

CAYMAN ISLANDS



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THE PENAL CODE (AMENDMENT) LAW, 2012

(LAW 21 OF 2012)

THE PENAL CODE (AMENDMENT) LAW, 2012

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CAYMAN ISLANDS

Law 21 of 2012.

I Assent

Duncan Taylor

Governor.

14th September, 2012

**A LAW TO AMEND THE PENAL CODE (2010 REVISION) TO
PENALIZE ACTIVITIES RELATING TO CHILD PORNOGRAPHY; TO
RE-STATE THE PENALTY FOR THE OFFENCE OF THEFT; AND TO
MAKE PROVISION FOR INCIDENTAL AND CONNECTED MATTERS**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Penal Code (Amendment) Law, 2012.

Short title

2. The Penal Code (2010 Revision), in this Law referred to as the “principal Law”, is amended in section 224 by repealing subsection (1) and substituting the following subsection -

Amendment of section
224 of the Penal Code
(2010 Revision) -
definitions

" (1) In this Part -

"child" means a person under the age of seventeen years and, in sections 228A to 228C, includes a person who appears to be under the age of seventeen years;

"child pornography" includes material that visually depicts -

- (a) a child engaged in sexually explicit conduct;
- (b) a person who appears to be a child engaged in sexually explicit conduct; or

- (c) realistic images representing a child engaged in sexually explicit conduct;

"computer data storage medium" means any article or material from which information is capable of being reproduced, with or without the aid of any other article or device;

"computer system" means a device that, or a group of interconnected or related devices, including the Internet, one or more of which, pursuant to a program, performs automatic processing of data or any other function; and "computer system" includes an ICT network as defined in section 2 of the Information and Communications Technology Authority Law (2011 Revision);

"film" includes any form of video-recording;

"pseudo-photograph" means an image, whether made or produced by computer-graphics or otherwise, which appears to be a photograph; and

"publish " includes -

- (a) distribute, transmit, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell or offer for sale, let on hire or offer to let on hire, offer in any other way, or make available in any way;
- (b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a); or
- (c) print, photograph, copy or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing an act referred to in paragraph (a).".

Insertion of sections 228A to 228D - indecent photographs of children; child pornography; child pornography stored on a computer system; destruction of child pornographic material

3. The principal Law is amended in Part VII by inserting after section 228 the following sections -

"Indecent photographs of children

228A.(1) A person who -

- (a) has in his possession an indecent photograph or pseudo-photograph of a child;
- (b) takes, permits to be taken or makes an indecent photograph or pseudo-photograph of a child; or
- (c) distributes or shows an indecent photograph or pseudo-photograph of a child,

is guilty of an offence and liable on conviction on indictment

to imprisonment for fifteen years.

(2) Where a person is charged with an offence under subsection (1)(a) or (c), it shall be a defence for him to prove -

- (a) that he had a legitimate reason for having the photograph or pseudo-photograph in his possession or, as the case may be, for distributing or showing it;
- (b) that he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent; or
- (c) that the photograph or pseudo-photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

(3) For the purposes of this section -

- (a) references to a photograph include -
 - (i) the negative as well as the positive version; and
 - (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph;
- (b) references to an indecent pseudo-photograph include -
 - (i) a copy of an indecent pseudo-photograph; and
 - (ii) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph;
- (c) references to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film;
- (d) photographs (including those comprised in a film) shall, if they show children and are indecent, be treated as indecent photographs of children and so as respects pseudo-photographs; and

- (e) a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(4) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for the purposes of this section as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

Child
pornography

228B.(1)A person who -

- (a) makes, prints, publishes, or possesses for the purpose of publication, any child pornography;
- (b) transmits, makes available, distributes, sells, advertises, imports, exports, or possesses for the purpose of transmission, making available, distribution, sale, advertising or exportation, any child pornography;
- (c) possesses any child pornography; or
- (d) accesses any child pornography,

is guilty of an offence and liable -

- (i) in the case of an offence under paragraph (a), (c) or (d), to imprisonment for fifteen years; and
- (ii) in the case of an offence under paragraph (b), to imprisonment for twenty-five years.

(2) For the purposes of subsection (1)(d), a person accesses child pornography if he knowingly causes child pornography to be viewed by, or transmitted to, himself.

(3) It is not a defence to a charge under subsection (1)(a) in respect of a visual representation that the accused believed that a person shown in the representation that is alleged to constitute child pornography was or was depicted as being seventeen years of age or more unless the accused took all reasonable steps to ascertain the age of that person and took all reasonable steps to ensure that, where the person

was seventeen years of age or more, the representation did not depict that person as being under the age of seventeen years.

Child
pornography
stored on a
computer system

- 228C.(1) A person who -
- (a) publishes child pornography through a computer system;
 - (b) produces child pornography for the purpose of its publication through a computer system;
 - (c) possesses child pornography in a computer system or on a computer data storage medium; or
 - (d) accesses child pornography through a computer system,

is guilty of an offence and liable on conviction on indictment to imprisonment for fifteen years.

(2) For the purposes of subsection (1)(d), a person accesses child pornography if he causes child pornography to be viewed by, or transmitted to, himself.

(3) It shall be a sufficient defence to a charge under subsection (1)(a), (c) or (d), if it shall be made to appear to the court or jury before whom the charge is brought that the person so charged establishes that the child pornography -

- (a) had a legitimate research purpose; and
- (b) does not pose an undue risk of harm to any child.

Destruction of
child
pornographic
material

228D.(1) If a court of summary jurisdiction is satisfied by information on oath that there are reasonable grounds to believe that there is child pornographic material that is stored on and made available through a computer system that is within the jurisdiction of the court, the court may order the custodian of the computer system to -

- (a) give an electronic copy of the child pornographic material to the court;
- (b) ensure that the child pornographic material is no longer stored on and made available through the computer system; and
- (c) provide the information necessary to identify and locate the person who posted the child

pornographic material.

(2) Within a reasonable time after receiving the information referred to in subsection (1)(c), the court shall cause notice to be given to the person who posted the child pornographic material, giving that person the opportunity to appear and be represented before the court, and show cause why the child pornographic material should not be deleted; and, if the person cannot be identified or located or does not reside in the Islands, the court may order the custodian of the computer system to post the text of the notice at the location where the child pornographic material was previously stored and made available, until the time set for the appearance.

(3) The person who posted the child pornographic material may appear and be represented in the proceedings in order to oppose the making of an order under subsection (5).

(4) If the person who posted the child pornographic material does not appear for the proceedings, the court may proceed *ex parte* to hear and determine the proceedings in the absence of the person as fully and effectually as if the person had appeared.

(5) If the court is satisfied, on a balance of probabilities, that the material is child pornography or data that makes child pornography available, it may order the custodian of the computer system to delete the child pornographic material.

(6) When the court makes the order for the deletion of the child pornographic material, it may order the destruction of the electronic copy in the court's possession.

(7) If the court is not satisfied that the material is child pornography or data that makes child pornography available, the court shall order that the electronic copy be returned to the custodian and terminate the order under subsection (1)(b).

(8) No order made under subsections (5) to (7) takes effect until the time for final appeal has expired."

Repeal and substitution
of section 241 - theft

4. The principal Law is amended by repealing section 241 and substituting the following section -

- "Theft
241. A person who commits a theft is guilty of an offence and -
- (a) where the value of the thing stolen does not exceed five thousand dollars, is liable on summary conviction to imprisonment for seven years; and
 - (b) where the value of the thing stolen exceeds five thousand dollars, is liable on conviction on indictment to imprisonment for ten years."

5. (1) Where -

Savings and transitional provisions

- (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 as if the new Law had not come into force and the provisions of the former Law are to apply accordingly.

(2) 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 the commencement, be dealt with in all respects as if the new Law had not come into force and the provisions of the former Law are to apply accordingly.

(3) 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 31st day of August, 2012.

Cline A. Glidden, Jr.

Deputy Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.