

CAYMAN ISLANDS



Supplement No.1 published with Extraordinary Gazette
No.30 dated 12 December, 2001.

**THE EVIDENCE (AMENDMENT) (SPOUSES, EXPERTS, FOREIGN
CONVICTIONS, ALIBIS, ETC.) LAW, 2001
(LAW 20 OF 2001)**

ARRANGEMENT OF SECTIONS

1. Short title.
2. Amendment of section 18 of the Evidence Law (1995 Revision) – accused persons, etc. as competent witnesses.
3. Insertion of sections 18A to 18D – competence and compellability of spouses, etc.
4. Insertion of section 20A – notice of alibi defence.
5. Insertion of sections 27A to 27D – conviction as evidence of commission of offence, etc.

CAYMAN ISLANDS

Law 20 of 2001.

I Assent

James M. Ryan

Acting Governor.

Date: 3 December, 2001

**A LAW TO AMEND THE EVIDENCE LAW (1995 REVISION) TO
PROVIDE FOR ADVANCE NOTICE OF EXPERT EVIDENCE; TO
AMEND THE LAW RELATING TO THE COMPETENCE AND
COMPELLABILITY OF SPOUSES; TO PROVIDE FOR CONVICTION
AS EVIDENCE OF COMMISSION OF AN OFFENCE; TO PROVIDE
FOR VIDEO RECORDINGS OF TESTIMONY FROM CHILD
WITNESSES AND FOR THE GIVING OF EVIDENCE THROUGH
TELEVISION LINKS; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

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| 1. This Law may be cited as the Evidence (Amendment) (Spouses, Experts, Foreign Convictions, Alibis, Etc.) Law, 2001. | Short title |
| 2. The Evidence Law (1995 Revision), in this Law referred to as "the principal Law", is amended in section 18 by repealing- | Amendment of section 18 of the Evidence Law (1995 Revision) - accused persons, etc., as competent witnesses |
| (a) the words "and the spouse of a person so charged" where they first appear; | |
| (b) paragraphs (b) and (e) of the proviso; and | |
| (c) the words "or of the spouse of such person" in paragraph (c) of the proviso. | |
| 3. The principal Law is amended by inserting the following new sections after section 18- | Insertion of sections 18A to 18D - competence and compellability of spouses, etc. |

"Competence and
compellability of
accused's spouse

18A.(1) In any criminal proceedings the wife or husband of the accused shall be competent to give evidence-

- (a) subject to subsection (4), for the prosecution; and
- (b) on behalf of the accused or any person jointly charged with the accused.

(2) In any criminal proceedings the wife or husband of the accused shall, subject to subsection (4), be compellable to give evidence on behalf of the accused.

(3) In any criminal proceedings the wife or husband of the accused shall, subject to subsection (4), be compellable to give evidence for the prosecution or on behalf of any person jointly charged with the accused if-

- (a) the offence charged involves an assault on, or injury or threat of injury to, the wife or husband of the accused or a person who was at the material time under the age of sixteen;
- (b) the offence charged is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or
- (c) the offence charged consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring, or inciting the commission of, an offence falling within paragraph (a) or (b).

(4) Where a husband and wife are jointly charged with an offence neither spouse shall, at the trial, be competent or compellable by virtue of subsection (1)(a), (2) or (3) to give evidence in respect of that offence unless that spouse is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.

(5) In any criminal proceedings a person who has been but is no longer married to the accused shall be

competent and compellable to give evidence as if that person and the accused had never been married.

(6) Where in any criminal proceedings the age of a person at any time is material for the purposes of subsection (3), his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or have been his age at that time.

(7) The failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

Advance notice of
expert evidence

18B. (1) Following-

- (a) the committal for trial of any person;
- (b) the preferment of an indictment under section 106A of the Criminal Procedure Code (voluntary bill of indictment);
- (c) the making of an order for the re-trial of any person; or
- (d) a hearing in the summary court at which a trial date is set,

if any party to the proceedings proposes to adduce expert evidence (whether of a fact or opinion) in the proceedings (otherwise than in relation to a sentence) he shall as soon as practicable, unless in relation to the evidence in question he has already done so-

- (i) furnish the other party with a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and
- (ii) where a request in writing is made to him in that behalf by any other party, provide that party also with a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine) the record of any observation, test, calculation or

other procedure on which such finding or opinion is based and any document or other thing or substance in respect of which any such procedure has been carried out.

(2) A party may by notice in writing waive his right to be furnished with any of the matters mentioned in subsection (1) and, in particular, may agree that the statement mentioned in subsection (1)(i) may be furnished to him orally and not in writing.

(3) In subsection (1) "document" means anything in which information of any description is recorded.

Exception to
provision of
advance notice

18C. (1) If a party has reasonable grounds for believing that the disclosure of any evidence in compliance with the requirements imposed by section 18B might lead to the intimidation, or attempted intimidation, of any person on whose evidence he intends to rely in the proceedings, or otherwise to the course of justice being interfered with, he shall not be obliged to comply with those requirements with regard to any evidence in relation to that evidence.

(2) Where in accordance with subsection (1), a party considers that he is not obliged to comply with the requirements imposed by section 18B with regard to any evidence in relation to any other party, he shall give notice in writing to that party to the effect that the evidence is being withheld and the grounds therefor.

Failure to comply
with section 18B

18D. A party who seeks to adduce evidence in any proceedings and who fails to comply with section 18B shall not adduce evidence in those proceedings without the leave of the court."

Insertion of section 20A-
notice of alibi defence

4. The principal Law is amended by inserting the following section after section 20-

"Notice of alibi
defence

20A. (1) An accused person shall not, without the leave of the court, adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of

the particulars of the alibi.

(2) Without prejudice to subsection (1), on any trial of an accused person, such person shall not without the leave of the court call any other person to give evidence unless-

- (a) the notice under that subsection includes the name and address of the witness or, if the name and address is not known to the accused person at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness;
- (b) if the name or the address is not included in that notice, the court is satisfied that the accused person, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;
- (c) if the name or address is not included in that notice, but the accused person subsequently discovers the name and address or receives other information which might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information; and
- (d) if the accused person is notified by or on behalf of the prosecution that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information which is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) An accused person shall be informed of the requirements of this section in the summary court and the Grand Court shall not refuse leave under this section if it appears to the court that the accused person was not so informed.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is adduced in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the accused person by his counsel shall, unless the contrary is proved, be deemed to be given with the authority of the accused person.

(6) A notice under subsection (1) of this section shall either be given in court during, or at the end of, the preliminary inquiry or be given in writing to the counsel for the prosecution, and a notice under paragraph (c) or (d) of subsection (2) shall be given in writing to that counsel.

(7) A notice required by this section to be given to the prosecution may be given by delivering it to him or by leaving it at the office of the Attorney General, or by sending it by registered mail addressed to him at his office.

(8) In this section-

- (a) "evidence in support of an alibi" means evidence tending to show that by reason of the presence of the defendant at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission; and
- (b) "the prescribed period" means-
 - (i) in the case of a trial before the summary court, seven days from the day on which the trial date is set; and
 - (ii) in the case of trial before the Grand Court, the period of seven days from the end of the proceedings before the summary court.

(9) In computing the prescribed period a Sunday, Christmas Day, Good Friday and a day which is a public

holiday under the Public Holidays Law (1995 Revision) shall be disregarded.”.

5. The principal Law is amended by inserting the following new sections after section 27-

Amendment of the
principal Law- insertion
of new sections

“Conviction as
evidence of
commission of
offence

27A.(1) In any criminal proceedings the fact that a person other than the accused has been convicted of an offence by or before any court in the Islands or by a competent court of a designated country shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that that person committed that offence whether or not any other evidence of his having committed that offence is given.

(2) In any criminal proceedings in which, by virtue of this section, a person other than the accused is proved to have been convicted of an offence by or before any court in the Islands or by a competent court of a designated country he shall be taken to have committed that offence unless the contrary is proved.

(3) In any criminal proceedings where evidence is admissible of the fact that the accused has committed an offence, in so far as that evidence is relevant to any matter in issue in the proceedings for a reason other than a tendency to show in the accused a disposition to commit the kind of offence with which he is charged, if the accused is proved to have been convicted of the offence-

- (a) by or before any court in the Islands; or
- (b) by a competent court of any designated country,

he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section shall prejudice-

- (a) the admissibility in evidence of any conviction which would be admissible apart from this section; or

- (b) the operation of any enactment whereby a conviction or a finding of fact in any proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(5) In this section "designated country" means a country designated for the purposes of this section by order of the Governor in Council.

Provisions
supplementary to
section 27A

27B. (1) Where evidence that a person has been convicted of an offence is admissible by virtue of section 27A alone, without prejudice to the reception of other admissible evidence for the purpose of identifying the facts on which the conviction was based-

- (a) the contents of any document which is admissible as evidence of the conviction; and
- (b) the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.

(2) Where in any criminal proceedings the contents of any document are admissible in evidence by virtue of subsection (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of the document shall be admissible in evidence and shall be taken to be a true copy of that document unless the contrary is shown.

(3) Nothing in section 27A shall be construed as rendering admissible in any proceedings evidence of any conviction other than a subsisting one.

(4) Nothing in section 27A prejudices any power of a court under section 28 or otherwise in any proceedings to exclude evidence (whether preventing questions being put or otherwise) at its discretion.

Evidence through
television links

27C. (1) A person other than an accused person may give evidence through a live television link in proceedings to which subsection (2) applies if-

- (a) the witness is outside the Islands; or
- (b) if the witness is a child, or is to be cross examined following the admission under section 27D of a video recording of testimony from him and the offence is one to which 27D (2) applies,

but such evidence may not be given without the leave of the court.

(2) This section applies to-

- (a) trials on indictment;
- (b) appeals to the Court of Appeal; and
- (c) summary trials of Category B offences.

(3) A statement made on oath by a witness outside of the Islands and given in evidence through a link by virtue of this section shall be treated for the purpose of section 99 of the Penal Code (1995 Revision) as having been made in the proceedings in which it is given in evidence.

(4) Where the court gives leave for a person to give evidence through a live television link then subject to subsection (5), the person concerned may not give evidence otherwise than through a television link.

(5) A court may give permission for a person to give evidence otherwise than through a live television link if it appears to the court to be in the interests of justice to give such permission.

(6) Permission may be given under subsection (5)-

- (a) on an application by a party to the case; or
- (b) of the court's own motion,

but no application may be made under paragraph (a) unless there has been a material change of circumstances

since the leave was given by virtue of subsection (1).

(7) The Governor in Council may make such rules as appears to him to be necessary for the purposes of this section.

Video recordings
of testimony from
child witnesses

27D. (1) This section applies in relation to-

- (a) trials on indictment;
- (b) appeals to the Court of Appeal;
- (c) summary trials of Category B offences; and
- (d) proceedings in any youth court.

(2) In any such proceedings a video recording of an interview which-

- (a) is conducted between an adult and a child who is not the accused or one of the accused ("the child witness"); and
- (b) relates to any matter in issue in the proceedings

may, with the leave of the court, be given in evidence in so far as it is not excluded by the court by subsection (3).

(3) Where a video recording is tendered in evidence under this section, the court shall (subject to the exercise of any power of the court to exclude evidence which is otherwise admissible) give leave under subsection (2) unless-

- (a) it appears that the child witness will not be available for cross-examination;
- (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or
- (c) the court is of the opinion, having regard to all of the circumstances of the case, that in the interests of justice the recording ought not to be admitted;

and where the court gives such leave it may, if it is of the opinion that in the interests of justice any part of the

recording ought not to be admitted, direct that that part shall be excluded.

(4) In considering whether any part of the recording ought to be excluded under subsection (3) the court shall consider whether any prejudice to the accused, or one of the accused, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole of the recorded interview.

(5) Where a video recording is admitted under this section-

- (a) the child witness shall be called by the party who tendered it in evidence;
- (b) that witness shall not be examined in chief on any matter which, in the opinion of the court, has been dealt with adequately in his recorded testimony.

(6) Where a video recording is given in evidence under this section, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony; and accordingly -

- (a) any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible;
- (b) no such statement shall be capable of corroborating any other evidence given by him;

and, in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn (as to its accuracy or otherwise).

(7) Where the court gives leave under subsection (2) the child witness shall not give relevant evidence (within the meaning of subsection (10)) otherwise than by means of the video recording; but this is subject to

subsection (8).

(8) In a case falling within subsection (7) the court may give permission for the child witness to give relevant evidence (within the meaning of subsection (10)) otherwise than by means of the video recording if it appears to the court to be in the interests of justice to give such permission.

(9) Permission may be given under subsection (8) on an application by a party to the case or of the court's own motion.

(10) For the purpose of subsections (7) and (8) evidence shall be relevant evidence if-

- (a) it is evidence in chief on behalf of the party who tendered the video recording, and
- (b) it relates to matter which, in the opinion of the court, is dealt with in the recording and which the court has not directed to be excluded under subsection (3).

(11) In this section-

"child" means a person who is under seventeen years of age;

"statement" includes any representation of fact, whether made in words or otherwise; and

"video recording" means any recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound track."

Passed by the Legislative Assembly the 26th day of July, 2001.

MABRY S. KIRKCONNELL

Speaker.

GEORGETTE MYRIE

Clerk of the Legislative Assembly.