

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE PENAL CODE (2018 REVISION)
TO INTRODUCE THE OFFENCE OF STALKING; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE PENAL CODE (AMENDMENT) (NO. 2) BILL, 2018

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Penal Code (2018 Revision) in order to introduce the offence of stalking.

Clause 1 of the Bill provides the short title.

Clause 2 provides for the repeal of section 155 of the Penal Code (2018 Revision) and seeks to replace it with provisions which set out the elements to be satisfied before the offence of stalking is constituted, the types of acts that form the offence and the defences available.

Clause 3 provides for the transitional and savings provisions.

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ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Penal Code (Amendment) (No. 2) Law, 2018 .
2. The Penal Code (2018 Revision) is amended by repealing section 155 and substituting the following section -

Short title

Repeal and substitution
of section 155 of the
Penal Code (2018
Revision) - watching
and besetting

“Stalking

155. (1) A person stalks another person if the first-mentioned person intentionally engages in a course of conduct specified under subsection (2), which -

- (a) is directed towards the second-mentioned person;
- (b) occurs on two or more occasions within a period of twelve months;
- (c) causes the second-mentioned person to fear for the second-mentioned person’s safety or the safety of someone known to the second mentioned person;
- (d) would cause a reasonable person to fear for the second mentioned person’s safety or the safety of someone known to the second-mentioned person; and
- (e) the first-mentioned person knows or

ought to know would cause the second mentioned person to fear for the second mentioned person's safety or the safety of someone known to the second-mentioned person.

(2) For the purposes of subsection (1), a course of conduct in relation to a person includes -

- (a) watching, besetting or loitering near that person;
- (b) approaching or entering a place where that person resides, works or visits;
- (c) preventing or hindering access to or from that person's place of residence, business, employment, learning or any other location which that person visits;
- (d) following or accosting that person;
- (e) entering or interfering with that person's property;
- (f) engaging in verbal, written, electronic or any other form of communication with that person;
- (g) giving offensive, abusive or threatening material to that person or leaving it where it will be found by, given to, or brought to the attention of that person;
- (h) sending, delivering or showing to that person letters, images, telegrams, packages, facsimiles or electronic messages;
- (i) acting covertly in a way that could reasonably be expected to arouse apprehension or fear in that person; or
- (j) intimidating, harassing or molesting that person.

(3) A person who stalks another person commits an offence and is liable-

- (a) on conviction on indictment, to a fine or to imprisonment for a term of four years or both; or
- (b) on summary conviction, to a fine of five thousand dollars or to imprisonment for a term of one year or both.

(4) A course of conduct under subsection (2) may be the same course of conduct, or different courses of conduct pursued on each occasion in a public or a private place.

(5) A police officer may arrest, without a warrant, anyone he reasonably suspects is committing an offence under this section.

(6) A police officer may, without a warrant, enter any premises for the purpose of giving assistance to any one present on the premises -

- (a) if the police officer has reasonable cause to suspect that a person is committing an offence under subsection (3); or
- (b) if the police officer has reasonable cause to suspect that a protection order made under the Stalking (Civil Jurisdiction) Law, 2018 is being contravened.

(7) It is a defence for a person charged with an offence under this section to show that -

- (a) the person's conduct was pursued for the purpose of preventing or detecting a crime;
- (b) the person's conduct was pursued under an enactment or a rule of law;
- (c) the person's conduct was pursued in order to comply with a condition or requirement imposed by another person acting under an enactment;
- (d) the person's conduct was reasonable for the protection of that person or another person or for the protection of the first-mentioned person's property or the property of another; or
- (e) the person had no reason to believe that there was any person within hearing or sight who was likely to be put in fear as a result of the first-mentioned person's conduct."

Transitional and savings provisions

3. (1) Any matter or proceeding commenced in any court in relation to an accused person immediately before the date of the commencement of this amending Law shall be continued, completed and enforced as if this amending Law was not in force.

(2) Where -

- (a) prior to the date of commencement of this amending Law, an accused person is convicted following a trial or a plea of guilty to an offence; and
- (b) at the date of commencement of this amending Law, no judgment or sentence has been passed upon the accused person in respect of the offence,

the accused person shall, for the purpose of the judgment or sentence, be dealt with in all respects as if this amending Law had not come into force.

(3) Where, at the date of commencement of this amending Law, any trial is or any proceedings are pending in respect of an offence before a court, the trial or proceedings shall, after that date, be dealt with in all respects as if this amending Law was not in force.

Passed by the Legislative Assembly the day of , 2018.

Speaker.

Clerk of the Legislative Assembly.