



ANGUILLA

A BILL FOR
CRIMINAL JUSTICE REFORM ACT, 2018

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CRIMINAL JUSTICE REFORM ACT, 2018

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I Assent

Timothy Foy
Governor

Date

ANGUILLA

No. /2017

A BILL FOR

CRIMINAL JUSTICE REFORM ACT, 2017

[Gazette Date: , 2017] [Commencement: At A Date to be Appointed by the Governor
In Council By Regulation]

AN ACT to amend the Criminal Code and other enactments to allow the reform of these criminal justice laws in certain respects; and to include a procedure for the rehabilitation of Offenders.

ENACTED by the Legislature of Anguilla

PART 1

AMENDMENTS TO THE CRIMINAL CODE

Interpretation

1. In this Part the “principal Act” means the Criminal Code, R.S.A. c. C140.

Amendment of section 140

2. The principal Act is amended in section 140 by inserting the following immediately after “148 (Procuration of minor), in the definition of ‘sexual offences’—

“148A (Grooming),”.

Insertion of section 148A

3. The principal Act is amended by inserting the following section directly after section 148—

“Grooming

148A. (1) A person aged 18 or over commits an offence if—

- (a) he has met or communicated with a child under sixteen and subsequently—
 - (i) he intentionally meets the child or
 - (ii) he travels with the intention of meeting the child or arranges to meet the child or
 - (iii) the child travels with the intention of meeting him (whether knowing his true identity or not), and
- (b) he intends to do anything to or in respect of the child, during or after the meeting mentioned in paragraph (a)(i) to (iii), which if done will involve the commission by him of a relevant offence, and
- (c) the child is a person under 16, and
- (d) he does not reasonably believe that the child is 16 or over.

(2) In subsection (1)—

- (a) the communication and meeting can take place in Anguilla or another country, and the travel can be to or from anywhere in the world, so long as one of those events takes place in Anguilla, and either the person or the child is present in Anguilla at the time of the relevant event mentioned in subsection (1),
- (b) “relevant offence” means conduct wherever committed which constitutes an offence involving a minor as set out in Part 14 of the Criminal Code.

(4) A person guilty of an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding 8 years.”.

Insertion of section 161A

4. The principal Act is amended by inserting the following section directly after section 161—

“Child pornography

161A. In this section, child pornography means—

- (a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means -
 - (i) that shows a person who is, or is depicted as being, under the age of sixteen years and is engaged in or is depicted as engaged in explicitly sexual activity; or

- (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of sixteen years; or
- (iii) which is inherently indecent;
- (b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of sixteen years that would be an offence under this Act;
- (c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of sixteen years that would be an offence under this Act; or
- (d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of sixteen years that would be an offence under this Act.

(2) Every person who makes, prints, publishes or possesses for the purpose of publication any child pornography is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

(3) Every person who transmits, makes available, distributes, sells, advertises, imports, exports or possesses for the purpose of transmission, making available, distribution, sale, advertising or exportation any child pornography is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years.

(4) Every person who knowingly possesses or accesses any child pornography is guilty of—

- (a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or
- (b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years.

(5) For the purposes of subsection (4), a person accesses child pornography who knowingly causes child pornography to be viewed by, or transmitted to, himself or herself.

(6) If a person is convicted of an offence under this section, the court that imposes the sentence shall consider as an aggravating factor the fact that the person committed the offence with intent to make a profit.

(7) It is not a defence to a charge under subsection (2) in respect of a visual representation that the accused believed that a person shown in the representation that is alleged to constitute child pornography was or was depicted as being sixteen years of age or more unless the accused took all reasonable steps to ascertain the age of that person and took all reasonable steps to ensure that, where the person was sixteen years of age or more, the representation did not depict that person as being under the age of sixteen years.

(8) No person shall be convicted of an offence under this section if the act that is alleged to constitute the offence has a legitimate purpose related to the investigation of crime by the Royal Anguillan Police Force or to science, medicine, education or art

(9) No person shall be convicted of an offence under subsection (4) if the person—
(a) had not seen the child pornography and did not know, or had any cause to suspect, that it was child pornography; or
(b) the child pornography was sent to the person unsolicited and that the person did not keep it for an unreasonable time.

Amendment of section 162

5. The principal Act is amended in section 162 by deleting “woman” wherever it occurs and substituting “woman or girl under the age of 18 years”.

Insertion of section 169A

6. The principal Act is amended by inserting the following sections directly after section 169—

“Publication of intimate image without consent

169A. (1) In this section, intimate image means a visual recording of a person made by any means including a photographic, film or video recording-

- (a) in which the person is nude, is exposing his or her genital organs or anal region or her breasts or is engaged in explicit sexual activity;
- (b) in respect of which, at the time of the recording, there were circumstances that gave rise to a reasonable expectation of privacy; and
- (c) in respect of which the person depicted retains a reasonable expectation of privacy at the time the offence is committed.

(2) Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty—

- (a) of an indictable offence and liable to imprisonment for a term of not more than five years; or
- (b) of an offence punishable on summary conviction for a term of not more than two years.

(3) No person shall be convicted of an offence under this section if the act that is alleged to constitute the offence -

(a) has a legitimate purpose related to the investigation of crime by the Royal Anguillan Police Force; legitimate journalistic material in the public interest; or to science, medicine, education or art.”.

Insertion of Part 27 – Rehabilitation of Offenders

7. The principal Act is amended by inserting the following immediately after section 372—

“PART 27
REHABILITATION OF OFFENDERS

Purpose of this Part

372A. The purpose of this Part is to rehabilitate offenders who have not been reconvicted of any serious offence for periods of time.

Qualifying persons

372B. A person is qualified to apply for a spent-conviction certificate if the person—

- (a) was convicted of an offence other than an offence listed in Part A of Schedule 2;
- (b) the rehabilitation period for the offence as set out in Part B of Schedule 2 has expired;
- (c) the person has not committed an offence in Anguilla or elsewhere, other than a negligible offence, since the conviction; and
- (d) the person has never been convicted of a disqualifying offence in Anguilla or elsewhere.

Negligible offences

372C. A negligible offence is an offence set out in Schedule 3.

Disqualifying offence

372D. A disqualifying offence is an offence set out in Part A of Schedule 2.

Application

372E. An application for a spent-conviction certificate is to be made to the Attorney General in Form 1 of Schedule 4.

Grant or refusal of certificate

372F. (1) The Attorney General shall sign and issue a spent-conviction certificate in Form 2 of Schedule 4 if satisfied that a person who applies under section 372E qualifies for a spent-conviction certificate under this Part.

(2) If the Attorney General is not satisfied that the person qualifies for the certificate, the Attorney General shall advise the applicant in writing and give reasons for the decision.

(3) The Attorney General shall grant or refuse an application within 45 days after receiving a complete application, or within such extended time as authorised in writing by the Governor.

Appeal to Governor

372G. (1) An applicant who is dissatisfied with the decision of the Attorney General under section 372F(2) may appeal the decision in writing to the High Court within 30 days after being given notice of the decision.

(2) On an appeal the High Court may confirm the decision of the Attorney General or grant the spent-conviction certificate.

(3) The High Court may grant the spent-conviction certificate only if the High Court Judge considers that the applicant qualifies for the certificate under this Act.

Effect of certificate

372H. (1) A spent-conviction certificate evidences the rehabilitation of the person in respect of whom it is issued, in respect of the conviction or caution for which it is issued.

(2) Subject to the exceptions established by Order made by the Governor on the advice of the Executive Council, a person who becomes rehabilitated under this Act in respect of a conviction or caution is to be treated for all purposes in law as a person who—

- (a) in the case of a conviction— has not committed or been charged with or prosecuted for, or convicted of, or sentenced for, the offence or offences which were the subject of the conviction and has no criminal record in respect thereof; or
- (b) in respect of a caution-- has not committed, been charged with or prosecuted for, or been given a caution for the offence and has no criminal record in respect thereof;
- (c) has paid in full or has had remitted the amount owing as a fine or reparation on the person, in the case of a court having imposed such a sentence of a fine or reparation;
- (d) has paid in full or has had remitted the amount owing as costs or compensation, in the case of a court having imposed such a sentence of costs and reparation.

Restrictions on disclosure of rehabilitated criminal record

372I. Government departments and law enforcement agencies or an employee or contractor of a government department or law enforcement agency that hold or have access to the criminal record of a recipient of a rehabilitation certificate shall not disclose any criminal record in respect of which a rehabilitation certificate has been issued.

Procedures

372J. The Attorney General shall establish procedures to receive applications for a spent certificate and inquire into them.

Regulations

372K. (1) The Governor on the advice of the Executive Council, may make regulations with respect to any matters that may be necessary or convenient for the purpose of this Act.

(2) Without limiting subsection (1), regulations may—

- (a) amend the Schedules;
- (b) set rules respecting the calculation of the rehabilitation periods for the purpose of section 2(b); and
- (b) specify the information and fees required to accompany an application under this Act.”.

Insertion of Schedules 2, 3 and 4

4. The principal Act is amended by renaming the Schedule, “Schedule 1” and inserting the following new Schedules—

SCHEDULE 2

(Section 372B)

Part A**OFFENCES EXCLUDED FROM REHABILITATION**

1. Sexual offences (as defined by section 140 of the Criminal Code).
2. Murder.
5. Offences for which the maximum penalty is a term of imprisonment for ten years or more.
6. A conviction that occurs before the rehabilitation period for a previous conviction has expired.

Part B
PERIOD OF REHABILITATION

Sentence	Rehabilitation period
A sentence of imprisonment for a term exceeding six months but not exceeding ten years	seven years
A sentence of imprisonment for a term not exceeding six months	five years
A fine or any other sentence subject to rehabilitation under Part 27 except cautions under this Code and cases in which an order is made under the Probation Act Cap. P96.	three years
Cautions	As stated under section 18I
A probation order under the Probation Act, Cap. P96.	one year

SCHEDULE 3
NEGLIGIBLE OFFENCES

(Section 372C)

The following are negligible offences for the purpose of section 372C: all offences under any Act or subordinate legislation for which—

- (a) the maximum penalty is a fine not exceeding \$500 and there is no provision for a term of imprisonment; and
- (b) the fine has been paid in full or has been deemed to have been remitted.

**SCHEDULE 4
FORM 1 – APPLICATION FOR SPENT CONVICTION CERTIFICATE**



This is an application under Part 27 of the Criminal Code for a spent conviction certificate.

		<i>(insert required information here)</i>
1.	Full name of applicant	
2.	Other names by which the applicant has ever been known	
3.	Applicant's date and place of birth	
4.	Applicant's current address	
5.	Other addresses of applicant (including outside of Anguilla) since the conviction	
6.	The offence that this application relates to	
7.	Date of conviction of relevant offence	
8.	Court which made the conviction	
9.	Sentence imposed on conviction of relevant offence	

I, *(here insert full name)*.....the applicant for a spent conviction certificate make oath and swear as follows—

1. I have not since the date of the conviction of specified above been convicted in any court, in Anguilla or elsewhere, of an offence;
2. I have not made an application for employment for a position that involves His Majesty's Armed Forces, Police, National Security, prison officer, probation officer, care and protection of a child or young person or judicial officer.
3. The information in this application is true and correct, so help me God.

Applicant's Signature.....

Sworn before me (name and title of Judge, Magistrate, Commissioner for Oaths or Justice of the Peace).....at.....on theday of20...

Witness signature

FORM 2 – SPENT CONVICTION CERTIFICATE



This is a Spent Conviction Certificate under Part 27 of the Criminal Code.
This certificate is issued to (the offender)
And relates to his conviction for the offence of.....(the specified offence)
on..... when the sentence was

WHEREAS the offender named above has satisfied me that —
 the specified offence is one that may be treated as spent under the Act;
 the offender has not since then been convicted of any offence other than a negligible offence
(in Anguilla or elsewhere),

NOW THEREFORE take note that from the date this certificate is issued, the Part 27 of the
Criminal Code applies to the specified conviction so that, subject to the exceptions established by
under section 372H(2) of the Criminal Code —

As a result of section 372H of the Criminal Code, with respect to the specified offence —
(a) the offender is deemed to have no criminal record for any purpose including the
purposes of any question asked about his criminal record;
(b) the offender may answer a question asked about his criminal record by stating
that he has no criminal record; and
(c) the offender is entitled, subject to the exceptions established by the Executive
Council under section 372H(2) of the Criminal Code, to have his criminal record
withheld by government departments and law enforcement agencies that hold or
have access to his criminal record.

AND in accordance with 372I of the Criminal Code —
A government department or law enforcement agency, or an employee or contractor of a
government department or law enforcement agency, that holds or has access to criminal records
and that is responding to a request for the disclosure of the offender’s criminal record or any
information about the person’s criminal record shall not disclose any criminal record in respect of
which this spent conviction certificate has been issued.

.....
Attorney General

(Date).....”.

PART 2**AMENDMENTS TO THE EVIDENCE ACT****Interpretation**

9. In this Part the “principal Act” means the Evidence Act, R.S.A. c. E065.

Insertion of section 13A

10. The principal Act is amended by inserting the following section directly after section 13—

“Audio and video recordings

13A. Evidence obtained in the course of an interview by police of a person suspected of the commission of a criminal offence shall not be rendered inadmissible by reason only of the fact that it has been recorded.”

Insertion of section 14A

11. The principal Act is amended by inserting the following section directly after section 14—

“Proof by formal admission

14A. (1) Subject to this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or defendant, and the formal admission by any party of such fact under this section is, as against that party, conclusive evidence in those proceedings of the fact so admitted.

(2) A formal admission under this section—

- (a) may be made before or at the proceedings;
- (b) if made otherwise than in court, shall be in writing;
- (c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;
- (d) may only be retracted with the leave of the court if the court considers it in the interests of justice to do so; and
- (e) if made at any stage before the trial by a defendant who is an individual, must be approved by his advocate (whether at the time it was made or subsequently) before or at the proceeding in question.

(3) A formal admission under this section for the purposes of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to the same matter.”

(4) Rules of procedure may set out the procedure for dealing with formal admissions in criminal proceedings.

Insertion of sections 10A- 10M

12. The principal Act is amended by inserting the following section directly after section 10—
“Witnesses eligible for assistance on grounds of age or vulnerability

10A. (1) For the purposes of sections 10A to 10B a witness in criminal proceedings, other than the accused, is eligible for assistance by virtue of this section -

- (a) if under the age of eighteen at the time of the hearing; or
- (b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason of any circumstances falling within subsection (2).

(2) The circumstances falling within this subsection are –

- (a) that the witness –
 - (i) suffers from a mental disorder; or
 - (ii) otherwise has a significant impairment of intelligence and social functioning; or
 - (iii) is otherwise vulnerable.
- (b) that the witness has a physical disability or is suffering from a physical disorder.

(3) In subsection (1)(a) “the time of the hearing”, in relation to a witness, means the time when it falls to the court to make a determination for the purposes of section 10D(2) in relation to the witness.

(4) In determining whether a witness falls within subsection (1)(b) the court shall consider any views expressed by the witness.

(5) In sections 10A to 10M references to the quality of a witness’s evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose “coherence” refers to a witness’s ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively.

10B. (1) In sections 10A to 10M a witness in criminal proceedings, other than the accused, is eligible for assistance by virtue of this subsection if the court is satisfied that the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings

(2) In determining whether a witness falls within subsection (1) the court shall take into account, in particular -

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;
- (c) such of the following matters as appear to the court to be relevant, namely -
 - (i) the social and cultural background and ethnic origins of the witness;
 - (ii) the domestic and employment circumstances of the witness; and
 - (iii) any religious beliefs or political opinions of the witness; and
- (d) any behaviour towards the witness on the part of -
 - (i) the accused;
 - (ii) members of the family or associates of the accused; or
 - (iii) any other person who is likely to be an accused or a witness in the proceedings.

(3) In determining that question the court shall in addition consider any views expressed by the witness.

(4) Where the complainant in respect of a sexual offence is a witness in proceedings relating to that offence, or to that offence and any other offences, the witness is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this subsection.

10C. (1) For the purposes of sections 10A to 10M and subject to subsection (2) –

- (a) the provision which may be made by a special measures direction by virtue of each of sections 10H to 10K is a special measure available in relation to a witness eligible for assistance by virtue of section 10A; or
- (b) the provision which may be made by such a direction by virtue of each of sections 10H to 10K is a special measure available in relation to a witness eligible for assistance by virtue of section 10B.

(2) Where, apart from this subsection, a special measure would, in accordance with subsection (1)(a) or (b), be available in relation to a witness in any proceedings, it shall not be taken by a court to be available in relation to the witness unless -

- (a) the court has been notified by the Attorney General that relevant arrangements may be made available in the court in which the proceedings will take place; and
- (b) the notice has not been withdrawn.

(3) In subsection (2)(a) “relevant arrangements” means arrangements for implementing the measure in question which cover the witness and the proceedings in question.

(4) The withdrawal of a notice under that subsection relating to a special measure shall not affect the availability of that measure in relation to a witness if a special measures direction providing for that measure to apply to the witness's evidence has been made by the court before the notice is withdrawn.

(5) The Governor in Council may by Order make such amendments of this Part as he considers appropriate for altering the special measures which, in accordance with subsection (1)(a) or (b), are available in relation to a witness eligible for assistance by virtue of section 10A or, as the case may be, section 10B, whether -

- (a) by modifying the provisions relating to any measure for the time being available in relation to such a witness;
- (b) by the addition -
 - (i) with or without modifications, of any measure which is for the time being available in relation to a witness eligible for assistance by virtue of any other section; or
 - (ii) of any new measure; or
- (c) by the removal of any measure.

10D. (1) This section applies where in any criminal proceedings –

- (a) a party to the proceedings makes an application for the court to give a direction under this section in relation to a witness in the proceedings other than the accused; or
- (b) the court of its own motion raises the issue whether such a direction should be given.

(2) Where the court determines that the witness is eligible for assistance by virtue of section 10A or 10B, the court shall then -

- (a) determine whether any of the special measures available in relation to the witness, or any combination of them, would, in its opinion, be likely to improve the quality of evidence given by the witness; and
- (b) if so -
 - (i) determine which of those measures, or combination of them, would, in its opinion, be likely to maximise so far as practicable the quality of such evidence; and

- (ii) give a direction under this section providing for the measure or measures so determined to apply to evidence given by the witness.

(3) In determining for the purposes of this Part whether any special measure or measures would or would not be likely to improve, or to maximise so far as practicable, the quality of evidence given by the witness, the court shall consider all the circumstances of the case, including in particular -

- (a) any views expressed by the witness; and
- (b) whether the measure or measures might tend to inhibit such evidence being effectively tested by a party to the proceedings.

(4) A special measures direction shall specify particulars of the provision made by the direction in respect of each special measure which is to apply to the witness's evidence.

(5) Nothing in this Part is to be regarded as affecting any power of a court to make an order or give leave of any description, in the exercise of its inherent jurisdiction or otherwise -

- (a) in relation to a witness who is not an eligible witness; or
- (b) in relation to an eligible witness where for example, in a case where a foreign language interpreter is to be provided, the order is made or the leave is given otherwise than by reason of the fact that the witness is an eligible witness.

10E. (1) Subject to subsection (2) and section 10F(8), a special measures direction has binding effect from the time it is made until the proceedings for the purposes of which it is made are either -

- (a) determined by acquittal, conviction or otherwise; or
- (b) abandoned,

in relation to the accused, or if there is more than one, in relation to each of the accused.

(2) The court may discharge or vary or further vary a special measures direction if it appears to the court to be in the interests of justice to do so, and may do so either -

- (a) on an application made by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) of its own motion.

(3) In subsection (2)(a) "the relevant time" means -

- (a) the time when the direction was given; or
- (b) if a previous application has been made under that subsection, the time when the application, or last application, was made.

(4) Nothing in section 10I(2) and (3), 10J(4) to (7) or 10K(4) to (6) is to be regarded as affecting the power of the court to vary or discharge a special measures direction under subsection (2).

(5) The court shall state in open court its reasons for -

- (a) giving or varying;
- (b) refusing an application for, or for the variation or discharge of; or
- (c) discharging,

a special measures direction and, if it is a court of summary jurisdiction, the magistrate shall cause the reasons to be entered in the register of its proceedings.

(6) Rules of court may make provision -

- (a) for uncontested applications to be determined by the court without a hearing;
- (b) for preventing the renewal of an unsuccessful application for a special measures direction except where there has been a material change of circumstances;
- (c) for expert evidence to be given in connection with an application for, or for varying or discharging, such a direction; and
- (d) for the manner in which confidential or sensitive information is to be treated in connection with such an application and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

10F. (1) For the purposes of this section –

- (a) a witness in criminal proceedings is a “child witness” if he is an eligible witness by reason of section 10A(1)(a), whether or not he is an eligible witness by reason of any other provision of section 10A or 10B;
- (b) a child witness is “in need of special protection” if the offence, or any of the offences, to which the proceedings relate is -
 - (i) a sexual offence within the meaning of Part 14 of the Criminal Code;
 - (ii) a kidnapping, abduction or similar offence within the meaning of the Part 18 of the Criminal Code;
 - (iii) an assault offence within the meaning of section 222 to 227 of the Criminal Code;
 - (iv) a firearm offence within the meaning of the Part 18 of the Criminal Code; or
 - (v) a serious violent offence within the meaning of section 84(4) of the Criminal Code;

(vi) such other offence as the court consider appropriate.

- (c) a “relevant recording”, in relation to a child witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Where the court, in making a determination for the purposes of section 10D(2), determines that a witness in criminal proceedings is a child witness, the court shall -

(a) first have regard to subsections (3) to (7); and

(b) then have regard to section 10D(2),

and for the purposes of section 10D(2), as it then applies to the witness, any special measures required to be applied in relation to him by virtue of this section shall be treated as if they were measures determined by the court, pursuant to section 10D(2)(a) and (b)(i), to be ones that, whether on their own or with any other special measures, would be likely to maximise, so far as practicable, the quality of his evidence.

(3) The primary rule in the case of a child witness is that the court shall give a special measures direction in relation to the witness which complies with the following requirements -

(a) it shall provide for any relevant recording to be admitted under section 10J; and

(b) it shall provide for any evidence given by the witness in the proceedings which is not given by means of a video recording, whether in chief or otherwise, to be given by means of a live link in accordance with section 10I.

(4) The primary rule is subject to the following limitations -

(a) the requirement contained in subsection (3)(a) or (b) has effect subject to the availability within the meaning of section 10C(2) of the special measure in question in relation to the witness;

(b) the requirement contained in subsection (3)(a) also has effect subject to section 10J(2); and

(c) the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the witness's evidence so far as practicable, whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason.

(5) Subsection (4)(c) does not apply in relation to a child witness in need of special protection.

(6) Where a child witness is in need of special protection by virtue of subsection (1)(b)(i), any special measures direction given by the court which complies with the

requirement contained in subsection (3)(a) shall in addition provide for the special measure available under section 10K to apply in relation to-

- (a) any cross-examination of the witness otherwise than by the accused in person; and
- (b) any subsequent re-examination.

(7) The requirement contained in subsection (6) has effect subject to the following limitations -

- (a) it has effect subject to the availability, within the meaning of section 10C(2), of that special measure in relation to the witness; and
- (b) it does not apply if the witness has informed the court that he does not want that special measure to apply in relation to him.

(8) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 10A(1)(a), then -

- (a) subject to subsection (9); and
- (b) except where the witness has already begun to give evidence in the proceedings, the direction shall cease to have effect at the time when the witness attains the age of eighteen.

(9) Where a special measures direction is given in relation to a child witness who is an eligible witness by reason only of section 10A(1)(a) and -

- (a) the direction provides -
 - (i) for any relevant recording to be admitted under section 10J as evidence in chief of the witness; or
 - (ii) for the special measure available under section 10K to apply in relation to the witness; and
- (b) if it provides for that special measure to so apply, the witness is still under the age of eighteen when the video recording is made for the purposes of section 10K, then, so far as it provides as mentioned in paragraph (a)(i) or (ii), the direction shall continue to have effect in accordance with section 10F(1) even though the witness subsequently attains that age.

10G. (1) For the purposes of this section –

- (a) a witness in criminal proceedings, other than the accused, is a “qualifying witness” if he -

- (i) is not an eligible witness at the time of the hearing, as defined by section 10A(3); and
 - (ii) was under the age of eighteen when a relevant recording was made;
- (b) a qualifying witness is “in need of special protection” if the offence, or any of the offences, to which the proceedings relate is-
- (i) a sexual offence within the meaning of Part 14 of the Criminal Code;
 - (ii) a kidnapping, abduction or similar offence within the meaning of the Part 18 of the Criminal Code;
 - (iii) an assault offence within the meaning of section 222 to 227 of the Criminal Code;
 - (iv) a firearm offence within the meaning of the Part 18 of the Criminal Code; or
 - (v) a serious violent offence within the meaning of section 84(4) of the Criminal Code;
 - (vi) such other offence as the court considers appropriate.
- (c) a “relevant recording”, in relation to a witness, is a video recording of an interview of the witness made with a view to its admission as evidence in chief of the witness.

(2) Subsections (2) to (7) of section 10F shall apply as follows in relation to a qualifying witness -

- (a) subsections (2) to (4), so far as relating to the giving of a direction complying with the requirement contained in subsection (3)(a), shall apply to a qualifying witness in respect of the relevant recording as they apply to a child witness within the meaning of that section;
- (b) subsection (5), so far as relating to the giving of such a direction, shall apply to a qualifying witness in need of special protection as it applies to a child witness in need of special protection within the meaning of that section; and
- (c) subsections (6) and (7) shall apply to a qualifying witness in need of special protection by virtue of subsection (1)(b)(i) as they apply to such a child witness as is mentioned in subsection (6).

10H. (1) A special measures direction may provide for the witness, while giving testimony or being sworn in court, to be prevented by means of a screen or other arrangement from seeing the accused.

(2) The screen or other arrangement shall not prevent the witness from being able to see, and to be seen by -

- (a) the magistrate or judge, or both, and the jury, if there is one;
- (b) legal representatives acting in the proceedings; and
- (c) any interpreter or other person appointed in pursuance of the direction or otherwise to assist the witness.

(3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(b) is to be regarded as satisfied in relation to those representatives if the witness is able at all material times to see and be seen by at least one of them.

10I. (1) A special measures direction may provide for the witness to give evidence by means of a live link.

(2) Where a direction provides for the witness to give evidence by means of a live link, the witness may not give evidence in any other way without the permission of the court.

(3) The court may give permission for the purposes of subsection (2) if it appears to the court to be in the interests of justice to do so, and may do so either -

- (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) of its own motion.

(4) In subsection (3)(a) “the relevant time” means -

- (a) the time when the direction was given; or
- (b) if a previous application has been made under that subsection, the time when the application, or last application, was made.

10J. (1) A special measures direction may provide for a video recording of an interview of the witness to be admitted as evidence in chief of the witness.

(2) A special measures direction may, however, not provide for a video recording, or a part of such a recording, to be admitted under this section if the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording, or that part of it, should not be so admitted.

(3) In considering for the purposes of subsection (2) whether any part of a recording should not be admitted under this section, the court shall consider whether any prejudice to the accused which might result from that part being so admitted is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if -

- (a) it appears to the court that -
 - (i) the witness will not be available for cross-examination, whether conducted in the ordinary way or in accordance with any such direction; and
 - (ii) the parties to the proceedings have not agreed that there is no need for the witness to be so available; or
- (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.

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

- (a) the witness shall be called by the party tendering it in evidence, unless -
 - (i) a special measures direction provides for the witness's evidence on cross-examination to be given otherwise than by testimony in court; or
 - (ii) the parties to the proceedings have agreed as mentioned in subsection (4)(a)(ii); and
- (b) the witness may not give evidence in chief otherwise than by means of the recording -
 - (i) as to any matter which, in the opinion of the court, has been dealt with adequately in the witness's recorded testimony; or
 - (ii) without the permission of the court, as to any other matter which, in the opinion of the court, is dealt with in that testimony.

(6) Where in accordance with subsection (2) a special measures direction provides for part only of a recording to be admitted under this section, references in subsections (4) and (5) to the recording or to the witness's recorded testimony are references to the part of the recording or testimony which is to be so admitted.

(7) The court may give permission for the purposes of subsection (5)(b)(ii) if it appears to the court to be in the interests of justice to do so, and may do so either -

- (a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or
- (b) of its own motion.

(8) In subsection (7)(a) "the relevant time" means -

- (a) the time when the direction was given; or
- (b) if a previous application has been made under that subsection, the time when the application, or last application, was made.

(9) The court may, in giving permission for the purposes of subsection (5)(b)(ii), direct that the evidence in question is to be given by the witness by means of a live link; and, if the court so directs, section 10I shall apply in relation to that evidence as they apply in relation to evidence which is to be given in accordance with a special measures direction.

(10) Nothing in this section affects the admissibility of any video recording which would be admissible apart from this section.

10K. (1) Where a special measures direction provides for a video recording to be admitted under section 10J as evidence in chief of the witness, the direction may also provide –

- (a) for any cross-examination of the witness, and any re-examination, to be recorded by means of a video recording; and
- (b) for such a recording to be admitted, so far as it relates to any such cross-examination or re-examination, as evidence of the witness under cross-examination or on re-examination, as the case may be.

(2) A recording pursuant to subsection (1) shall be made in the presence of such persons as rules of court or the direction may provide and in the absence of the accused, but in circumstances in which -

- (a) the magistrate or judge, or both, and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the persons in whose presence the recording is being made; and
- (b) the accused is able to see and hear any such examination and to communicate with any legal representative acting for him.

(3) Where two or more legal representatives are acting for a party to the proceedings, subsection (2)(a) and (b) are to be regarded as satisfied in relation to those representatives if at all material times they are satisfied in relation to at least one of them.

(4) Where a special measures direction provides for a recording to be admitted under this section, the court may nevertheless subsequently direct that it is not to be so admitted if any requirement of subsection (2) or rules of court or the direction has not been complied with to the satisfaction of the court.

(5) Where in pursuance of subsection (1) a recording has been made of any examination of the witness, the witness may not be subsequently cross-examined or re-

examined in respect of any evidence given by the witness in the proceedings, whether in any recording admissible under section 10J or this section or otherwise than in such a recording, unless the court gives a further special measures direction making such provision as is mentioned in subsection (1)(a) and (b) in relation to any subsequent cross-examination, and re-examination, of the witness.

(6) The court may only give such a further direction if it appears to the court -

- (a) that the proposed cross-examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the original recording was made in pursuance of subsection (1), of a matter which that party could not with reasonable diligence have ascertained by then; or
- (b) that for any other reason it is in the interests of justice to give the further direction.

(7) Nothing in this section shall be read as applying in relation to any cross-examination of the witness by the accused in person in a case where the accused is to be able to conduct any such cross-examination.

10L. Where on a trial on indictment evidence has been given in accordance with a special measures direction, the judge shall give the trier of fact such warning, if any, as the judge considers necessary to ensure that the fact that the direction was given in relation to the witness does not prejudice the accused.

10M. In sections 10A to 10M –

“special measures” direction means a direction under sections 10A to 10M;

“live link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the persons specified in section 10H(2)(a) to (c).”.

Insertion of section 29A

13. The principal Act is amended by inserting the following section directly after section 29-29A. Video Recordings of testimony from witnesses

(1) In any proceedings, a video recording of an interview which-

- (a) is conducted with a witness; and
- (b) relates to any matter in issue in the proceedings,

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

(2) 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 (1) unless-

- (a) it appears that the 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.

(3) In considering whether any part of the recording ought to be excluded under subsection (2), 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.

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

(a) the witness shall be called by the party who tendered it in evidence; and

(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.

(5) Where a video recording is given in evidence under this section, any statement made by the witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony; and accordingly any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible 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).

(6) Where the court gives leave under subsection (1), the witness shall not give relevant evidence (within the meaning of subsection (9)) otherwise than by means of the video recording; but this is subject to subsection (7).

(7) In a case falling within subsection (6), the court may give permission for the witness to give relevant evidence (within the meaning of subsection (9)) 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.

(8) Permission may be given under subsection (7) on an application by a party to the case or of the court's own motion.

(9) For the purpose of subsections (6) and (7), 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 (2).

(10) In this section-

“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.

Insertion of section 31B

14. The principal Act is amended by inserting the following section directly after section 46—

“Complainants in proceedings for sexual offences.

31B.(1) No person charged with a sexual offence may in any criminal proceedings cross-examine in person a witness who is the complainant, either—

- (a) in connection with that offence, or
- (b) in connection with any other offence (of whatever nature) with which that person is charged in the proceedings

(2) Where this section applies, the court shall—

- (a) invite the accused to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and
- (b) require the accused to notify the court, by the end of two weeks or such other period as it may specify, whether a legal representative is to act for him for that purpose.

(3) If by the end of the period mentioned in subsection (2)(b) either—

- (a) the accused has notified the court that no legal representative is to act for him for the purpose of cross-examining the witness, or
- (b) no notification has been received by the court and it appears to the court that no legal representative is to so act,

the court must consider whether it is necessary in the interests of justice for the witness to be cross-examined.

(4) If the court decides that it is necessary in the interests of justice for the witness to be so cross-examined, the court must appoint a legal representative to be present for the examination of, and to conduct the cross examination of the witness on behalf of the accused, and order that the reasonable professional costs of that legal representative be met by the Attorney General.

(5) For the purposes of this section—

- (a) any reference to cross-examination includes a reference to further cross-examination; and
- (b) “legal representative” means a legal representative who has a right of audience in relation to the proceedings before the court.

(6) Where this section applies, the judge must give the jury such warning (if any) as the judge considers necessary to ensure that the accused is not prejudiced—

- (a) by any inferences that might be drawn from the fact that the accused has been prevented from cross-examining the witness in person; and

- (b) where the witness has been cross-examined by a legal representative appointed by the Court, by the fact that the cross-examination was carried out by the legal representative and not by the accused or a person acting as the accused's own legal representative.

Insertion of section 47A

15. The principal Act is amended by inserting the following section directly after section 47—

“Rules

47A.(1) The Governor in Council may make rules regulating criminal procedure.

(2) A rule under this section is a regulation.”.

PART 4

AMENDMENTS TO THE ANGUILLA POLICE ACT

Interpretation

16. In this Part the “principal Act” means the Anguilla Police Act, R.S.A. c. A70.

Insertion of section 72(3A)

17. The principal Act is amended by inserting the following section directly after section 72(3)—

“72(3A). (1) The Governor In Council may make rules in connection with the recording of interviews of persons suspected of the commission of criminal offences which are held by police officers at police stations.

(2) A recording under this section may be in whatever medium it is recorded including for example, in hard copy, tape recording or other electronic form, or as a sound or visual recording.”.

Insertion of Part 2A

18. The principal Act is amended by inserting the following directly after Part 2—

PART 2A
CAUTIONS

Definitions

- 18A. In this Part—

“caution record” means a record kept by the Anguilla Police Force containing a person’s information in relation to a caution for an offence; and

“suspect” means a person sixteen years or older who is alleged to have committed an offence or who has been charged with an offence.

Cautioning of suspects

18B. (1) Despite sections 20(b), 20(e) and 23 of this Act, section 37 of the Magistrate’s Code of Procedure Act M5, and the provisions of Part 3 of the Criminal Procedure Code, where a suspect has behaved in a manner that amounts to an offence and the suspect has admitted to so behaving, a police officer, or, if a charge has already been brought, the Attorney General, may caution the suspect in accordance with this Act instead of charging, or prosecuting the suspect for the offence constituted by that behaviour.

Qualifying conditions for cautions

18C. A suspect may be cautioned for an offence if—

- (a) a police officer, or the Attorney General, as the case may be, believes there is sufficient evidence to provide a realistic prospect of conviction for the offence;
- (b) the suspect has admitted that the suspect is guilty of the offence and agrees to be cautioned for it;
- (c) the offence attracts a maximum custodial sentence of less than four years or is an offence specified in the Schedule; and
- (d) in the opinion of -
 - (i) a police officer of the rank of Inspector or above; or
 - (ii) in the opinion of the Attorney General, where a charge has already been brought for the offence,

the circumstances of the suspect or the offence are such that the matter is suitable for a caution and the suspect is not ineligible for a caution under section 18D.

Suspects not eligible for caution

18D. A suspect is not eligible to be cautioned for an offence if at the time of the alleged commission of the offence, the suspect—

- (a) had in the preceding three years been convicted or cautioned for a similar offence;
- (b) was on police or court bail; or
- (c) was -
 - (i) serving a sentence of imprisonment;
 - (ii) subject to recall to prison on licence;

- (iii) subject to a non-custodial sentence; or
- (iv) subject to proceedings for an offence under the Drugs (Prevention of Misuse) Act D045.

Form of a caution

18E. (1) A caution shall take the form of a written document that is—

- (a) read to the suspect by a police officer; and
- (b) signed by the suspect and the police officer of the rank of Inspector or above.

(2) The written document shall contain—

- (a) the name, date of birth, address and occupation of the suspect;
- (b) the particulars of the offence to which the suspect admits, including the date, time and location of the offence and the name of the officer reporting the offence;
- (c) a notice to the suspect stating that -
 - (i) the caution will be recorded by the police and may be disclosed as part of the suspect's caution record;
 - (ii) if the suspect is subsequently convicted of any offence, that the existence of the caution may be revealed to the court dealing with the suspect for any subsequent offence; and
 - (iii) a court may take a caution into account when dealing with the suspect for any subsequent offence;
- (d) the name of the police officer who authorised the caution and the name of the police officer administering the caution; and
- (f) an acknowledgement by the suspect that -
 - (i) the suspect committed the offence specified in the document;
 - (ii) the suspect understands the contents of the caution document and the notice set out therein; and
 - (iii) the suspect has agreed to be cautioned for the offence.

Record of cautions

18F. (1) Where a caution has been administered to a suspect, the original written document shall be retained by the police officer and the suspect shall be provided with a copy.

(2) A caution shall be recorded in the prescribed register of cautions and the fact that a caution has been administered to a suspect shall form a part of that suspect's caution record.

Effect of a caution in court proceedings

18G. Where a person is convicted of an offence within 12 months of the administration of a caution, the court may take the caution into account when dealing with the person for the subsequent offence.

Effect of a caution and disqualification under other Act

18H. Where an Act disqualifies or potentially disqualifies a person convicted of an offence from conducting specified activities or from holding specified positions, the Act shall apply to a person to whom a caution has been administered in the same manner as if that person had been convicted of the offence, unless a provision to the contrary appears in that Act.

Expunging a caution record

18I. (1) Where a person has been administered a caution in relation to an offence, upon the expiration of one year from the date of the administering of that caution, that person's caution record in relation to that offence shall be treated as expunged.

Written policy and Standing Orders

18J. (1) The Attorney General shall, with the approval of the Governor in Council, prepare a written policy in relation to the administration of cautions.

(2) The Commissioner of Police shall issue Standing Orders to the members of the Anguilla Police Force in relation to the administration of cautions.

(3) No caution shall be administered prior to preparation of the policy under subsection (1) and the issuance of the Orders under subsection (2).

Amendment of Schedule

18L. (1) The Governor in Council may, by Order, amend the Schedule.

(2) An Order made under subsection (1) is subject to negative resolution of the Legislative Council."

Insertion of Schedule

19. The principal Act is amended by inserting the following Schedule after section 91—

“SCHEDULE

OFFENCES FOR WHICH CAUTIONS MAY BE ISSUED

The offences for which cautions may be issued are as follows:

1. All offences punishable summarily only

2. All offences punishable both summarily and on indictment with the written authority of a police officer of at least the rank of Inspector (or deputising at that rank)
3. Offences punishable Indictable only with written authority of the Attorney General

PART 5

AMENDMENTS TO THE VEHICLES AND ROAD TRAFFIC ACT

Interpretation

20. In this Part the “principal Act” means the Vehicles and Road Traffic Act, R.S.A. c. V010.

Insertion of sections 50A and 50B

21. The principal Act is amended by inserting the following section directly after section 50, however s. 50B shall not come into force until the expiration of one year after this Act comes into force —

“Seatbelts

“50A. (1) The driver and every front seat passenger in any motor vehicle other than vehicles excepted by Order of the Minister shall wear a seat belt while the motor vehicle is in motion.

(2) The driver of a motor vehicle to which subsection (1) applies shall not without reasonable excuse drive a vehicle while there is a front seat passenger who is not wearing a seat belt.

(3) Any person who contravenes the provisions of subsection (1) or subsection (2) is guilty of an offense and liable on summary conviction to a fine of one thousand dollars.

(4) A person shall not be convicted under this section if he proves that the material time he or the passenger, as the case be, held a valid certificate signed by a legally qualifying medical practitioner to the effect that it is inadvisable on medical grounds for him or the passenger to wear a seat belt and the certificate shall be valid for a period of no more than two years from the date of issue.

(5) The Governor on the advice of the Executive Council may make regulations exempting persons from the provisions of subsection (1).

50B. (1) The driver of a motor vehicle to which subsection 50A(1) applies—

- (a) shall not, without reasonable excuse, drive his vehicle while there is in the front seat of the vehicle a child of five (5) years of age or less and,
- (b) shall ensure that a child—

- (i) under six (6) months of age, be restrained in a properly fastened and adjusted, rearward facing child restraint;
 - (ii) over six (6) months and under four (4) years of age, be restrained in a properly fastened and adjusted, rearward facing child restraint or a forward facing child restraint that has in in-built harness; and
 - (iii) over four years and under six years of age, be restrained in a properly fastened and adjusted, forward facing child restraint that has an in-built harness or an approved booster seat that is properly positioned and fastened.
- (2) Subsection (1)(b) shall not apply to a driver of a public service vehicle.
- (3) The driver of a motor vehicle who contravenes this section commits an offence and is liable on summary conviction to a fine of one thousand dollars.
- (4) The driver of a motor vehicle is not guilty of an offense under this section
- (a) if he proves that the child held a valid certificate signed by a medical practitioner to the effect that is inadvisable on the medical grounds for the child to be placed in a child restraint or a booster seat and the certificate shall be valid for a period of no more than two years from the date of issue; or
 - (b) where there is only one row of seats in the vehicle.”.
- (5) This section shall not come into force until the Governor In Council makes a Regulation specifying the coming into force of the section, notwithstanding any other provision in this Act.

Insertion of section 50C

22. The principal Act is amended by inserting the following section directly after section 50B—

“Wireless communication and entertainment devices

50C. (1) A person shall not drive a motor vehicle on a road while holding or using a hand-held wireless communication device or other prescribed device that is capable of receiving or transmitting telephone communications, electronic data, mail or text messages.

(2) A person shall not drive a motor vehicle on a road while holding or using a hand-held electronic entertainment device or other device the primary use of which is unrelated to the safe operation of the motor vehicle.

(3) Despite subsection (1), a person may drive a motor vehicle on a road while using a device described in that subsection in hands-free mode if the device is in a suitable mount designed for that purpose.

(4) Subsection (1) does not apply to the driver of an ambulance, fire department vehicle or police department vehicle.

(5) Subsection (1) does not apply in respect of the reasonable use of a device to contact ambulance, police or fire department emergency services.

(6) Subsections (1) and (2) do not apply if all of the following conditions are met:

(a) The motor vehicle is off the roadway or is lawfully parked on the roadway;

(b) The motor vehicle is not in motion; and

(c) The motor vehicle is not impeding traffic.

(7) A person who contravenes this section is guilty of an offence and on conviction is liable to a fine not exceeding \$1,000.”.

Amendment of Section 51

23 Section 51 of the principal Act is amended

(a) in subsection (1) by deleting the subsection and substituting it with the following—

“(1) Any person who, when driving or attempting to drive, or when in charge of, a motor vehicle on a road is unfit to drive through drink or drugs, commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 2 years, and in the case of a second or subsequent conviction either to a fine of \$20,000 or to imprisonment for a term of 4 years or to both.

(1A) For the purposes of this section, a person shall be taken to be unfit to drive if the consumption of liquor or drugs has made him unable to drive properly at the time of the driving. and

(b) in subsection (2) by deleting the words “permanently disqualified from holding or obtaining a driver’s licence” appearing at the end and substituting the words “disqualified for a period of at least three years”.

Insertion of section 51A

24. The principal Act is amended by inserting the following section directly after section 51—

“Driving while intoxicated

51.A (1) Any person who, when driving or attempting to drive, or when in charge of, a motor vehicle on a road has his blood alcohol level above the limit prescribed by the Governor on the advice of Executive Council, is guilty of an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 2 years, and in the case of a second or subsequent conviction either to a fine of \$20,000 or to imprisonment for a term of 4 years or to both.

(2) A police officer may obtain a breath sample from a person for the purpose of determining blood alcohol level if he has reasonable cause to suspect that the person is or has been committing an offence under this section.

(3) A person who wilfully fails or refuses to supply a breath sample when lawfully requested by a police officer for the purpose of subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 2 years, and in the case of a second or subsequent conviction either to a fine of \$20,000 or to imprisonment for a term of 4 years or to both.

(4) Subsections (2) and (3) of section 51 apply to an offence under this section as it applies to an offence under section 51.”.

Amendment of section 91

25. The principal Act is amended by deleting ‘and’ after paragraph (al) and inserting the following directly after it —

“(am) prescribe the form of notice to be used under this Act;

(an) prescribe the duties of the clerks of the Magistrate’s Court and the information to be supplied to them; and

(ao) provide for any matter incidental to the operation of this Act.”.

Repeal and substitution of section 94

26. The principal Act is amended by repealing section 94 and substituting the following—

“Member of Police service may give or affix notice

94. (1) A police officer may give to the driver of the motor vehicle who commits an offence in Schedule 3 a notice charging him with the commission of the offence and requiring him either to pay the penalty set out in Schedule 3 in respect of the offence within the time specified in the notice or to appear at the court specified in the notice on the day and hour stipulated therein for the purpose of answering the charge.

(2) If the driver of the motor vehicle is not present at the place of the commission of the offence a member of the police force may affix the notice to such part of the vehicle as may readily be seen by a driver of that vehicle.

(3) If a notice is affixed to a motor vehicle, it is deemed to have been given to the person liable for the offence, and despite any law to the contrary, the registered owner of the vehicle shall, for the purposes of the proceedings instituted by the notice, be the person liable for the offence.

Time when notice to be given or affixed

94A. A notice under section 94 shall be given or affixed at the time of the commission of the offence, and where the circumstances render it impracticable so to do, any charge or notice to be issued in respect of the offence shall be issued in accordance with this Act.

Notice to be sent to Magistrate

94B. (1) Where a member of the police service gives a notice under section 94(1) or affixes a notice under section 94(2) he shall send a copy of the notice to the Magistrate and to the registered owner of the motor vehicle.

(2) A copy of a notice is a complaint laid before a Magistrate for the purposes of the Magistrate's Code of Procedure Act.

Particulars to be specified in notice

94C. A notice under section 94 shall be signed by the police officer who gives or affixes it, and shall specify—

- (a) the date, time and place of the giving or affixing of the notice;
- (b) the section of the enactment creating the offence and the act alleged to have been committed which amounts to a contravention of that section;
- (c) the time within which the penalty is payable;
- (d) the amount of the penalty;
- (e) the address of the court into which the penalty is to be paid;
- (f) the address of the court at which the person is required to appear in the event of his failure to pay the penalty within the specified time.

Payment of penalty

94D. (1) The driver or registered owner of a motor vehicle on whom notice has been served under section 94 shall, if he wishes to plead guilty to the charge, pay the penalty in accordance with the notice.

(2) A penalty is payable within ten days of the date of the notice.

(3) Payment of a penalty shall be made to a Clerk of the Magistrate's Court and shall be dealt with in the same manner as the payment of a fine imposed by a Magistrate for the commission of an offence.

(4) Where a penalty is duly paid in accordance with the notice the Magistrate shall enter conviction and the proceedings instituted by the notice shall be deemed complete.

Procedure in case of failure to pay penalty

94E. (1) Where a penalty is not paid within the time specified in the notice, the Magistrate may issue a summons in accordance with section 21 of the Magistrate's Code of Procedure Act and proceedings in respect of the offence shall proceed in the manner prescribed by that enactment.

(2) Despite the provisions of this Act, where a person is issued with a notice under this Act and elects to answer the charge in court, he shall, if convicted of the offence charged, be liable to a fine of not less than the amount for which he is liable under this Act in respect of that offence.

(3) Where, in proceedings for an offence in respect of which a notice was affixed under section 94(2) the Magistrate is satisfied that the registered owner of the motor vehicle had not paid the penalty in accordance with section 94D(1) for the reason that he was unaware during the relevant period of the existence of the notice, the Magistrate may order that the penalty contained in the notice be paid within ten days of that order.

(4) For the purpose of subsection (3), “relevant period” means a period of ten days from the date a notice is affixed to a vehicle under section 94(2).

Certificate of payment

94F. In any proceedings under this Act a certificate signed by the Clerk of the Magistrate stating that a penalty has not been paid, or has been paid on a specified date shall be sufficient evidence of that fact unless the contrary is proved.

Unauthorised interference with notice

94G. A notice affixed to a vehicle under section 94 shall not be removed or interfered with except by or under the authority of the driver of the vehicle or the person liable for the offence in question and any person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$500.”

Amendment to Schedule 3

27. Schedule 3 is to be amended to include offences pursuant to sections 50A, 50B AND 50C each with a fine of \$ 200.

PART 6

AMENDMENTS TO THE DRUGS (PREVENTION OF MISUSE) ACT

Interpretation

28. In this Part the “principal Act” means the Drugs (Prevention of Misuse) Act, R.S.A. c. D045.

Amendment of Section 7

29. Section 7 of the principal Act is amended by deleting subsection (1) and substituting it with the following—

“(1) Subject to any regulations under section 9, a person shall be deemed not to have a controlled drug in his possession, if that drug is only cannabis that is less than or equal to the statutory threshold in Schedule 4:

Provided that the Attorney General has the discretion to prosecute regardless of quantity and the foregoing provisions of this subsection, only if the evidence indicates an intention to supply quantities which exceed those prescribed by Schedule 4, contrary to section 6(3) of the Drugs (Prevention of Misuse) Act;”.

Insertion of section 24A

30. The principal Act is amended by inserting the following section directly after section 25—
“Police powers to seize cannabis

“24A. (1) A police officer of any rank shall have lawful authority to seize any amount of cannabis in the possession of any person.

(2) The Governor In Council may make Regulations regulating the operation of the power of a police officer to seize any amount of cannabis in possession of any person”.

Insertion of Schedule 4

31. The principal Act is amended by inserting the following Schedule after Schedule 3—

“SCHEDULE 4

(Sections 7(1) & (2))

STATUTORY AMOUNT OF CANNABIS WHERE CRIMINAL SANCTIONS

DO NOT APPLY

Controlled Drug	Weight
(a) Cannabis	10 grams.”.

PART 7

AMENDMENT TO THE MAGISTRATE’S CODE OF PROCEDURE ACT

Interpretation

32. In this Part the “principal Act” means the Magistrate’s Code of Procedure Act R.S.A. c. M5

Insertion of section 225A

33. The principal Act is amended by inserting the following section directly after section 225—

“When written statements may be read in criminal proceedings

“225A(1) In this section, “written statement” means a statement made by a person about a crime that is reduced into writing by the person making it or that is recorded by a police officer before whom it is made and signed by the maker and

(2) is of a category of statement as prescribed by Regulations made by the Governor In Council.
(2) In any criminal proceedings a written statement, with or without exhibits, by any person shall, if such of the conditions mentioned in subsection (3) as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(3) The conditions referred to in subsection (1) are—

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each accused together with a notice that the accused may object to the admission of the evidence of any such statement or part thereof; and

(d) none of the other parties or their counsel, within 7 days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section;

but the conditions mentioned in paragraphs (c) and (d) do not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(4) The following provisions shall also have effect in relation to any written statement tendered in evidence under this section—

(a) if the statement is made by a person under the age of 18, it shall give his age;

(b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read;

(c) if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under paragraph (3)(c) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof;

(d) in the case of a statement that indicates in pursuance of paragraph (a) that the person making it has not attained the age of 14, paragraph (3)(b) shall have effect as if for the words from “made” onwards there were substituted the words “understands the importance of telling the truth in it”.

(5) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of this section—

(a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and

(b) the Court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the Court and give evidence.

(6) An application under paragraph (5)(b) to a Judge of the Court may be made before the hearing.

(7) So much of any statement as is admitted in evidence by virtue of this section shall, unless

the Court otherwise directs, be read aloud at the hearing and where the Court so directs, an account shall be given orally of so much of any statement as is not read aloud.

(8) Any document or object referred to as an exhibit and identified in a written statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in Court by the maker of the statement.

(9) A document required by this section to be served on any person may be served—

(a) by delivering it to him or to his counsel;

(b) by addressing it to him and leaving it at his usual or last known place of abode or place of business or by addressing it to his counsel and leaving it at his office;

(c) by sending it in a registered letter addressed to him at his usual or last known place of abode or place of business or addressed to his counsel at his office; or

(d) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or sending it in a registered letter addressed to the secretary or clerk of that body at that office.

Citation

34. This Act may be cited as the Criminal Justice Reform Act, 2018.

Terry Harrigan
Deputy Speaker

Passed by the House of Assembly this day of , 2018.

Lenox J. Proctor
Clerk of the House of Assembly

OBJECTS AND REASONS

[The Objects and Reasons do not form part of this Bill]

The Criminal Justice Bill seeks to update and amend aspects of the criminal justice system in Anguilla.

Clauses 1 to 8 amend the Criminal Code R.S.A. c. C140

Clause 1 is the interpretation section

Clause 2 and **3** create new offence of “Grooming- 148A”. This is a sexual offence against a minor. Under this section it is an offence to arrange a meeting with a child, with the intent of sexually abusing the child.

Clause 4 creates the offence of “child pornography-161A”. This is a sexual offence against a minor. Under this section it is an offence to print, possess etc any material which falls within the definition of child pornography.

Clause 5 amends the offence of rape to include a woman or a girl under the age of 18 years.

Clause 6 creates the offence of publication of an intimate image of a person without that persons consent.

Clause 7 inserts Part 27 which deals with rehabilitation of Offenders. This part makes provision for the issuing of spent conviction certificates to person who qualify for same. It sets out the terms for granting of the certificates and appeal process where applicant’s application is refused.

Clause 8 creates 3 new Schedules. The existing Schedule becomes Schedule 1. New Schedule 2 is divided into two Parts. Part A deals with Offences that are excluded from rehabilitation. Persons who are convicted of an offence listed in Part are a disqualified from being granted a spent conviction certificate. Part B outlines the Period of Rehabilitation taken into consideration when granting the certificates. Schedule 3 outlines what offence fall within the category of negligible offences. Schedule 4 is divided into two Parts. Part 1 provides the Application Form to be filled out by applicants applying for a Spent Conviction Certificate. Part 2 provides for Form 2 which details the Spent Conviction Certificate

Clauses 9 to 15 amend the Evidence Act R.S.A. c. E65

Clause 9 is the interpretation section

Clause 10 creates a new section 13A which deals with audio and video recording. This section allows for audio or video evidence which recorded by a police to be admissible in court.

Clause 11 creates a new section which deals with formal admissions.

Clause 12 creates new sections 10A-10M. These sections deal with vulnerable witness due to age or otherwise and provides that assistance may be granted to witnesses who fall within the aforementioned categories.

Clause 13 makes provision for the video recording of testimony given by witnesses in court.

Clause 14 prohibits a person charge with a sexual offence from cross examining in person a witness who is a complainant in criminal proceedings.

Clause 15 makes provision for the making of rules regulating criminal procedure by the Governor in Council.

Clauses 16 to 19 amend the Anguilla Police Act R.S.A. c. A70

Clause 16 deals with the interpretation section for clauses 16 to 19.

Clause 17 amends section 72 by providing that the Governor in Council may make rules in connection with the recording of interviews of persons suspected of committing criminal offence.

Clause 18 creates a new Part 2A which deals with Cautioning of witnesses. This Part details the circumstances under which a suspect may be cautioned, the circumstances under which a suspect is not eligible to be cautioned and the form of caution that may be given to a suspect. The cautioning of a suspect shall be recorded.

Clause 19 inserts a new Schedule which deals with offences for which cautions may be issued.

Clauses 20 to 27 amend the Vehicle Road and Traffic Act R.S.A. c. V10

Clause 20 is the interpretation section for clauses 20 to 27.

Clause 21 makes it mandatory for a driver of a motor vehicle to wear a seat belt while driving. This clause also creates a duty for a driver of a motor vehicle to ensure his front seat passenger wears a seat belt while driving in a vehicle driven by the driver. Clause 21 also puts the onus on a driver of a vehicle to ensure that any child passenger driving in a vehicle driven by the driver is properly restrained while the vehicle is being driven as outlined in clause 21.

Clause 22 makes it an offence for a person to use or hold a handheld wireless communication device or other prescribed device while driving. Clause 22 also makes it an offence for a person to drive a motor vehicle on a road while holding or using a hand-held electronic entertainment device, the primary use of which is unrelated to the safe operation of the motor vehicle. This clause does not apply to driver using a hands free device appropriately mounted inside the vehicle nor a driver using said device in emergency situation or to contact emergency services. Clause 22 also does not apply where the vehicle is stationary, parked legally off the road or not impeding traffic. Lastly, clause 22 is not applicable to a driver of an ambulance, fire department vehicle or police department vehicle.

Clause 23 makes it an offence to drive if made unfit to do so by the consumption of drugs or alcohol.

Clause 24 makes it an offence for a person to drive or to attempt to drive while intoxicated or to be in charge of a motor vehicle while intoxicated. A person is deemed to be intoxicated under this section where his blood alcohol level is above the limit prescribed by the Governor on the advice of Executive Council.

Clause 25 increases the regulation making power of the Governor in Council.

Clauses 26 to 27 speaks the process whereby a police officer may give to a driver of a motor vehicle who commits an offence outlined in Schedule 3, a notice charging him with the commission of the offence and requiring him either to pay the penalty set out in Schedule 3 in respect of the offence within the time specified in the notice or to appear at the court specified in the notice on the day and hour stipulated therein for the purpose of answering the charge.

Clauses 28 to 31 amend the Drugs (Prevention of Misuse) Act R.S.A. c. D45

Clause 28 is the interpretation section for Clauses 28 to 31.

Clause 29 provides that possession of cannabis equal to or less than the amounts prescribed in Schedule 4 will not amount to a charge of possession of a controlled drug, subject to the Attorney General retaining a discretion to prosecute if the evidence suggests the person in possession intended to supply a controlled drug.

Clause 30 speaks to the police powers to seize cannabis.

Clause 31 provides a Schedule which outlines the statutory amounts of cannabis where criminal sanctions will not be applicable.

Clauses 32 to 33 amend the Magistrate's Code of Procedure Act R.S.A. c. M5

Clause 32 is the interpretation section for Clauses 32 to 33.

Clause 33 outlines when written statements may be read in criminal proceedings.

Clause 34 provides the citation for the Bill.

John McKendrick QC
Attorney General