

CAYMAN ISLANDS



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THE CRIMINAL PROCEDURE CODE (AMENDMENT) LAW, 2011

(LAW 7 OF 2011)

THE CRIMINAL PROCEDURE CODE (AMENDMENT) LAW, 2011

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CAYMAN ISLANDS

Law 7 of 2011.

I Assent

Duncan Taylor

Governor.

27th January, 2011

A LAW TO AMEND THE CRIMINAL PROCEDURE CODE (2010 REVISION) IN RELATION TO PRELIMINARY INQUIRIES; THE CHARGING OF OFFENCES IN THE SAME INDICTMENT; THE JOINDER OF SUMMARY OFFENCES ON AN INDICTMENT; TO REPLACE REFERENCES TO THE ATTORNEY GENERAL WITH REFERENCES TO THE DIRECTOR OF PUBLIC PROSECUTIONS; 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, 2011. Short title

2. The Criminal Procedure Code (2010 Revision), in this Law referred to as the “principal Law”, is amended in section 2 by inserting after the definition of “Summary Court” the following definition - Amendment of section 2 of the Criminal Procedure Code (2010 Revision) - definitions

 ““young person” means a person under the age of seventeen years.”.

3. The principal Law is amended by repealing section 84 and substituting the following section - Repeal and substitution of section 84 - power to commit for trial

 “Power of court to commit for trial or transmit for hearing 84. Subject to this Code, the Evidence Law (2007 Revision) and the Summary Jurisdiction Law (2006

(2007 Revision)
(2006 Revision)

Revision), a Summary Court may -

- (a) commit any person for trial; or
- (b) transmit any matter for hearing,

before the Grand Court.”.

Repeal and substitution
of section 85 - court to
hold preliminary inquiry

4. The principal Law is amended by repealing section 85 and substituting the following sections -

“Court to hold
preliminary
inquiry

85. Subject to section 85A, where a charge has been brought in a Summary Court against a person in respect of an offence which may be tried either summarily or on indictment and the prosecution or the accused person elects to have that charge tried on indictment, the court shall hold a preliminary inquiry in accordance with section 88.

No preliminary
inquiry for
Category A
offences

85A.(1) Where a charge has been brought in a Summary Court against a person in respect of a Category A offence, the court shall transmit the matter forthwith to the Grand Court for hearing and if that person is also charged with an offence which may be tried either summarily or on indictment and the commission of that other offence appears to the court to be related to the commission of the Category A offence the court shall also transmit that matter forthwith to the Grand Court for hearing.

(2) Where the court transmits a matter for hearing under subsection (1) and -

- (a) another person appears or is brought before the court on the same or a subsequent occasion charged jointly or may be tried jointly with the person referred to in subsection (1) for an offence which may be tried either summarily or on indictment; and
- (b) that offence appears to the court to be related to the Category A offence,

the court shall where it is the same occasion, and may where it is a subsequent occasion, transmit the matter forthwith to the Grand Court for hearing.

(3) Where the court transmits a matter for hearing under subsection (2), it shall at the same time transmit any other matter to the Grand Court for hearing where that other matter -

- (a) arises from an offence which may be tried either summarily or on indictment; or
- (b) is a summary offence punishable with imprisonment,

and is related to the Category A offence.

(4) Where -

- (a) the court transmits a matter for hearing under subsection (1) or (2); and
- (b) a young person is brought before the court on the same or a subsequent occasion charged jointly or may be tried jointly for a Category A offence with a person referred to in subsection (1) or (2), and that matter has been transmitted for hearing,

the court shall, if it considers it necessary in the interests of justice to do so, transmit the matter involving the young person forthwith to the Grand Court for hearing.

(5) Where a court transmits a matter involving a young person for hearing under subsection (4), it may at the same time transmit to the Grand Court for hearing any other matter involving the young person where the offence may be tried either summarily or on indictment, or is a summary offence punishable by imprisonment, and the commission of that offence appears to the court to be related to the commission of the Category A offence.

(6) Where, under this section, the court transmits a matter to the Grand Court, the court shall -

- (a) specify in a notice the offence or offences for which the matter is transmitted for hearing;
- (b) serve a copy of the notice on the person charged; and
- (c) provide a copy to the Grand Court.

(7) In a case where there is more than one Category

A offence and the court includes -

- (a) an offence which may be tried either summarily or on indictment; or
- (b) a summary offence punishable by imprisonment,

in the notice under subsection (6), the court shall specify in that notice the Category A offence to which the offence which may be tried either summarily or on indictment, or summary offence punishable by imprisonment as the case may be, appears to the court to be related.

(8) Where a matter has been transmitted to the Grand Court for hearing, it shall be first mentioned in the current session of the Grand Court for directions of the Court to be given.

(9) Where a matter has been transmitted to the Grand Court under subsection (1) the provisions of the Fifth Schedule (which makes provision in relation to the dismissal of a matter transmitted to the Grand Court for trial) shall have effect.”.

Repeal and substitution of section 86 - magistrate to read charge to accused and explain purpose of the proceedings

5. The principal Law is amended by repealing section 86 and substituting the following section -

“Magistrate to read charge to accused and explain purpose of the proceedings

86. A magistrate conducting a preliminary inquiry shall, at the commencement of such inquiry, read over and explain to the accused person the charge in respect of which the inquiry is being held and shall explain to the accused person the purpose of the proceedings, namely, to determine whether there is sufficient evidence to put him on trial before the Grand Court.”.

Repeal of section 87 - taking of depositions

6. The principal Law is amended by repealing section 87.

Repeal and substitution of section 88 - committal for trial on written statements

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

“Committal for trial on written statements

88. (1) Subject to subsection (2), a magistrate conducting a preliminary inquiry shall, where all the evidence before him, whether for the prosecution or the defence, consists of written statements (with or without exhibits) tendered to the court pursuant to section 33 of

(2007 Revision) the Evidence Law (2007 Revision), commit the accused person to the Grand Court, in the current session, for him to stand his trial for the offence without consideration of the contents of those statements.

(2) Where -

- (a) the accused person or one of the accused persons does not have a counsel; or
- (b) the counsel for the accused person or one of the accused persons, as the case may be, request the court to consider a submission that the written statements disclose insufficient evidence to commit the accused person for trial before the Grand Court,

the magistrate shall consider the contents of the written statements.

(3) A magistrate shall not, where he is considering the written statements pursuant to subsection (2) -

- (a) take any oral evidence or statements from the accused; or
- (b) call any witnesses.

(2007 Revision) (4) Subject to the Evidence Law (2007 Revision), where the magistrate considers the written statements and is satisfied that there is sufficient evidence to put the accused person on trial, the magistrate shall commit him to the Grand Court, in the current session, for him to stand his trial.

(5) Where the magistrate commits an accused person to the Grand Court pursuant to subsection (1) or (4), the magistrate shall until the trial, either admit him to bail or send him to prison for safekeeping.

(6) The warrant of the court shall be sufficient authority for the detention of the accused person by the officer in charge of a prison.

(7) In the case of a corporation the court may, if it

considers the evidence sufficient to put the accused corporation on trial, make an order authorising the Director of Public Prosecutions to file an indictment against such corporation, and for the purposes of this Code any such order shall be deemed to be a committal for trial.”.

Insertion of new section 88A - power to join in indictment count for summary offence if punishable with imprisonment, etc.

8. The principal Law is amended by inserting after section 88 the following section -

“Power to join in indictment count for summary offence if punishable with imprisonment, etc.

88A. (1) Where a Summary Court commits a person to the Grand Court for trial on indictment for an offence which may be tried either summarily or on indictment or a number of such offences, it may also commit him for trial for any summary offence with which he is charged and which -

- (a) is punishable with imprisonment or involves obligatory or discretionary disqualification from driving; and
- (b) arises out of circumstances which appear to the court to be the same as or connected with those giving rise to the offence, or one of the offences which may be tried either summarily or on indictment,

whether or not evidence relating to that summary offence appears on the written statements in the case; and the trial of the summary offence shall then be treated as if the Summary Court had adjourned it under section 21 of the Summary Jurisdiction Law (2006 Revision) and had not fixed the time and place for its resumption.

(2006 Revision)

(2) Where a Summary Court commits a person to the Grand Court for trial on indictment for a number of offences which may be tried either summarily or on indictment and exercises the power conferred by subsection (1) in respect of a summary offence, the Summary Court shall provide the Grand Court and the person who is committed for trial a notice stating which of the offences which may be tried either summarily or on indictment appears to the court to arise out of circumstances which are the same as or connected with those giving rise to the summary offence.

(3) A Summary Court's decision to exercise the power conferred by subsection (1) shall not be subject to appeal."

9. The principal Law is amended in section 89 by deleting the words “; but if any variance appears to the court to be such that the accused person has been thereby deceived or misled, the court may, on the application of the accused person adjourn the inquiry or may allow any witness to be recalled and such questions to be put to him as by reason of the terms of the charge may have been omitted”.

Amendment of section 89 - variance between evidence and charge

10. The principal Law is amended in section 90 by deleting the words “, from the absence of witnesses or any other sufficient cause to be recorded in the proceedings,”.

Amendment of section 90 - remand

11. The principal Law is amended by repealing sections 91 and 92.

Repeal of sections 91 and 92 - provisions as to taking statement of accused person; evidence and address in defence

12. The principal Law is amended by repealing section 93 and substituting the following section -

Repeal and substitution of section 93 - discharge of accused person

“Discharge of accused person

93. (1) Where the magistrate considers the written statements and is not satisfied that there is sufficient evidence to put the accused person on trial, the magistrate shall forthwith order him to be discharged as to the particular charge under inquiry.

(2) A discharge under subsection (1) shall not be a bar to any subsequent charge in relation to the same facts.

(3) Nothing contained in this section shall prevent the court from proceeding either forthwith, or after such adjournment of the inquiry as may seem expedient in the interests of justice, to investigate any other charge upon which the accused person may have been summoned or otherwise brought before the court.”.

13. The principal Law is amended by repealing section 95.

Repeal of section 95 - committal for trial

Amendment of section 96 - complainant and witnesses to be bound over

14. The principal Law is amended in section 96 by deleting the words “, and also to appear and give evidence, if required at any further examination concerning the charge which may be held by direction given by the Attorney General under section 106”.

Repeal and substitution of section 98 - accused person entitled to copy of depositions

15. The principal Law is amended by repealing section 98 and substituting the following section -

“Accused person entitled to copy of the written statements

98. A person who -

- (a) has been committed for trial; or
- (b) has had his matter transmitted for hearing,

before the Grand Court shall be entitled at any time before the trial to have a copy of the written statements without payment.”.

Amendment of section 99 - binding over of witness conditionally

16. The principal Law is amended in section 99(1) by deleting the words “been examined before it” and substituting the words “provided a written statement”.

Amendment of section 105 - transmission of records to Grand Court and Attorney General

17. The principal Law is amended in section 105 -

- (a) by deleting the words “the depositions, the statement, if any, of the accused person” and substituting the words “the written statements”; and
- (b) by deleting the words “the depositions, the statement aforesaid” and substituting the words “the written statements”.

Amendment of section 107 - mode of trial upon committal to the Grand Court and preferment of indictment

18. The principal Law is amended in section 107(3) by deleting the word “depositions” and substituting the words “written statements”.

Insertion of new section 149A - treatment of summary offence by Grand Court when joined on indictment pursuant to section 88A

19. The principal Law is amended by inserting after section 149 the following section -

“Treatment of summary offence by Grand Court when joined on indictment pursuant to section 88A

149A. (1) Where the Summary Court commits a person to the Grand Court pursuant to section 88A, the committal of that person in respect of a summary offence shall not preclude the exercise in relation to the offence of the power conferred by that section; but where that person is tried on indictment for such an offence and is acquitted the functions of the Grand Court under that section in relation to the offence shall cease.

(2) If the person is convicted on the indictment, the Grand Court -

- (a) shall consider whether the conditions specified in section 88A(1) were satisfied; and
- (b) if they were satisfied,

it shall state to him the substance of the summary offence and ask him whether he pleads guilty or not guilty.

(3) If the person pleads guilty, the Grand Court shall convict him, but may only deal with him in respect of that offence in the manner in which a Summary Court could have dealt with him.

(4) If the person does not plead guilty, the Grand Court shall remit the matter to the Summary Court in respect of the offence except as provided by subsection (5).

(5) If the prosecution informs the Grand Court that they will not submit evidence on the charge relating to the summary offence, the Grand Court shall dismiss it.

(6) The Grand Court shall inform the clerk of the Summary Court of the outcome of any proceedings under this section.

(7) Where the Court of Appeal allows an appeal against conviction of an offence which may be tried either summarily or on indictment which arose out of circumstances which were the same as or connected with those giving rise to a summary offence of which the appellant was convicted under this section -

- (a) it may set aside the conviction of the summary offence and give the clerk of the Summary Court notice that it has done so; and
- (b) it may -
 - (i) remit the summary offence to the Summary Court to be re-tried; or
 - (ii) direct that no further proceedings in relation to the offence are to be undertaken;

and the proceedings before the Grand Court in relation to

the offence shall thereafter be disregarded for all purposes.

(8) A notice under subsection (7) shall include particulars of any direction given under paragraph (b)(i) of that subsection in relation to the offence.

(2006 Revision) (9) The references to the clerk of the Summary Court in this section are to be construed in accordance with section 10 of the Summary Jurisdiction Law (2006 Revision).”.

Amendment of section 161 - joinder of counts in indictment

20. The principal Law is amended in section 161 by repealing subsection (1) and substituting the following subsection -

“(1) More than one offence may be charged together in the same indictment if the offences charged are founded on the same facts or form or are part of a series of offences of the same or a similar character.”.

Insertion of new section 161A - power to join in indictment count for summary offence if founded on the same facts, etc.

21. The principal Law is amended by inserting after section 161 the following section -

“Power to join in indictment count for summary offence if founded on the same facts, etc.

161A. (1) A count charging a person with a summary offence to which this section applies may be included in an indictment if the charge -

- (a) is founded on the same facts or evidence as a count charging an indictable offence; or
- (b) is part of a series of offences of the same or similar character as an indictable offence which is also charged,

but only if, in either case, the facts or evidence relating to the offence were disclosed on the written statements before a magistrate in the committal or transmittal proceedings.

(2) Where a count charging an offence to which this section applies is included in an indictment, the offence shall be tried in the same manner as if it were an indictable offence; but the Grand Court may only deal with the person in respect of it in a manner in which a Summary Court could have dealt with him.

(3) The offences to which this section applies are -

- (2010 Revision) (a) common assault;
- (b) an offence under sections 78 to 81 of the Penal Code (2010 Revision);
- (c) an offence under section 246(1) of the Penal Code (2010 Revision);
- (d) an offence under section 267(1) of the Penal Code (2010 Revision);
- (2003 Revision) (e) an offence under section 78 or 79 of the Traffic Law (2003 Revision); and
- (f) any summary offence specified under subsection (4).

(4) The Governor in Cabinet may by Order specify any summary offence for the purposes of this section where that summary offence is punishable with imprisonment or involves obligatory or discretionary disqualification from driving.”.

22. The principal Law is amended by deleting the words “Attorney General” wherever they appear and substituting the words “Director of Public Prosecutions”. Amendment of principal Law to substitute Director of Public Prosecutions for Attorney General

23. The principal Law is amended in the First Schedule - Amendment of the First Schedule - mode of trial and arrestable offences

(a) by deleting the items in the columns relating to section 88 and substituting the following items -

“C	A	88	Threatening violence	Three years
C	A	88	Threatening violence by night	Five years”;

(b) by deleting the items in the columns relating to section 216 and substituting the following items -

“C	A	216	Assault causing actual bodily harm	Five years”;
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and

- (c) by deleting the items in the columns relating to section 241 and substituting the following items -

“C	A	241	Theft where the value does not exceed \$5,000	Seven years
B	A	241	Theft where the value exceeds \$5,000	Ten years”.

Insertion of Fifth Schedule - application for dismissal

24. The principal Law is amended by inserting after the Fourth Schedule, the following Schedule -

“FIFTH SCHEDULE

(Section 85A)

Application for Dismissal

1. Where a person has had a matter transmitted to the Grand Court under section 85A of this Law, that person may, on any charge or charges, at any time -

- (a) after he is served with copies of the document containing the evidence on which the charge or charges are based; and
- (b) before he is arraigned and whether or not an indictment has been preferred against him,

apply orally or in writing to the Grand Court for the charge or any of the charges, in the case to be dismissed.

2. The Judge shall dismiss a charge and accordingly quash any count relating to it in any indictment preferred against the applicant, which is the subject of any such application if he is satisfied that the evidence against the applicant would not be sufficient to put the applicant on his trial.

3. An oral application may not be made unless the applicant has given the Grand Court written notice of his intention to make the application.

4. Oral evidence may be given on such an application only with the leave of the Judge or by his order; and the Judge shall give leave or make an order only if it appears to him, having regard to any matters stated in the application for leave, that the interests of justice require him to do so.

5. If the Judge gives leave permitting, or makes an order requiring, a person to give oral evidence, but that person does not do so, the Judge may disregard any document indicating the evidence that he might have given.
6. If the charge, or any of the charges, against the applicant is dismissed -
 - (a) no further proceedings may be brought on the dismissed charge or charges except by means of the preferment of a voluntary bill of indictment; and
 - (b) unless the applicant is in custody otherwise than on the dismissed charge or charges, he shall be discharged.
7. The Grand Court Rules may make provision for the purposes of this Schedule and, without prejudice to the generality of this Schedule, may make provision -
 - (a) as to the time or stage in the proceedings at which anything required to be done is to be done, unless the court grants leave to do it at some other time or stage;
 - (b) as to the contents and form of notices or other documents;
 - (c) as to the manner in which evidence is to be submitted; and
 - (d) as to persons to be served with notices or other material.”.

25. (1) Every committal hearing or trial commenced under the former Law and partly dealt with by the relevant court when the new Law comes into force, is to be continued and dealt with in all respects as if the new Law had not come into force.

Savings and transitional provisions

(2) Where a person has been charged but no committal hearing or trial has commenced in the relevant court when the new Law comes into force, the committal hearing or trial is to be taken to be a committal hearing or trial commenced under the new Law and the provisions of the new Law are to apply accordingly.

(3) In this section -

“former Law” means the Criminal Procedure Code (2010 Revision) in force immediately before the date of commencement of this Law; and

(2010 Revision)

“new Law” means the Criminal Procedure Code (2010 Revision) as amended by this Law.

Passed by the Legislative Assembly the 14th day of January, 2011.

Mary J. Lawrence J.P.

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.