

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE POLICE LAW, 2010, LAW 36 OF
2010, TO MAKE THE PROCEDURE FOLLOWING ON THE
DETENTION OF PERSONS IN SECTION 65 CONSISTENT WITH
SECTION 5(5) OF THE CAYMAN ISLANDS CONSTITUTION; AND TO
PROVIDE FOR INCIDENTAL AND CONNECTED PURPOSES**

THE POLICE (AMENDMENT) BILL, 2014

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Police Law, 2010, Law 36 of 2010, for the purpose of making section 65 consistent with section 5(5) of the Cayman Islands Constitution. Section 5(5) of the Constitution requires, among other things, that where a person is arrested or detained on reasonable suspicion of his having committed a criminal offence and has not been released he must be brought promptly before the court.

Clause 1 provides the short title and commencement of the legislation.

Clause 2, among other things, repeals section 65(4) of the Police Law, 2010. The preceding section 65(3) currently empowers an arresting officer to detain a person for a period not exceeding seventy-two hours from the time of arrest. This is provided for in circumstances where he determines that there is insufficient evidence to charge the person but reasonably believes that the detention of the person is necessary to, among other things, complete the investigation.

Section 65(4) empowers a police officer of the rank of Chief Inspector or above to authorise the detention of a person for an additional twenty-four period before being taken before a court. In *Re Canute Nairne and in the matter of the Writ of Habeas Corpus Ad Subjiciendum* (Cause Nos. 10 & 18 of 2013) it was declared that section 65(4) is incompatible with section 5(5) of the Constitution. The court found that detention for an additional period of twenty-four hours, permitted by section 65(4), would be in contravention of the constitutional requirement of promptness in bringing a detainee before the court. In repealing that provision, the clause takes away the power of the Chief Inspector to authorise the continued detention of a person, arrested without a warrant, for an additional twenty-four hour period.

Clause 2 also repeals and replaces subsections (1), (2) and (3) of section 65 to provide more clarity to the provisions and to the procedures to be adhered to by police officers when taking a person into custody without a warrant.

Additionally the clause provides for the insertion of subsections (3A) and (3B). The former subsection provides that the custody officer shall make periodic inquiries regarding the detention of a person arrested without a warrant. The latter subsection provides that the detained person may make oral representations regarding his detention. The custody officer is required to record any representations made by the detained person and the grounds for his continued detention where he is not released.

Clause 2 also repeals and replaces subsections (5) and (6) of section 65 of the Law. The amendment to subsection (5) outlines the bases on which a person may be kept in police detention after the initial period of up to forty-eight hours. Further detention is permitted where -

- (a) a police officer of the rank of Superintendent or above makes a determination that further detention is required to, among other things, secure evidence relating to the offence for which the person is detained;
- (b) notice of intention to apply for an order for further detention is given to the detainee; and
- (c) the application for further detention is granted by the summary court.

The amendment to subsection (6) provides that the hearing referred to in that subsection must take place in the presence of the person taken into custody. This will ensure that the hearings are consistent with the constitutional requirement for the arrested person to be brought before the court. The court may extend detention for up to seventy-two hours.

The clause also inserts subsections (6A) and (6B). The former provision states that the hearing may be held in chambers where the judge considers that it is in the interest of justice to do so. The latter provision states that the detained person may make submissions to the court in relation to an application for further detention under subsection (5).

Clause 2 makes an amendment to subsection (9) to, among other things, remove the reference to subsection (4) which is repealed. The provision also amends subsection (9) to incorporate a reference to subsection (5).

Clause 2 also makes an amendment to subsection (15) to provide for the point at which time starts running for the detention period where the person is either taken for medical treatment at the time of arrest or who is arrested while in a hospital.

The clause also amends section 65 by inserting a new subsection (16) that provides for the detention period where a person in detention is removed from a police station and taken to a hospital because he is in need of medical treatment. Any periods of time utilised by a police officer to question the detainee with a view to obtaining evidence related to an offence during the journey to or from the hospital or while the detainee is in the hospital will be treated as a part of the period of detention.

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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Police (Amendment) Law, 2014.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor and different dates may be appointed for different provisions of this Law.

2. The Police Law, 2010 is amended in section 65 as follows -

Amendment of section 65 of the Police Law (Law 36 of 2010) - detention of persons arrested without warrant

(a) by repealing subsections (1), (2) and (3) and substituting the following subsections -

“ (1) When a person has been taken into custody without a warrant, that person shall be brought to the custody officer who, not being directly involved in the investigation, shall enquire into the case, and, upon the completion of the enquiry, if there are no reasonable grounds for believing that the person has committed an offence he shall, subject to subsection (3), be released forthwith.

(2) If, upon the completion of the inquiry referred to in subsection (1), there are reasonable grounds for believing that the person arrested has committed an offence, the custody officer may release the person on bail.

(3) Where there is a determination that there is insufficient evidence to charge the person taken into custody but the police officer carrying out the arrest has reasonable grounds for believing that the detention of that person without being charged is necessary to -

- (a) secure or preserve evidence relating to an offence for which the person is under arrest;
- (b) obtain that evidence by questioning him; or
- (c) complete the investigation,

the custody officer who, not being directly involved in the investigation, may authorize the police officer to place that person in detention for such period of time as may be reasonably required up to forty-eight hours from the relevant time as set out in subsection (15).

(3A) The custody officer, at the beginning of each shift, shall -

- (a) conduct an inquiry regarding the progress of the investigation related to any person detained by virtue of this section;
- (b) determine whether the conditions justifying detention under subsection (3) are continuing; and
- (c) where the person detained is not released, inform him of the grounds for his continued detention.

(3B) The person detained may make oral representations on his detention and the custody officer shall record any representation made and the grounds for the continued detention on the custody record based on the criteria for further detention set out in subsection (3).”;

- (b) by repealing subsection (4);
- (c) by repealing subsections (5) and (6) and substituting the following subsections -

“(5) A person shall not be kept in police detention after the period referred to in subsection (3) except where -

- (a) a police officer of the rank of Superintendent, or above, who is not directly involved in the investigation determines that the further detention of a person is required to -
 - (i) secure or preserve evidence relating to an arrestable offence for which the person is under arrest;
 - (ii) obtain evidence by questioning him; or
 - (iii) carry out investigations, such investigations being carried out in a diligent and expeditious manner;
- (b) notice of intention to apply for an order for further detention and the grounds for the application are given in writing to the detainee;
- (c) an application is made to the summary court for an order for further detention of the person stating the period of time required, such period being not more than seventy-two hours; and
- (d) the summary court grants the order referred to in paragraphs (b) and (c).

(6) The application made under subsection (5) shall be heard in the presence of the detained person and where the court considers that there are reasonable grounds for believing that -

- (a) the detention of that person without charge is necessary to secure or preserve evidence relating to an offence for which he is under arrest or to obtain such evidence by questioning him;
- (b) an offence for which he is under arrest is an arrestable offence; and
- (c) the investigation is being conducted in a diligent and expeditious manner,

it may order detention for a further period of up to seventy-two hours.

(6A) The hearing under subsection (6) may be held in chambers where the court considers that it is in the interest of justice to do so.

(6B) The person taken into custody or his legal representative may make submissions to the court in relation to an application under subsection (5).”;

- (d) in subsection (9), by deleting the words “in subsections (3), (4), (6), (7) or (8) and substituting the words “in subsections (3), (5), (6), (7) or (8)”;
- (e) in subsection (15), by inserting after paragraph (a) the following paragraph -
 - “(aa) in the case of a person who is either taken for medical treatment at the time of arrest or who is arrested while in a hospital, the time at which that person arrives at the first police station to which he is taken after his arrest;”;
- (f) by inserting after subsection (15) the following subsection -
 - “(16) For the purposes of this section, where -
 - (a) a person in detention is taken from a police station to a hospital because he is in need of medical treatment; or
 - (b) a person is arrested while in a hospital,any time utilised by a police officer in questioning him in the hospital, on the way to the hospital or to the police station for the purpose of obtaining evidence relating to an offence, shall be included as part of the period of detention and shall be recorded as such in the custody record as soon as is practicable.”.

Passed by the Legislative Assembly the day of , 2014.

Speaker.

Clerk of the Legislative Assembly.