

CAYMAN ISLANDS



Supplement No. 8 published with Extraordinary
Gazette No. 72 dated 12th September, 2016.

**A BILL FOR A LAW TO REPEAL AND REPLACE THE
REHABILITATION OF OFFENDERS LAW (1998 REVISION); TO
ESTABLISH A BOARD FOR THE PURPOSES OF EXPUNGING
CRIMINAL RECORDS; TO ENHANCE THE REHABILITATION
PROCESS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

THE CRIMINAL RECORDS (SPENT CONVICTIONS) BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to repeal the Rehabilitation of Offenders Law (1998 Revision) and re-enact an enhanced version of the Law.

Clause 1 provides for the short title and the commencement.

Clause 2 contains the definitions of some key terms used in the Bill as well as some interpretational rules.

Clause 3 provides that the Law binds the Crown.

Clause 4 contains the primary object of the Bill. This is to implement a scheme to govern the expungement of convictions.

Clause 5 establishes the Expungement Board. Schedule 3 deals with the membership and other matters relating to the Board.

Clause 6 sets out the main functions of the Board, which include, among other things, receiving, considering, reviewing and determining applications for the expungement of a criminal record; and advising the Governor on relevant policy and strategic matters.

Clause 7 makes provision that specific findings or orders of a court are to be treated as convictions for the purposes of this Law

Clause 8 provides that references to offences, convictions and courts in the laws of the Cayman Islands are to be taken to include references to offences, convictions and courts of places other than the Islands where they correspond (or which correspond as closely as possible) to the relevant offences, convictions and courts in the Islands. It further provides that an expungement of an offence in another jurisdiction shall be treated as an expungement in the Islands.

Clause 9 provides for the recognition of the expungement of the convictions of prohibited immigrants. Where a person's record has been expunged in these circumstances, that person may re-enter the Islands to live or visit after satisfying the requirements of such Law as may for the time being be in force in relation to prohibited immigrants.

Clause 10 provides for the expungement of criminal records of deportees. This clause provides that where a person is deported from the Islands following a conviction, that person may apply to the Board for expungement of that record if it is shown that they have lived a crime-free period in the country or countries in which they have lived since being deported. Provision is made that upon expungement of a deportee's criminal record, the deportee may re-enter the Islands to live or visit after satisfying the requirements of such Law as may for the time being be in force in relation to deportees.

Clause 11 provides that a person, who was convicted prior to the commencement of this Law, may apply under this Law for the expungement of their criminal record pursuant to the provisions of this Law.

Clause 12 provides for convictions that cannot be expunged. The clause also provides for Cabinet to, by Order, amend Schedule 3 subject to affirmative resolution.

Clause 13 provides for pending charges. It provides that where a person applies for an expungement of criminal record is charged with or suspected of committing a new offence, the Board may, grant the expungement. The clause also provides that a person who applies for expungement must disclose if that person has been charged or is under official suspicion of a new offence and, if that person does not disclose, that person commits an offence and is liable upon summary conviction to a fine not exceeding ten thousand dollars.

Clause 14 provides for the expungement of minor offences relating to marijuana, including those committed before the commencement of this Law.

Clause 15 provides for the making of the application and payment of fees.

Clause 16 provides for the inquiries to be made by the Board on receipt of an application for an expungement of criminal record. Cabinet is also given power to make regulations regarding factors that may be taken into account in deciding if the administration of justice would be brought into disrepute.

Clause 17 provides that if the Board proposes to disapprove an application for expungement of a criminal record, it must advise the applicant and the applicant is entitled to make, or have made on his or her behalf, any representations to the Board. The Board must, before making its decision, consider any representations made to it.

Clause 18 provides for the computation of the date of expiration of a sentence.

Clause 19 provides that an applicant whose application was refused may not re-apply until the expiration of one year after the day on which the Board disapproved the application for an expunged record.

Clause 20 sets out when a conviction is considered to be spent.

Clause 21 provides for the meaning of a crime-free period for convictions of courts (other than the juvenile court). The crime-free period in the case of a conviction of a court (other than a juvenile court) is a period after the date of the person's conviction during which the person has not been convicted of an offence punishable by imprisonment, has not been in prison because of a conviction for any offence or is unlawfully at large.

Clause 22 defines what the crime-free period is for orders of the juvenile court. The crime-free period (in the case of an order of the juvenile court) in respect of a person is a period after the date of the order during which the person has not been subject to a control order; has not been convicted of an offence punishable by imprisonment; and has not been in prison because of a conviction for any offence and has not been unlawfully at large.

Clause 23 makes provision for traffic offence convictions.

Clause 24 as read with Schedule 1, prescribes the crime-free periods applying to various kinds of offences. These periods are reckoned from the date of the conviction.

Clause 25 makes provision for the computation of the crime-free period in relation to a conviction in circumstances where more than one sentence is imposed in the same or separate proceedings.

Clause 26 provides for the general effect of expungement of a criminal record. A person whose criminal record has been expunged is treated, for all purposes in law, as a person, who has not committed an offence, has not been charged with, prosecuted for, convicted of, or sentenced for, the offence which was the subject of that conviction.

Clause 27 makes provision for the effect of an expungement in relation to judicial proceedings. It prohibits, in any judicial proceedings, the admission of evidence to prove that the person is linked in any way with the crime in question; and further stipulates that the person is not required to answer any question, direct or indirect, that bears a relationship to the offence in respect of which expungement of their record has been approved. The clause further provides that, if a person is asked about the expunged conviction, they can answer in the negative.

Clause 28 provides for the effect of expungement in non-judicial proceedings. In summary, it provides protections that are broadly similar to those applying to judicial proceedings.

Clause 29 deals with the effect of expungement on rules of law, agreements, arrangements, offices, professions, occupations and employment. Once a person has received an expungement, they need not disclose an expunged record even if a rule of law, agreement, arrangement, office, profession, occupation or employment would require them to disclose a conviction. If they fail to disclose an expunged conviction, they must not suffer any detriment in that regard.

Clause 30 provides that where a person with an expunged record brings an action for defamation alleging that the defendant published information relating to an expunged conviction, such action is not to be prejudiced by the publication of the information unless the publication was subsequent to the record becoming expunged. The clause implicitly acknowledges the defendant's right to rely on the traditional defences of justification, fair comment or privilege.

Clause 31 preserves the Royal Prerogative of mercy.

Clause 32 recognises the need for there to be exceptions to the rule relating to the non-disclosure of a criminal history that has been expunged. Where the person is seeking certain categories of employment or membership of a professional body as specified in Schedule 2, they are required to disclose particulars of expunged convictions if requested to do so, provided that the person to whom the disclosure of such particulars is made is an authorised recipient.

Clause 33 makes it an offence to fail to disclose the commission of an offence when there is a statutory requirement to do so and where the person has benefitted from such failure, as where he was successful in obtaining employment.

Clause 34 provides that a person who, in the course of official duties, has or has had, custody of or access to any criminal record or information relating to an ex-offender's spent conviction and who knowingly discloses such information otherwise than in the course of those duties, commits an offence. An offence is also committed where a person employs fraudulent means to obtain such information.

Clause 35 provides for the keeping and protection of expunged criminal records..

Clause 36 provides for the protection of disclosure of discharges.

Clause 37 provides for notations and verification of records in relation to persons who work or volunteer with vulnerable persons.

Clause 38 provides for disclosure and use of information. In most instances information may be released with the consent of the person whose record has been expunged.

Clause 39 provides that an expunged record may be revoked by the Board where the expungement had been obtained by fraud or deceit or was not eligible.

Clause 40 provides that where the Board proposes to revoke an expunged record, it must advise the person that the person is entitled to make, or have made on his or her behalf, any representations to the Board.

Clause 41 provides for a limitation on the number of expungements. Under this section, a person is not eligible to obtain more than two expungements unless the convictions were for multiple offences for which concurrent sentences were imposed, in which case those sentences must be considered to be one conviction.

Clause 42 deals with the disclosure of decisions relating to expunged criminal records. The Board may disclose the number of decisions on approvals and disapprovals of expungement applications, and related matters. However, it may not disclose information that could reasonably be expected to identify an individual unless the individual authorizes the disclosure in writing.

Clause 43 provides for reporting to the Legislative Assembly. The Board must, within three months after the end of each fiscal year, submit to the Governor a report for that year containing information relating to the operations of the Board and any other information that the Governor may require. The Governor is to cause the report to be laid before the Legislative Assembly.

Clause 44 provides that nothing in this Law authorises a person to disclose a conviction or to take a conviction into account if to do so would contravene any other law.

Clause 45 provides that nothing in this Law affects anything lawfully done before a conviction is expunged.

Clause 46 makes it clear that this Law does not authorise the destruction by or on behalf of a public authority of a record relating to an expungement.

Clause 47 makes provision that a person aggrieved by a decision of the Board may seek judicial review.

Clause 48 empowers the Cabinet to make regulations to give effect to the objects of this legislation.

Clause 49 repeals the Rehabilitation of Offenders Law (1998 Revision) and makes certain transitional provisions.

THE CRIMINAL RECORDS (SPENT CONVICTIONS) BILL, 2016

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PROCESS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Criminal Records (Spent Convictions) Law, 2016. Short title and commencement

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

2. In this Law - Interpretation

“Board” means the Expungement Board established by section 5;

“Caymanian” has the same meaning as in section 2 of the Immigration Law (2015 Revision);

“Chairperson” means the Chairperson of the Board appointed pursuant to paragraph 2 of Schedule 1; Schedule 1

2014 Revision

“Commissioner” means the Commissioner of Police appointed under section 8 of the Police Law (2014 Revision);

“conviction” means -

- (a) a conviction in the Islands;
- (b) a conviction by or before a court outside the Islands; or
- (c) a finding in criminal proceedings that a person has committed an offence, done an act or made the omission charged;

“crime-free period”, in relation to a court other than a juvenile court, has the meaning assigned in section 21;

“crime-free period”, in relation to a juvenile court, has the meaning assigned in section 22;

“criminal record” means a record containing a person’s information in relation to a conviction for an offence, which is kept -

- (a) by a court;
- (b) by the Royal Cayman Islands Police Service;
- (c) by a department of Government or any other public authority; or
- (d) for the purposes of Her Majesty’s forces, whether in the Islands or elsewhere;

“expunged”, in relation to a criminal record, means a criminal record that has been spent and has been expunged from the criminal records pursuant to this Law;

“firearm” has the same meaning as in section 2 of the Firearms (2008 Revision);

“Governor” means the person for the time being holding the office of Governor of the Cayman Islands, and includes any person for the time being lawfully performing the functions of that office;

“information”, in relation to criminality, means information imputing that a named or otherwise identifiable living person has committed or been charged with or prosecuted for, or convicted of, or sentenced for, any offence which is the subject of an expunged criminal record;

“proceedings before a judicial authority” includes, in addition to proceedings before a court of law, proceedings before a tribunal, body or person having power -

- (a) by virtue of any law, custom or practice;
- (b) under the rules governing an association, institution, profession, occupation or employment; or
- (c) under a provision of an agreement providing for arbitration with respect to questions arising under the agreement,

to determine a question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of that question;

“sentence” includes an order made by a court dealing with a person in respect of a conviction for an offence directing anything to be done or not to be done by the person and includes -

- (a) an order for committal or other order made in default of payment of a fine or other sum adjudged to be paid by or imposed on conviction; and
- (b) an order dealing with a person in respect of a suspended sentence of imprisonment;

“spent”, in relation to a conviction, means a conviction where the relevant crime-free period has expired and the Board has declared it to be spent;

“vulnerable person” means a person referred to in section 37.

(2) For the purposes of this Law, the following are “ancillary circumstances” in relation to a conviction -

- (a) the offence which is the subject of that conviction;
- (b) the conduct constituting the offence;
- (c) a process or proceedings preliminary to that conviction;
- (d) a sentence imposed in respect of that conviction;
- (e) proceedings, whether by way of appeal or otherwise, for reviewing that conviction or that sentence; and
- (f) anything done under or in compliance with a sentence.

(3) For the purposes of this Law -

- (a) the following are to be treated as a single term of imprisonment -
 - (i) consecutive terms of imprisonment;
 - (ii) terms of imprisonment which are wholly or partly concurrent, and which were imposed in respect of offences of which a person was convicted in the same proceedings;
- (b) no account is to be taken of any subsequent variation of a term originally imposed by a court in dealing with a person in respect of a suspended sentence of imprisonment; and
- (c) a sentence imposed by a court outside the Islands which is substantially the same as a sentence of any description mentioned in this Law shall be treated as being the same as a sentence described in this Law.

3. This Law binds the Crown.

Law binds the Crown

4. The primary object of this Law is to implement a scheme to limit the effect of a person’s conviction for a range of offences if the person, having served that

Object of this Law

person's sentence, subsequently completes a period of crime-free behaviour and on completion of that period, the conviction is to be regarded as spent and, subject to some exceptions, a person is eligible to apply for the expungement of that criminal record.

PART 2 - EXPUNGEMENT BOARD

Expungement Board established

5. (1) There is established for the purposes of this Law a body to be known as the Expungement Board.

Schedule 1

(2) The provisions of Schedule 1 shall have effect as to the constitution of the Board and otherwise in relation to the Board.

Functions of the Board

6. (1) The functions of the Board are to -

- (a) receive, consider, review and determine applications for the expungement from the criminal records of spent convictions;
- (b) consider representations made to it by or on behalf of persons who apply to the Board for the expungement of criminal records;
- (c) advise the Governor on policy and strategic matters;
- (d) submit reports to the Governor, at intervals required by the Governor, on the discharge of the Board's functions;
- (e) carry out other functions assigned by the Governor.

(2) The Board shall have the power to approve, disapprove or revoke the expungement of a criminal record, and this power shall be exercised in a manner that is lawful, rational, proportionate and procedurally fair.

(3) The Governor may give the Board policy directions relating to applications for expunging records, including related inquiries and proceedings and the Board shall ensure that the policies are brought to the attention of the public.

(4) A hearing by the Board shall be in private and may be conducted without the applicant appearing unless the Board sees it fit to hear the applicant in person.

PART 3 - EXPUNGEMENT OF CONVICTIONS

Criteria for expunging a criminal record

Findings and orders considered to be convictions

7. The following findings or orders of a court shall be treated as convictions for the purposes of this Law -

(a) a finding that an offence has been proved, or that a person is guilty of an offence, and the discharging of, or the making of an

order releasing, the person conditionally on entering into a recognizance to be of good behaviour for a specified period or on other conditions determined by the court; and

- (b) in the case of the juvenile court an order other than an order dismissing a charge.

8. (1) This Law shall apply to a conviction for an offence against laws other than the Laws of the Cayman Islands and a reference in this Law to an offence, conviction and court includes a reference to an offence, conviction and court of a place other than the Islands which correspond, or which correspond as closely as possible, to the relevant offence, conviction and court of the Islands.

Convictions imposed or expunged in other countries

(2) Where a person's conviction was expunged in another country for a conviction in that country, that person is entitled to protection under this Law as if the offence had been committed in the Islands and the conviction expunged under this Law.

(3) A prisoner who is Caymanian and has been convicted of an offence in another country and who is transferred to the Islands to serve that prisoner's sentence, or the rest of that sentence, shall be entitled to expungement as if that offence had been committed in the Islands in accordance with the criteria set out in this Law.

(4) For the purposes of this Law, the offence that a transferred prisoner has been found guilty of, is deemed to be a "Category A offence" under section 23 of the Penal Code (2013 Revision).

2013 Revision

9. (1) Where a person has been declared a prohibited immigrant in the Islands on the basis of a criminal offence committed outside the Islands and the person's criminal record is expunged in the country in which the conviction took place, that expungement shall be recognized under this Law as if it had been given by the Board in respect of an offence committed in the Islands.

Convictions of prohibited immigrants

(2) Where a person's criminal record has been expunged in circumstances described in subsection (1), that person may re-enter the Islands to live or visit after satisfying the requirements of such Law as may for the time being be in force in relation to prohibited immigrants.

10. (1) Where a person is deported from the Islands following a conviction, that person may apply to the Board for expungement of that person's criminal record if it is shown that that person has lived the relevant crime-free period in the country in which that person has lived since being deported.

Convictions of deportees

(2) Where a person's criminal record has been expunged in circumstances described in subsection (1), that person may re-enter the Islands to live or visit

after satisfying the requirements of such Law as may for the time being be in force in relation to deportees.

Convictions before the commencement of this Law
1998 Revision

11. A person who has been convicted before the coming into force of this Law and has not completed the crime-free period under the Rehabilitation of Offenders Law (1998 Revision) -

- (a) may apply; or,
- (b) if the application was pending, may reapply,

for an expungement of a criminal record under this Law as if the conviction took place when this Law was in force.

Criteria for expunging criminal records

Convictions that cannot be expunged
Schedule 2

12. (1) The following convictions cannot be expunged -
(a) a conviction for an offence specified in Schedule 2;
(b) a conviction resulting in a sentence of imprisonment for life;
(c) a conviction resulting in a term exceeding five years, subject to the power in section 16(1)(c);
(d) a conviction against a corporate body;
(e) a conviction resulting in a sentence of detention during the court's pleasure; and
(f) a conviction for an offence described in paragraph (c), regardless of the sentence imposed where the person convicted is not under seventeen years old and it is a first offence.

(2) The Cabinet may by Order amend Schedule 2 to -

- (a) add or delete categories; or
- (b) impose exceptions or conditions.

(3) An Order made pursuant to section (2) shall be subject to affirmative resolution of the Legislative Assembly

(4) Where a sentence that is eligible for expungement is reduced by an exercise of a prerogative power, privilege or the court's pleasure, the reduced sentence shall, for the purposes of determining the crime-free period, be treated as if it was the sentence imposed by the court.

Pending charges

13. (1) Where a person makes an application for expungement of a criminal record and that person is alleged to have committed a new offence, the Board may, on terms and conditions it thinks fit, and in exceptional circumstances, approve the expungement of the record.

(2) The Board shall, in exercising the Board's power under subsection (1), take into account the following -

- (a) the nature of the offence for which suspension is being sought and the nature of the new offence;
- (b) the provisions of this Law in relation to the period during which the new offence can be suspended;
- (c) the length of time it has taken without the charge for the new offence being disposed of; and
- (d) any other factor the Board considers relevant.

(3) A person who applies for expungement shall disclose to the Board any allegations in relation to that person of the commission of a new offence and, if that person fails to disclose those allegations in relation to a new offence, that person commits an offence and is liable upon conviction to a fine not exceeding ten thousand dollars.

(4) In this section “new offence” means an offence for which a person seeking expungement of an earlier offence is charged or in respect of which that person is named by the police as a suspect in the Islands or elsewhere.

14. (1) A person convicted of any of the following offences -

Minor offences relating to marijuana

- (a) possession not involving an aggravating factor such as trafficking or intent to supply;
- (b) possession of pipes or other utensils for the consumption of marijuana; or
- (c) smoking or other unlawful use of marijuana,

or a similar offence under a Law, before the coming into force of this Law, may apply to the Board for an expungement of that person’s criminal record upon the coming into force of this Law.

(2) Where a person is convicted of any of the offences referred to subsection (1), after the coming into force of this Law, that person may apply to the Board for an expungement if the sentence is non-custodial and, if a fine is imposed, where that fine does not exceed five thousand dollars.

(3) The Cabinet may -

- (a) by Order amend this section; and
- (b) make regulations relating to the administration of this section.

(4) An Order made pursuant to section (3)(a) shall be subject to affirmative resolution of the Legislative Assembly.

Procedures for expunging criminal records

- Application for expungement
15. (1) Where a person has been convicted of an offence and the crime-free period has expired, that person may apply to the Board for that person's criminal record to be expunged.
- (2) An application for expungement shall be made in the prescribed manner and accompanied by the prescribed fee.
- Inquiries by Board
16. (1) On receipt of an application for an expungement of a criminal record, the Board -
- (a) shall cause inquiries to be made to ascertain whether the applicant is eligible to make the application;
- (b) shall, if the applicant is eligible, cause inquiries to be made to ascertain whether section 13 applies; and
- (c) may, in the case of an offence referred to in Schedule 3, item 2, cause inquiries to be made with respect to factors which are relevant to determining whether approving an expungement of a criminal record would bring the administration of justice into disrepute.
- (2) Without limiting the generality of the power in subsection (1)(c), Cabinet may make regulations as to what factors may be taken into account for purposes of determining whether the expungement of a criminal record would bring the administration of justice into disrepute.
- Schedule 3
- Representations
17. (1) If the Board proposes to deny an application for expungement of a criminal record, the Board shall notify the applicant in writing and advise the applicant that the applicant may make, or have made on the applicant's behalf, representation to the Board, either in writing within twenty-one days from the date of the notice or, with the Board's authorization, orally at a hearing held for that purpose.
- (2) The Board shall, before making its decision, consider any representations made to it by the applicant or on the applicant's behalf.
- Computing date of expiration of sentence
18. For the purposes of this Law, a reference to the expiration according to law of a sentence of imprisonment imposed for an offence shall be read as a reference to the day on which the sentence expires, without taking into account -
- (a) any period during which the person could be entitled to statutory release or any period following a statutory release date;
- (b) any remission that stands to the credit of the person in respect of the offence; or

(c) an earlier date of release due to parole.

19. Where an application has been denied, the applicant may not re-apply until the expiration of one year after the day on which the Board refused to approve the expungement of the criminal record. Re-applying

General

20. (1) A conviction is spent on completion of the relevant crime-free period, except as provided by this section. Spent conviction

(2) A conviction shall not be spent unless the person has served or otherwise fully complied with the sentence imposed in respect of that conviction.

(3) A finding that an offence has been proved, or that a person is guilty of an offence, without proceeding to a conviction, is not to be considered a conviction.

(4) An order of a juvenile court dismissing a charge and administering a caution is not to be considered a conviction.

(5) A finding that an offence has been proved, or that a person is guilty of an offence, and -

- (a) the discharging of, or the making of an order releasing, the person conditionally -
 - (i) on entering into a good behaviour bond for a specified period;
 - (ii) on participating in an intervention program; or
 - (iii) on other conditions determined by the court; or
- (b) the releasing of that person on probation on conditions determined by the court, for such period of time as it thinks fit,

shall be treated as spent on the satisfactory completion of the period or the satisfactory compliance with the program (including any intervention plan arising out of the program) or conditions, as the case may require.

(6) A conviction for an offence which has ceased, by operation of law, to be an offence shall be immediately spent when that offence -

- (a) ceases to be an offence; and
- (b) is prescribed by Regulations made by Cabinet to be an offence to which this subsection applies.

(6) A conviction which is expunged shall not be revived by a subsequent conviction.

2008 Revision (7) A reference in subsection (5)(a)(i) to a good behaviour bond includes a reference to a recognizance to be of good behaviour made before the commencement of the Alternative Sentencing Law (2008 Revision).

Crime-free period for convictions of courts (other than a juvenile court) 21. (1) The crime-free period (in the case of an order of a court other than an order of a juvenile court) means the period after a sentence is served during which the person has not been -

- (a) convicted of an offence punishable by imprisonment;
- (b) in prison because of a conviction for an offence; and
- (c) unlawfully at large.

(2) The crime-free period may commence before the date of the commencement of this Law.

Crime free period for orders of a juvenile court 22. (1) The crime-free period (in the case of an order of the juvenile court) is the period after the date of the order during which the person has not been -

- (a) subject to a control order;
- (b) convicted of an offence punishable by imprisonment;
- (c) in prison because of a conviction for an offence; and
- (d) unlawfully at large.

(2) The crime-free period may commence before the date of the commencement of this Law.

Convictions in relation to traffic offences 23. (1) A conviction for a traffic offence and any period of imprisonment imposed as a consequence of such a conviction shall be disregarded in calculating the crime-free period for a conviction for a non-traffic offence and a conviction for a traffic offence is of relevance only in calculating the crime-free period for a conviction for an earlier traffic offence.

(2) A conviction for a non-traffic offence and any period of imprisonment imposed as a consequence of such a conviction shall be disregarded in calculating the crime-free period for a conviction for a traffic offence and a conviction for a non-traffic offence is of relevance only in calculating the crime-free period for an earlier non-traffic offence.

(3) Notwithstanding subsections (1) and (2), regard shall be had to a conviction for an offence resulting in -

- (a) death; or
- (b) bodily harm.

in calculating the crime-free period for any conviction (whether for a traffic offence or a non-traffic offence) and a conviction for any of those shall be of relevance in determining the crime-free period for any earlier offence.

(4) In this section, traffic offence means an offence arising out of the use of a motor vehicle or trailer within the meaning of the Traffic Law, 2011 and non-traffic offence means any other offence.

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24. The crime-free period in relation to a sentence specified in the first column of Schedule 3 shall be the period specified in the second column thereof; the period being reckoned from the date of the expiration of the sentence as defined in section 18.

Applicable crime-free period
Schedule 3

25. Where a person has been convicted of multiple offences and the sentence imposed in respect of the convictions (whether or not in the same proceedings) differ, the crime-free period in relation to those convictions shall be determined by the longer or the longest of those sentences.

Crime-free period in relation to multiple sentences

PART 4 - EFFECT OF EXPUNGEMENT

26. A person shall, where the criminal record of that person has been expunged, be treated, for all purposes in law, as a person who has not -

Effect of expungement of a criminal record in general

- (a) committed;
- (b) been charged with;
- (c) been prosecuted for;
- (d) been convicted of; or
- (e) been sentenced for,

the offence which was the subject of that criminal record.

27. (1) Notwithstanding any other written or unwritten law -

Effect of expungement in judicial proceedings

- (a) no evidence shall be admissible in proceedings before a judicial authority to prove that a person has -
 - (i) committed;
 - (ii) been charged with;
 - (iii) been prosecuted for;
 - (iv) been convicted of; or
 - (v) been sentenced for,the offence which was the subject of an expunged criminal record; and
- (b) a person shall not, in any proceedings, be asked and, if asked, may answer in the negative any question relating to the person's criminal record which cannot be answered without

acknowledging or referring to a conviction which forms the basis of an expunged criminal record or any ancillary circumstances.

(2) If, in judicial proceedings the judicial authority is satisfied that justice cannot be done except by requiring or admitting evidence relating to a person's expunged criminal record or to ancillary circumstances to it, that authority may -

- (a) require or admit the evidence in question, but a court before which such evidence is admitted shall, in appropriate circumstances, take reasonable steps to prevent or minimize publication of that evidence; and
- (b) determine any issue to which the evidence relates.

(3) In the performance of its functions, the Department of Community Rehabilitation shall be entitled to have access to the criminal record.

Effect of expungement in non-judicial proceedings

28. Where a question arises in a non-judicial proceeding with respect to a person's criminal history, the person-

- (a) may answer in the negative; and
- (b) shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure, in the answer, to acknowledge or disclose an expunged criminal record or ancillary circumstances.

Effect of expungement on laws, agreements and arrangements.

29. Notwithstanding section 32, a disclosure obligation imposed on a person by a rule of law or by the provisions of an agreement or arrangement shall not extend to requiring that person to disclose an expunged criminal record or ancillary circumstances.

Defamation actions

30. The law of defamation applies to an expunged criminal record as if the person had never committed the offence but shall not protect a person if the publication complained of took place before the conviction was expunged.

Saving the Royal Prerogative

31. Nothing in this Law affects the right of Her Majesty, by virtue of Her Royal Prerogative or otherwise, to grant a free pardon, to quash a conviction or sentence, to commute a sentence or to expunge a criminal record.

PART 5 - DISCLOSURE OF EXPUNGED RECORDS

Circumstances where persons shall disclose expunged criminal record

32 (1) A person shall, if requested to do so, disclose particulars of an expunged criminal record when seeking to -

Schedule 4

- (a) be made a member of a professional body or any of the professions specified in Part 1 of Schedule 4;
- (b) be appointed to an office of employment specified in Part 2 of Schedule 4; or

- (c) become engaged in a business of the type specified in Part 3 of Schedule 4.
- (2) A disclosure of particulars of an expunged criminal record under subsection (1) shall be made -
 - (a) to a person authorised by the -
 - (i) professional body concerned; or
 - (ii) organisation responsible for the office of employment; or
 - (b) in relation to a business, to -
 - (i) the chief operating officer of the business; or
 - (ii) a person ostensibly authorised to receive the disclosure; or
 - (c) a person designated by regulations made by Cabinet for the purpose.
- (3) The Cabinet may by Order amend Schedule 4 by -
 - (a) add or delete categories; or
 - (b) impose exceptions or conditions.
- (4) An Order made pursuant to section (3) shall be subject to affirmative resolution of the Legislative Assembly.
- (5) The particulars of an expunged criminal record disclosed to an authorised person under this section may be published or communicated on the following conditions -
 - (a) the publication or communication shall be in accordance with rules applying to the professional body, office of employment or business; and
 - (b) the general disclosure or publication of the particulars of the expunged criminal record shall be to authorised persons.

33. (1) Where a person who is required to disclose the particulars of an expunged conviction under section 32 fails to do so, that person commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Failure to disclose expunged criminal record where disclosure required

(2) A person shall not be convicted of an offence under this section unless the court is satisfied that a benefit was conferred on that person and that such benefit would not have accrued if the person had not committed the act alleged to constitute the offence.

34. (1) A person -

- (a) who, in the course of official duties, has or has had custody of or access to information constituting part of a criminal record; or
- (b) who, knowing or having reasonable cause to suspect that any such information was obtained in the course of the official duties,

Unauthorised disclosure of expunged criminal record

discloses that information to any other person, commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(2) In proceedings for an offence under subsection (1) it is a defence for the accused person to show that the disclosure was made to -

- (a) the person whose criminal record has been expunged or to another person at the express written request of the person whose criminal record has been expunged;
- (b) a person whom the accused reasonably believed to be the person whose criminal record has been expunged; or
- (c) another person at the express written request of a person whom the accused reasonably believed to be the person whose criminal record had been expunged.

(3) A person who obtains any information from an expunged criminal record by means of fraud, dishonesty or a bribe commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of six months, or to both.

PART 6 - CUSTODY AND MANAGEMENT OF EXPUNGED CRIMINAL RECORDS

Custody and protection of records

Keeping and protection of expunged criminal records

35. (1) The Governor may, by direction in writing addressed to a person having the custody or control of a judicial record of a conviction for which an expungement has been approved, require that person to deliver that judicial record into the Commissioner's custody.

(2) A judicial record of a conviction for which an expungement has been approved that is in the custody of the Commissioner or of any department or agency of the Government of the Islands shall be kept separate from other criminal records and that judicial record shall not be disclosed to any person, nor may the existence of the judicial record or the fact of the conviction be disclosed to any person, without the prior approval of the Governor.

(3) The Governor shall, before granting the approval for disclosure referred to in subsection (2), be satisfied that the disclosure is in the interests of the administration of justice or for any purpose related to the safety or security of the Islands or any state allied or associated with the Islands.

(4) For greater certainty, a judicial record includes any information in relation to the conviction that may be contained in a convicted person's index of a national DNA data bank as may be established.

36. (1) No judicial record of a discharge under any Law that is in the custody of the Commissioner or of any department or agency of the Government of the Islands shall be disclosed to any person, nor may the existence of the judicial record or the fact of the discharge be disclosed to any person, without the prior approval of the Governor unless -

Protection of disclosures
of discharges

- (a) more than one year has elapsed since the person was discharged absolutely; or
- (b) more than three years have elapsed since the person was discharged on the conditions prescribed in a probation order.

(2) On the expiration of the relevant period referred to in subsection (1), the Commissioner shall remove all references to a discharge under any Law from the criminal conviction records retrieval system that may be maintained by the Police Service.

(3) Notwithstanding sections 35 and subsections (1) and (2), the name, date of birth and last known address of a person whose criminal record is expunged and who has received a discharge referred to in subsection (1) may be disclosed to the Police Service if a fingerprint, identified as that of the person, is found -

- (a) at the scene of a crime during an investigation of the crime; or
- (b) during an attempt to identify a deceased person or a person suffering from amnesia.

Protecting vulnerable persons

37. (1) In this section, vulnerable person means a person who, because of that person's age, a disability or other circumstances, whether temporary or permanent is-

Notation and verification
of records

- (a) in a position of dependency on others; or
- (b) at a greater risk than the general population of being harmed by a person in a position of trust or authority towards them.

(2) The Commissioner shall make, in the criminal conviction records retrieval system maintained by the Police Service, a notation enabling a member of the Police Service or other authorized body to determine whether there is a criminal record of a person's conviction for an offence listed in Schedules 2 and 3 in respect of which the expungement of a criminal record has been approved.

Schedule 2
Schedule 3

(3) At the request of any person or organization responsible for the well-being of a child or vulnerable person and to whom or to which an application is made for a paid or volunteer position, a member of the Police Service or other

authorized body shall verify whether the applicant is the subject of a notation made in accordance with subsection (2) if -

- (a) the position is one of trust or authority towards that child or vulnerable person; and
- (b) the applicant has consented in writing to the verification.

(4) Except as authorized by subsection (3), no person may verify whether a person is the subject of a notation made in accordance with subsection (2).

(5) The Police Service or other authorized body that identifies an applicant for a position referred to in subsection (3)(a) as being a person who is the subject of a notation made in accordance with subsection (2) shall request the Commissioner to provide the Governor with any record of a conviction of that applicant, and the Commissioner shall transmit any such record to the Governor.

Disclosure and use of information

38. (1) The Governor may disclose to the Police Service or other authorized body all or part of the information contained in a record transmitted by the Commissioner under section 37(5).

(2) The Police Service or other authorized body shall disclose the information referred to in subsection (1) to the person or organization that requested the verification if the applicant for a position has consented in writing to the disclosure.

(3) A person or organization that acquires information under this section in relation to an application for a position shall not use it or communicate it except in relation to the assessment of the application.

Schedule 2
Schedule 3

(4) The Cabinet may by Order amend Schedule 2 and 3 by adding or deleting a reference to an offence, sentence or period.

(5) An Order made pursuant to section (4) shall be subject to affirmative resolution of the Legislative Assembly.

PART 7 - MISCELLANEOUS

Revocation of expungement

39. The expungement of a criminal record may be revoked by the Board on evidence establishing to the satisfaction of the Board -

- (a) that the person to whom it relates knowingly made a false or deceptive statement in relation to the application for the expungement, or knowingly concealed some material particular in relation to that application; or
- (b) that new information shows that the person was not eligible for the expungement when it was approved.

40. (1) If the Board proposes to revoke an expunged criminal record, the Board shall notify the applicant in writing and advise the applicant that the applicant may make, or have made on the applicant's behalf, representation to the Board either in writing within twenty-one days from the date of the notice or, with the Board's authorization, orally at a hearing held for that purpose. Representations
- (2) The Board shall, before making its decision, consider any representations made to it by the applicant or on the applicant's behalf.
41. A person shall not be eligible to obtain more than two expungements unless the convictions are for multiple offences for which concurrent sentences were imposed, in which case those sentences shall be considered to be one conviction. Limitation on expungements
42. The Board may disclose the number of decisions on approvals and disapprovals of expungement applications, and related matters with the exception that the Board may not disclose information that could reasonably be expected to identify a person unless that person authorizes the disclosure in writing. Disclosure of decisions relating to expunged criminal records
43. (1) The Board shall, within three months after the end of each financial year, submit to the Governor a report for that year containing the following information - Reports to Legislative Assembly
- (a) the number of applications for expungement of criminal records made in respect of the offences referred to in Schedule 2; Schedule 2
 - (b) the number of expungement of criminal records that the Board approved or disapproved, in respect of the offences referred to in Schedule 2;
 - (c) the number of expungement of criminal records approved, categorized by the offence to which they relate and, if applicable, the district of residence of the applicant; and
 - (d) any other information required by the Governor.
- (2) The Governor shall cause the report to be laid before the Legislative Assembly on any of the first thirty days on which the House is sitting after the day on which the Governor receives it.
44. Nothing in this Law authorises a person to disclose a conviction or to take a conviction into account if to do so would contravene any other law. Law does not authorize contraventions of other laws
45. Nothing in this Law affects anything lawfully done before a conviction is expunged. Law does not affect certain other lawful acts

- Non-destruction of records 46. This Law does not authorise the destruction by or on behalf of a public authority of an expunged criminal record.
- Judicial review 47. A person affected by a decision of the Board may, within forty-five days of that decision, appeal to the Grand Court by way of judicial review of the decision.
- Regulations 48. 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 and, in particular, may prescribe -
- (a) the additions, deletions, exceptions and conditions referred to in section 32(3);
 - (b) the form of police clearance reports;
 - (c) the procedure relating to applications for the expungement of criminal records;
 - (d) the persons to whom disclosures can be made under section 32(2)(b);
 - (e) the forms to be used for applications made under this Law;
 - (f) the rules respecting the making of notations in respect of records of conviction, and the verification of such records, for the purposes of section 35(3);
 - (g) the rules respecting the consent given by applicants to the searching of records and the disclosure of information contained in them, including the information to be given to applicants before obtaining their consent and the manner in which consent is to be given, for the purposes of sections 38(1) and (2);
 - (h) rules governing the disclosure of decisions under section 42;
 - (i) what the exceptional circumstances that apply for the purposes of any part of this Law.
- Repeal of the Rehabilitation of Offenders Law (1998 Revision) 49. (1) The Rehabilitation of Offenders Law (1998 Revision), hereinafter referred to as the “repealed Law”, is hereby repealed.
- (2) The rights or benefits of any person where those rights or benefits -
- (a) were acquired under the repealed Law; and
 - (b) existed immediately prior to the commencement of this Law,
- shall not be adversely affected by this Law.

SCHEDULE 1

(Section 5)

EXPUNGEMENT BOARD

1. (1) The Board shall consist of not less than three nor more than five members as the Governor may appoint. Constitution of the Board

(2) The Board shall include at least one of each of the following -

- (a) a person who -
 - (i) is an attorney-at-law of at least five years' standing;
 - (ii) is a Judge;
 - (iii) is qualified to hold office as a Judge even if that person may have reached the retirement age for Judges; or
 - (iv) is a Magistrate;
- (b) a person appearing to the Governor to be interested in the rehabilitation of persons convicted of criminal offences being, but not limited to -
 - (i) a psychiatrist or psychologist; or
 - (ii) a social worker; or
- (c) a member of the public other than one referred to in paragraph (2)(a), (b) or (c) who may be a justice of the peace, minister of religion or other person.

(3) For purposes of assessing the qualifications and experience of persons to be considered for appointment to the Board, the Governor may appoint a panel which may or may not include members of the Cabinet.

2. (1) The Governor shall appoint as Chairperson a member of the Board appointed under paragraph 1(2)(a)(i), (ii) or (iii). Chairperson and Secretary

(2) Where the Chairperson is absent or unable to act, the Governor shall appoint a member to perform the functions of Chairperson.

(3) Where the Chairperson is unable to attend a meeting and no person has been appointed under subsection (2) or, where one has been appointed but that person is also unable to attend, the other members at the meeting shall elect one of their number to act as Chairperson at that meeting.

(4) The Chief Officer in the Ministry responsible for the rehabilitation of offenders shall appoint a Secretary to the Board.

Seal	<p>3. (1) The Board shall have a seal which shall be in the custody of the Chairperson or the Secretary and the seal shall be affixed to instruments pursuant to a resolution of the Board in the presence of the Chairperson or any other member of the Board and the Secretary.</p> <p>(2) The seal of the Board shall be authenticated by the signature of the Chairperson or a member of the Board authorised to act in that behalf and the Secretary, and the seal shall be officially and judicially noticed.</p> <p>(3) Documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signed by the Chairperson or any other member authorised to act in that behalf, or the Secretary.</p>
Tenure of office of members	<p>4. Subject to the provisions of this Schedule, the appointment of members of the Board is to be for a period not exceeding three years and each member is eligible for reappointment.</p>
Temporary appointments	<p>5. Where a member is absent or unable to act, the Governor shall appoint another person to act temporarily in the place of that member.</p>
Filling vacancies	<p>6. (1) If a vacancy occurs on the Board, the vacancy shall be filled by the appointment of another member who is to, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.</p> <p>(2) In the making of appointments pursuant to this paragraph regard shall had to the requirements of paragraph 1(2).</p>
Resignations	<p>7. (1) The Chairperson may at any time resign by instrument in writing addressed to the Governor and the resignation shall take effect from the date of receipt by the Governor of the instrument.</p> <p>(2) A member other than the Chairperson may resign by instrument in writing addressed to the Governor and transmitted through the Chairperson, and from the date of the receipt by the Governor of that instrument that member ceases to be a member of the Board.</p>
Revocation of appointments	<p>8. The Governor may at any time revoke the appointment of any member of the Board.</p>
Publication of membership	<p>9. The names of all members of the Board as first constituted and every change in membership shall be published in the Gazette.</p>

10. (1) The Board is to meet at such times as may be necessary or expedient for the transaction of its business and the meetings shall be held at such places and times and on such days as the Chairperson may determine. Procedure for meetings

(2) Minutes in proper form of each meeting of the Board shall be kept by the Secretary.

(3) Decisions of the Board shall be by a majority of the members present and voting and be in writing.

(4) The Chairperson or, in the case of the absence or inability of the Chairperson to act, the person appointed or elected to act as Chairperson in accordance with paragraph 6 shall preside at the meetings of the Board, and when so presiding shall, in addition to an original vote, have a casting vote in any case in which the voting is equal.

(5) The quorum of the Board shall be three.

(6) Subject to the provisions of this Law the Board shall regulate its own proceedings.

(7) The validity of any proceedings of the Board shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

11. (1) Where a member of the Board has a possible or perceived conflict of interest with respect to any matter that comes up for discussion, that member shall say so but not disclose the nature of the interest and - Conflict of interest

(a) shall, as soon as the matter comes up on the agenda, immediately leave the place in which the deliberations are taking place and shall not participate, directly or indirectly, in the deliberations touching such matter and shall not return while the matter is under discussion until a decision has been taken by the Board; and

(b) shall otherwise comply with Regulations Cabinet may make with regard to conflict of interest.

(2) A declaration of interest made under this section and the absence of the member concerned are to be recorded in the minutes of the meeting.

Transaction of business
outside of meetings or
by telephone

12. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board, and a resolution in writing approved in writing by a majority of those members shall be taken to be a decision of the Board.

(2) A Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of -

- (a) the approval of a resolution under sub-paragraph (1); or
- (b) a meeting held in accordance with sub-paragraph (2),

the Chairperson and each member shall have the same voting rights as they have at an ordinary meeting of the Board.

(4) A resolution approved under sub-paragraph (1) or (2) shall be recorded in the minutes of the meetings of the Board.

(5) Papers may be circulated among the members for the purposes of sub-paragraph (1) by facsimile or other transmission of the information in the papers concerned.

Remuneration of
members

13. Members who are not public officers as defined by section 124 of the Constitution shall be paid allowances as the Governor may determine.

Protection from liability

14. (1) A member shall not be personally liable in damages for anything done or omitted in the discharge or purported discharge of that member's functions, responsibilities, powers and duties under this Law unless it is shown that the act or omission was in bad faith.

(2) The Government shall indemnify a member against all claims, damages, costs, charges or expenses incurred by that member in the discharge or purported discharge of that member's functions, responsibilities, powers and duties under this Law, except claims, damages, costs, charges or expenses caused by the bad faith of that member.

SCHEDULE 2

(Sections 12, 37, 38, 43)

OFFENCES THE RECORDS OF WHICH CANNOT BE EXPUNGED

(Regardless of sentence, unless otherwise stated)

1. Treason
2. Murder
3. Manslaughter
4. Offences Against Morality under Part VB of the Penal Code (2013 Revision) where a person is sentenced to a custodial sentence of five years or more
5. Offences Against the Person under Part VI of the Penal Code (2013 Revision) where a person is sentenced to a custodial sentence of five years or more
6. Offences relating to terrorism
7. Offences relating to the trafficking of persons
8. Offences relating to care and protection of children and vulnerable persons
9. Offences relating to child pornography
10. Offences relating to a firearm as defined in section 2

SCHEDULE 3

(Sections 16, 24, 37)

CRIME-FREE PERIODS IN RELATION TO SENTENCES

Sentence	Crime-free period
1. A sentence of life imprisonment	No expungement
2. A sentence exceeding five years	15 years, but subject to the approval of the Board in accordance with the criteria prescribed in and under section 16(1)(c).
3. A sentence of imprisonment for a term exceeding three years but not exceeding five years	10 years
4. Sentence of imprisonment for a term	7 years (adult)

exceeding six months but not exceeding three years	5 years (juvenile)
5. A sentence of imprisonment for a term not exceeding six months	7 years (adult) 2.5 years (juvenile)
6. A fine or any community based order	5 years (adult) 2.5 years (juvenile)
7. An order sending the person to a rehabilitation school under section 21(1)(b) as read with section 20(3)(a) of the Youth Justice Law (2005 Revision)	2.5 years
8. A sentence of probation	5 years
9. A community service order under section 42 of the Penal Code (2013 Revision)	5 years
10. An order made under section 20(1)(b) of the Youth Justice Law (2005 Revision)	2.5 years
11. An order imposing a disqualification, disability or prohibition, or any other penalty other than a conviction	A period beginning with the date of conviction and ending on the date on which that disqualification, disability, prohibition or other penalty, other than a fine or conviction ceases or ceased to have effect.
12. A curfew order or exclusion order as defined in sections 5 and 11, respectively, of the Alternative Sentencing Law, (2008 Revision)	5 years
13. A sentence of being bound over to keep the peace, an absolute discharge, conditional discharge, or admonishment and discharge	6 months. If the order itself exceeds 6 months, then the crime-free period will be completed at the time of completion of the order
14. A suspended sentence (including a suspended sentence supervision order referred to in section 21 of the Alternative Sentencing Law, (2008 Revision)	7 years
15. An order under section 158 of the Criminal Procedure Code (2014 Revision) (Special verdict where accused found insane, after trial, at the time of offence charged)	7 years for a term not exceeding 6 months but not exceeding 36 months and 5 years for a sentence of imprisonment for a term not exceeding 6 months

SCHEDULE 4

(Section 32)

PERSONS WHO MUST DISCLOSE EXPUNGED CRIMINAL RECORDS

Part 1

Professions

1. Attorney-at-Law
2. Certified or Chartered Accountant
3. Dentist
4. Medical Practitioner
5. Midwife
6. Optician
7. Pharmacist
8. School Teacher
9. Registered Nurse
10. Veterinary Surgeon
11. Any profession which can be practiced only upon being licensed under a Law.

Part 2

Offices of Employment

<i>Office of Employment</i>	<i>Categories of Employment</i>
1. Judicial Service, that is, Judges, Magistrates and Justices of the Peace	All
2. Public Service, that is, the civil service and employees of statutory authorities and government companies	All
3. Members of statutory boards and boards of directors of government companies	All

4.	Police Service	All
5.	Prison Service	All
6.	Fire Service	All
7.	Monetary Authority	All
8.	Financial Institutions	All
9.	Insurance Companies	All
10.	Hospitals and Nursing Homes	All
11.	Educational Institutions	All
12.	Residential facilities for the care and protection of children and other vulnerable persons	All
13.	Sports organisations for children, in-home care agencies, after-school programmes and other services and facilities for vulnerable persons	All
14.	Security Services Organisations	Director, Manager, Security Guard

Part 3

Nature of Business

1. Bonds and other Securities
2. Stock Broking
3. Firearms Dealing

Passed by the Legislative Assembly the day of , 2016.

Speaker.

Clerk of the Legislative Assembly.