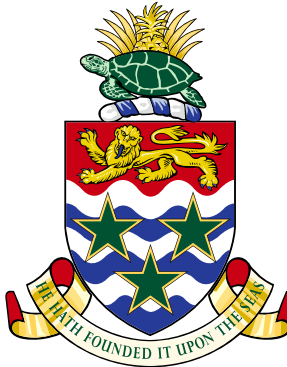


APPENDIX 1

LAW REFORM COMMISSION FINAL REPORT

CAYMAN ISLANDS



PENAL CODE (AMENDMENT) BILL, 2022

A BILL FOR AN ACT TO AMEND THE PENAL CODE (2022 REVISION) TO REMOVE THOSE PROVISIONS WHICH ARE INCOMPATIBLE WITH THE BILL OF RIGHTS, FREEDOMS AND RESPONSIBILITIES CONTAINED IN THE CAYMAN ISLANDS CONSTITUTION ORDER, 2009; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Portfolio of Legal Affairs (PLA)



Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Penal Code (2022 Revision) (“the principal Act”) to remove those provisions which are incompatible with the Bill of Rights, Freedoms and Responsibilities contained in the Cayman Islands Constitution Order, 2009.

Clause 1 provides the short title of the legislation.

Clause 2 seeks to amend section 12(1) of the principal Act by increasing the immature age from ten years of age to twelve years of age, to provide that a person under the age of twelve years is not criminally responsible for any act or omission.

Clause 3 seeks to repeal section 16 of the principal Act which provides for the defence of compulsion by a person’s spouse.

Clause 4 seeks to amend section 88(1) of the principal Act by deleting all references to the word “insulting”.

Clause 5 seeks to amend section 88A(1) of the principal Act by deleting all references to the word “insulting”.

Clause 6 seeks to amend section 88B(1) of the principal Act by deleting all references to the word “insulting”.

Clause 7 seeks to amend the principal Act by repealing section 132 and substituting a new proposed section 132, which introduces a new definition of indecent assault.

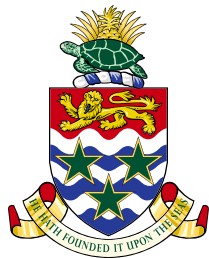
Clause 8 seeks to repeal section 133 of the principal Act which deals with insulting the modesty of a woman.

Clause 9 seeks to repeal section 144 of the principal Act which deals with unnatural offences.

Clause 10 seeks to repeal section 145 of the principal Act which deals with indecent assault on man.

Clause 11 seeks to amend the principal Act by introducing a new proposed section 228M, which introduces the offence of indecent assault against a child.

CAYMAN ISLANDS



PENAL CODE (AMENDMENT) BILL, 2022

Arrangement of Clauses

Clause	Page
1. Short title	7
2. Amendment of section 12 of the Penal Code (2022 Revision) - immature age	7
3. Repeal of section 16 - compulsion by spouse	7
4. Amendment of section 88 - causing fear, or provocation of violence	7
5. Amendment of section 88A - intentional harassment, alarm or distress.....	8
6. Amendment of section 88B - harassment, alarm or distress.....	8
7. Repeal and substitution of section 132 - indecent assault on females.....	8
8. Repeal of section 133 - insulting the modesty of a woman.....	9
9. Repeal of section 144 - unnatural offences	9
10. Repeal of section 145 - indecent assault on a man	9
11. Insertion of section 228M - indecent assault against a child	Error! Bookmark not defined.

CAYMAN ISLANDS**PENAL CODE (AMENDMENT) BILL, 2022**

A BILL FOR AN ACT TO AMEND THE PENAL CODE (2022 REVISION) TO REMOVE THOSE PROVISIONS WHICH ARE INCOMPATIBLE WITH THE BILL OF RIGHTS, FREEDOMS AND RESPONSIBILITIES CONTAINED IN THE CAYMAN ISLANDS CONSTITUTION ORDER, 2009; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Act may be cited as the Penal Code (Amendment) Act, 2022.

Amendment of section 12 of the Penal Code (2022 Revision) - immature age

2. The *Penal Code (2022 Revision)*, in this Act referred to as the “principal Act”, is amended in section 12(1) by deleting the word “ten” and substituting the word “twelve”.

Repeal of section 16 - compulsion by spouse

3. The principal Act is amended by repealing section 16.

Amendment of section 88 - causing fear, or provocation of violence

4. The principal Act is amended in section 88(1) as follows —

- (a) in paragraph (a), by deleting the words “, abusive or insulting” and substituting the words “or abusive”; and
- (b) in paragraph (b), by deleting the words “, abusive or insulting” and substituting the words “or abusive”.

Amendment of section 88A - intentional harassment, alarm or distress

5. The principal Act is amended in section 88A(1) as follows —

- (a) in paragraph (a), by deleting the words “, abusive or insulting” and substituting the words “or abusive”; and
- (b) in paragraph (b), by deleting the words “, abusive or insulting” and substituting the words “or abusive”.

Amendment of section 88B - harassment, alarm or distress

6. The principal Act is amended in section 88B(1) as follows —

- (a) in paragraph (a), by deleting the words “, abusive or insulting” and substituting the words “or abusive”; and
- (b) in paragraph (b), by deleting the words “, abusive or insulting” and substituting the words “, or abusive”.

Repeal and substitution of section 132 - indecent assault on females

7. The principal Act is amended by repealing section 132 and substituting the following section —

“Indecent assault

132. (1) A person (A) commits an act of indecent assault against another person (B) if —

- (a) A intentionally —
 - (i) touches B; or
 - (ii) incites B to touch A;
 - (b) the touch is sexual;
 - (c) B does not consent to the touch; and
 - (d) A knows that B does not consent to the touch or is reckless as to whether B consents to the touch.
- (2) For the purpose of subsection (1) —
- (a) a touch includes A touching B or inciting B to touch A —
 - (i) with any part of the body;
 - (ii) with any object; or
 - (ii) through anything, including anything worn by the person doing the touching or by the person being touched;



- (b) a touch is sexual if it is done in a way that a reasonable person would consider to be sexual; and
- (c) the matters to be taken into account in determining whether a touch is sexual include whether —
 - (i) the area of the body touched or doing the touching is the genital area, anal area, buttocks, breasts or lips;
 - (ii) the person doing the touching does so for the purpose of obtaining sexual arousal or sexual gratification; or
 - (iii) any other aspect of the touching of the body makes it sexual.
- (3) A person under the age of sixteen cannot in law give any consent which would prevent an act being an indecent assault for the purposes of this section.
- (4) A person with a mental disorder cannot in law give any consent which would prevent an act being an indecent assault for the purposes of this section, but a person is only to be treated as having committed indecent assault on a person with a mental disorder by reason of that incapacity to consent, if that person knew or had reason to suspect such person to have a mental disorder.
- (5) A person who commits an act of indecent assault against another person commits an offence and is liable on conviction on indictment to imprisonment for ten years.”.

Repeal of section 133 - insulting the modesty of a woman

8. The principal Act is amended by repealing section 133.

Repeal of section 144 - unnatural offences

9. The principal Act is amended by repealing section 144.

Repeal of section 145 - indecent assault on a man

10. The principal Act is amended by repealing section 145.

Insertion of section 228M - indecent assault against a child

11. The principal Act is amended by inserting after section 228L, the following section —

“Indecent assault against a child

228M.(1) A person (A) commits an act of indecent assault against a child (B) under the age of sixteen if —

- (a) A intentionally —
 - (i) touches B; or

- (ii) incites B to touch A; and
 - (b) the touch is sexual.
- (2) For the purpose of subsection (1) —
 - (a) a touch includes A touching B or inciting B to touch A —
 - (i) with any part of the body;
 - (ii) with any object; or
 - (iii) through anything, including anything worn by the person doing the touching or by the person being touched;
 - (b) a touch is sexual if it is done in a way that a reasonable person would consider to be sexual; and
 - (c) the matters to be taken into account in determining whether a touch is sexual include whether —
 - (i) the area of the body touched or doing the touching is the genital area, anal area, buttocks, breasts or lips;
 - (ii) the person doing the touching does so for the purpose of obtaining sexual arousal or sexual gratification; or
 - (iii) any other aspect of the touching of the body makes it sexual.
- (3) A child under the age of sixteen cannot in law give any consent which would prevent an act being an indecent assault against a child for the purposes of this section.
- (4) A person who commits an act of indecent assault against a child under the age of sixteen commits an offence and is liable on conviction on indictment to imprisonment for twelve years.”.

Passed by the Parliament the day of , 2022.

Speaker

Clerk of the Parliament

