

ANNEX

PART A

Criminal Law Concerning Same-Sex Intimacy in Grenada

Introduction

[See also Part B]

1. The existing legislation in Grenada that criminalises consensual same-sex intimacy is the Criminal Code, CAP. 76, 1958 Revised Edition.
2. The Criminal Code, CAP. 76, in respect of sexual offences, is a development of the law which previously was found in the older Criminal Codes. The older Criminal Codes can be traced back to as early as 1897.
3. The Criminal Codes since 1897 have been amended on many occasions. However, the amendments have not affected the substance of the offences concerned with here. Therefore, such offences have remained unchanged since the Criminal Code, Ordinance No. 2 of 1897.
4. The offences are (1) Aggravated Assault, (2) Committing grossly indecent act, (3) Unnatural crime, (4) Unnatural carnal knowledge by force.

Offences

5. Aggravated assaulted, specifically indecent assault upon a male or female person; it is gender-neutral. It can be committed by a male person on/towards a female person or another male person, similarly, by a female person on/towards a male person or another female person.
6. Where there is consent of both parties, an indictment for indecent assault cannot be sustained. A minor cannot consent to that which would otherwise constitute an indecent assault.
7. Committing grossly indecent act; is stated in gender-neutral terms. By implication it covers both opposite-sex and same-sex acts. The act of gross indecency must be committed wilfully and in public. The side note of the offence refers also to the offence of indecent exposure, which can only be committed by a male person.

8. There is no requirement for lack of consent or use of force. As such, the provision is broad enough to criminalise consensual acts between two adults (same-sex or opposite-sex), once they have taken place publicly and wilfully.

9. Unnatural crime; it is committed by way of sexual intercourse *per anum*, i.e., penetration. The Criminal Code does not specify the ‘penetrating’ object, through reliance on the common law; the ‘penetrating’ object is the male sexual organ. The offence is committable by, (1) male person with/to male person and/or, (2) male person with/to female. The offence cannot be committed by two females.

10. There is no requirement for lack of consent or use of force. By implication, the consensual act between two adults (same-sex or opposite-sex) is criminalised.

11. Unnatural carnal knowledge by force; it is committed by way of sexual intercourse *per anum*, i.e., penetration, with force or without consent. The Criminal Code does not specify the ‘penetrating’ object, through reliance on the common law; the ‘penetrating’ object is the male sexual organ. The offence is committable by, (1) male person with/to male person and/or, (2) male person with/to female person. The offence cannot be committed by two female persons.

11. The offences that cover same-sex intimacy can be placed broadly into two categories, (1) consensual and (2) non-consensual. Non-consensual offences: Aggravated assault (indecent assault), Unnatural carnal knowledge with force. Consensual: Committing grossly indecent act, Unnatural crime.

PART B

Historical Development of Laws on Same-Sex Intimacy

[See also Part A]

1. Criminal Code, Ordinance No. 2 of 1897

Section 442

The side note: “Unnatural crime. (See s. 197).”

If any two persons are guilty of unnatural connexion, or if any person is guilty of unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years.

NOTE: Ordinance No. 2 of 1897 was amended by Ordinances 14 of 1901, 1 of 1902, 12 of 1904, 11 of 1907, 23 of 1908, 9 of 1909, 10 of 1910 and 15 of 1910

2. Criminal Code¹

Section 442

The side note: “Unnatural crime. (See s. 197).”

If any two persons are guilty of unnatural connexion, or if any person is guilty of unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years.

NOTE: The Criminal Code as reflected in the 1911 Revised Edition of the Laws of Grenada has been amended by Ordinances 13 of 1911, 8 of 1912, 17 of 1912, 6 of 1913, 10 of 1915, 31 of 1915, 6 of 1918, 6 of 1921, 22 of 1921, 15 of 1925, 3 of 1928, 4 of 1929, 14 of 1934 and 20 of 1934.

3. Criminal Code²

Section 445

The side note: “Unnatural crime. (See s. 199).”

¹ 1911 Revised Edition of the Laws of Grenada, Vol. II, pp. 1729- 1872

² 1934 Revised Edition of the Laws of Grenada, Vol. I, CAP. 55, pp. 542- 684
*Annex to Sexuality, Gender, HIV Vulnerability & Human Rights in Grenada:
A Shadow Report to the United Nations Human Rights Committee*

If any two persons are guilty of unnatural connexion, or if any person is guilty of unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years.

NOTE: The Criminal Code as reflected in the 1934 Revised Edition of the Laws of Grenada has been amended by Ordinances 3 of 1935, 9 of 1936, 34 of 1936, 2 of 1938, 9 of 1939, 6 of 1952, 15 of 1953, 1 of 1954, 51 of 1954, 20 of 1956, 24 of 1956, 16 of 1957.

4. Criminal Code³

Section 435

The side note: “Unnatural crime. (See s. 187).”

If any two persons are guilty of unnatural connexion, or if any person is guilty of unnatural connexion with any animal, every such person shall be liable to imprisonment for ten years.

NOTE: The Laws of Grenada were revised in 1990. The Criminal Code as reflected in the 1958 Revised Edition was not included. However, it remains in force.

The following are the amendments subsequent to the 1958 Revised Edition:

Statutory Rules and Orders, No. 24 of 1959

Known as the Prison (Amendment) Rules, 1959 concerned with prison rules.

Ordinance No. 10 of 1960

Known as the Corporal Punishment (Caning) Ordinance, 1960 concerned with the amendment of laws relating to corporal punishment.

Ordinance No. 23 of 1962

Known as the Criminal Code (Amendment) Ordinance, 1962 concerned with the administration of industrial schools.

Ordinance No. 32 of 1962

³ 1958 Revised Edition of the Laws of Grenada, Vol. I, CAP. 76, pp. 688- 843
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Known as the Motor Vehicles and Road Traffic (Amendment) Ordinance, 1962 concerned with offences relating to use of motor vehicles. Similar offences as reflected in the Criminal Code have been repealed.

Ordinance No. 37 of 1962

Known as the Criminal Code (Amendment) Ordinance, 1962 concerned with offences relating to seditious libel.

Ordinance No. 1 of 1963

Known as the Criminal Code (Amendment) Ordinance, 1963 concerned with the attempted suicide, dwelling houses and corruption of public offices

Ordinance No. 7 of 1964

Known as the Criminal Code (Amendment) Ordinance, 1964 concerned with the seditious libel and repealing Ordinance No. 37 of 1962

Ordinance No. 5 of 1966

Known as the Criminal Code (Amendment) Ordinance, 1966 concerned with the procedure for the summary conviction of a person

Ordinance No. 10 of 1966

Known as the Gambling, Lotteries and Betting Ordinance, 1967 concerned with the Gambling, Lotteries and Betting

Ordinance No. 7 and 23 of 1967

Known as the Existing Laws (Adaptation) Act, No.1 and No. 2, 1967 concerned with the adaptation of existing laws to bring them in conformity with the constitution.

Ordinance No. 17 of 1971

Known as the West Indies Associated States Supreme Court (Grenada) Act, 1971, concerned with conferring jurisdiction on the West Indies Associated States Supreme Court.

Ordinance No. 45 of 1972

Known as the Criminal Code (Amendment) Ordinance, 1972 concerned with the amendment of punishment of certain offences not relating to the ones dealt with here.

Act of 1973

Known as the Criminal Code (Amendment) Ordinance, 1973 concerned with the amendment of punishment of certain offences. Of importance is that the punishment for indecent exposure of one person is now liable on summary conviction to a fine not exceeding twenty-four dollars.

Act 35 of 1973

Known as the Abatement of Litter Act, 1973 concerned with littering of place by persons

Act 36 of 1973

Known as the Criminal Code (Amendment No. 2) Act, 1973 is concerned with offence of obscene language.

Act 12 of 1974

Known as the Criminal Code (Amendment) Act, 1974 is concerned with idle and disorderly person.

Act 3 of 1980

Known as the Criminal Code (Amendment) Act, 1980 is concerned definition of vessel.

Act 16 of 1993

Known as the Criminal Code (Amendment) Act, 1993 is concerned with amending the degree of punishment for certain offences, for aggravated assault this has increased from two years to five years.

Act 36 of 1993

Known as the Criminal Code (Amendment No. 2) Act, 1993 is concerned with amending the degree of punishment for the certain offences not relating to ones concerned with here.

Act 34 of 1994

Known as the Family Court Act, 1994 is concerned with establishing and conferring jurisdiction on the Family Court.

Act 9 of 2004

Known as the Criminal Code (Amendment) Act, 2004 is concerned with maximum age and punishment of young offenders.

PART C

Excerpt from the Grenada Constitution of 1973: **Constitutional Prohibition on Discriminatory Laws**

13.-(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision-

- a. for the appropriation of public revenues or other public funds ;
- b. with respect to persons who are not citizens of Grenada ; or
- c. whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, political opinions, colour, creed or sex) to be required of any person who is appointed to or to act in any office in the public service, any office in a disciplined force, any office in the service of a local government authority or in any office in a body corporate established by law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or subsection (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question

makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11 and 12 of this Constitution, being such a restriction as is authorised by section 7(2), section 9(5), section 10(2), section 11(2) or paragraph (a), (b) or (h) of section 12(3), as the case may be.

(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.