

CAYMAN ISLANDS



Supplement No. 11 published with Extraordinary
Gazette No.9 dated 31st January, 2017.

**A BILL FOR A LAW TO AMEND THE PENAL CODE (2013 REVISION)
TO MAKE PROVISION FOR THE MAKING OF SEXUAL HARM
PREVENTION ORDERS; THE OFFENCES OF POSSESSION OF
ARTICLES FOR USE TO DEFRAUD AND MAKING OR SUPPLYING
ARTICLES FOR USE TO DEFRAUD; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE PENAL CODE (AMENDMENT) BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Penal Code (2013 Revision) to make provision for Sexual Harm Prevention Orders.

Provision is also made for the offences of possession of articles for use to defraud and making or supplying articles for use to defraud.

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Penal Code (Amendment) Law, 2017.
2. The Penal Code (2013 Revision), is amended by inserting after section 45 the following sections -

“Sexual harm
prevention order

45A.(1) The Director of Public Prosecution, after consultation with the Royal Cayman Islands Police Service or any other relevant agency may apply to a court for a sexual harm prevention order.

(2) Where a person, including a young person, of or over the age of seventeen is dealt with by the court for any offence of a sexual or indecent nature and the court is satisfied on a balance of probabilities that it is necessary for the purpose of -

Short title

Insertion of sections 45A to 45E into the Penal Code (2013 Revision) – sexual harm prevention order; interim sexual harm prevention order; breach of sexual harm prevention order or interim sexual harm prevention order an offence; amendment of sexual harm prevention order or interim sexual harm prevention order; meaning of sexual harm

- (a) protecting the public or a particular member of the public from sexual harm from that person; or
- (b) protecting children or vulnerable persons or a particular child or vulnerable person from sexual harm from that person,

the court, upon an application pursuant to subsection (1), may instead of or in addition to any sentence, make a sexual harm prevention order.

(3) A sexual harm prevention order shall prohibit a person from doing anything described in the order and may include such conditions as the court considers necessary including a prohibition on travel both within and outside the Islands and shall be for a fixed period of at least five years.

(4) Before making a sexual harm prevention order the court shall explain to the convicted person -

- (a) the purpose and effect of the order;
- (b) the consequences which may follow under section 45C if the person fails to comply with any of its requirements; and
- (c) that the court has the power to review or vary the order on the application either of the person or the Director of Public Prosecution.

Interim sexual
harm prevention
order

45B. (1) The Director of Public Prosecution, after consultation with the Royal Cayman Islands Police Service or any other relevant agency may apply to a court for an interim sexual harm prevention order.

(2) Where a person, including a young person, of or over the age of seventeen is charged with any offence of a sexual or indecent nature and the court is satisfied on a balance of probabilities that it is necessary for the purpose of -

- (a) protecting the public or a particular member of the public from sexual harm from that person; or
- (b) protecting children or vulnerable persons

or a particular child or vulnerable person
from sexual harm from that person,

the court may, upon an application pursuant to
subsection (1), make an interim sexual harm prevention
order.

(3) An interim sexual harm prevention order shall
prohibit the person charged from doing anything
described in the order and may include such conditions
as the court considers necessary including a prohibition
on travel both within and outside the Islands and shall be
for a fixed period.

(4) Before making an interim sexual harm
prevention order the court shall explain to the person
charged -

- (a) the purpose and effect of the order;
- (b) the consequences which may follow
under section 45C if the person fails to
comply with any of its requirements; and
- (c) that the court has the power to review or
vary the order on the application either
of the person charged or the Director of
Public Prosecution.

Breach of sexual
harm prevention
order or interim
sexual harm
prevention order
an offence

45C. (1) If at any time while a sexual harm prevention
order or interim sexual harm prevention order is in force
in respect of any person, it appears on information to the
court that made the order that the person has failed to
comply with any of the requirements of the order, or has
attempted to do so, the court may issue a summons
directing the person to appear before the court, or may, if
the information is in writing and on oath, issue a warrant
for the person's arrest and for the person to be brought
before the court.

(2) If at any time while a sexual harm prevention
order or interim sexual harm prevention order is in force
in respect of any person, a constable may arrest that
person, without a warrant, where the constable
reasonably suspects that the person has failed to comply
with any of the requirements of the order, or has

attempted to do so.

(3) A person who, without reasonable excuse fails to comply with any of the requirements of the order, or attempts to do so, commits an offence and is liable on summary conviction, to imprisonment for a term not exceeding four years or to a fine not exceeding three thousand dollars or to both.

(4) Where a person is convicted of failing to comply with any of the requirements of the order, or attempting to do so, that person may be committed to the Grand Court and the Grand Court shall have the same sentencing powers of the Summary Court and may impose such a sentence in addition to any other sentence.

Amendment of sexual harm prevention order or interim sexual harm prevention order

45D. Where a sexual harm prevention order or interim sexual harm prevention order is in force in respect of a person and, on his application or that of the Director of Public Prosecutions, it appears to the court that made the order that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice to do so, the court may vary, renew or discharge the order.

Meaning of sexual harm

45E. For the purpose of sections 45A and 45B, “sexual harm” from a person means physical or psychological harm caused by a person committing a sexual offence.

Rules of Court 2015 Revision

45F. The Rules Committee established under section 19 of the Grand Court Law (2015 Revision) shall make Rules regulating the procedures in respect of the making of an application and the granting of a sexual harm prevention order and an interim sexual harm prevention order.”.

Insertion of sections 283A and 283B into the Penal Code (2013 Revision) - possession, etc. of articles for use to defraud; making or supplying articles for use to defraud; meaning of article

3. The Penal Code (2013 Revision) is amended by inserting after section 283 the following sections -

“Possession, etc. of articles for use to defraud

283A. A person who has in his possession or under his control any article for use to defraud commits an offence and is liable -

(a) on summary conviction, to imprisonment

for a term not exceeding four years or to a fine not exceeding three thousand dollars or to both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years or to a fine not exceeding five thousand dollars or to both.

Making or supplying articles for use to defraud

283B. A person who makes, adapts, supplies or offers to supply any article knowing that it is designed or adapted for use to defraud commits an offence and is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding five years or to a fine not exceeding five thousand dollars or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand dollars or to both.

Meaning of article

283C. For the purpose of sections 283A and 283B, “article” includes any program or data held in electronic form.”.

Passed by the Legislative Assembly the _____ day of _____, 2017.

Speaker.

Clerk of the Legislative Assembly.