

CAYMAN ISLANDS



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**A BILL FOR A LAW TO MAKE PROVISION FOR THE PREVENTION
AND SUPPRESSION OF TRAFFICKING IN PERSONS, ESPECIALLY
WOMEN AND CHILDREN; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

THE TRAFFICKING IN PERSONS (PREVENTION AND SUPPRESSION) BILL, 2007

MEMORANDUM OF OBJECTS AND REASONS

The Cayman Islands is a party to the International Convention for the Suppression of Traffic in Women and Children and has seen fit to enact legislation to implement the provisions of that Convention.

This Bill seeks to make provision for the prevention and suppression of trafficking in persons, particularly to –

- (a) create the offence of trafficking;
- (b) protect and assist victims of trafficking, having due regard to their human rights;
- (c) facilitate the efficient investigation of cases of trafficking;
- (d) facilitate the just and effective punishment of individuals and organizations involved in trafficking; and
- (e) promote co-operation between the Cayman Islands and other territories in order to prevent and suppress trafficking and to punish offenders.

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**A BILL FOR A LAW TO MAKE PROVISION FOR THE PREVENTION
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ENACTED by the Legislature of the Cayman Islands.

PART I – PRELIMINARY

1. This Law may be cited as the Trafficking in Persons (Prevention and Suppression) Law, 2007. Short title

2. In this Law - Interpretation

“child” means any person under eighteen years of age;

“child pornography” means -

- (a) audio or visual depiction of any kind, whether –
 - (i) made or produced by electronic, mechanical or other means;
or
 - (ii) embodied in a disc, tape, film or other device, whether electronically or otherwise, so as to be capable of being retrieved or reproduced therefrom,
of sexually explicit conduct involving a child; or
- (b) any representation of the genitalia of a child,

where such audio or visual depiction or representation lacks genuine literary, artistic, or scientific value;

(2000 Revision)

“controlled drug” means a drug listed in the First Schedule of the Misuse of Drugs Law (2000 Revision);

“exploitation” includes –

- (a) the exploitation of the prostitution of a person;
- (b) compelling or causing a person to provide forced labour;
- (c) keeping a person in a state of slavery or servitude;
- (d) engaging in any form of sexual exploitation; or
- (e) the illicit removal of organs;

“exploitation of the prostitution of a person” means the deriving by one person of monetary or other benefit through the provision of sexual services for money or other benefit by another person;

“forced labour” means any work or services exacted from a person by threat of penalty and for which that person did not offer himself to provide such work or services voluntarily;

“Governor” means Governor in Cabinet;

“illicit removal of organs” means the unlawful removal of organs, tissue or body parts from a victim irrespective of whether the victim consented to such removal;

(2007 Revision)

“immigration officer” means the Chief Immigration Officer or any other immigration officer holding office under section 3(1) of the Immigration Law (2007 Revision);

“servitude” means a relationship of dependency in which the labour or service of a person is provided or obtained by threats of harm or death to that person or another person, or through any scheme, plan, or pattern intended to cause the person to believe that if he does not perform such labour or service he or another person will suffer harm or be killed;

“sexual exploitation” means compelling the participation of a person in –

- (a) prostitution;
- (b) the production of child pornography or other pornographic material; or
- (c) any other sexual activity,

as a result of being subjected to threat, coercion, abduction, the effects of a controlled drug, force, abuse of authority or fraud;

“sexually explicit conduct” includes actual or simulated sexual activity, such as sexual intercourse whether between persons of the same or opposite sex and whether involving genital, anal or oral sex, bestiality, masturbation, sadistic or masochistic abuse;

“slavery” means the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised by another, and includes practices similar to slavery, such as bondage and serfdom;

“trafficker” means a person who is known or suspected to be involved in the offence of trafficking in persons;

“travel document” means any document that can be used for travel between territories such as –

- (a) a passport;
- (b) a visa;
- (c) a tourist card; or
- (d) an airline ticket,

and any other document used under the laws of a territory to establish identity in that territory; and

“victim” means a person against whom the offence of trafficking in persons has been committed.

PART II – TRAFFICKING IN PERSONS

3. (1) A person commits the offence of trafficking in persons where, for the purpose of exploitation he –

Offence of trafficking in persons

- (a) recruits, transports, transfers, harbours or receives another person within the Islands;
- (b) recruits, transports or transfers another person from the Islands to another territory; or
- (c) recruits, transports, transfers, or receives another person from another territory into the Islands,

by any of the means specified in subsection (2).

(2) The means referred to in subsection (1) are –

- (a) threat or use of force or other form of coercion;

- (b) abduction;
- (c) deception or fraud;
- (d) the abuse of –
 - (i) power; or
 - (ii) a position of vulnerability; or
- (e) the giving or receiving of a benefit in order to obtain the consent of a person who has control over another person.

(3) Notwithstanding the absence of the use of any of the means specified in paragraphs (a) to (e) of subsection (2), a person who recruits, transports, transfers, harbours or receives a child for the purpose of exploitation of that child commits the offence of trafficking in persons.

(4) It shall not be a defence for a person who commits the offence of trafficking in persons that the offence was committed with the victim's consent.

(5) A person who facilitates the offence of trafficking in persons commits an offence.

(6) A person who commits the offence of trafficking in persons or who facilitates that offence is liable on conviction on indictment to a fine of five thousand dollars or to imprisonment for a term of ten years or to both.

(7) A person who, for the purpose of committing or facilitating the offence of trafficking in persons conceals, removes, withholds or destroys any –

- (a) travel document that belongs to another person; or
- (b) document that establishes or purports to establish another person's identity or immigration status,

is liable on conviction on indictment to a fine of five thousand dollars or to imprisonment for a term of ten years or to both.

(8) Every person who receives a financial or other benefit knowing that it results from the offence of trafficking in persons commits an offence and is liable on conviction on indictment to a fine of five thousand dollars or to imprisonment for a term of ten years or to both.

(9) For the purposes of this section, the offence of trafficking in persons is facilitated –

- (a) where the facilitator knows that such an offence is intended to be facilitated;
- (b) whether or not the facilitator knows the specific nature of the offence that is intended to be facilitated; and

(c) whether or not the offence was actually committed.

4. (1) Where a body corporate commits an offence under this Law, every director or other officer concerned in the management of the body corporate commits that offence unless he proves that the offence was committed without his consent or connivance or that he exercised reasonable diligence to prevent the commission of the offence.

Offences by bodies
corporate

(2) Where a director or other officer of a body corporate commits an offence under this Law he is liable on conviction on indictment to a fine of five thousand dollars or to imprisonment for a term of ten years or to both.

(3) A body corporate which commits an offence against this Law is liable on conviction on indictment to a fine of ten thousand dollars.

(4) In this section “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

5. (1) Where a person is convicted of the offence of trafficking in persons the court before which he is convicted may order that person to pay restitution to the victim.

Restitution

(2) Restitution shall compensate, where applicable, for any of the following –

- (a) costs of medical and psychological treatment;
- (b) costs of physical and occupational therapy and rehabilitation;
- (c) costs of necessary transportation, temporary housing and child care;
- (d) lost income;
- (e) attorney’s fees and other legal costs;
- (f) compensation for emotional distress, pain and suffering; and
- (g) any other losses suffered by the victim which the court considers applicable.

(3) Restitution shall be paid to the victim –

- (a) upon the conviction of the accused; and
- (b) as far as possible, from any property forfeited under section 6 or the proceeds thereof.

(4) The absence of the victim from the proceedings shall not prejudice the victim’s rights to receive restitution.

Forfeiture 6. (1) All property of persons convicted of the offence of trafficking in persons that was used or obtained in the course of the crime, or benefits gained from the proceeds of the crime shall be forfeited to the Crown in the manner specified in the Schedule.

Schedule

(2) Where any such property as described in subsection (1) is located outside the Islands it shall be subject to forfeiture to the extent that it can be retrieved by the Government.

Immunity of victim from prosecution 7. Where a person provides evidence that he is a victim he shall not be liable to prosecution for any offence against the laws relating to immigration or prostitution, which is a direct result of the offence of trafficking in persons committed against him.

PART III – ASSISTANCE TO AND PROTECTION OF VICTIMS

Protection of victims 8. (1) The Government shall take all reasonable steps to identify victims in the Islands.

(2) When victims are identified, the appropriate authorities shall provide reasonable protection to the victims to prevent their being recaptured, intimidated or becoming the objects of reprisal by traffickers and their associates.

Assistance to victims 9. (1) The Government shall take appropriate steps to assist victims where practicable and such assistance may include –

- (a) assistance in understanding the laws of the Islands;
- (b) assistance in understanding their rights as victims;
- (c) assistance in obtaining any relevant documents and information to assist with legal proceedings;
- (d) assistance in replacing or providing passports and other travel documents necessary for the victim to return to his territory;
- (e) assistance in language interpretation and translation where necessary;
- (f) assistance in meeting expenses related to criminal proceedings against the traffickers; and
- (g) the provision of safe shelters and assistance to cover living expenses.

(2) The Government in consultation with approved non-governmental organizations and agencies shall establish and carry out programmes and initiatives to support victims by assisting in the integration, reintegration or resettlement, as the case may be, of such persons.

(3) For the purposes of this section, an approved non-governmental organization or agency refers to an organization or agency being a corporation or an association of persons, whether or not resident in the Islands, which is approved for the purposes of this section by order made by the Governor.

10. In any proceedings involving a victim who –

Proceedings to be in camera

- (a) is a child;
- (b) has been traumatized by the experience of exploitation;
- (c) is mentally or physically challenged; or
- (d) is a person against whom any of the offences set out in sections 127, 130, 131, 132, 134, 136, 138, 144 and 145 of the Penal Code (2007 Revision) was committed,

(2007 Revision)

the court before which the proceedings are being held shall order that the proceedings be held in camera.

11. (1) The Governor shall establish a system to effect the return of victims to their territory of citizenship or to a territory in which the victim holds permanent residency.

Return of victims to home territory, etc.

(2) The system under subsection (1) shall take into account the –

- (a) safety of the victim while in the Islands;
- (b) safe return of the victim without undue delay; and
- (c) wishes of the victim as to the choice of territory to which he is to be sent.

12. (1) Where the victim is a person who does not have the right to remain or reside in the Islands, an immigration officer shall, subject to the provisions of this section, grant the victim the appropriate visas or other required authorization to allow him to remain in the Islands for the duration of time necessary for the officer to carry out, where feasible, the –

Immigration regime for victims

- (a) process of identifying the victim or verifying his identity and nationality;
- (b) activities necessary to find accommodation for and other assistance to the victim;
- (c) criminal prosecution against the persons who have committed or facilitated the commission of the offence of trafficking in persons; or
- (d) investigations necessary to prosecute the offence of trafficking in persons or facilitating the offence and other legal and administrative activities.

(2) The Governor may, where he considers it appropriate in the circumstances to do so, cancel at any time the visas or other documents which permit the victim to remain in the Islands.

PART IV – PREVENTION OF TRAFFICKING IN PERSONS

Entry, search and seizure.

13. (1) Subject to subsection (3), where a Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that evidence of or relating to an offence under this Law is to be found on any premises specified in the information, he may issue a warrant in accordance with subsection (2).

(2) A warrant issued under subsection (1) may authorize a constable named therein to enter the premises specified therein, with such assistance and by the use of such force as is necessary and reasonable to –

- (a) search the premises for evidence of or relating to an offence under this Law; and
- (b) seize any article, vehicle or property found in the course of the search that the constable believes, on reasonable grounds, to be evidence of or relating to an offence under this Law.

(3) A warrant shall not be issued under this section unless the informant or some other person has given the Magistrate, on oath, such further information as the Magistrate may require concerning the grounds on which the issue of the warrant is sought.

(4) A warrant issued under this section shall include –

- (a) a statement of the purpose for which the warrant is issued, and a reference to the nature of the offence of trafficking suspected;
- (b) a description of the kind of article, vehicle or property to be seized;
- (c) the time, not being later than fourteen days, upon the expiration of which the warrant ceases to have effect; and
- (d) a statement as to whether entry is authorized to be made at any time of the day or night, or during specified hours of the day or night.

(5) For the purpose of this section “an offence under this Law” refers to an offence which has been committed or is about to be committed.

Offence of threatening, obstructing, etc., a constable

14. Any person who threatens, assaults, or obstructs a constable acting in the execution of his duty under this Law commits an offence and is liable on

summary conviction to a fine of five hundred dollars or to imprisonment for a period of six months.

PART V – MISCELLANEOUS

15. The Governor may make regulations for giving effect to this Law either generally or in relation to any particular case. Regulations

SCHEDULE

(Section 6)

PROCEDURE FOR FORFEITURE

1. (1) Where a constable has reasonable cause to suspect that any article, vehicle or property is being used or has been used in the commission of an offence against this Law, the constable may without warrant search the article, vehicle or property, and if it appears that the article, vehicle or property is being used or has been used for the commission of any offence as aforesaid, the constable may seize and detain the article, vehicle or property.

(2) Where any article, vehicle or property is seized pursuant to subparagraph (1) and a person is convicted of an offence under this Law, if the court before which he is convicted is satisfied that –

- (a) the person owns the article, vehicle or property used in the commission of the offence;
- (b) the owner permitted it to be used; or
- (c) the circumstances are otherwise such that it is just to do so,

the court shall, upon an application by the Attorney-General, order the forfeiture of the article, vehicle or property.

(3) On the application of the Attorney-General before a Magistrate, the Magistrate may make an order in accordance with subparagraph (4), notwithstanding that the conditions mentioned in subparagraph (2) have not been satisfied.

(4) The Magistrate may order the forfeiture of the article, vehicle or property if the Magistrate is satisfied that –

- (a) the article, vehicle or property has been abandoned; or
- (b) the circumstances in which the article, vehicle or property was seized give reasonable cause to suspect that it was being used or has been used for the purpose of committing an offence against this Law,

and it is otherwise just to do so.

2. (1) Where the Attorney-General intends to apply to the Magistrate for an order of forfeiture of any article, vehicle or property under paragraph 1(3) he shall, subject to subparagraph (2), give to any person who, to his knowledge, was at the time of the seizure, the owner of the article, vehicle or property, notice of the seizure and the intention to apply for forfeiture and the grounds thereof.

(2) Notice shall not be required under subparagraph (1) if the seizure under paragraph 1 was made in the presence of the owner or his servant or agent.

(3) Where the Attorney-General is unable to ascertain the owner of or any person having an interest in any article, vehicle or property that he intends to be the subject of an application for an order of forfeiture, he shall publish a notice in a daily newspaper circulating in the Islands regarding the intention to apply to a Magistrate for an order of forfeiture, not less than thirty days prior to the application.

(4) Any person having a claim to any article, vehicle or property seized under this Law may appear at the hearing of the application for forfeiture and show cause why such an order should not be made.

(5) Where, on the hearing of an application for forfeiture pursuant to paragraph 1(3), no person appears before the Magistrate to show cause as mentioned in subparagraph (4), the Magistrate shall presume that the article, vehicle or property has been abandoned.

(6) If, upon the application of a person prejudiced by a forfeiture order, the Magistrate is satisfied that it is just in the circumstances of the case to revoke the order, the Magistrate may -

- (a) revoke such order upon such terms and conditions, if any, as the Magistrate deems appropriate; and
- (b) without prejudice to the generality of sub-subparagraph (a), require such person to pay in respect of storage, maintenance, administrative expenses, security and insurance of the article, vehicle or property, such amount as may be charged by the person in whose custody the article, vehicle or property was kept.

(7) An application to the Magistrate under subparagraph (6) for the revocation of an order shall be made within thirty days of the date of the order or such longer period not exceeding six months after the date of the order as the Magistrate may allow.

Passed by the Legislative Assembly the day of , 2007.

Speaker.

Clerk of the Legislative Assembly.