons (Prevention, Suppression and Punishment) (Amendment) Act, 2013 [No.] 9

On the 23rd day of July 2013 the House of Representatives agreed to the amendments made by the Senate.

MICHAEL A. PEART
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Clerk to the Houses of Parliament.