

CAYMAN ISLANDS



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THE PENAL CODE (AMENDMENT) LAW, 2018

(LAW 24 OF 2018)

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ARRANGEMENT OF SECTIONS

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CAYMAN ISLANDS

Law 24 of 2018.

I Assent

Samuel W. Bulgin

Acting Governor.

Date: 26th October, 2018

A LAW TO AMEND THE PENAL CODE (2018 REVISION) TO PROVIDE FOR THE RETROSPECTIVE APPLICATION OF SEXUAL HARM PREVENTION ORDERS; TO PROVIDE FOR OFFENCES IN RESPECT OF SEXUAL COMMUNICATION WITH A CHILD; TO PROVIDE FOR OFFENCES IN RESPECT OF SEXUAL ACTIVITIES WITH A CHILD; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Penal Code (Amendment) Law, 2018. Short title

2. The Penal Code (2018 Revision), in this Law referred to as “the principal Law”, is amended by inserting after section 45F the following section - Insertion of new section 45G into the Penal Code (2018 Revision) - order applicable to prior acts etc.

“Order applicable to prior acts etc. Law 32 of 2017.	45G. For the purpose of sections 45A and 45B, an order may be made in relation to an act, behaviour, conviction or finding which occurred before the commencement of the Penal Code (Amendment) Law, 2017.”.
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3. The principal Law is amended by inserting after section 132 the following section - Insertion of new section 132A - assault by penetration

“Assault by penetration	132A. (1) Subject to subsection (2), a person, (A) who, for the purpose of obtaining sexual gratification,
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intentionally and without consent, penetrates (whether orally, vaginally or anally) another person (B), with an object or with any part of A's body, commits an offence and is liable on -

- (a) summary conviction; or
- (b) conviction on indictment,

to imprisonment for a term of ten years.

(2) A child under the age of sixteen cannot consent to a penetration under this section.”.

Repeal and substitution of section 135 - defilement of idiots or imbeciles

4. The principal Law is amended by repealing section 135 and substituting the following section -

“Sexual assault of a mentally impaired person

(Law 10 of 2013)

135. A person who has engaged or attempts to engage in an activity that is sexual in nature with a person who -

- (a) has a mental impairment, within the meaning of the Mental Health Law, 2013; or
- (b) has a mental disorder impeding choice,

under circumstances not amounting to rape but which prove that the first-mentioned person knew or could reasonably be expected to know at the time of the commission of the activity, that the second-mentioned person was suffering from a mental impairment or mental disorder impeding choice, commits an offence and is liable to imprisonment for twelve years.”.

5. The principal Law is amended by inserting after section 228D the following sections -

“Sexual communication with a child.

228E. (1) Where a person, being eighteen years or older, for the purpose of obtaining sexual gratification -

- (a) knowingly engages in communication of a sexual nature with a child under the age of sixteen years; or
- (b) encourages a child under the age of sixteen years to make or engage in a communication that is sexual or relates to a sexual activity,

that person commits an offence.

(2) A person who contravenes subsection (1) is liable on -

- (a) summary conviction; or
- (b) conviction on indictment,

to imprisonment for a term of six years.

Arranging to meet a child following sexual communication

228F. (1) Where a person, being eighteen years or older, communicates with a child under the age of sixteen years on one or more than one occasion and that communication is sexual in nature or is intended to encourage communication that is sexual or relates to a sexual activity and subsequently that person -

- (a) arranges to meet the child; or
- (b) travels with the intention of meeting the child within the Islands or outside the Islands,

for the purpose of the commission of an activity that is sexual in nature that person commits an offence.

(2) A person who contravenes subsection (1) is liable on -

- (a) summary conviction; or
- (b) conviction on indictment,

to imprisonment for a term of six years.

Insertion of new sections 228E -228L into the Penal Code (2018 Revision) - sexual communication with a child; arranging to meet a child following sexual communication; meeting a child following sexual communication; procurement of a child for a sexual activity; causing a child to watch a sexual activity; engaging in sexual activity in the presence of a child; inviting a child to participate in sexual activity; abuse of position of trust

Meeting a child following sexual communication

228G. Where a person, being eighteen years or older, communicates with a child under the age of sixteen years on one or more than one occasion and that communication is sexual in nature or is intended to encourage communication that is sexual or relates to a sexual activity and subsequently that person -

- (a) intentionally meets the child; and
- (b) intends during or after the meeting to do anything which if done would involve the commission of an act of a sexual nature,

that person commits an offence.

(2) A person who contravenes subsection (1) is liable on -

- (a) summary conviction; or
- (b) conviction on indictment,

to imprisonment for a term of six years.

Procuration of a child for a sexual activity

228H. (1) Where a person, being eighteen years or older, engages in any conduct with intent to procure a child under the age of sixteen years, to do anything which if done would involve or lead to the commission of an act of a sexual nature that person commits an offence and is liable on -

- (a) summary conviction; or
- (b) conviction on indictment,

to imprisonment for a term of eight years.

Causing a child to watch a sexual activity

228I. Where a person, being eighteen years or older, for the purpose of obtaining sexual gratification, intentionally causes a child under the age of sixteen years to watch any person engaging in an activity that is sexual in nature, or to look at an image of any person engaging in an activity that is sexual in nature, that person commits an offence and is liable on -

- (a) summary conviction; or
- (b) conviction on indictment,

to imprisonment for a term of eight years.

Engaging in sexual activity in the presence of a child

228J. Where a person, being eighteen years or older, who, for the purpose of obtaining sexual gratification, intentionally engages in an activity that is sexual in nature in the presence of a child under the age of sixteen years or knowingly engages in such activity believing that a child is aware or should be aware, that that person is engaging in such activity commits an offence and is liable on -

- (a) summary conviction; or
- (b) conviction on indictment,

to imprisonment for a term of twelve years.

Inviting a child to participate in a sexual activity

228K. Where a person, being eighteen years or older, invites a child under the age of sixteen years to engage in any touching or other behaviour, that touching or behaviour being an activity that is sexual in nature that person commits an offence and is liable on -

- (a) summary conviction; or
- (b) conviction on indictment,

to imprisonment for a term of twelve years.

Abuse of position of trust

228L. (1) Where a person, being eighteen years or older who, in relation to a child under the age of sixteen years, is in a position of trust -

- (a) engages in any sexual communication with that child;
- (b) engages with that child in an activity that is sexual in nature ;
- (c) intentionally causes another person to engage with that child in an activity that is sexual in nature;
- (d) causes that child to watch any person engaging in an activity that is sexual in nature, or to look at an image of any person engaging in an activity that is sexual in nature; or
- (e) engages in an activity that is sexual in nature in the presence of that child or knowingly engages in such activity believing that that child is aware or should be aware, that that person is

engaging in such activity,
that person commits an offence.

(2) A person who contravenes subsection (1) is liable on -

- (a) summary conviction; or
- (b) conviction on indictment,

to imprisonment for a term of twelve years.

(2018 Revision) (3) Notwithstanding sections 6(2) and 8 of the Criminal Procedure Code (2018 Revision), the court of summary jurisdiction or the Grand Court before which the individual pleads guilty or is convicted, shall -

- (a) in a case where the individual pleads guilty, impose a sentence of imprisonment for a term of at least five years; or
- (b) in any other case, impose a sentence of imprisonment for a term of at least seven years,

unless the relevant court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so; and such exceptional circumstances shall be stated by the relevant court.

(4) For the purposes of this section a “position of trust” in relation to a child includes any position which involves -

- (a) a family relationship with the child;
- (b) caring for, training, supervising or being in charge of that child; or
- (c) any other similar special relationship with the child.”.

Passed by the Legislative Assembly the 12th day of September, 2018.

Dr. Hon. W. McKeeva Bush

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.