

A BILL

entitled

CRIMINAL CODE AMENDMENT ACT 2020

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WHEREAS it is expedient to amend the Criminal Code Act 1907 to strengthen measures to protect young persons from sexual offences by persons in a position of trust;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Criminal Code Amendment Act 2020.

Amends section 182E

2 The Criminal Code Act 1907 is amended in section 182E(1) by deleting "by means of a communications medium," and substituting "whether orally or in writing, by means of a communications medium or in any other manner,".

Inserts section 182EA

3 The Criminal Code Act 1907 is amended by inserting after section 182E the following—

"Luring of young person by a person in a position of trust

182EA (1) A person who, being in a position of trust or authority towards a young person, or being a person with whom a young person is in a relationship of dependency communicates with the young person whether orally, in writing, by

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means of a communications medium or in any other manner for the purpose of committing any of the acts described in sections 177(1), 180, 181(1), 182A(1), 182B(1), 184(1), 185(1), 187(1), 188(1), 189, or 323, commits an offence.

(2) A person who is convicted of an offence under subsection (1) is liable—

(a) on conviction on indictment to imprisonment for fifteen years;

(b) on summary conviction to imprisonment for five years.

(3) It is no defence to a charge under this section that the accused believed that the person was eighteen years of age or older unless the accused took all reasonable steps to ascertain the age of the person.

(4) In this section, “young person” means a person under the age of eighteen years.”.

Amends section 329D

4 The Criminal Code Act 1907 is amended in section 329D(1) in the definition of “sexual offence” by inserting after paragraph (xv) the following—

“(xva) luring of a young person by person in a position of trust (section 182EA);”

Consequential amendment of Police and Criminal Evidence Act 2006

5 Part II of Schedule 1 to the Police and Criminal Evidence Act 2006 is amended by inserting after paragraph 27 the following—

“27A. Section 182EA (luring by person in a position of trust).”.

Savings

6 For the avoidance of doubt, nothing in section 3 of this Act shall be construed as affecting section 233(3).

Commencement

7 This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Criminal Code Act 1907 (the “Criminal Code”) to strengthen measures for the protection of children from sexual offences by persons in a position of trust.

Clause 1 provides a title for the Bill.

Clause 2 amends section 182E of the Criminal Code to include additional methods of communication, other than electronic means.

Clause 3 inserts section 182EA in the Criminal Code to create an offence of luring by persons in a position of trust. The new section will cover young persons under the age of 18. The section is intended to cover situations where an adult (A) who is in a position of trust, communicates with a young person for the purpose of committing a sexual offence against the young person. The intended sexual offence does not have to take place. The evidence of A’s intention to commit an offence against a young person may be drawn from the communications between A and the young person or may be drawn from other circumstances.

Clause 4 amends section 329D of the Criminal Code to add the section 182EA offence to the current listing of sexual offences therein.

Clause 5 amends Schedule 1 to the Police and Criminal Evidence Act 2006 to add the section 182EA offence to the list of serious arrestable offences.

Clause 6 provides for savings. In the event that there is a prosecution for an offence referred to in section 182EA with respect to a young person who is 16 or 17 years of age, factors that might be taken into consideration may include the ages of the parties, and whether there was consent. This clause confirms that the evidential presumptions about consent with respect to an offence where an accused is a person in a position of trust, are not affected by the section 182EA offence.

Clause 7 provides for commencement.