

CAYMAN ISLANDS



Supplement No. 2 published with Gazette No. 21 dated
8 October, 2001.

THE CRIMINAL PROCEDURE CODE (AMENDMENT) LAW, 2001

(LAW 19 OF 2001)

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ARRANGEMENT OF SECTIONS

1. Short title.
2. Insertion of new section in the Criminal Procedure Code (1995 Revision) - committal for sentence on summary trial of offence triable either way.
3. Insertion of new section - voluntary indictment.
4. Amendment of the First Schedule - Mode of trial and arrestable offences; treason; death penalty.
5. Insertion of a new Schedule.

CAYMAN ISLANDS

Law 19 of 2001.

I Assent

P.J. Smith

Governor.

20 September, 2001

**A LAW TO AMEND THE CRIMINAL PROCEDURE CODE (1995
REVISION) TO CHANGE THE PROCEDURE RESPECTING THE
INDICTMENT OF OFFENDERS; TO INCREASE THE POWER OF
SENTENCING BY THE GRAND COURT; TO REFLECT THE
INCREASED PENALTIES FOR INCEST; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Criminal Procedure Code (Amendment) Law, 2001. Short title

2. The Criminal Procedure Code (1995 Revision), in this Law referred to as "the principal Law", is amended by inserting after section 6 the following section-

Insertion of new section
in the Criminal
Procedure Code (1995
Revision) - committal
for sentence on summary
trial of offence triable
either way

"Committal for
sentence on
summary trial of
offence triable
either way

6A. Subject to subsection (2)(c), this section applies where, on the summary trial of a Category B offence, a person who is not less than eighteen years old is convicted of an offence.

(2) If a Summary Court is of opinion-

- (a) that an offence or the combination of the offence and one or more offences associated with it was so serious that

greater punishment should be inflicted for the offence than the court has the power to impose;

- (b) in the case of a violent or sexual offence, that a custodial sentence for a term longer than the court has power to impose is necessary to protect the public from serious harm from a person; or
- (c) that a conviction for a Category B or C offence in that court results in the breach of a Grand Court order,

the Summary Court may, in accordance with Practice Directions issued under this section, commit the offender in custody or on bail to the Grand Court for sentence.

(3) The preceding provisions shall apply in relation to a corporation as if-

- (a) the corporation was an individual who is not less than eighteen years old; and
- (b) in subsection (2), paragraph (b) and the words "in custody or on bail" were omitted.

(4) Where an accused is committed by a Summary Court under this section the Grand Court shall inquire into the circumstances of the case and shall have power to deal with the offender in any manner in which it could deal with him if he had been convicted by the Grand Court.

(5) Nothing in this section compels the Grand Court to impose a greater sentence than that which could have been imposed by the Summary Court.

(6) The Chief Justice may, from time to time, issue Practice Directions relating to the power of a Summary Court to commit under this section and the procedure to be followed in such committals."

Insertion of new section
- voluntary indictment

3. The principal Law is amended by inserting after section 106 the following section -

"Voluntary
indictment

106A. (1) Notwithstanding section 106, a person may be tried before the Grand Court on an indictment preferred by the direction, or with the consent, of the Grand Court.

(2) An indictment under subsection (1) shall be preferred in accordance with rules set out in the Fourth Schedule."

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

Amendment of the First
Schedule - Mode of trial
and arrestable offences;
treason; death penalty

- (a) in that part of column 5 relating to section 132 (1) by deleting the word "Fourteen" and substituting the word "Twenty"; and
 - (i) by inserting after the words "Defilement of girl under twelve" in column 4 relating to that section the words "Defilement of girl between the ages of twelve and sixteen";
 - (ii) by inserting after the words "Fourteen years" in column 5 relating to that section the words "Twelve years";
- (b) in that part of column 5 relating to section 133 by deleting the word "Two" and substituting the word "Twelve";
- (c) in that part of column 5 relating to section 143 (1) by deleting the word "Five" and substituting the word "Ten";
- (d) in that part of column 5 relating to section 144 (1), by repealing the words "Five years" and substituting the words "If with a girl under thirteen, life, otherwise twenty years";
- (e) in that part of column 5 relating to section 144 (3), by repealing the words "Two years" and substituting the words "If with a girl under thirteen, ten years, otherwise seven years";
- (f) in that part of column 5 relating to section 145, by repealing the word "Two" and substituting the word "Ten"; and
- (g) in that part of column 1 relating to section 238 (1), by repealing "C" and substituting "B".

5. The principal Law is amended by inserting the following Schedule as the Fourth Schedule-

Insertion of a new
Schedule

"FOURTH SCHEDULE

Voluntary Indictments

Application to judge of the Grand Court

1. An application under section 106A for consent to the preferment of an indictment may be made to a judge of the Grand Court.

Application to be in writing

2. Every such application shall be made in writing and shall be signed by the applicant or his attorney-at-law.

Accompanying documents to application etc.

3. Every application-
 - (a) shall be accompanied by the indictment which it is proposed to prefer and, unless the application is made by or on behalf of the Attorney-General, shall also be accompanied by an affidavit by the applicant, or, if the applicant is a corporation, by an affidavit by a director or officer of the corporation, that the statements contained in the application are, to the best of the deponent's knowledge, information and belief, true; and
 - (b) shall state whether or not any application has previously been made under this Law and whether there have been any committal proceedings, and the result of any such application or proceedings.

Application where no committal proceedings

4. Where there are no committal proceedings, the application shall state the reason why it is desired to prefer an indictment without such proceedings and-
 - (a) there shall accompany the application proofs of evidence of the witnesses whom it is proposed to call in support of the charges; and
 - (b) the application shall embody a statement that the evidence shown by the proofs will be available at the trial and that

the case disclosed by the proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

Application where committal proceedings

5. Where there have been committal proceedings, and the magistrate has refused to commit the accused for trial, the application shall be accompanied by-

- (a) a copy of the committal documents; and
- (b) proofs of any evidence which it is proposed to call in support of the charges so far as that evidence is not contained in the committal documents; and

the application shall embody a statement that the evidence shown by the proofs and (except so far as may be expressly stated to the contrary in the application) the evidence shown by the committal documents, will be available at the trial and that the case disclosed by the committal documents and proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

Application where person committed for trial

6. Where the accused has been committed for trial the application shall state why the application is made and shall be accompanied by proofs of evidence which it is proposed to call in support of the charges, so far as that evidence is not contained in the committal documents and, unless the committal documents have already been transmitted to the judge to whom the application is made, shall also be accompanied by a copy of the committal documents; and the application shall also embody a statement that the evidence shown by the proofs is, to the best of the knowledge, information and belief of the applicant, substantially a true case.

Judge's decision in writing

7. Unless the judge otherwise directs in any particular case, his decision on the application shall be signified in writing on the application without requiring the attendance before him of the applicant or of any of the witnesses, and if the judge thinks fit to require the attendance of the applicant or of any of the witnesses, their attendance shall not be in open court.

Applicant may attend by an attorney-at-law

8. Unless the judge gives a direction to the contrary, where an applicant is required to attend as aforesaid, he may attend by an attorney-at-law.

Inspection of committal documents

9. It shall be the duty of any person in charge of any committal documents to give to any person desiring to make an application for leave to prefer an indictment against a person in respect of whom committal proceedings have taken place, a reasonable opportunity to inspect the committal documents and, if so required by him, to supply him with copies of the documents or any part thereof."

Passed by the Legislative Assembly the 4th day of July, 2001.

MABRY S. KIRKCONNELL

Speaker.

GEORGETTE MYRIE

Clerk of the Legislative Assembly.