

Act number 12/2009

Special Provisions Act to Deal with Child Sex Abuse Offenders

Part 1

Explanation and Purpose

Explanation and Title

- 1 (a) This law sets out special provisions to deal with the confinement of child sex abusers at investigative and trial stages, and the monitoring of abusers following release from confinement through a mechanism, and allowing the acceptance of a lower level of evidence by the court, and to specify a special procedure to award damages arising out of child sex abuse.
- (b) This law shall be cited as “special provisions act to deal with child sex abuse offenders”

Purpose

- 2 This law intends to achieve the following purposes:-
 - (a) Protect children of the society from persons who could harm them and, to maintain that protection by detaining child sex abusers under custody during investigation and trial stages, and monitoring of offenders under a specific monitoring mechanism even after they have served their sentences.
 - (b) The state monitor and manage child sex offenders in a continued manner.
 - (c) In addition to the types of evidences admissible



to court, to permit other types of evidence to be admitted to establish child sex abuse, and lower the admissibility criteria of evidence.

- (d) Stipulate severe punishment to child sex abusers and those who aid and abet in the commission of such.
- (e) Obtain compensation for injuries suffered by child due to sex abuse.
- (f) Cause the identity of child sex offenders to be known to the public.
- (g) Prevent requests to the child to demonstrate to court through actions, or by other means, the manner in which the abuse was carried out or committed.

Part 2

Declaration of Offences

Sexual act carried out with a child

- 3 (a) It is an offence to intentionally touch a child's body with a sexual intent.
- (b) For the purpose of this clause, touching with a sexual intent shall mean touching in the following ways.
 - (1) Touching the child's genitals, or touching any other sexual parts of a child's body, or touching a part of the body that could provide sexual stimulation.
 - (2) Touching with the hand or using an object.
- (c) Offence prescribed in (a) of this section shall be punishable with imprisonment for a period

is 13 years of age, such a child's punishment shall be detention for a period not exceeding 5 years in a place suitable for detention of children. If the child has not attained 13 years of age at the time of commission of the offence, the parents of the child shall be entrusted with the child's care and child shall be kept under house detention for a period not exceeding 5 years.

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| Aiding a child to commit a sexual act | 8 | <p>(a) It is an offence to intentionally arrange, assist or facilitate or abet the commission of an offence prescribed in Sections 3, 4, 5 or 6 of this law, by a child.</p> <p>(b) Offences prescribed in (a) of this section shall be punishable with imprisonment for a period between 7 years and 10 years.</p> |
| Sexual act carried out by a person in a position of trust | 9 | <p>(a) It is an offence for a person in a trustable position to a child, to engage in a sexual act with the child.</p> <p>(b) Offence prescribed in (a) of this section shall be punishable with imprisonment for a period between 15 years and 18 years.</p> |
| Causing a child to engage in a sexual activity while in a position of trust | 10 | <p>(a) It is an offence for a person in a trustable position to a child, to cause a child to engage in a sexual act.</p> <p>(b) Offence prescribed in (a) of this section shall be punishable with imprisonment for a period between 15 years and 18 years.</p> |

marital relations in Islam.

- (e) A person who provides care or services to a child under law.
- (f) Person looking after detention centre where a child is kept for investigation or where a child is serving a sentence.
- (g) A person of the house, where a child is kept.
- (h) A person from a hospital, clinic, or a place providing childcare services.
- (i) A resident of the child's house.
- (j) A person from the facility where a child obtains education from.
- (k) A person from the child's work place or place where the child obtains work skills from.
- (l) Person in a position to advise and provide guidance to a child.
- (m) Person entrusted with care of a child

Exemption arising out of marriage

- 14 Acts that can be considered sex offences within this law shall not be deemed as an offence when carried out with a child with whom a person has entered into marital relations with as per Islamic principles.

Sexual act with a family member

- 15 (a) It is an offence to engage in a sexual act with a child of a person's family.
- (b) Offence prescribed in (a) of this section shall be punishable with imprisonment for a period between 20 years and 25 years.

Family member encouraging a child to engage in a sexual

- 16 (a) It is an offence for a family member of a child, to encourage a child to engage in a sexual

- activity** activity.
- (b) Offence prescribed in (a) of this section shall be punishable with imprisonment for a period between 20 years and 25 years
- Paying for sexual services of a child** 17 (a) It is an offence to engage in sexual acts with a child pledging to make payment, or to carry out a sexual act with a child by creating an expectation that payment would be made, prior to carrying out the act.
- (b) Offence prescribed in (a) of this section shall be punishable with imprisonment for a period between 15 years and 21 years
- (c) For purposes of this section “make payment” refers to the award of financial or monetary advantages, or the discharge on behalf of the child an obligation of the child to pay and includes discharge on behalf of the child an obligation of the child to pay for goods and services, and the gift of valuables and money.
- Prostitution or pornography through children** 18 (a) A person commits an offence, if he intentionally causes child prostitution, or involves a child in the creation of pornography, or where he creates pornographic material in which a child’s sexual organ is displayed.
- (b) Offence prescribed in (a) of this section shall be punishable with imprisonment for a period between 20 years and 25 years
- Production of pornography and** 19 (a) A person commits an offence, if he engages a

**causing prostitution through
force**

child in prostitution, or participate a child in the production of pornography using force, through control or by restraining the free will of a child.

- (b) Offence prescribed in (a) of this section shall be punishable with imprisonment for a period between 20 years and 25 years

**Causing sexual acts by
intoxicating**

- 20 (a) It is an offence to engage with, or cause a child to engage in a sexual act, by administration of an intoxicating substance or a substance to stupefy, or cause a child to lose free will.

- (b) For purposes of this section “administration of a substance”, refers to giving food or drink or any other form of ministrations of something into the body.

- (c) Offence prescribed in (a) of this section shall be punishable with imprisonment for a period of 25 years.

**Entering into a house to carry
out a sexual act**

- 21 (a) It is an offence for a person to enter a house or a place where a child is staying, with the intention of carrying out a sexual act.

- (b) For purposes of this section, buildings and empty spaces surrounding buildings, and land transport vehicles, and sea transport vessels shall fall within the meaning of “house” or “place”.

- (c) Offence prescribed in (a) of this section shall be punishable with imprisonment for a period between 1 year and 10 years.

not give consent to carryout sexual acts, and that the sexual act was carried out without the child's consent.

Part 4

Withholding Certain Rights

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| Withholding certain rights granted under the Constitution | 26 | From the rights granted under the Constitution for persons arrested or detained, the rights mentioned in this part shall be withheld to the extent stated in the following sections. |
| Withholding the right to remain silent | 27 | Although article 48 (c) grants the right to remain silent except to establish identity, this right is completely withheld for persons arrested for commission of offences under this law. |
| Withholding right to be released from detention at investigation stage | 28 | Although article 49 of the Constitution states that no person shall be detained in custody prior to sentencing, unless the danger of the accused absconding or not appearing at the trial, the protection of the public, or potential interference with witnesses or evidence dictate otherwise, this right shall be withheld herewith, in order to facilitate judges to order persons accused of commission of offences under this law to be detained during investigation and trial stages, and for that purpose it shall be deemed that the accused poses a danger to the society if released, and the accused will |



potentially interfere with witnesses or evidence.

**Reference to article 16 of the
Constitution in withholding
rights**

- 29 (a) Rights granted under the Constitution, withheld under section 27 and 28 of this law are withheld under article 16 (b) of the Constitution.
- (b) When deciding whether the rights withheld under this law are pursuant to Article 16 (b) of the Constitution, the court shall recognize that the 6 points mentioned in article 16 (c) of the Constitution were referred to by the People's Majlis in withholding the basic rights to the extents mentioned in this law.

Part 5

Detention in Custody

Request for an order to detain

- 30 (a) The Commissioner of Police may request the Prosecutor General to submit to court to obtain an order to detain a person under suspicion of committing an offence prescribed under this law into custody during investigation and trial stages, where the police feel the need to invoke the special procedures set out under this act.
- (b) When a request as stated in (a) of this section is signed, and made in writing by the Commissioner of Police to the Prosecutor General, the Prosecutor General shall review the request as per his guidelines, following

which, he shall submit the request to court to obtain the order, as soon as practicable.

What the Prosecutor General needs to establish

31 The Prosecutor General will need to establish at court the following, where he requests for a court order pursuant to section 30 of this law.

- (a) The necessity of detention in custody of the accused in order to protect children of the society.
- (b) That the accused if not detained in custody, will repeat such an offence or potentially interfere with witnesses or evidence of the case.

Matters considered by court

32 Prior to granting an order to detain a person in custody during investigation and trial stages in cases where requests are submitted under section 30, the court shall consider the following.

- (a) Opinions on the matter of experts from the area of health, psychology and psychiatry.
- (b) The offence of the accused.
- (c) Victim's age and the situation of the victim due to the offence committed by the accused.
- (d) Whether the offence was carried out by a person in a position of trust to the child.
- (e) History of the accused and whether previously accused for commission of similar offences.
- (f) Cooperativeness during the investigation of the offence.
- (g) Criminal record of the accused.
- (h) The degree to which the accused will potentially interfere with witnesses or evidence,

or repeat similar offence where the accused is not detained during investigation and trial stages.

- (i) The situation, other evidences with regard to the matter, and circumstantial evidence.

Interim order

- 33 (a) When submission to court is made as per section 30, the court is authorized to issue an interim order to detain the accused in custody during trial stage pending court decision, for a period not exceeding 30 days.
- (b) Where the investigation could not be completed during the 30 days period in which the accused had been detained in custody, in spite of carrying out the investigation in a satisfactory manner, the period of detention maybe extended for an additional period not exceeding 30 days, at the courts discretion.
- (c) The court shall expeditiously, within the period extended in (b) of this schedule decide the case submitted to court by the Prosecutor General as per schedule 30 of this law.

Requests that maybe made by court

- 34 In order to decide a case submitted under schedule 30, the court may appoint a psychiatrist or a child protection worker and request for reports of their opinions.

Order to detain in custody

- 35 (a) Where the court deems necessary to sustain the detention of a person in custody during investigation and trial stages, the court may

order to sustain the detention.

- (b) The order referred to in (a) of this section shall end when the first stage of the trial proceedings conclude, or when the court which made the order rescinds the order.
- (c) When making the order specified in (a) of this section, the reasons for making the order should be specified.

Review of court order

- 36 (a) Where the court feels that a court order to detain during trial and investigation stages has exceeded the duration specified by court order, or where such complaint is submitted to court by the guardians of a person, the court shall review the case.
- (b) In reviewing a case as per (a) of this section information about the work carried out with regard to the case up to the date, the time spent, and information about the manner of treatment of the accused should be obtained. The information would be obtained in a court setting in the presence of the accused and the police.
- (c) In reviewing a case by court as per (a) of this section, the court may rescind the court order for detention where the court does not see the need for the accused to be detained during investigation and trial stages, or the circumstances in which the detention order was issued had changed.



Part 6

Order to Monitor

Requesting for an order to monitor

- 37 (a) The state may request the court to make an order requiring the state to monitor persons convicted of engaging in sexual offences with children, even after the sentences for the offences have been served, to protect the society, or another child from harm and to prevent the commission of a sexual offence against a child from the offenders family, or children of the offender, till the said children reach 18 years of age.
- (b) Request to obtain the order stated in (a) of this section shall be made by the Prosecutor General within the 6 months prior to the expiry of the sentence being served by the offender.
- (c) When request to obtain the order stated in (a) of this section is made by the Prosecutor General, he shall submit to court a document by a doctor, a psychologist, or a certified psychiatrists stating the possibility of the accused repeating the offence.
- (d) Within 7 days of submission of case to the court, the Prosecutor General shall furnish a copy of the case to the offender and the offender's guardian.
- (e) Copies of any documents, information or evidence prepared for a case submitted

under set principles for a period not exceeding 3 years where it is likely that the offender would repeat the commission of such offences.

- (c) When an order is issued pursuant to (b) of this section, and 6 months remain from expiry of the order issued for 3 years, the state at its discretion may request as per section 37 of this law.

Matters to be assessed in granting orders

40 In addition to matters examined as general rules by the court, the court shall assess the following, prior to granting a court order pursuant to section 38 of this law.

- (a) Maintaining safety of the society.
- (b) Information derived from the statements given by psychiatrists, psychologists or criminologists appointed by the court.
- (c) The level of corporation given to the persons appointed by court, by the offender.
- (d) Findings of the psychiatrists, psychologists or criminologists.
- (e) Level of recidivism by offender, and persons who had committed similar offences through review of their history's, date's and general statistics of such persons.
- (f) Whether the offender has participated or has requested to participate in a rehabilitation programme in order to reform, or if participated in a similar programme, the level of participation in the programme.
- (g) Criminal record of the offender.

- (h) Other factors to corroborate the possibility of repeat of a sexual offence by the offender.
- Effective date of order to monitor** 41 (a) A court order to monitor an offender pursuant to section 30 (b) will be effective on whichever date comes last, from the date the order was made or the end date of detention .
- (b) The order specified in (a) of this section will expire on the date specified for end of detention on the order.
- (c) When the order specified in (a) of this section is made, a correction officer appointed from the agency mandated to look after prisoners shall implement the order.
- Incorporation of conditions into order to monitor** 42 The court may include a condition or conditions from the following in an order to monitor made by it. The court may further order the offender to comply with the said conditions.
- (a) Visits to the offender's house, on a specified time, for a specified duration by the correction officer assigned to the offender.
- (b) The offender meet with correction officer assigned to the offender, at specified periods.
- (c) Inform correction officer of any changes to the address of the offender.
- (d) Offender participate in a rehabilitation or treatment programme prescribed by the court or the agency mandated to look after prisoners.
- (e) Prohibit the offender from attending certain places or to be seen at certain places.

- (f) Prohibit the offender to live in a certain place.
 - (g) Prohibit meeting certain persons.
 - (h) Prohibit contact with certain persons or persons of certain categories.
 - (i) Forbid the offender from carrying out certain acts or certain types of acts.
 - (j) Forbid offender to engage in certain kinds of employment or forbid engaging in certain types of employment.
 - (k) Forbid name change.
- Failure to comply with the order to monitor** 43
- (a) It is an offence to fail to comply with an order to monitor or to go against a condition specified in the order.
 - (b) A person who commits the said offence shall be punishable with imprisonment for a period not exceeding 2 years.
- Responsibilities of psychiatrists** 44
- Every psychiatrist appointed to assess an offender or a suspect under this law shall include the following in their reports.
- (a) The extent to which it is likely that the offender may engage in a sexual offence with a child if offender is not kept under a monitored mechanism.
 - (b) The reasons for the psychiatrist view
- Receiving and obtaining information** 45
- (a) The agency mandated to look after the affairs of offenders shall provide health reports, psychiatric reports, reports prepared by detention centres and any other reports or

information deemed important to carry out the work of a psychiatrist, when requested to do so for purposes of compilation of reports pursuant to this law by the psychiatrist.

- (b) It is an obligation of a person in possession of information required as per (a) of this section to provide such information when requested to do so, pursuant to this law.
- (c) Obligations to uphold confidentiality under any law shall not be applicable when carrying out duties pursuant to this law to the extent required for attaining purposes of this law.

Part 7

Principles Relating to Trial

Rights relating to trial

- 46 There is no prohibition under any section of this law for an offender or an accused, to avail the following rights existing, during trial process
- (a) Offender be able to defend himself through legal counsel or on his own.
 - (b) Obtain attendance of witnesses
 - (c) To testify
 - (d) To examine witnesses presented by one party by the other through the judge
 - (e) Admit other documents required to be submitted to court.

Evidential requirement

- 47 The evidential requirement for a criminal offence



stated in another law shall not apply when charges are made under this law or, when establishing offence stated in this law or in establishing the commission of a sexual offence with a child where at least 5 types of evidences are available from the following types of evidences. Where the 5 types of evidences are available, such evidence shall be deemed to constitute sufficient evidence to establish the offence beyond reasonable doubt as stated in Article 51 (a) of the Constitution.

- (a) An official document establishing that a sexual offence had been committed with a child.
- (b) Results of scientific investigations.
- (c) Statements of eye witness accounts.
- (d) Forensic evidence and evidence derived from investigations.
- (e) Evidence received from video records.
- (f) Statement given by the child to the child's parents, or relatives, or friend, or doctor, or health worker, or psychologist, or psychiatrist or police officer involved in the investigation, or a child protection worker, within a short period or duration of commission of the act
- (g) Child's statement explaining the events and what had transpired with the child.
- (h) A child's narration of the events when a long time had not elapsed between the time of the event and the narration, and grounds to believe that slander is being uttered against a person does not exist.
- (i) Corroboration between the child's statement



and medically established physical injury, and findings of forensic investigations.

- (j) The person who had engaged in the sexual act with the child has a previous conviction for committing a child sex offence.
- (k) Material evidence.
- (l) Child's narrative when interviewed by investigator.

Obtaining testimony of a child 48 To obtain testimony of a child for purposes of this law, testimony of the child should be obtained through interview which should be video recorded. The interview should take place away from court and trial proceedings and the police station, and be carried out in a familiar environment for the child, in the presence of familiar or trusted persons to the child. Further, where the child has a disability, the interview should be video recorded and carried out in the presence of a trusted or familiar person to the child, in addition to a person capable of translating what the child narrates.

Part 8

Some General Principles

Free from legal responsibility 49 A person who carries out acts stipulated in this law, as stipulated in this law, in good faith, without intention to harm another, and with the intention of executing this law, is free from legal responsibility



where he acts or omits to act.

Exemption of parole and bail principles

50 Bail and parole principles shall not apply to persons detained pursuant to this law.

Compensation

51 (a) Where the offence of engaging in a sexual act with a child is established, a separate civil lawsuit can be made to obtain monetary compensation for physical injuries sustained, the costs incurred for medical treatment, the psychological damage caused and the terrifying ordeal suffered by the child.

(b) To establish a lawsuit mentioned in (a) of this section the evidence required would be the court decision establishing guilt of the offender.

Areas for which compensation may be obtained

52 (a) The following are included within the scope of the areas under which monetary compensation may be obtained pursuant to the civil lawsuit under section 51.

- (1) Physical injuries sustained by the child.
- (2) Compensation for costs incurred due to physical harm to the child.
- (3) Compensation for psychological damage caused to the child.
- (4) Compensation for damage caused as a result of the terrifying ordeal suffered by the child.
- (5) Compensation for damage caused to the child's standing in society at a young age.

- (b) The court shall make reference to the following in deciding on the level of compensation to be granted under a lawsuit specified in (a) of this section.
- (1) Age of the child.
 - (2) Prospects for the child to pursue education.
 - (3) Prospects for the child to become a responsible citizen.
 - (4) The extent of psychological damage caused to the child.
 - (5) The expenses that would be incurred for the child to lead a normal life.
 - (6) The spending capacity of the child's parents or guardians.
 - (7) The level and rank in society of the child's family.
 - (8) The level and rank of the child in society.
- 53 (a) It is an offence for a person with the knowledge of an offence being committed or the occurrence of an offence or the design to commit an offence prescribed under this law to fail to inform of such to the police.
- (b) Offences prescribed in (a) of this section shall be punishable with imprisonment for a period between 6 months and 3 years.

Protection

- 54 This law does not permit disclosure of information about a child with whom an offence prescribed under this law had been committed by either an agency in possession of the information or the media. The trial

proceedings of cases submitted pursuant to this law shall not be held publicly.

Counseling

55 The state at its expense and in a manner organized by it shall provide counseling services required to support a child to become a responsible citizen, and counseling to relieve potential psychological distress caused to a child, against whom an offence prescribed under this law had been committed.

Recompense

56 The state shall provide financial assistance in a manner prescribed by it to the parents or guardians of a child against whom an offence prescribed under this law had been committed where financial assistance is required by the parents or guardian for the child's upkeep.

Publishing offender registry

57 State agency responsible for the protection of children shall publish and make available to the public information of offenders pursuant to this law. In this regard, for the safety and protection of other citizens from offenders, and to eliminate possibilities for repetition of such offences, complete information about the offenders should be published in an internet website providing easy access to the information, and a mechanism should be established to identify offenders by their national identification numbers via short message service(s.m.s)

Making regulations and enforcement

58 Regulations required to be made pursuant to this law will be made and enforced by the Attorney General

and such regulations shall be publicly announced within a period of six months from this law coming into force.

59 Unless stated otherwise, this law shall come into force, after approval of the People's Majlis, assent, and publication in the government gazette.

Definitions

60 Unless stated otherwise in this law, the following words and phrases shall have the meanings ascribed to it below.

(a) "Person" shall mean a person of sound mind above the age of 18.

(b) "Child" shall mean a person who had not attained the age of 18, and includes newborns. Persons with special needs suffering from mental disorders shall be included within the definition of "child" despite being above the age of 18.

(c) "Sexual intent" shall mean the decision to act in a manner in order to fulfill sexual desire. Or an act carried out to achieve such objective.

(d) "Sexual act" means, whether the act be intercourse, touching, or commission of any other act, which to a reasonable man's thinking could be deduced as an act committed to achieve sexual gratification. Or in view of the situation of commission of the act, it cannot be deduced that the act was committed for a purpose other than for sexual gratification.

(e) "Consent" shall mean the ability to make a

decision or make a choice free from coercion with free will. Or the ability to choose or decide.

- (f) “Presence of a child” shall mean, carrying out a sexual act in the presence of a child with the intention of exposing to the child.
- (g) “Family” shall mean the following persons with relation to the child.
 - (1) Mother, father, grandfather or grandmother, great grandfather, or great grandmother or;
 - (2) Siblings, or half brothers or sisters or;
 - (3) Aunts or grand aunts, or uncle or great uncle or;
 - (4) Siblings due to breastfeeding from a common person;
 - (5) Legal guardians as per shariah in addition to the persons mentioned above.

