

CAYMAN ISLANDS



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**A BILL FOR 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**

**THE PENAL CODE (AMENDMENT) BILL, 2018**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to amend the Penal Code (2018 Revision) (“the principal Law”) to provide for the retrospective application of Sexual Harm Prevention Orders. Provision is also made for offences in respect of sexual communication with a child and sexual activities with a child.

Clause 1 provides for the short title of the legislation.

Clause 2 amends the principal Law by inserting a new section 45G to provide for the making of a Sexual Harm Prevention Order in relation to any act, behaviour, conviction or finding in respect of an offence of a sexual or indecent nature which occurred before the commencement of the Penal Code (Amendment) Law, 2017.

Clause 3 amends the principal Law by inserting a new section 132A to provide for the offence of assault by penetration in respect of a child.

Clause 4 amends the principal Law by repealing and replacing section 135 which formerly provided for the offence of defilement of idiots and imbeciles with a new provision which provides for the offence of sexual assault of a mentally impaired person.

Clause 5 amends the principal Law by inserting eight new offences in respect of sexual contact with a child. These are -

- (1) Sexual communication with a child - where a person communicates with a child with the intention that such communication encourages the child to make a communication that is sexual or related to a sexual activity.
- (2) Arranging to meet a child following sexual communication - where a person has communicated with a child on one or more occasions and subsequently arranges to meet that child for the purpose of the commission of an activity that is sexual in nature.
- (3) Meeting a child following sexual communication - where a person has communicated with a child on one or more occasions and subsequently meets that child for the purpose of the commission of an activity that is sexual in nature.
- (4) Procurement of a child for a sexual activity - where a person engages in conduct with intent to procure a child for the purpose of the commission of an activity that is sexual in nature.

- (5) Causing a child to watch a sexual activity - where a person intentionally causes a child to watch another person engaging in an activity that is sexual in nature.
- (6) Engaging in sexual activity in the presence of a child - where a person intentionally engages in an activity that is sexual in nature in the presence of a child.
- (7) Inviting a child to participate in sexual activity - where a person invites a child to engage in touching or other behaviour that is sexual in nature.
- (8) Abuse of position of trust - where a person, being in a position of trust, engages in any communication or activity that is sexual in nature with a child. The section defines a position of trust as including “any position which involves the regular caring for, training, supervising or being in charge of that child.

The sentences in respect of these new offences range from four to twelve years with the offence of abuse of position of trust carrying a mandatory minimum sentence of four years where the offender pleads guilty or six years upon conviction.

**THE PENAL CODE (AMENDMENT) BILL, 2018**

**ARRANGEMENT OF CLAUSES**

1. Short title
2. Insertion of new section 45G into the Penal Code (2018 Revision) - order applicable to prior acts etc.
3. Insertion of new section 132A - assault by penetration
4. Repeal and substitution of section 135 - defilement of idiots or imbeciles
5. Insertion of new sections 228E - 228L - sexual communication with a child; arranging to meet a child following sexual communication; meeting a child following sexual communication; procuration 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

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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.      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.”.
  - Law 32 of 2017.
  
- 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,

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

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,

(Law 10 of 2013)

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 four 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 four 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 four years.

Procurement 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 ten 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 four years; or
- (b) in any other case, impose a sentence of imprisonment for a term of at least six 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            day of            , 2018.

Speaker.

Clerk of the Legislative Assembly.