

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE CRIMINAL PROCEDURE CODE  
LAW (2005 REVISION) IN ORDER TO PROVIDE FOR THE GIVING OF  
EVIDENCE BY DEFENDANTS THROUGH A LIVE LINK; TO  
PRESCRIBE THE MODE OF TRIAL FOR VARIOUS OFFENCES; AND  
FOR INCIDENTAL AND CONNECTED PURPOSES**



**MEMORANDUM OF OBJECTS AND REASONS**

**THE CRIMINAL PROCEDURE CODE (AMENDMENT) BILL, 2005**

This Bill amends the Criminal Procedure Code (2005 Revision) in order to provide that, in any proceedings relating to the hearing of the offence with which an accused has been charged, the accused instead of appearing in person (either because he has been excluded by the court for disruptive behaviour or otherwise) may appear by his counsel or by live link.

This Bill also amends the Criminal Procedure Code for the purpose of prescribing the mode of trial for various offences. The amendment is consequential upon the enactment of the Penal Code (Amendment) Law, 2005.

**ARRANGEMENT OF CLAUSES**

1. Short title and commencement of section 4.
2. Amendment of section 10 of the Criminal Procedure Code (2005 Revision)-  
court to be open.
3. Repeal of section 60 and substitution- accused persons entitled to be  
present at trial and may be represented by legal practitioner.
4. Amendment of First Schedule -mode of trial and arrestable offences.

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**A BILL FOR A LAW TO AMEND THE CRIMINAL PROCEDURE CODE LAW (2005 REVISION) IN ORDER TO PROVIDE FOR THE GIVING OF EVIDENCE BY DEFENDANTS THROUGH A LIVE LINK; TO PRESCRIBE THE MODE OF TRIAL FOR VARIOUS OFFENCES; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Criminal Procedure Code (Amendment) Law, 2005.

Short title and commencement of section 4

(2) Section 4 shall come into force immediately after the coming into force of the Penal Code (Amendment) Law, 2005.

2. The Criminal Procedure Code (2005 Revision), in this Law referred to as “the principal Law”, is amended in section 10 as follows-

Amendment of section 10 of the Criminal Procedure Code (2005 Revision)-court to be open

- (a) by inserting after the words “trying any offence” the words “or for the purpose of hearing any other proceedings relating to an offence”; and
- (b) in the proviso, by deleting the word “trial” and substituting the word “proceedings”.

Repeal of section 60 and substitution- accused persons entitled to be present at trial and may be represented by legal practitioner

3. The principal Law is amended by repealing section 60 and substituting the following-

“Accused persons entitled to be present at trial and related proceedings and may be represented by a legal practitioner

60. (1) Every person accused of any criminal offence shall be entitled to be present in court during the whole of any proceedings relating to such offence unless he is excluded by the court because he so conducts himself in the court as to render the continuance of the proceedings in his presence impossible.

(2) Notwithstanding subsection (1) and subject to section 54(2)-

- (a) where an accused person so conducts himself in the court as to render the continuance of the proceedings in his presence impossible, as an alternative to excluding the accused under subsection (1), the court may direct for such period as the court determines, that the accused shall appear by counsel or by live television link or by any other means that would allow the court and the accused to engage in simultaneous visual and oral communication; or
- (b) the court may, in its discretion-
  - (i) where an accused is confined in prison (whether on remand or otherwise); or
  - (ii) where the prosecutor and an accused so agree at any time during any proceedings relating to an offence other than a part in which the evidence of a witness is taken,  
direct that the accused may appear by counsel or by live television link or any other means that allow the court and the accused to engage in simultaneous visual and oral communication.

(3) A court shall not give a direction under subsection (2) unless the court is satisfied that it is in the interests of the efficient or effective administration of justice for the accused person to appear in the proceedings through a live link or other means.

(4) In deciding whether to give a direction under this section the court must consider all the circumstances of the case; and such circumstances shall include the suitability of the facilities at the place where the witness would give evidence through a live link.

(5) For the purposes of this section, the consent of the accused person to the conduct of the proceedings in his absence may be deemed to have been given in a case in which he enters a written plea of guilty under any law or in any case in which the court is satisfied that, having been duly summoned to appear before the court a reasonable time before the date appointed, the accused person wilfully refuses to attend at any time appointed by the court.

(6) Every person accused of any criminal offence, whether present in person or absent in accordance with this section, may be defended before any court by a legal practitioner.

(7) A statement made on oath and given in evidence through a link by virtue of this section shall be treated for the purpose of section 100 of the Penal Code (2005 Revision) as having been made in the proceedings in which it is given in evidence.

(8) The Rules Committee of the Grand Court may make such rules as appears to it to be necessary for the purposes of this section.”.

4. The principal Law is amended in the First Schedule as follows -

- (a) by inserting, after section 80, section 80A to which the following shall apply -

Amendment of First  
Schedule -mode of trial  
and arrestable offences

- (i) the nature of the offence shall be “Restriction on carrying restricted weapons by night”;
  - (ii) the mode of trial shall be Category B;
  - (iii) the offence shall be an arrestable offence; and
  - (iv) the maximum punishment shall be a fine of one hundred thousand dollars and imprisonment for twenty years, subject to a minimum term of imprisonment of ten years; and
- (b) by inserting, after section 222, the following sections, namely, sections 227B, 227C and 227D to which the following shall apply -
- (i) the nature of the respective offences shall be -
    - (A) in relation to section 227B, “Possession of bullet-proof vest or firearm in association with gang”;
    - (B) in relation to section 227C, “Gang membership”; and
    - (C) in relation to section 227D, “Participation in criminal activity in association with gang”;
  - (ii) the mode of trial shall be Category B;
  - (iii) each of the respective offences shall be an arrestable offence; and
  - (iv) the maximum punishment shall be a fine of one hundred thousand dollars and imprisonment for twenty years, subject to a minimum term of imprisonment of ten years.

Passed by the Legislative Assembly the    day of                    2005

Speaker

Clerk of the Legislative Assembly