

CAYMAN ISLANDS



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**A BILL FOR A LAW TO MAKE PROVISION FOR THE
ADMINISTERING OF CAUTIONS IN RELATION TO ADULTS; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

THE CAUTIONS (ADULT) BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

This Bill makes provision for the administering of cautions in relation to adults.

Clause 1 provides for the short title and commencement.

Clause 2 makes provision for the defined terms.

Clause 3 makes provision for the administering of a caution where a suspect has behaved in a manner that amounts to an offence and has admitted to so behaving.

Clause 4 provides for the qualifying conditions for the administering of a caution. Such conditions include that there is a realistic prospect of conviction and an unequivocal admission of guilt.

Clause 5 makes provision for the conditions which make a suspect ineligible for caution. These conditions include where the suspect has been previously cautioned for a similar offence; on police or court bail; serving a sentence; on recall to prison on licence; the subject of a non-custodial sentence; or subject to proceedings in the Drug Court.

Clause 6 sets out the form of a caution. It provides that the caution must be in writing and contain the full particulars of the suspect, the particulars of the offence, the acknowledgement by the suspect that he committed the offence, the name of the suspect's attorney at law and signed by both the suspect and the police officer administering the caution.

Clause 7 provides for the keeping of a record of all cautions administered by the Royal Cayman Islands Police Service and that all such cautions shall be treated in the same manner as a criminal conviction and form a part of a person's criminal record.

Clause 8 makes provision for a court to take into account a caution where the suspect is convicted for a subsequent offence.

Clause 9 provides that where a Law disqualifies or potentially disqualifies a person convicted of an offence from conducting specified activities or from holding specified positions, that the Law would also apply to a person who is cautioned for an offence as if they had been convicted of that offence.

Clause 10 makes provision for the expungement of a caution pursuant to the Criminal Records (Spent Convictions) Law, 2016, Law 42 of 2016.

Clause 11 mandates the Commissioner of Police, with the approval of the Director of Public Prosecutions, to prepare a written policy in relation to the administration of cautions. It also mandates him to issue Standing Orders to the members of the Royal Cayman Islands Police Service in relation to the administration of cautions.

Clause 12 makes provision for the laying of an Annual Report in the Legislative Assembly which would specify the number of persons cautioned and the nature of the matters for which the cautions were administered.

Clause 13 provides for the amendment of the Schedule by an Order of Cabinet.

Clause 14 makes provision for the making of Regulations by Cabinet.

The Schedule to the Bill provides for a list of offences which may be dealt with by way of caution.

THE CAUTIONS (ADULT) BILL, 2017

ARRANGEMENT OF CLAUSES

1. Short title and commencement
 2. Interpretation
 3. Cautioning of suspects
 4. Qualifying conditions for caution
 5. Suspects not eligible for a caution
 6. Form of a caution
 7. Records of cautions
 8. Effect of a caution in court proceedings
 9. Effect of a caution on disqualification under other laws
 10. Expungement of a record of caution
 11. Written policy and Standing Orders
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- Schedule

CAYMAN ISLANDS

**A BILL FOR A LAW TO MAKE PROVISION FOR THE
ADMINISTERING OF CAUTIONS IN RELATION TO ADULTS; AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

1. (1) This Law may be cited as the Cautions (Adult) Law, 2017. Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.
2. In this Law - Interpretation

“criminal record” has the same meaning as in section 2 of the Criminal Records (Spent Conviction) Law, 2016 Law 42 of 2016; Law 42 of 2016

“suspect” means a person over the age of eighteen years who is alleged to have committed an offence or who has been charged with an offence.
3. Subject to sections 4 and 5 of this Law, where a suspect has behaved in a manner that amounts to an offence and the suspect has admitted to so behaving, that suspect may be cautioned in accordance with this Law instead of being charged with, or prosecuted for the offence constituted by that behaviour. Cautioning of suspects
4. A suspect may be cautioned for an offence if - Qualifying conditions for caution

- Schedule
- (a) there is sufficient evidence to provide a realistic prospect of conviction for the offence;
 - (b) the suspect has unequivocally admitted that the suspect is guilty of the offence and agrees to be cautioned for it;
 - (c) the offence attracts a maximum custodial sentence of less than four years or is an offence specified in the Schedule; and
 - (d) in the opinion of -
 - (i) a police officer of the rank of Inspector or above; or
 - (ii) in the opinion of the Director of Public Prosecutions, where a charge has already been brought for the offence, the circumstances of the suspect or the offence are such that the matter is suitable for a caution and the suspect is not ineligible for a caution under section 5.
- Suspects not eligible for a caution
5. A suspect may not be cautioned for an offence if at the time of the alleged commission of the offence, the suspect -
- (a) had in the preceding three years been convicted or cautioned for a similar offence;
 - (b) was on police or court bail; or
 - (c) was -
 - (i) serving a sentence of imprisonment;
 - (ii) subject to recall to prison on licence;
 - (iii) subject to a non-custodial sentence under the provisions of the Alternative Sentencing Law (2008 Revision); or
 - (iv) subject to proceedings in the Drug Court.
- 2008 Revision
- Form of a caution
6. (1) A caution shall take the form of a written document that is -
- (a) read to the suspect by a police officer; and
 - (b) signed by the suspect and the police officer.
- (2) The written document shall contain -
- (a) the name, date of birth, address and occupation of the suspect;
 - (b) the particulars of the offence to which the suspect admits, including the date, time and location of the offence and the name of the officer reporting the offence;
 - (c) a notice to the suspect stating that -
 - (i) the caution will be recorded by the police and may be disclosed as part of the suspect's criminal record;
 - (ii) if the suspect is subsequently convicted of any offence, that the existence of the caution may be revealed to the court dealing with the suspect for any subsequent offence; and
 - (iii) a court may take a caution into account when dealing with the suspect for any for any subsequent offence;

- (d) the name of the police officer who authorised the caution under section 4(d) and the name of the police officer administering the caution;
- (e) the name of the attorney who represented the suspect at the time the suspect was cautioned; and
- (f) an acknowledgement by the suspect that -
 - (i) the suspect committed the offence specified in the document;
 - (ii) the suspect understands the contents of the caution document and the notice set out therein; and
 - (iii) the suspect has agreed to be cautioned for the offence.

7. (1) Where a caution has been administered to a suspect, the police officer shall retain the original written document and shall provide the suspect with a copy. Record of cautions

(2) A caution shall be recorded in the same manner as a record of a criminal conviction and the fact that a caution has been administered to a suspect shall form a part of that suspect's criminal record.

8. Where a person who has been administered a caution is subsequently convicted of an offence, the court may take the caution into account when dealing with the person for the subsequent offence. Effect of a caution in court proceedings

9. Where a Law disqualifies or potentially disqualifies a person convicted of an offence from conducting specified activities or from holding specified positions, the Law shall apply to a person to whom a caution has been administered in the same manner as if that person had been convicted of the offence, unless a provision to the contrary appears in that Law. Effect of a caution and disqualification under other laws

10. A record of a caution may be expunged pursuant to the Criminal Records (Spent Convictions) Law, 2016 Law 42 of 2016. Expungement of a record of caution Law 42 Of 2016

11. (1) The Commissioner of Police shall, with the approval of the Director of Public Prosecution, prepare a written policy in relation to the administration of cautions. Written policy and Standing Orders

(2) The Commissioner of Police shall issue Standing Orders to the members of the Royal Cayman Islands Police Service in relation to the administration of cautions.

(3) No caution shall be administered prior to preparation of the policy under subsection (1) and the issuance of the Orders under subsection (2).

- Annual Report 12. The Commissioner of Police shall cause to be laid before the Legislative Assembly, within three months of the end of each year, a report specifying the number of persons who have been administered with a caution and the nature of the matters for which the cautions were administered.
- Amendment of Schedule 13. (1) The Cabinet may, by Order, amend the Schedule.
- (2) An Order made pursuant to subsection (1) shall be subject to negative resolution of the Legislative Assembly.
- Regulations 14. The Cabinet may make Regulations generally for administering this Law by prescribing anything required or permitted by this law to be prescribed, or is necessary or convenient to be prescribed in order to give effect to the objects of this Law.

SCHEDULE

(section 4)

List of offences which may be dealt with by way of a caution

1. Theft (where the value of goods stolen does not exceed \$5,000) pursuant to section 241(a) of the Penal Code (2013 Revision);
2. Handling stolen goods (where the value of goods stolen does not exceed \$5,000) pursuant to section 260 of the Penal Code (2013 Revision);
3. Making off without payment pursuant to section 254 of the Penal Code (2013 Revision);
4. Criminal damage (where the value of the damage does not exceed \$3,000) pursuant to section 267(a) of the Penal Code (2013 Revision);
5. Assault occasioning actual bodily harm pursuant to section 216 of the Penal Code (2013 Revision);
6. Possession of a controlled drug that is not a hard drug pursuant to section 3(1)(k) of the Misuse of Drugs Law (2014 Revision);
7. Causing fear or provocation of violence by night pursuant to section 88 of the Penal Code (2013 Revision);
8. Intentionally causing harassment, alarm or distress by night pursuant to section 88A of the Penal Code (2013 Revision);

9. Causing harassment, alarm or distress by night pursuant to section 88B of the Penal Code (2013 Revision);
10. Being an idle and disorderly person pursuant to section 158 of the Penal Code (2013 Revision).

Passed by the Legislative Assembly the day of , 2017.

Speaker.

Clerk of the Legislative Assembly.