

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE PENAL CODE (2010 REVISION)  
IN ORDER TO CREATE OFFENCES AND INCREASE PENALTIES,  
FOR THE PURPOSE OF PROMOTING PUBLIC ORDER; TO  
STRENGTHEN THE ANTI-GANG PROVISIONS OF THE CODE; TO  
ABOLISH THE YEAR AND A DAY RULE; AND TO MAKE PROVISION  
FOR INCIDENTAL AND CONNECTED MATTERS**



**THE PENAL CODE (AMENDMENT) BILL, 2011**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill amends the Penal Code (2010 Revision) to increase the penalties for offences against public order, strengthen the anti-gang provisions of the Code and abolish the year and a day rule.

Clause 1 provides the short title.

Clause 2 amends section 69 of the Code to increase the custodial sentence for unlawful assembly from one year to three years.

Clause 3 amends section 70 of the Code to increase the custodial sentence for punishment for riot from two years to four years.

Clause 4 amends section 82 of the Code to increase the fine for refusing to accompany a constable exercising the power of search, from one hundred dollars to two thousand dollars.

Clause 5 repeals and replaces section 86 of the Code to clarify the definition of the offence of affray and increase the penalty from two years to four years.

Clause 6 inserts into the principal Law, new sections 88 to 88D to constitute offences of “causing fear, or provocation of violence”, “harassment” and “threat to kill”.

Clause 7 inserts into the principal Law, a new section 134A to constitute the offence of “gross indecency”.

Clause 8 amends section 158 of the Code to increase the fine and custodial sentence for idle and disorderly persons from a fine of five hundred dollars and imprisonment for three months to a fine of two thousand dollars and imprisonment for four years.

Clause 9 amends section 159(1) of the Code -

- (a) to deem a person to be a rogue and a vagabond, if he is found by night without any lawful excuse, in or upon any closed commercial premises; and

- (b) to increase the custodial sentence for rogues and vagabonds from one year to three years for a first offence and from two years to four years for a subsequent offence.

Clause 10 amends section 164 of the Code to increase the fine for disorderly conduct from one hundred dollars to two thousand dollars and to insert a definition of the word “firearm” for the purposes of section 164.

Clause 11 amends section 165 of the Code to increase the fine and custodial sentence for drunk and disorderly persons from a fine of thirty dollars and imprisonment for thirty days to a fine of one thousand dollars and imprisonment for one year.

Clause 12 amends section 166 of the Code to increase the fine and custodial sentence for the unauthorized wearing of a uniform from a fine of one hundred dollars and imprisonment for three months to a fine of two thousand dollars and imprisonment for four years.

Clause 13 abolishes the rule known as the “year and a day rule”, that is, the rule that for the purposes of offences involving death and of suicide, an act or omission is conclusively presumed not to have caused a person’s death if more than a year and a day elapsed before the person died.

Clause 14 repeals and replaces section 229 of the Code to re-define the term “gang” and define various other terms for the purposes of Part VIII.

Clause 15 amends section 231 of the Code to make further provision in respect of the offence of gang membership.

Clause 16 repeals and replaces section 232 of the Code to make further provision in respect of the offence of participation in criminal activity in association with a gang.

Clause 17 inserts into the Code new sections 232A to 232D. The new sections 232A to 232C apply where a police officer not below the rank of Inspector has reasonable grounds for suspecting that, in a locality where anti-social behaviour is a significant and persistent problem -

- (a) any member of the public has been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of two or more persons in a public place in that locality; or
- (b) the presence or behaviour of a group of two or more persons in any public place in the relevant locality has resulted, or is likely

to result, in any members of the public being intimidated, harassed, alarmed or distressed.

In those circumstances, that police officer may authorize police officers to issue any one or more of the following directions -

- (a) a direction requiring the persons in the group to disperse (either immediately or by such time as the police officer may specify and in such way as the police officer may specify);
- (b) a direction requiring any of those persons whose place of residence is not within the relevant locality to leave the relevant locality or any part of the relevant locality (either immediately or by such time as the police officer may specify and in such way as the police officer may specify); and
- (c) a direction prohibiting any of those persons whose place of residence is not within the relevant locality from returning to the relevant locality or any part of the relevant locality for such period (not exceeding two weeks) from the day of the giving of the direction as the police officer may specify.

In addition, if, by night, a police officer finds a person in any public place in the relevant locality who the police officer has reasonable grounds to believe -

- (a) is under the age of seventeen; and
- (b) is not under the effective control of a parent or a responsible person aged eighteen or over,

the police officer may remove the person to the person's place of residence unless the police officer has reasonable grounds for believing that the person would, if removed to that place, be likely to suffer significant harm.

The new section 232D empowers a police officer in any public place, to stop a person and -

- (a) require that person to remove any item which the police officer reasonably suspects that person is wearing to obscure or conceal his identity; or
- (b) seize any item which that person has and which the police officer reasonably suspects that person has for the purpose of obscuring or concealing his identity.

Clause 18 contains savings and transitional provisions.

**THE PENAL CODE (AMENDMENT) BILL, 2011**

**ARRANGEMENT OF CLAUSES**

1. Short title
2. Amendment of section 69 of the Penal Code (2010 Revision) - punishment for unlawful assembly
3. Amendment of section 70 - punishment for riot
4. Amendment of section 82 - power of search
5. Repeal and substitution of section 86 - affray
6. Repeal and substitution of section 88 - threatening violence
7. Insertion of section 134A - gross indecency
8. Amendment of section 158 - idle and disorderly persons
9. Amendment of section 159 - rogues and vagabonds
10. Amendment of section 164 - disorderly conduct
11. Amendment of section 165 - drunk and disorderly persons
12. Amendment of section 166 - unauthorized wearing of uniform
13. Repeal and substitution of section 190 - limitation as to time of death
14. Repeal and substitution of section 229 - definition of "gang"
15. Amendment of section 231 - gang membership
16. Repeal and substitution of section 232 - participation in criminal activity in association with gang
17. Insertion of sections 232A to 232D - dispersal of groups; removal of persons under seventeen to their place of residence; authorisations under section 232A: supplemental provisions; powers under section 232A: supplemental provisions; power to deal with items obscuring or concealing identity
18. Savings and transitional provisions

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ENACTED by the Legislature of the Cayman Islands.

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| 1. This Law may be cited as the Penal Code (Amendment) Law, 2011.  | Short title  |
| 2. The Penal Code (2010 Revision), in this Law referred to as the “principal Law”, is amended in section 69 by deleting the words “one year” and substituting the words “three years”. | Amendment of section 69 of the Penal Code (2010 Revision) - punishment for unlawful assembly |
| 3. The principal Law is amended in section 70 by deleting the words “two years” and substituting the words “four years”.   | Amendment of section 70 - punishment for riot  |
| 4. The principal Law is amended in section 82 by deleting the words “one hundred dollars” and substituting the words “two thousand dollars”.   | Amendment of section 82 - power of search  |
| 5. The principal Law is amended by repealing section 86 and substituting the following section -   | Repeal and substitution of section 86 - affray   |

“Affray

86. (1) A person who uses or threatens unlawful violence towards another person and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety is guilty of affray and liable to imprisonment for four years.

(2) Where two or more persons use or threaten unlawful violence, it is the conduct of them taken together that shall be considered for the purposes of subsection (1).

(3) For the purposes of this section -

(a) a threat shall not be made by the use of words alone; and

(b) a person of reasonable firmness need not actually be, or be likely to be, present at the scene.

(4) An affray may be committed in a public place or a private place.

(5) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an affray.”.

Repeal and substitution of section 88 - threatening violence

6. The principal Law is amended by repealing section 88 and substituting the following sections -

“Causing fear, or provocation of violence

88. (1) A person who -

(a) uses towards another person threatening, abusive or insulting words or behaviour; or

(b) distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting,

with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked is guilty of an offence and liable to imprisonment for three years or, if the offence is committed in the night, to imprisonment for four years.

(2) An offence under this section may be committed in a public place or a private place.

(3) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.

Intentional harassment, alarm or distress

88A. (1) A person who, with intent to cause a person harassment, alarm or distress -

- (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or
- (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

thereby causing that or another person harassment, alarm or distress is guilty of an offence and liable to imprisonment for three years or, if the offence is committed in the night, to imprisonment for four years.

(2) An offence under this section may be committed in a public place or a private place.

(3) It is a defence for the accused to prove that his conduct was reasonable.

(4) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.

Harassment, alarm or distress

88B. (1) A person who -

- (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour; or
- (b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,

within the hearing or sight of a person likely to be caused harassment, alarm or distress is guilty of an offence and liable to imprisonment for three years or, if the offence is committed in the night, to imprisonment for four years.

(2) An offence under this section may be committed in a public place or a private place.

(3) It is a defence for the accused to prove -

(a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress; or

(b) that his conduct was reasonable.

(4) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.

Threat to kill

88C. (1) A person who without lawful excuse makes to another person a threat, intending that person would fear it would be carried out, to -

(a) kill; or

(b) cause serious harm to,

that person or a third person, is guilty of an offence and liable to imprisonment for ten years.

(2) A threat may be committed in a public place or a private place.

(3) A constable may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.”.

Insertion of section  
134A - gross indecency

7. The principal Law is amended by inserting after section 134 the following section -

“Gross indecency 134A.(1) A person who commits an act of gross indecency with or towards a child under the age of sixteen or who incites a child under that age to do such an act with him or another person is guilty of an offence and liable to imprisonment for twelve years.

(2) A constable may arrest, without a warrant, anyone he reasonably suspects has committed an offence under this section.”.

8. The principal Law is amended in section 158 by deleting the words “a fine of five hundred dollars and to imprisonment for three months” and substituting the words “a fine of two thousand dollars and to imprisonment for four years”. Amendment of section 158 - idle and disorderly persons
9. The principal Law is amended in section 159 as follows - Amendment of section 159 - rogues and vagabonds
- (a) in subsection (1)(b) by deleting the words “dwelling-house, warehouse” and substituting the words “dwelling-house, closed commercial premises, warehouse”; and
  - (b) in subsection (1) by deleting the words “one year” and “two years” and substituting the words “three years” and “four years”, respectively.
10. The principal Law is amended in section 164 as follows - Amendment of section 164 - disorderly conduct
- (a) by renumbering section 164 as section 164(1);
  - (b) in section 164(1) as renumbered by deleting the words “one hundred dollars” and substituting the words “two thousand dollars”; and
  - (c) by inserting after section 164(1) as renumbered the following subsection -
    - “ (2) In subsection (1)(e) -
    - “firearm” has the meaning assigned to that expression in section 2 of the Firearms Law (2008 Revision).”.
11. The principal Law is amended in section 165 by deleting the words “thirty dollars” and “thirty days” and substituting the words “one thousand dollars” and “one year”, respectively. Amendment of section 165 - drunk and disorderly persons
12. The principal Law is amended in section 166 by deleting the words “a fine of one hundred dollars and to imprisonment for three months” and substituting the words “a fine of two thousand dollars and to imprisonment for four years”. Amendment of section 166 - unauthorized wearing of uniform
13. The principal Law is amended by repealing section 190 and substituting the following sections - Repeal and substitution of section 190 - limitation as to time of death
- “Abolition of the year and a day rule” 190. The rule known as the “year and a day rule”, that is, the rule that for the purposes of offences involving death and of suicide, an act or omission is conclusively presumed not to have caused a person’s death if more than a year and a day elapsed before he died, is abolished for all purposes.

Restriction on institution of proceedings for a fatal offence

190A.(1) Proceedings against a person for a fatal offence may be instituted if -

- (a) the injury alleged to have caused the death was sustained not more than three years before the death occurred; or
- (b) the person has previously been convicted of an offence committed in circumstances alleged to be connected with the death.

(2) In subsection (1), "fatal offence" means -

- (a) murder, manslaughter, infanticide or any offence of which one of the elements is causing a person's death; or
- (b) the offence of aiding, abetting counseling or procuring a person's suicide or acting in pursuance of a suicide pact between one person and another to kill the other or to be a party to the other killing himself or being killed by a third party."

Repeal and substitution of section 229 - definition of "gang"

14. The principal Law is amended by repealing section 229 and substituting the following section -

"Definitions of "gang, etc."

229. In this Part -

"anti-social behaviour" means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more other persons not of the same household as the person;

"bullet-proof vest" means a vest that is capable of providing protection from the penetration of bullets;

2008 Revision

"firearm" has the meaning assigned to that expression in section 2 of the Firearms Law (2008 Revision);

"gang" means any group, association or other body consisting of three or more persons, whether formally or informally organised -

- (a) having as one of its primary activities the commission of a serious offence; and
- (b) any or all of the members of which engage in

or have, within the preceding three years, engaged in the commission of a series of serious offences;

“public place” includes any public way and any other premises or place to which at the material time the public has or is permitted to have access, whether on payment or otherwise; and

“serious offence” means an offence for which the maximum punishment is imprisonment for twelve months or more.”.

15. The principal Law is amended in section 231 by repealing subsection (1) and substituting the following subsection -

Amendment of section 231 - gang membership

“ (1) A person who -

- (a) is a member of a gang; or
- (b) participates in or contributes to the activities of a gang knowing that any or all of the members of the gang engage in or have, within the preceding three years, engaged in the commission of a series of serious offences,

is guilty of an offence and liable to a fine of five hundred thousand dollars and to imprisonment for twenty years.”.

16. The principal Law is amended by repealing section 232 and substituting the following section -

Repeal and substitution of section 232 - participation in criminal activity in association with gang

“Participation in criminal activity in association with gang

232. A person who -

- (a) participates in or contributes to the activities of a gang knowing that any or all of the members of the gang engage in or have, within the preceding three years, engaged in the commission of a series of serious offences; or
- (b) is a party to the commission of a serious offence, for the benefit of, at the direction of, or in association with, a gang,

is guilty of an offence and liable to a fine of five hundred thousand dollars and to imprisonment for twenty years.”.

Insertion of sections 232A to 232D - dispersal of groups; removal of persons under seventeen to their place of residence; authorisations under section 232A: supplemental provisions; powers under section 232A: supplemental provisions; power to deal with items obscuring or concealing identity

17. The principal Law is amended by inserting after section 232 the following sections -

“Dispersal of groups; removal of persons under seventeen to their place of residence

232A.(1) This section applies where a police officer not below the rank of inspector has reasonable grounds for suspecting that in a locality where anti-social behaviour is a significant and persistent problem -

- (a) any member of the public has been intimidated, harassed, alarmed or distressed as a result of the presence or behaviour of groups of two or more persons in a public place in that locality; or
- (b) the presence or behaviour of a group of two or more persons in any public place in the relevant locality has resulted, or is likely to result, in any members of the public being intimidated, harassed, alarmed or distressed.

(2) The police officer referred to under subsection (1) may in pursuance of that subsection, give an authorization that the powers conferred on a police officer under subsections (6) to (8) are to be exercisable for such period, not exceeding two weeks, as is specified in the authorization.

(3) If an inspector gives an authorization under subsection (2), he shall as soon as practicable, inform or cause a police officer of or above the rank of superintendent to be informed.

(4) If a police officer gives an authorization under subsection (2) and it appears to another police officer above his rank that it is expedient to do so, having regard to offences which have or are reasonably suspected to have been committed or are reasonably suspected to be likely to be committed in connection with any activity falling within the authorization, the police officer may direct that the authorization shall continue in force for a further period not exceeding two weeks after the period referred to in subsection (2), or be reduced.

(5) A direction given under subsection (4) shall be in writing or, where that is not practicable, recorded in writing

as soon as it is practicable to do so.

(6) In pursuance of subsection (2) and subject to subsection (7), a police officer may give any one or more of the following directions -

- (a) a direction requiring the persons in the group to disperse (either immediately or by such time as the police officer may specify and in such way as the police officer may specify);
- (b) a direction requiring any of those persons whose place of residence is not within the relevant locality to leave the relevant locality or any part of the relevant locality (either immediately or by such time as the police officer may specify and in such way as the police officer may specify); and
- (c) a direction prohibiting any of those persons whose place of residence is not within the relevant locality from returning to the relevant locality or any part of the relevant locality for such period (not exceeding two weeks) from the day of the giving of the direction as the police officer may specify.

(7) A direction under subsection (6) may not be given in respect of a group of persons who are taking part in a lawful public procession.

(8) If, by night, a police officer finds a person in any public place in the relevant locality who the police officer has reasonable grounds to believe -

- (a) is under the age of seventeen; and
- (b) is not under the effective control of a parent or a responsible person aged eighteen or over,

the police officer may remove the person to the person's place of residence unless the police officer has reasonable grounds for believing that the person would, if removed to that place, be likely to suffer significant harm.

(9) In this section any reference to the presence or behaviour of a group of persons is to be read as including a

reference to the presence or behaviour of any one or more of the persons in the group.

Authorisations  
under section  
232A:  
supplemental  
provisions

232B.(1) An authorization under section 232A(2) shall -

- (a) be in writing;
- (b) be signed by the police officer giving it; and
- (c) specify -
  - (i) the relevant locality;
  - (ii) the grounds on which the authorization is given; and
  - (iii) the period during which the powers conferred by section 232A(6) to (8) are exercisable.

(2) Publicity shall be given to an authorization given under section 232A(2) and the extension or reduction of an authorization given under section 232A(4) by either or both of the following methods -

- (a) publishing an authorization notice in a newspaper with wide circulation;
- (b) posting an authorization notice in a conspicuous public place or places within the relevant locality.

(3) For the purposes of this section, an “authorization notice” is a notice which -

- (a) states the authorization has been given;
- (b) specifies the relevant locality; and
- (c) specifies the period during which the powers conferred by section 232A(6) to (8) are exercisable.

(4) Subsection (2) shall be complied with before the beginning of the period mentioned in subsection (3)(c).

(5) An authorization may be withdrawn by -

- (a) the police officer who gave it; or
- (b) any other police officer not below the rank of superintendent.

(6) The withdrawal of an authorization does not affect the exercise of any power pursuant to that authorization in

respect of a matter which occurred prior to its withdrawal.

(7) The giving or withdrawal of an authorization does not prevent the giving of a further authorization in respect of a locality which includes the whole or any part of the relevant locality to which the earlier authorization relates.

(8) In this section “authorization” means an authorization under section 232A(2).

Powers under section 232A: supplemental provisions

232C.(1) A direction under section 232A(6) -

- (a) may be given orally;
- (b) may be given to an individual or to two or more persons together; and
- (c) may be withdrawn or varied by the person who gave it.

(2) A person who refuses to comply with a direction given to him by a police officer under section 232A(6) or resists removal by a police officer under section 232A(8), is guilty of an offence and liable to a fine of three thousand dollars and to imprisonment for four years.

(3) A police officer may arrest, without a warrant, any person he reasonably suspects has committed an offence under subsection (2).

(4) The powers conferred under section 232A are in addition to and not in derogation of any power otherwise conferred.

Power to deal with items or obscuring or concealing identity

232D.(1) A police officer may in any public place, stop a person and -

- (a) require that person to remove any item which the police officer reasonably suspects that person is wearing to obscure or conceal his identity; or
- (b) seize any item which that person has and which the police officer reasonably suspects that person has for the purpose of obscuring or concealing his identity.

(2) A police officer may use reasonable force, if

necessary, in the exercise of the powers conferred under subsection (1).

(3) A person who fails to comply with an order from a police officer under subsection (1) or obstructs a police officer in the course of performing his duties under subsection (1), is guilty of an offence and liable to a fine of three thousand dollars and to imprisonment for four years.

(4) A police officer may arrest, without a warrant, anyone he reasonably suspects has committed an offence under subsection (3).

(5) The powers conferred under this section are in addition to and not in derogation of any power otherwise conferred.”.

Savings and transitional provisions

18. (1) Where -

- (a) prior to the date of commencement of this Law, an accused person is convicted following a trial or a plea of guilty to an offence; and
- (b) at the date of commencement of this Law, no judgment or sentence has been passed upon him in respect of the offence,

the accused person shall, for the purpose of the judgment or sentence, be dealt with in all respects under the former Law and the provisions of the former Law are to apply accordingly.

(2) Subject to subsection (3), where, at the date of commencement of this Law, any trial or any proceedings in respect of an offence are pending before a court, the trial or proceedings shall, after that date, be dealt with in all respects under the new Law and the provisions of the new Law are to apply accordingly.

(3) Where, on or after the date of commencement of this Law, an accused person is convicted following a trial or a plea of guilty to an offence, the accused person shall for the purpose of judgment or sentence -

- (a) in respect of an offence committed prior to that date, be dealt with in all respects under the former Law and the provisions of the former Law are to apply accordingly; and
- (b) in respect of an offence committed on or after that date, be dealt with in all respects under the new Law and the provisions of the new Law are to apply accordingly.

(4) In this section -

“former Law” means the principal Law in force immediately before the date of commencement of this Law; and

“new Law” means the principal Law as amended by this Law.

Passed by the Legislative Assembly the        day of        , 2011.

Speaker.

Clerk of the Legislative Assembly.