

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 6 August 1985.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

House of Representatives, 26 November 1985.

Words struck out are shown in italics within double round bold brackets or with double black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule.

[This Bill was formerly clauses 2 to 8 of, and the Schedule to, the Rape Law Reform Bill (No. 2)]

Hon. Geoffrey Palmer

CRIMES AMENDMENT (NO. 4)

ANALYSIS

Title	129. Attempt to commit sexual violation
1. Short Title and commencement	129A. Inducing sexual connection by coercion
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A BILL INTITULED

An Act to amend the Crimes Act 1961

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

No. 3—3A

Price \$1.20

1. Short Title and commencement—(1) This Act may be cited as the Crimes Amendment Act (No. 4) 1985, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of ~~((December 1985))~~ February 1986. 5

2. New sections (relating to sexual violation) substituted—The principal Act is hereby amended by repealing sections 128 and 129, and substituting the following sections: 10

Struck Out

“128. **Sexual violation**—(1) Sexual violation is the act of a person having sexual connection with another person where—

“(a) That other person does not consent to that sexual connection; and 15

“(b) The person having sexual connection—

“(i) Knows that the other person does not consent; or

“(ii) Knows or believes that there is a risk that the other person does not consent; or 20

“(iii) Means to have sexual connection with the other person regardless of whether the other person consents or not; or

“(iv) Recklessly gives no thought to whether the other person consents or not; or 25

“(v) Believes that the other person consents but has no reasonable grounds for that belief.

New

“128. **Sexual violation**—(1) Sexual violation is—

“(a) The act of a male who rapes a female; or 30

“(b) The act of a person having unlawful sexual connection with another person.

“(1A) A male rapes a female if he has sexual connection with that female occasioned by the penetration of her vagina by his penis— 35

“(a) Without her consent; and

“(b) Without believing on reasonable grounds that she consents to that sexual connection.

New

“(1B) A person has unlawful sexual connection with another person if that person has sexual connection with the other person—

- 5 “(a) Without the consent of the other person; and
- “(b) Without believing on reasonable grounds that the other person consents to that sexual connection.

“(2) A person may be convicted of sexual violation in respect of sexual connection with another person notwithstanding that
10 those persons were married to each other at the time of that sexual connection.

“(3) For the purposes of this section, ‘sexual connection’ means—

- 15 “(a) Connection occasioned by the penetration of the vagina or the anus of any person by—
 - “(i) Any part of the body of any other person;
 - or
 - “(ii) Any object held or manipulated by any other person,—
- 20 “(b) Connection between the mouth or tongue of any person and any part of the genitalia of any other person;
- “(c) The continuation of sexual connection as described in either **paragraph (a) or paragraph (b)** of this subsection.

Struck Out

“128A. **Consent for the purposes of section 128**—(1) The consent of any person to sexual connection shall not be inferred for the purposes of **section 128** of this Act only from the fact that the person does not offer actual physical resistance or
30 verbal protest to that sexual connection.

“(2) The consent of any person to sexual connection shall not be inferred for the purposes of **section 128** of this Act only from the fact that the person submits to or acquiesces in sexual connection by reason of—

- 35 “(a) The actual or threatened application of force to that person or to some other person; or
 - “(b) The fear of the application of force to that person or some other person;—
- and any consent purportedly given in any such case does not
40 constitute consent for the purposes of that section.

Struck Out

“(3) The consent of any person to sexual connection with another person given by reason of—

“(a) A mistake as to the identity of that other person; or

“(b) A mistake as to the nature and quality of the act— 5

does not constitute consent for the purposes of **section 128** of this Act; and the person charged with sexual violation shall be deemed to have known that there was no consent if, at the time of the sexual connection, that person knew of the mistake.

“(4) Nothing in this section shall limit the circumstances in 10 which there is no consent to sexual connection for the purposes of **section 128** of this Act.

New

“128A. **Matters that do not constitute consent to sexual connection**—(1) The fact that a person does not protest or 15 offer physical resistance to sexual connection does not by itself constitute consent to sexual connection for the purposes of **section 128** of this Act.

“(2) The following matters do not constitute consent to sexual connection for the purposes of **section 128** of this Act: 20

“(a) The fact that a person submits to or acquiesces in sexual connection by reason of—

“(i) The actual or threatened application of force to that person or some other person; or

“(ii) The fear of the application of force to that 25 person or some other person:

“(b) The fact that a person consents to sexual connection by reason of—

“(i) A mistake as to the identity of the other person; or 30

“(ii) A mistake as to the nature and quality of the act.

“(3) Nothing in this section shall limit the circumstances in which there is no consent to sexual connection for the purposes of **section 128** of this Act.” 35

“128B. **Penalty for sexual violation**—(1) Every one who commits sexual violation is liable to imprisonment for a term not exceeding 14 years.

“(2) Every one who is convicted of sexual violation shall be sentenced to imprisonment unless, having regard to the particular circumstances of the offence or of the offender, including the nature of the conduct constituting the offence,
 5 the Court is of the opinion that the offender should not be so sentenced.

“129. **Attempt to commit sexual violation**—Every one who attempts to commit sexual violation or assaults any person with intent to commit sexual violation is liable to imprisonment
 10 for a term not exceeding 10 years.

Struck Out

“129A. **Obtaining sexual connection by coercion**—
 (1) Every one is liable to imprisonment for a term not exceeding 7 years who has sexual connection with another person,
 15 with the consent of the other person, where—

“(a) The other person consents to that sexual connection because of—

“(i) An express or implied threat that the person having sexual connection or some other person will
 20 commit an offence which is punishable by imprisonment but which does not involve the actual or threatened application of force to any person; or

“(ii) An express or implied threat that the person having sexual connection or some other person will
 25 make an accusation or disclosure (whether true or false) about misconduct by any person (whether living or dead) that is likely to damage seriously the reputation of the person against or about whom the accusation or disclosure is made; or

“(iii) An express or implied threat by the person having sexual connection to make improper use, to the detriment of the other person, of any power or authority arising out of any occupational or vocational position held by the person having sexual
 30 connection or any commercial relationship existing between that person and the other person; and

“(b) The person having sexual connection knows that the other person consents to sexual connection because of that threat.

40 “(2) For the purposes of this section, ‘sexual connection’ has the same meaning as it has in **section 128 (3)** of this Act.”

New

- “129A. Inducing sexual connection by coercion—**
- (1) Every one is liable to imprisonment for a term not exceeding 14 years who has sexual connection with another person knowing that the other person has been induced to consent to sexual connection by— 5
- “(a) An express or implied threat that the person having sexual connection or some other person will commit an offence which is punishable by imprisonment but which does not involve the actual or threatened application of force to any person; or 10
- “(b) An express or implied threat that the person having sexual connection or some other person will make an accusation or disclosure (whether true or false) about misconduct by any person (whether living or dead) that is likely to damage seriously the reputation of the person against or about whom the accusation or disclosure is made; or 15
- “(c) An express or implied threat by the person having sexual connection to make improper use, to the detriment of the other person, of any power or authority arising out of any occupational or vocational position held by the person having sexual connection or any commercial relationship existing between that person and the other person. 20
- “(2) For the purposes of this section, ‘sexual connection’ has the same meaning as it has in **section 128 (3)** of this Act.” 25

3. Compelling indecent act with animal—The principal Act is hereby amended by inserting, after section 142, the following section: 30

 “142A. Every one is liable to imprisonment for a term not exceeding 14 years who compels any other person, by the actual or threatened application of force to that other person or some other person, to perform, or to submit to or acquiesce in, any act of indecency with an animal, whether or not involving penetration.” 35

4. Part of charge proved—Section 339 (3) of the principal Act is hereby repealed.

5. Special provisions in cases involving sexual violation—The principal Act is hereby amended by inserting, **((after section 375 (as substituted by section 4 (1) of the Crimes Amendment Act (No. 2) 1982))** before section 376, the following

5 section:

“375A. (1) For the purposes of this section, ‘case involving sexual violation’ means proceedings in which a person is charged with, or is to be sentenced for, any of the following offences:

10 “(a) Sexual violation:

“(b) Attempted sexual violation:

“(c) Assault with intent to commit sexual violation:

“(d) An offence against **section 129A** of this Act (**(obtaining inducing sexual connection by coercion)**):

15 “(e) An offence against **section 142A** of this Act (compelling indecent act with animal):

Struck Out

20 “(f) Aiding, abetting, inciting, counselling, or procuring the commission of any offence referred to in **paragraphs (a) to (e)** of this subsection:

New

“**(f)** Being a party to the commission of any offence referred to in **paragraphs (a) to (e)** of this subsection:

25 “(g) **Conspiring with any person to commit any such offence.**
 “(2) While the complainant in a case involving sexual violation is giving oral evidence (whether in chief or under cross-examination or on re-examination), **(only the following persons shall be present in the courtroom) no person shall be present in the courtroom except the following:**

30 “(a) The Judge and jury:

“(b) The accused and any person who is for the time being acting as custodian of the accused:

“(c) Any barrister or solicitor engaged in the proceedings:

“(d) Any officer of the Court:

35 *New*

“(da) Any person who is for the time being responsible for recording the proceedings:

“(e) The member of the Police in charge of the case:

“(f) Any accredited news media reporter:

“(g) Any person whose presence is requested by the complainant:

“(h) Any person expressly permitted by the Judge to be present.

“(3) Before the complainant in a case involving sexual violation commences to give evidence, the Judge shall— 5

“(a) ~~(Satisfy himself)~~ Ensure that no person other than one referred to in subsection (2) of this section is present in the courtroom; and

“(b) Advise the complainant of the complainant’s right to request the presence of any person under paragraph (g) of that subsection. 10

“(4) Where in a case involving sexual violation the Court is of the opinion that the interests of the complainant so require, it may make an order forbidding publication of any report or account giving details of the criminal acts alleged to have been performed on the complainant or of any acts that the complainant is alleged to have been compelled or induced to perform or to consent to or acquiesce in. 15

“(5) The breach of any order made under subsection (4) of this section, or any evasion or attempted evasion of it, may be dealt with as contempt of Court. 20

“(6) Nothing in this section shall limit or affect the powers of the Court to exclude any person or forbid any report or account of any evidence under ~~((section 375))~~ section 138 of the Criminal Justice Act 1985 or section 401 of this Act or any other enactment.” 25

6. Transitional provisions—(1) No person shall be convicted of—

(a) Sexual violation; or 30

(b) Attempted sexual violation; or

(c) Assault with intent to commit sexual violation; or

(d) An offence against **section 129A** of the principal Act ~~((obtaining))~~ inducing sexual connection by coercion; or 35

(e) An offence against **section 142A** of that Act (compelling indecent act with animal); or

Struck Out

(f) Aiding, abetting, inciting, counselling, or procuring the commission of any offence referred to in **paragraphs (a) to (e)** of this subsection; or 40

New

(f) Being a party to the commission of any offence referred to in **paragraphs (a) to (e)** of this subsection; or

(g) Conspiring with any person to commit any such offence,—
5 in respect of any act done before the 1st day of ~~(April)~~
~~((December 1985))~~ February 1986.

(2) Every person who, but for the passing of this Act, could have been charged with any offence specified in **subsection (3)** of this section in respect of any act done before the 1st day
10 of ~~(April)~~ ~~((December 1985))~~ February 1986 may be charged with and convicted of such offence, and the relevant provisions of the principal Act shall continue to apply, as if **sections 2 and 4** of this Act had not been passed.

(3) **Subsection (2)** of this section applies to the following
15 offences:

(a) Rape:

(b) Attempted rape:

(c) Assault with intent to commit rape:

Struck Out

20 (d) Aiding, abetting, inciting, counselling, or procuring the commission of any offence referred to in **paragraphs (a) to (c)** of this subsection:

New

25 (d) Being a party to the commission of any offence referred to in **paragraphs (a) to (c)** of this subsection:

(e) Conspiring with any person to commit any such offence.

(4) Notwithstanding anything in **section 1 (2)** of this Act or in **subsection (2)** of this section, where the trial of any person for an offence specified in **subsection (3)** of this section commences
30 on or after the 28th day after the date on which this Act receives the Governor-General's assent, the provisions of **section 375A** of the principal Act (as inserted by **section 5** of this Act) shall apply with all necessary modifications.

35 **7. Consequential amendments**—(1) Section 24 (2) of the principal Act is hereby amended by omitting the words “is aiding or abetting rape, or”.

(2) Section 187A of the principal Act (as inserted by section 6 of the Crimes Amendment Act 1977) is hereby amended by omitting from subsection (2)(b) the word “rape”, and substituting the words “sexual violation”.

5 (3) The enactments specified in the Schedule to this Act are hereby amended in the manner indicated in that Schedule.

SCHEDULE

Section 7 (3)

ENACTMENTS CONSEQUENTIALLY AMENDED

Enactment	Amendment
1908, No. 56—The Evidence Act 1908 (R.S. Vol. 2, p. 33)	<p>By repealing subsection (4) (as substituted by section 2 (3) of the Evidence Amendment Act 1962) of section 5 (as substituted by section 2 (1) of the Evidence Amendment Act 1952), and substituting the following subsection:</p> <p>“(4) The wife or husband of a person charged with an offence shall be a competent but not compellable witness for the prosecution, and without the consent of the person charged, at every stage of the proceedings, where the person against whom or in respect of whom the offence is alleged to have been committed—</p> <p>“(a) Is a child or grandchild of the person charged or of the wife or husband of the person charged; or</p> <p>“(b) Was at the time of the alleged offence under the care or protection of the person charged or of the wife or husband of the person charged,—</p> <p>and the offence is an offence, or an attempt to commit an offence, against any of the provisions of sections 128 to 135 or sections 140 to 142A of the Crimes Act 1961.”</p> <p><i>Struck Out</i></p>
1954, No. 50—The Criminal Justice Act 1954 (R.S. Vol. 9, p. 1)	<p>By omitting from subparagraph (i) of subsection (6) of section 24 (as substituted by section 3 (2) of the Criminal Justice Amendment Act 1961) the expression “142”, and substituting the expression “142A”.</p> <p>By omitting from subparagraph (ii) of that paragraph the words “the said section 142”, and substituting the words “section 142 or section 142A of the Crimes Act 1961”.</p>

SCHEDULE—*continued*

Enactment	Amendment
<i>Struck Out</i>	
1957, No. 87—The Summary Proceedings Act 1957 (R.S. Vol. 9, p. 583)	<p>By omitting from subsection (1) (as substituted by section 23 of the Criminal Justice Amendment Act 1980) of section 45C (as inserted by section 17 (1) of the Criminal Justice Amendment Act 1975) the expression “142”, and substituting the expression “142A”.</p> <p>By inserting in Part I of the First Schedule, after the item relating to sections 125 and 126 of the principal Act, the following item: “129A. (<i>Obtaining</i>) <u>Inducing</u> sexual connection by coercion”.</p>
1965, No. 44—The Extradition Act 1965	<p>By omitting from Part I of the First Schedule the items relating to sections 128 and 129 of the principal Act, and substituting the following items: “128. Sexual violation “129. Attempt to commit sexual violation “129A. (<i>Obtaining</i>) <u>Inducing</u> sexual connection by coercion”.</p>
1977, No. 112—The Contraception, Sterilisation, and Abortion Act 1977	<p>By inserting in that Part of that Schedule, after the item relating to section 142 of the principal Act, the following item: “142A. Compelling indecent act with animal”.</p> <p>By omitting from section 5 the word “rape” wherever it occurs, and substituting in each case the words “sexual violation”.</p> <p>By inserting in subsection (1) of that section, after the words “a contrary wish”, the words “or unless the medical practitioner is satisfied that the sexual violation did not involve the penetration of the complainant’s vagina by a penis”.</p> <p>By adding to that section the following subsection: “(4) In this section ‘sexual violation’ has the same meaning as it has in section 128 of the Crimes Act 1961.”</p>
1980, No. 44—The Crimes (Internationally Protected Persons and Hostages) Act 1980	<p>By omitting from the First Schedule the items relating to sections 128 and 129 of the principal Act, and substituting the following items: “128. Sexual violation “129. Attempt to commit sexual violation “142A. Compelling indecent act with animal”.</p>
1980, No. 94—The Family Proceedings Act 1980	<p>By repealing so much of the First Schedule as relates to the principal Act.</p>