CAYMAN ISLANDS

CRIMINAL PROCEDURE (AMENDMENT) BILL, 2025

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A BILL FOR AN ACT TO AMEND THE CRIMINAL PROCEDURE CODE (2021 REVISION) TO REGULATE THE PROCEDURE WHEN PERSONS ARE FOUND NOT GUILTY BY REASON OF INSANITY OR ARE UNFIT TO PLEAD; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

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

Memorandum of

OBJECTS AND REASONS

The Bill seeks to amend the Criminal Procedure Code (2021 Revision) ("the principal Act") to regulate the procedure when persons are found not guilty by reason of insanity and to deal with incidental and connected purposes.

Clause 1 provides the short title of the legislation.

Clause 2 amends section 48 of the principal Act which deals with persons who are found unfit to plead (or put forward their defence) following an inquiry by the court pursuant to section 47 of the principal Act.

Clause 3 repeals and replaces section 158 of the principal Act to simplify the language of that section. Section 158 deals with special verdicts where accused are found insane at the time the offence is charged. It provides that where in an indictment —

(a) an act or omission is charged against a person as an offence; and

(b) it is given in evidence on that person's trial for that offence that that person was insane so as not to be responsible, according to law, for that person's actions at the time when the act was done or omission made,

then, if it appears to the jury before whom that person is tried that that person did the act or made the omission charged but was insane at the time when the person did the act or made the omission, the jury shall return a special verdict that the accused is not guilty of the act or omission by reason of insanity.

Clause 4 repeals and replaces section 159 of the principal Act to provide for the powers of the court to deal with persons found not guilty by reason of insanity or who are unfit to plead. This will replace the power of the Governor in such cases. The court would be empowered in any such case to issue several types of orders which are —

(a) a supervision order;

(b) a treatment order;

(c) an order under the Alternative Sentencing Act (2008 Revision);

(d) an order for the conditional discharge of the person; or

(e) an order for the absolute discharge of the person.

The proposed new section provides, among other things, that the court, before making an order, must be satisfied on the evidence of one or more mental health professionals, at least one of whom must be a psychiatrist or a psychologist, that the defendant is mentally disordered and requires confinement and treatment or only treatment for such disorder.

It is further provided that where the court makes an order the court shall order the person to be kept at a hospital, prison, place of safety or other place appointed by any law for the reception or custody of insane persons until discharged by order of the court. Also, the

court shall consult with the Chief Medical Officer, and mental health professionals and social workers assigned to the person with regard to the discharge of the person.

Clause 4 also inserts new sections 159A and 159B which deal respectively with the interpretation of certain terms used in Part VII of the legislation and provides for the making of regulations to give effect to the provisions under Part VII of the legislation.

Clause 5 provides transitional provisions. The clause provides that where, at the date of the commencement of the amending legislation, a person is in custody pursuant to section 159 of the principal Act, the Governor, prior to making an order for discharge of that person, shall consult, in relation to the discharge, with the Chief Medical Officer and the mental health professionals and social workers assigned to the person, and may impose such conditions upon the discharge of the person which the Governor determines are necessary.

A condition of a discharge under this clause may include —

(a) supervision by mental health professionals and social workers for a specified period, which period may be varied from time to time by the Governor; or

(b) a course of treatment under the Mental Health Act (2023 Revision) as an outpatient of a specified hospital for a specified period which period may be varied from time to time by the Governor.

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ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Act may be cited as the Criminal Procedure (Amendment) Act, 2025.

Amendment of section 48 of the Criminal Procedure Code (2021 Revision) - procedure when accused found insane during proceedings

2. The *Criminal Procedure Code (2021 Revision)*, in this Act referred to as the "principal Act", is amended in section 48 by repealing subsection (3) and substituting the following subsection —

"(3) If —

(a) the case under this section is one in which bail may not be taken;

(b) sufficient surety cannot be given; or

(c) the court, for any sufficient reason, considers that bail ought not to be granted,

the court, may order the accused person to be detained in a hospital, prison, place of safety or other place appointed by any law for the reception or custody of insane persons and may make such further order in the case for the detention, treatment or otherwise of the accused as the circumstances may require.".

Repeal of section 158 and substitution - special verdict where accused found insane at time of offence charged

3. The principal Act is amended by repealing section 158 and substituting the following section —

"**Special verdict where accused found insane at time of offence charged**

158. Where in an indictment —

(a) an act or omission is charged against a person as an offence; and

(b) it is given in evidence on that person's trial for that offence that that person was insane so as not to be responsible, according to law, for that person's actions at the time when the act was done or omission made,

then, if it appears to the jury before whom that person is tried that that person did the act or made the omission charged but was insane at the time when that person did the act or made the omission, the jury shall return a special verdict that the accused is not guilty of the act or omission by reason of insanity.".

Repeal of section 159 and substitution - provision for custody of accused person found insane; insertion of new sections 159A and 159B

4. The principal Act is amended by repealing section 159 and substituting the following sections —

"**Powers to deal with persons not guilty by reason of insanity or unfit to plead etc.**

159. (1) Where an accused person is found to be insane before or upon arraignment, in accordance with section 122(2), or a special verdict is found against that person under section 158, the court shall make in respect of the accused —

(a) a supervision order;

(b) a treatment order;

(c) an order under the *Alternative Sentencing Act (2008 Revision)*;

(d) an order for the conditional discharge of the person; or

(e) an order for the absolute discharge of the person.

(2) The court, before making an order under subsection (1)(a) and (b), must be satisfied on the evidence of one or more mental health professionals, at least one of whom must be a psychiatrist or a psychologist, that the defendant is mentally disordered and requires confinement and treatment or only treatment for such disorder.

(3) Where the court makes an order under subsection (1)(a) the court shall order the person to be kept at a hospital, prison, place of safety or other place appointed by any law for the reception or custody of insane persons until discharged by order of the court, and the court shall consult with the Chief Medical Officer, and mental health professionals and social workers assigned to the person with regard to the discharge of the person.

(4) When a person is sent to a hospital, place of safety or other place appointed by any law for the reception or custody of insane persons under this section, officers of such hospital, place of safety or other place may exercise the same powers and authorities for the restraint of such person as can by law be exercised by or are vested in a gaoler or any other officers in respect of persons sentenced to imprisonment.

(5) Where the court has power under subsection (1)(e) to make an order for the absolute discharge of the accused, the court may do so where it is of the opinion, having regard to the circumstances, including the nature of the offence charged and the character of the accused, that such an order would be most suitable in all the circumstances of the case.

(6) In the exercise of its powers under subsection (1), the court may take into account any undertaking given by, or on behalf of, the person that the person shall undergo or continue to undergo a particular programme or course of treatment.

(7) The court may, from time to time, after consultation with the Chief Medical Officer, issue all necessary orders for the care, control and custody of any person detained under this section and such orders may vary or revoke other orders made under this section and may contain such conditions as the court determines to be necessary.

Interpretation for this Part

159A. In this Part —

"**supervision order**" means an order for confinement and treatment under the *Mental Health Act (2023 Revision)* at a hospital, prison, other place of safety or other place appointed by any law for the reception or custody of insane persons; and

"**treatment order**" means an order for treatment under the *Mental Health Act (2023 Revision)* as an outpatient of a specified hospital.

Regulations for this Part

159B. The Cabinet may, after consultation with the Chief Medical Officer, make regulations to give effect to this Part.".

Transitional provisions

5. (1) Where, at the date of the commencement of this amending Act, a person is in custody pursuant to section 159 of the principal Act, the Governor, prior to making an order for discharge of that person, shall consult, in relation to the discharge, with the Chief Medical Officer and the mental health professionals and social workers assigned to the person, and may impose such conditions upon the discharge of the person which the Governor determines are necessary.

(2) Under subsection (1) a condition of a discharge may include —

(a) supervision by mental health professionals and social workers for a specified period, which period may be varied from time to time by the Governor; or

(b) a course of treatment under the *Mental Health Act (2023 Revision*) as an outpatient of a specified hospital for a specified period which period may be varied from time to time by the Governor.

Passed by the Parliament the day of , 2025.

Speaker

Clerk of the Parliament