



# Child Abuse and the Law in Latin America and the Caribbean

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Barbados • Belize • Bermuda • Bolivia • Brazil • Chile  
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## CHILD ABUSE AND THE LAW IN LATIN AMERICA AND THE CARIBBEAN

*The countries of Latin America and the Caribbean have legal instruments in place to punish child abuse and neglect. This report summaries relevant provisions for a number of the countries, and where noted photocopies of materials have been appended. In some of the countries, the problems of poverty and urbanization have led to harsh conditions for children. Comments from other sources on actual conditions have been included in the summaries. It should be noted that in many cases the laws are not written in a gender-neutral manner; the assumption is that sexual abuse is likely to be done by a man to a young girl, rather than by a woman to a young boy. Same-sex offenses may be punished separately, under code sections with titles such as "Unnatural Offenses."*

### ANTIGUA AND BARBUDA

Child abuse tends to go unpunished. (Country Reports on Human Rights 1997, [http://www.state.gov/www/global/human\\_rights/1997\\_hrp\\_report](http://www.state.gov/www/global/human_rights/1997_hrp_report). [Hereafter cited as CRHR. Copies of the section on children for each country have been attached].)

### ARGENTINA

The United Nations Convention on the Rights of the Child is incorporated into the 1994 Constitution. The federal capital and most of the provinces, as well as the central government, have enacted child protection laws. (CRHR)

### BAHAMAS

Anyone in contact with a child that appears to have been sexually abused must report the case to the police; this requirement is not in the law for physical abuse. All kinds of abuse are serious problems in the country. Children may be removed from homes and criminal charges can be brought by the Department of Social Services. (CRHR)

Under the Criminal Procedure Code of 1968, corroboration is looked for in reports of sexual crimes and when a child gives evidence. (Cole, Dexter E. *The Legal System of the Commonwealth of the Bahamas* §1.4 (F), 7 MODERN LEGAL SYSTEMS CYCLOPEDIA (1989-). [Hereafter cited as MLSC.]

### BARBADOS

Under Title XI of the LAWS OF BARBADOS, Chapter 141 (Offenses Against the Person), a number of abuses against children are defined as crimes. Abandonment of a child less than two years old or exposure of a child such that the child is likely to be permanently injured is a misdemeanor punishable with up to three years of imprisonment (§25). Any sexual act with a girl of less than 16 is considered not to be consensual and therefore is considered indecent assault, punishable as such with up to two years of imprisonment (§45). Unlawful carnal knowledge of a girl younger than 13 is punishable with imprisonment for life and whipping. Attempts to commit this crime are punished with up to two years in prison and a whipping (§48(1) & (2)).

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Carnal knowledge of a girl who is at least 13 but less than 16 years old, if it is not rape, is punished with two years of imprisonment. The same punishment applies if the girl is mentally deficient, regardless of age. (§49(1)(a)). However there is an exception if the offender is 24 years old or younger, without previous criminal charges, and had reason to believe the girl was 16 or older (§49 (2)).

Inducing or allowing any girl to be on one's premises for unlawful carnal purposes is punishable with life imprisonment if the girl is less than 13 years old or with two years in prison if the girl is at least 13 but less than 16 (§51). The punishment is two years for taking an unmarried girl less than 16 years old away from her parents; if the purpose of the action is unlawful sexual intercourse, the same punishment applies when the victim is up to 18 years old, unless the perpetrator had reason to believe her to be 18 or older (§§52-53.). Stealing a child less than 14 years of age, whether by decoy or force, is punishable with seven years of imprisonment, with the possibility of a whipping. Sending a stolen child away from the island for the purpose of employment is punishable with two years in prison.

Evidence of sexual crimes will be heard by the court from a child, even if the child is too young to understand the required oath if the child is "possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth," but the testimony must be corroborated by material evidence (§48(3) & (4)).

Under Chapter 148 of the Laws, incestuous sexual offenses against children are defined as crimes and punishments ranging from the loss of authority over the child to life imprisonment are established.

In addition to these criminal law provisions, Chapter 145 of the Laws constitutes the "Prevention of Cruelty to Children" act. It sets punishments of fines and imprisonment or both for various acts of neglect and mistreatment. It also establishes that the authorities may take a neglected or mistreated child to "a place of safety" until a magistrate can review the case; furthermore permanent custody can be taken from the parent or guardian (art. 7-8). A photocopy of this act is attached.

The Child Care Board is the key agency responsible for child welfare. (CRHR)

### BELIZE

Under the Criminal Code of Belize (Title X, Chapter 84, LAWS OF BELIZE), a number of crimes against children are defined. The following chart lists the term of imprisonment established as punishment for carnal knowledge of a female child, with or without her consent, under section 46 of the law:

Age of the Child	Length of Term in Prison
less than 12 years	life
12 years or more but less than 13	5 years
13 years or more but less than 14	2 years
14 years or more but less than 16, or mentally deficient of any age	2 years, but if the perpetrator is less than 20 himself, had reason to believe the girl to be over 16, and had no prior offense, not punished

Procuring a female under 18, other than someone who is a "common prostitute or of known immoral character" to have unlawful carnal knowledge or become a prostitute is punished with five years in prison (§47). Allowing one's premises to be used for carnal purposed when the girl is less than 12 years old is punishable with life imprisonment. For girls over 12 but under 16, it is punishable with two years' imprisonment (§49).

Anyone who has a legal or contractual obligation to take care of a child of less than five years who abandons the child, whether by leaving the child at a hospital or workhouse or in any manner, is liable to be punished with two years' imprisonment (§58).

The family services division of the Ministry of Human Resources has programs for children who are victims of domestic violence. No societal pattern of abuse has been found. (CRHR)

#### BERMUDA

Under the REVISED LAWS OF BERMUDA, Title 13, Item 6, the Protection of Children Act, 1943, the offense of cruelty to a child, defined as a person under the age of 17, is outlined. Anyone who is 17 or older and who has the custody or care of a child and willfully assaults, ill-treats, neglects, abandons, or exposes the child or who permits these things to happen such that the child is caused to suffer or be injured is guilty of an offense and may be punished with imprisonment for 12 months, a fine, or both (§6, ¶1). It is further specified that neglect is defined as including failure to provide or take steps to obtain adequate food, clothing, medical aid, or lodging; it also includes leaving a child under the age of 10 unattended of an "unreasonable" length of time (§6, ¶3). If a children is found to be in need of protection or control, anyone whose actions caused the situation may be punished with imprisonment for six months, a fine, or both. Children are considered to be in need of protection or control if they are found:

- 1) destitute or deserted;
- 2) under the care of unfit parents or guardians, that is those who have "criminal or drunken habits";
- 3) without settled abode or subsistence;
- 4) begging;
- 5) (for females) present in a household in which the offense of incest has occurred;
- 6) frequenting the company of a reputed prostitute;
- 7) frequenting a house used in part for prostitution or living in circumstances calculated to cause or encourage the seduction or prostitution of the child;
- 8) frequenting a public bar; or
- 9) unlawfully buying, receiving, or possessing a dangerous drug (§7).

When children are designated as in need of protection or control, the Children's Court can make decisions pertaining to their custody (§8).

In addition, Title 8, Item 31 of the Revised Laws, the Criminal Code, contains provisions on the abuse of children in Part X, Offenses Against Morality. Offenses are punished as follows:

Offense	Punishment
carnal knowledge of girl less than 14 years of age	imprisonment for 20 years
attempted carnal knowledge of a girl less than 14 years of age	imprisonment for 15 years
carnal knowledge of girl 14 or older but younger than 16, or attempts to do so	imprisonment for 15 years, if convicted on indictment; for 5 years if convicted by a court of summary jurisdiction
permitting unlawful carnal knowledge of a girl under 14 years of age on the premises	imprisonment for 15 years
permitting unlawful carnal knowledge of a girl 14 or older but younger than 16 on the premises	imprisonment for 15 years, if convicted on indictment; for 5 years if convicted by a court of summary jurisdiction
touching someone under the age of 14 for sexual purposes or causing such a person to so touch anyone	imprisonment for 15 years, if convicted on indictment; for 5 years if convicted by a court of summary jurisdiction
a person in a position of trust or authority touching someone under the age of 16 for sexual purposes or causing such a person to so touch anyone	imprisonment for 20 years, if convicted on indictment; for 5 years if convicted by a court of summary jurisdiction

It should be noted that if the offender is under 21, it is a valid defense if he can claim that he had reason to believe the girl was 16 or older. (§§180-182, 182A-B.)

## BOLIVIA

There are problems stemming from a system of children indentured as servants in well-to-do families from the age of 10 or 12. There are no controls over their treatment, and children in this system (*criadito*) become virtual slaves. (CRHR)

## BRAZIL

Although legislation is in place to protect children, Brazil has a vast number of "street children" who either live or spend most of their time on the streets. These children are perceived by some as primarily a public safety problem and have been the targets of vigilante-type groups. (*see Life on Rio's Mean Streets*, WASHINGTON TIMES, Aug. 5, 1991, at 12.) Child prostitution is a serious problem. The government of the Federal District launched a program to prevent sexual exploitation of children that includes a 24-hour number for case reporting, a special police office to investigate sexual crimes against children, a requirement that schools discuss violence against children, establishment of teams within clinics and hospitals with staff to treat children who are victims of violence or sexual abuse, and development of education and professional training for poor adolescents, to prevent their ending up on the streets. (CRHR)

## CHILE

On August 19, 1994, a law on domestic violence was signed by the President. It includes provisions on abuse of children and establishes procedures to be followed. Those guilty of acts of domestic violence may be sentenced to mandatory therapy, a fine, or imprisonment. (*Diario Oficial*, Aug. 27, 1994, pp. 2-3, via *World Law Bulletin* 94.12)

There have been few reported cases of sexual abuse of children, though it occurs. Estimates are that 34% of those under 12 experience some physical violence, but only 3.2% of the victims reported to the family affairs unit of the police were under 18. (CRHR)

## COLOMBIA

Constitutional and legislative commitments to the rights of children exist. A Children's Code sets forth children's rights and establishes services and programs to enforce them but implementation is inadequate. There is also a recent Law on Family Violence, designed in part to protect children. Child prostitution and street life continue to be a problem; those living on the streets are the targets of "social cleansing gangs." (CRHR)

## COSTA RICA

The National Institute for Children (PANI) has worked to increase awareness of crimes against children and the problem of child prostitution. (CRHR)

## DOMINICA

Under Chapter 10:31 of the LAWS OF DOMINICA, Offenses Against the Person, anyone who is responsible for a child, whether as a parent or employer of an apprentice or servant, who willfully neglects to provide necessary food, clothing, or lodging or who causes any bodily harm to an apprenticed or servant, is liable to imprisonment for two years (§28). Abandonment or exposure of a child under two such that the life of the child is endangered or the health of the child is or is likely to be permanently injured is also liable to imprisonment for two years (§29). Assault or battery in general is punished with a fine of 250 dollars and costs or two months imprisonment (§43); but if the victim is a male child under the age of 14 or a female of any age, the punishment may be more severe. The Magistrate may decide to impose a fine of 100 dollars, plus costs, or imprisonment for six months; in

addition the offender may be under observation as to good behavior for an additional period of up to six months (§44).

The crime of abducting an unmarried girl under the age of 16 against the will of her parents is punished with imprisonment for two years (§53). The crime of child stealing, when the child is under the age of 14, is punished with three years of imprisonment, but those claiming parenthood of a child are not liable to prosecution for taking a child away from someone lawfully caring for the child (§54). Kidnapping in general, regardless of the age of the victim, is punishable with seven years of imprisonment (§65). Rape and indecent assault, regardless of the age of the victim, are punished under the Offenses Against the Person law, with ten and seven years' imprisonment respectively (§§49-50). It should be noted that the section on indecent assault is specifically about assault on females.

In addition, Dominica has a Sexual Offences Act (Chapter 10:36, copy attached). It outlines the following crimes and punishments:

Offense	Punishment
carnal knowledge of a girl under the age of 12	life imprisonment
attempted carnal knowledge of a girl under 12	imprisonment for 7 years; if the offender is not over 16 years old, the court may order whipping instead of prison time
carnal knowledge or attempted carnal knowledge of a girl over 12 but under 14 years old or of any "female idiot or imbecile"	imprisonment for 7 years
having a girl under the age of 12 on the premises for unlawful carnal knowledge	imprisonment for 5 years
having a girl over the age of 12 but under 14 on the premises for unlawful carnal knowledge	imprisonment for 2 years
abduction of a girl under 16 for carnal purposes	imprisonment for 2 years
detention against her will for carnal purposes or in a brothel (female of any age)	imprisonment for 2 years

The law specifies that seduction or prostitution of a girl under 16 that has been caused or encouraged by a parent or guardian may result in the loss of custody (§ 10).

It has been pointed out that although children's rights are listed in a number of laws, enforcement agencies are understaffed (CRHR).

#### DOMINICAN REPUBLIC

According to the 1995 Country Reports on Human Rights, January 1, 1995, a new Minor's Code went into effect that contains provisions on child abuse, sexual exploitation, and child labor. It has provisions on removal of mistreated or delinquent children from the home. (p. 396). As of 1996,



the Code was described as "unimplemented," and child abuse is underreported. There has been sexual exploitation of children facilitated by the tourist industry. (CRHR)

#### EL SALVADOR

The Constitution of December 15, 1983, contains a provision on children's rights, including the right to have the state protect them from physical, mental, or moral harm. (Knight, W. Wilder, *The Legal System of El Salvador* §1.2 (E), MLSC.)

The Salvadoran Institute for the Protection of Children (ISPM) is an autonomous entity responsible for protecting and promoting children's rights. Offenses against children have been increasingly reported. (CRHR)

#### GRENADA

The law provides severe penalties for those convicted of child abuse. The victim's alleged consent is not admitted as a defense in cases of incest. (CRHR)

#### GUATEMALA

A Code of Children and Youth was approved September 26, 1996. Children are defined as those up to 12 years of age and youth those 12 to 18. It outlines discrimination, negligence, marginalization, exploitation, violence, cruelty, and oppression. Fines and/or imprisonment may be imposed on those found to enslave, torture, or exploit children or youth. (*Diario de Centro América*, Sept. 27, 1996, pp. 2877-2894, via Global Legal Information Network and *World Law Bulletin* 97.01.)

In addition, on November 25, 1996, a law was enacted concerning domestic violence. It covers physical, sexual, or psychological harm and property damage that effects family members, including children. It outlines procedures to be followed when complaints are made and states that protective measures may be applied. Sanctions are imposed on offenders under the Criminal Code. (*Diario de Centro América*, Nov. 28, 1996, pp. 1020-1021, via Global Legal Information Network and *World Law Bulletin* 97.02.)

Despite these laws and a clause in the Constitution stating that the government is responsible for protecting children, abuse of children, especially street children, is a serious problem. It has been alleged that corrupt police and military personnel are involved in recruiting children into theft and prostitution rings. There are a number of government and private youth centers, but they are not sufficient to care for the needs of the children at risk. (CRHR)

#### GUYANA

Violence and sexual abuse of children are significant problems. The problems of children result from extreme poverty and the fact that every year 3% of the population emigrates to find work, often leaving children behind to be raised by other relatives. (CRHR)

The Criminal Law (Offences) Act is contained in Chapter 8:1 of the LAWS OF GUYANA. It provides the following punishments for crimes relating to sexual abuse of children:

Offense	Punishment
carnal knowledge of a girl under the age of 12	life imprisonment
procuring a female under age 21 for unlawful carnal knowledge	imprisonment for 2 years
abduction or detention of an unmarried girl under age 18 for marriage or carnal purposes	imprisonment for 2 years
having a girl under age 12 on the premises for carnal purposes	life imprisonment
having a girl aged 12 or more but under age 13 on the premises for carnal purposes	imprisonment for 2 years
child stealing	imprisonment for 7 years

In addition, under section 92, the law punishes willful neglect, mistreatment, abandonment, or exposure of a child in a manner likely to cause unnecessary suffering or injury with a fine of 500 dollars and imprisonment for two years. The same punishments are imposed on those who willfully neglect to provide proper medical care for a child who is ill. The fine may in some cases be increased up to 1,000 dollars, and if the child is under two and is abandoned or exposed to the elements such that his or her life is endangered or health is or is likely to be permanently affected, the punishment is five years in prison (§93).

## HAITI

Impoverished rural families often send their young children to serve as unpaid domestic labor in urban families. The children in this *restavek* system work long hours, receive little nourishment, and frequently are beaten and abused. The Ministry of Social Affairs, despite believing that many of these children are mistreated, feels that it can do little to stop the practice. (CRHR)

## HONDURAS

According to the Constitution, the state must protect children against abandonment, cruelty, and exploitation. (*The Legal System of Honduras*, §1.2 (C) (5), MLCS.) On September 10, 1996, legislation covering children and adults was enacted; it established a penalty of three years of imprisonment for persons convicted of any form of child abuse. Enforcement may be a problem given the limit on government resources. Honduras has thousands of street children, many of them subject to abuse, including violence at the hands of the police. When arrested, they are housed with adult offenders, who subject them to abuse. (CRHR)

## JAMAICA

The Juvenile Act of 1951 (v. 10, LAWS OF JAMAICA) defines a child as a person under the age of 14, a young person as one 14 years old but younger than 17, and a juvenile as anyone under 17. Anyone who willfully assaults, mistreats, neglects, abandons, or exposes a juvenile in a way likely to cause unnecessary suffering or injury to health is liable, if convicted by the Supreme Court, to a fine of 200 dollars or imprisonment with hard labor for up to two years, or both (§9(1)(a)). If such a person

is convicted by a Resident Magistrate, the fine is not to exceed 50 dollars and the imprisonment with hard labor is for up to three months (§9(1)(b)). The punishments may be increased to 400 dollars and up to five years and 100 dollars and up to six months, respectively, if the person was liable to benefit financially from the death of the juvenile (§9(5)). It is also a violation of the Act to allow a juvenile to be engaged in begging (§10). Children who are being mistreated in any way may be removed from custody and taken to a place of safety (§11).

The Offences Against the Person Act (v. 13, LAWS OF JAMAICA) includes offenses against children. It states that abandonment or exposure of a child under the age of two in a such a way that the child's life is endangered or health is likely to be permanently injured, is subject to imprisonment for up to three years (§28). Aggravated assault or batter of a boy under the age of 14 or any female is punished under section 40 with imprisonment for a term of up to six months, a fine of up to 40 dollars, and a requirement of being on good behavior for six months after the imprisonment.

Sexual abuse of young girls is punished as follows:

Offense	Punishment
procurement of a women or girl under age 18 for illicit carnal purposes	imprisonment for up to 3 years
carnal knowledge or abuse of a girl under age 12	life imprisonment
attempted carnal knowledge of a girl under age 12	imprisonment for up to 10 years
carnal knowledge or abuse of a girl, aged 12 or older but under 16	imprisonment for up to 7 years
having a girl under age 12 on the premises for carnal purposes	life imprisonment
having a girl over age 12 but under 16 on the premises for carnal purposes	imprisonment for up to 5 years
indecent assault on a female under age 16 but over 12 or attempt to have carnal knowledge of her	imprisonment for up to 3 years
detention, from motives of lucre, of a woman with real or personal property who is under age 18 against the will of her parents for marriage or carnal purposes	imprisonment for up to 14 years
abduction of a girl under 16	imprisonment for up to 3 years
procurement of a girl under 18 for carnal connection with another	imprisonment for up to 3 years
abduction of a girl under the age of 18 for carnal purposes	imprisonment for up to 3 years
encouraging the seduction, unlawful carnal knowledge, or prostitution of a girl under the age of 16 by the person having custody	imprisonment for up to 3 years
allowing a young person age 4 or over but under 16 for whom	fine of up to 2000 dollars or

one is responsible to reside in or frequent a brothel	imprisonment for up to 1 year, or both
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(§§45, 48, 50, 51, 53, 55, 57, 58, 60, 64, 65)

The government is committed to improving child welfare, with increased expenditures for health and education. (CRHR)

## MEXICO

While there is no overall societal pattern of abuse of children, there are thousands of street children in Mexico City; they are subject to police "sweeps" in which they are incarcerated to clean up the streets. Corrupt officers are reported to pressure street children to commit crimes for them. In 1996, the Human Rights Commission for the Federal District opened an agency to teach children about human rights, and there are a number of other government and private programs to help children at risk. (CRHR)

## NICARAGUA

Child abandonment and murder due to poverty are reported in the media; UNICEF estimates that 6,000 children have been abandoned by their families. (CRHR)

## PANAMA

The Family Code of 1995 clarified procedures for reporting and strengthened programs to prevent child abuse. It also created a mechanism to record suspected domestic violence involving children. Limited funding makes implementation incomplete. (CRHR)

## PARAGUAY

The Constitution protects children's rights and states that the state and parents have the obligation to care for children. It is estimated that 26,000 children work in the cities as street vendors or prostitutes. Another problem is forced recruiting into the military of young people under the constitutionally mandated age of 17. (CRHR)

## PERU

There are thousands of orphaned or abandoned homeless children in Lima that are forced to work in some manner, as are a number of children in rural areas. Violence against children, including rape, is a serious problem, and among homeless children, a majority report leaving home due to mistreatment, rather than solely because of poverty. In 1995, there was new legislation that ordered that juvenile offenders not be housed with adult prisoners, who might abuse them, but the law has not been fully implemented as cases continued to be reported of young people under 18 incarcerated in adult prisons. (CRHR)

## ST. KITTS AND NEVIS

Most of the provisions of the U.N. Convention on the Rights of the Child have been incorporated into domestic law. (CRHR)

#### ST. LUCIA

A Children's Rights Act was adopted in 1992, but effective programs against domestic violence and incest have not been put into operation. (CRHR)

#### ST. VINCENT AND THE GRENADINES

The Social Welfare Office is the government agency responsible for protecting children. It reports all cases of child abuse to the police for action. (CRHR)

#### SURINAM

There is a privately funded shelter for sexually abused children, open since 1993. In general, children have to rely on their extended families for assistance. (CRHR)

#### TRINIDAD AND TOBAGO

The Domestic Violence Act provides protection for children abused at home. Such children are usually placed with relatives if they are removed from their immediate families, but there are several government and private programs if no relatives can take them. (CRHR)

#### URUGUAY

Those under 18, when suspected of crimes, are not subject to criminal trial, but are processed by special juvenile judges and, when sentenced, are housed in special institutions run by the National Institute for Minors (INAME). In 1995, a Public Security Law was adopted that allows minors who have committed violent crimes to be kept in special units within regular prisons if INAME has no room for them. Human rights groups oppose this provision, so INAME has determined that it will not act on the possibility raised by the Law. (CRHR)

#### VENEZUELA

The National Institute for Minors estimated in 1994 that over 200,000 children are involved in illegal activities, including begging as well as theft, prostitution, and drug trade, and that 40,000 were exploited sexually. In some areas, there is a 10 pm to 5 am curfew for minors, but children's advocates claim that this system permits the police to detain people who have not committed crimes. Many children who have been detained by the police are housed in jails, in extremely harsh conditions, despite frequently not having been formally charged.

The judicial system though slow does remove children from households once a case of abuse is reported, but public facilities for the children are inadequate. (CRHR)

#### VIRGIN ISLANDS

Under Chapter 37 of the LAWS OF THE VIRGIN ISLANDS, a child is defined as a person under the age of 14 and a juvenile is someone under the age of 16 (§ 2). Ill-treatment of a juvenile entrusted to one's care, including neglect, abandonment, and assault, may be punished with a fine of up to 480

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dollars or imprisonment with hard labor for up to two years, or both, for a person convicted on indictment. Those under summary conviction are liable to a fine of up to 120 dollars or imprisonment with hard labor for up to three months, or both (§ 5). The law elaborates standards for guilt.

In addition, under Chapter 17, the amendment to the Criminal Law, sexual crimes involving girls are punished as follows:

Crime	Punishment
procuring for carnal knowledge by means of threat or intimidation, by false pretenses, or by administering drugs	imprisonment for up to two years.
unlawful carnal knowledge of a girl under 12	life imprisonment.
attempted carnal knowledge of a girl under 12	imprisonment for up to two years. However, if the offender is under 16, may be whipped instead.
unlawful carnal knowledge of (or attempts) of girl over 12 but under 14, or any female "idiot or imbecile woman or girl"	imprisonment for up to two years.
permitting on one's premises the defilement of girls under the age of 12	imprisonment for up to five years.
permitting defilement of girls over 12 but under 14	imprisonment for up to two years.
abduction of an unmarried girl under 16 for carnal knowledge	imprisonment for up to two years.
detention of a woman or girl with intent to have carnal knowledge or in a brothel	imprisonment for up to two years.

(§§2-7)

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