



THE CAYMAN ISLANDS LAW REFORM COMMISSION



DISCUSSION PAPER SPENT CONVICTIONS 27 MARCH, 2026

THE CAYMAN ISLANDS LAW REFORM COMMISSION

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CAYMAN ISLANDS LAW REFORM COMMISSION

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Stakeholders and members of the general public are invited to comment on the issues identified in this Discussion Paper and, in particular, to submit their views on the recommendations presented for discussion.

The Paper may be viewed on the following website: www.lrc.gov.ky or www.gov.ky or a copy may be collected from the Offices of the Law Reform Commission.

Submissions should be forwarded no later than **27 June, 2026** to the Director of the Law Reform Commission, 5th Floor Government Administration Building, Portfolio of Legal Affairs, 133 Elgin Avenue, George Town, Grand Cayman, P.O. Box 136, Grand Cayman KY1-9000 either electronically to **cilawreform@gov.ky**, or in writing, by post or hand delivered.

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TABLE OF LEGISLATION

A reference in the footnotes to a jurisdiction is a reference to the following legislation from that jurisdiction —

Australia

Australian Capital Territory	<i>Spent Convictions Act 2000</i>
New South Wales	<i>Criminal Records Act 1991</i>
Northern Territory	<i>Criminal Records (Spent Convictions) Act 1992</i>
Queensland	<i>Criminal Law (Rehabilitation of Offenders) Act 1986</i>
South Australia	<i>Spent Convictions Act 2009</i>
Tasmania	<i>Annulled Convictions Act 2003</i>
Victoria	<i>Spent Convictions Act 2021</i>
Western Australia	<i>Spent Convictions Act 1988</i>

Barbados

Criminal Law (Rehabilitation of Offenders) Act (Cap. 127A)

Bermuda

Rehabilitation of Offenders Act 1977

Canada

Criminal Records Act (R.S.C. 1985, c. C-47)

Jamaica

Criminal Law (Rehabilitation of Offenders) Act 1988

New Zealand

Criminal Law (Clean Slate) Act 2004

United Kingdom

Rehabilitation of Offenders Act 1974

1 INTRODUCTION

- 1.1 This Discussion Paper is prepared in response to a referral by Cabinet on 3 October, 2023. The referral requested that the Law Reform Commission (the “Commission”) undertake, in consultation with the Ministry of Home Affairs, a detailed review of the *Criminal Records (Spent Convictions) Act (2018 Revision)* (the “CRSCA”). The referral followed the identification of a range of perceived difficulties in administering the CRSCA, in addition to a number of anomalies within the Act, and a desire to devise a more streamlined scheme.
- 1.2 This Paper will outline the purpose and key features of spent convictions schemes, conduct a comparative analysis of schemes in other common law jurisdictions, examine the CRSCA and outline the difficulties that have been identified. Finally, the Paper will propose a new spent convictions scheme for the Cayman Islands and a range of consultation questions.

2 PURPOSE OF SPENT CONVICTIONS SCHEMES

- 2.1 The United Kingdom (the “UK”) introduced the concept of spent convictions when it enacted the *Rehabilitation of Offenders Act 1974*, and numerous common law jurisdictions have since followed suit. Spent convictions schemes developed alongside the increasing use of criminal records checks in a variety of contexts, including when vetting candidates for employment. The use of criminal records checks can indirectly extend the punishment imposed on an offender by limiting their ability to gain employment, hold licences, be admitted to professions or appointed to certain offices, long after they have completed their sentence.¹ This can significantly impact an offender’s prospects of rehabilitation and increase the likelihood of re-offending, which carries significant social and economic costs.²

¹ Paterson & Naylor, “Australian Spent Convictions Reform: A Contextual Analysis” (2011) 34(3) *UNSW Law Journal*, 938.

² Naylor, Paterson & Pittard, “In the Shadow of a Criminal Record: Proposing a Just Model of Criminal Record Employment Checks” (2008) 32 *Melbourne University Law Review*, 172.

2.2 Evidence suggests that an offender’s criminal record has ever-diminishing value as a predictor of future behaviour as time goes on. As noted by the Australian Law Reform Commission —

*“An old conviction, followed by a substantial period of good behaviour, has little, if any, value as an indicator as to how the former offender will behave in the future. In such circumstances reliance on the old conviction will result in serious prejudice to the offender which will outweigh to a large extent its value as an indicator of future behaviour.”*³

2.3 Offenders are less likely, overall, to re-offend as they age.⁴ The Gardiner Committee found in 1972 that, of 4,000 male first offenders, 64% had not re-offended five years after serving their sentence, and 60% had not re-offended after ten years. After ten years, the rate of re-offending was minimal.⁵ The findings of the Gardiner Committee formed the basis of the *Rehabilitation of Offenders Act 1974* (UK). In 2002, the Home Office reviewed the operation of the Act, finding that the policy justifications set out by the Gardiner Committee remain valid.⁶

2.4 A 2013 study found that the impact of employment on the likelihood of re-offending is significant. For offenders who received a custodial sentence of up to 12 months, 32% of those employed on release re-offended within one year, while 69% of those not employed re-offended within one year. For offenders who received a custodial sentence of at least 12 months, 18% of those employed on release re-offended within one year, while 43% of those not employed re-offended within one year.⁷

2.5 While employment is a key factor in rehabilitation, a criminal record significantly hampers prospects for employment. A 2016 YouGov survey found that 50% of UK employers

³ Australian Law Reform Commission, *Spent Convictions* (ALRC Report No. 37, 1987), xi-xii.

⁴ Naylor, Paterson & Pittard, 189.

⁵ Gardiner Committee, *Living it Down: The Problem of Old Convictions* (Steven & Sons, 1972), 42.

⁶ Law Reform Commission of Ireland, *Report: Spent Convictions* (LRC 84-2007), 18.

⁷ Ministry of Justice, “Analysis of the impact of employment on re-offending following release from custody, using Propensity Score Matching”, (2013), retrieved from <https://assets.publishing.service.gov.uk/media/5a7c4f9740f0b6321db3855b/impact-employment-reoffending.pdf>,

3.

would not consider employing an ex-offender.⁸ These findings prompted the UK to reduce the waiting periods before convictions can become spent under the *Rehabilitation of Offenders Act 1974*.⁹

- 2.6 The criminal justice system operates not just for punishment and deterrence, but for rehabilitation. It is crucial that offenders are given the best prospects of rehabilitation, both to ensure community safety and to reduce the social and economic burden of re-offending. Spent convictions schemes mitigate the ongoing impact of a conviction on the offender's ability to gain employment and fully integrate into society, increasing their prospects of rehabilitation.

3 FEATURES OF SPENT CONVICTIONS SCHEMES

This section outlines the key features of spent convictions schemes. The approaches taken by a range of jurisdictions are compared. The CRSCA is attached in Appendix A. Comparative tables summarising key aspects of each scheme, in addition to the Cayman Islands scheme, are attached in Appendix B.

3.1 Expunged vs spent convictions

- 3.1.1 The distinction between expunged and spent convictions is important in considering the policy goals of a scheme. An expunged conviction is struck from the record – it is treated in law as if it had never occurred. This is “wiping the slate clean” in the truest sense. In contrast, when a conviction is spent, the record of the conviction is sealed for most purposes, absolving the offender of responsibility to disclose the conviction in most circumstances.
- 3.1.2 One criticism of spent convictions or expungement schemes is that they favour the interests of the offender over those of the community, particularly vulnerable members of the

⁸ YouGov/DWP Survey Results (2016), retrieved from https://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/42yrwvixdo/YG-Archive-160126-DWPwaves.pdf.

⁹ Home Office, “Criminal records reform – rehabilitation periods: Equalities Impact Assessment” (2023), retrieved from <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-equality-statements/criminal-records-reform-rehabilitation-periods-equalities-impact-assessment>.

community.¹⁰ This concern is more relevant in the case of expungement schemes that erase the record. Conversely, spent convictions schemes limit the disclosure of the record, and disclosure requirements can be designed with the goal of community safety.¹¹ The policy rationale for spent convictions, as opposed to expungement, is that the record can be unsealed where there are sound justifications for convictions to be disclosed, such as where the offender is applying for a job working with vulnerable persons, or where they are seeking admission to a profession requiring a high degree of integrity.¹²

- 3.1.3 The CRSCA, despite its title, ostensibly provides for expungement of criminal records rather than spent convictions. In substance, records that are labelled as expunged are, in fact, merely sealed (in the manner of spent convictions).¹³ References to expunged convictions in this paper, in the context of the CRSCA, can be taken to mean spent convictions.
- 3.1.4 Some jurisdictions provide for convictions to be both spent and expunged. The Australian Capital Territory provides for youth offences committed by children under 12 years old to be automatically extinguished.¹⁴ Barbados and Jamaica allow a person with a spent conviction to apply to a board for the offence to be expunged if the board is satisfied that the person is rehabilitated.¹⁵ Other jurisdictions only provide for convictions to become spent (with variations in the language used to describe the concept of sealing the record).¹⁶
- 3.1.5 Allowing convictions to be spent strikes a balance between the interests of offenders and the interests of the community. Spent convictions allow offenders who have completed a sufficient crime-free period to be released from the implications of a criminal record in most situations. This promotes their continued rehabilitation while requiring disclosure

¹⁰ Law Reform Commission of Ireland, 20.

¹¹ Law Reform Commission of Ireland, 24.

¹² Knowler, "Living down the past – Spent convictions schemes in Australia" (1994) 1(6) *Privacy Law & Policy Reporter* 103.

¹³ CRSCA, Pt 5.

¹⁴ Australian Capital Territory, Pt 3AA.

¹⁵ Barbados, Pt II; Jamaica, Pt II.

¹⁶ Cayman Islands, UK, Australian Capital Territory, New South Wales, Queensland, Northern Territory, Western Australia, South Australia, Victoria, Tasmania, Bermuda, Canada.

where there are sound community safety reasons for doing so. Expungement of convictions, however, does not provide the safeguard of disclosure requirements.

3.2 Application vs self-executing

- 3.2.1 Requiring an application to a body (such as the existing Expungement Board in the Cayman Islands) for a conviction to be spent arguably increases emphasis on public safety by requiring a case-by-case assessment of the offender's rehabilitation and likelihood of re-offending.¹⁷ An automatic scheme, where a conviction is automatically spent on completion of a specified crime-free period, assumes that the offender is rehabilitated without undertaking such an assessment.¹⁸ The majority of jurisdictions examined in this paper provide for convictions to become spent automatically.¹⁹
- 3.2.2 An automatic scheme is easier to administer and less resource-intensive than one that requires an application process. It also provides an objective standard that an offender must meet. Giving a person or body discretion to determine whether or not an offender is rehabilitated inevitably involves some subjectivity, even if the governing legislation provides clear parameters for the assessment. This raises the question as to what more an offender should be required to demonstrate apart from a crime-free life. Are judgments to be made about other aspects of their life, such as their contribution to the community? Is the nature of their original offending to be re-examined? There does not seem to be a sound policy basis for requiring the offender to demonstrate anything other than a lack of offending given the decreasing relevance, with the passage of time, of criminal history as a predictor of future behaviour.
- 3.2.3 In addition, requiring the offender to apply to have a conviction declared spent has the potential to re-stigmatise the offender by exposing them to judgment of their past

¹⁷ Paterson & Naylor, 947.

¹⁸ Knowler.

¹⁹ UK, s 1; Australian Capital Territory, s 12; New South Wales, s 8; Queensland, s 6; Northern Territory, s 6; South Australia (in part), s 8; Victoria (in part), s 7, s 8; Tasmania, s 6; New Zealand, s 7; Bermuda, s 1; Jamaica, s 3; Barbados, s 3.

behaviour. The report of the Gardiner Committee rejected the approach of requiring an application —

*“It appears to us to be largely self-defeating: the last thing which anyone in this position wants is to have fresh inquiries conducted, many years after the event...In our view, the most probable result of such a provision would be that only very few would avail themselves of it.”*²⁰

- 3.2.4 This prediction has been borne out by evidence of low participation in schemes requiring an application. The Canadian Solicitor General has cited fear of publicising an old conviction as a reason for lack of participation in the Canadian scheme, which operates on application to the Parole Board.²¹ An application scheme also requires the offender to know about the scheme and be capable of navigating the process. The Australian jurisdiction of Victoria operates an application scheme for offenders who do not qualify for the automatic scheme in limited circumstances, such as where the offence would otherwise be ineligible but the offender did not receive a custodial sentence.²² A review of the scheme found that applicants, particularly those who are unemployed and would benefit most from having a conviction declared spent, have significant difficulty navigating the process.²³ In addition, such schemes are often plagued by significant delays. All these factors can discourage offenders from applying.
- 3.2.5 A hybrid approach is to provide for most convictions to be automatically spent, but reserve an application process for more serious offences. This is the approach taken in the CRSCA. With some exceptions (such as minor marijuana offences), convictions carrying a term of imprisonment not exceeding five years are eligible for automatic expungement.²⁴ Convictions carrying a term of imprisonment exceeding five years but less than life imprisonment may be expunged on application to the Expungement Board.²⁵ Victoria and

²⁰ Gardiner Committee, 13.

²¹ Australian Law Reform Commission, 34; Canada, s. 3.

²² Victoria, Pt 2, Div 2.

²³ Department of Justice and Community Safety, “Review of the Spent Convictions Act 2021”, (2023), 18, retrieved from <https://engage.vic.gov.au/review-of-the-spent-convictions-act-2021>.

²⁴ CRSCA, s 15.

²⁵ CRSCA, s 15A.

South Australia also operate a hybrid scheme with an application process for more serious offences.²⁶

- 3.2.6 Despite the difficulties associated with an application process, there is arguably merit in providing an option for those who do not qualify for their conviction to be spent automatically to demonstrate their rehabilitation. This is particularly the case if an old conviction is causing significant difficulty in the offender's life. In the Cayman Islands, one such difficulty occurs when offenders are required to travel for medical reasons and have difficulty obtaining visas because of requirements to disclose offences.

3.3 Crime-free period

- 3.3.1 The benefit of a system that operates automatically is that every offender is subject to the same objective standard of completing a specified period without further re-offending. The difficulty of such a system is in determining what that period should be. As there is no opportunity to assess whether an offender is actually rehabilitated, the crime-free period must be set in a way that balances the risk of re-offending with fairness to the offender. As noted by the Australian Law Reform Commission —

*“It should be frankly acknowledged that any drawing of this particular line will have elements of arbitrariness. But a line can and should be drawn at a point where it can be said with reasonable confidence that, in the vast majority of circumstances, the fact of a criminal conviction has simply become irrelevant and out of date in the context of any future judgment or decision which might reasonably be expected to be made about the former offender.”*²⁷

- 3.3.2 Most jurisdictions examined in this paper take a simple, “one size fits all” approach by setting one period for adult offenders and one period for young offenders.²⁸ The majority of these jurisdictions require a lengthy crime-free period of ten years. This is despite the eligibility thresholds being quite strict, with only offences of a less serious nature eligible

²⁶ Victoria, s 7, s 8, Pt 2, Div 2; South Australia, s 8, s 8A.

²⁷ Australian Law Reform Commission, 35.

²⁸ Australian Capital Territory, s 13; Northern Territory, s 6; South Australia, s 7; Victoria, s 9; Tasmania, s 6; New South Wales, s 9; Queensland, s 3.

to be spent. The choice of ten years in these jurisdictions is derived from the findings of the Gardiner Committee that the risk of re-offending after ten years is minimal.²⁹

- 3.3.3 This approach is justified on the basis that offenders should be required to prove themselves by completing a long crime-free period to ensure community safety. However, the longer a conviction is required to be disclosed, the more difficult it will be for an offender to gain employment and fully re-integrate into the community.³⁰ In addition, prescribing a single crime-free period regardless of the sentence imposed on the offender is inconsistent with the concept of proportionality.³¹ No regard is given to the sentencing judge's assessment of the offending behaviour and the risk of re-offending.³²
- 3.3.4 The Cayman Islands, the UK, Barbados and Jamaica instead operate a sliding scale of crime-free periods based on the sentence imposed.³³ These systems are more complicated to administer, but this can be mitigated by limiting the number of different crime-free periods. The Cayman Islands operates a complex system with crime-free periods ranging from six months to 15 years.³⁴ The UK operates a relatively simple system of three crime-free periods (from one to seven years) based on different sentence periods.³⁵
- 3.3.5 Consideration should also be given to treating non-custodial sentences differently. The crime-free period for most non-custodial sentences in the UK expires when the sentence is completed (for example, on the date a community order ends) or is very low (for example, one year in the case of a fine).³⁶ In the Cayman Islands, minor marijuana offences resulting in non-custodial sentences do not carry a crime-free period requirement.³⁷ This could be further limited so that only non-custodial sentences imposed for first offences qualify for the lower crime-free period.

²⁹ Knowler.

³⁰ Paterson & Naylor, 954.

³¹ Paterson & Naylor, 953.

³² Paterson & Naylor, 954.

³³ UK, s 5; Barbados, First Sch; Jamaica, s 5.

³⁴ CRSCA, Sch 3.

³⁵ UK, s 5.

³⁶ UK, s 5.

³⁷ CRSCA, s 14.

3.3.6 All jurisdictions examined in this paper distinguish adult offenders from young offenders to some extent. Many young offenders “grow out” of offending behaviour, justifying a shorter crime-free period.³⁸ Most jurisdictions provide for a crime-free period for offenders under the age of 18 that is half that for adults.³⁹ In addition, some jurisdictions provide that convictions resulting in some non-custodial sentences are spent on completion of the sentence.⁴⁰ In the Cayman Islands, young offenders are subject to lower crime-free periods in the case of a limited category of offences.⁴¹ The *Youth Justice Act (2021 Revision)* only applies to offenders under the age of 17. However, consideration could be given to treating offenders under the age of 18 as young offenders for the purpose of setting the crime-free period.

3.4 Sentence limits

3.4.1 The sentence imposed for a conviction is widely used to determine the offender’s eligibility for the conviction to become spent. This is justified on the basis that the sentence imposed reflects the court’s assessment of the seriousness of the offence, the circumstances surrounding it, and the offender’s character. This, in turn, should be a predictor of rehabilitation prospects.⁴² In addition, there is some evidence that re-offending is influenced more by factors such as living circumstances and employment status than by the seriousness of the offence (and therefore, the length of the sentence).⁴³ On this basis, it has been argued that all convictions should be eligible to become spent, even if an application is required that involves an individual assessment of the offender’s rehabilitation.

3.4.2 Nonetheless, most jurisdictions use the sentence imposed for an offence as an eligibility criterion for the conviction to become spent. However, there is wide variation in those sentence limits. Under the New Zealand scheme, any custodial sentence renders a

³⁸ Australian Law Reform Commission, 39.

³⁹ UK, s 5; Australian Capital Territory, s 13; Northern Territory, s 6; South Australia, s 7; Victoria, s 9; Tasmania, s 6; Queensland, s 3; Jamaica, s 5; Barbados, First Sch.

⁴⁰ UK, s 5; New South Wales, s 8; Victoria, s 7.

⁴¹ CRSCA, Sch 3.

⁴² Paterson & Naylor, 950.

⁴³ Paterson & Naylor, 950

conviction ineligible to be spent.⁴⁴ In the various Australian jurisdictions, the sentencing limit ranges from six to 30 months' imprisonment, above which a conviction is ineligible.⁴⁵ Barbados and Bermuda set the threshold at three years' imprisonment,⁴⁶ while in Jamaica it is five years' imprisonment.⁴⁷ The Cayman Islands and the UK stand out in having very lenient sentence limits. In the UK, convictions for certain serious offences are ineligible if the sentence exceeds four years' imprisonment, otherwise only convictions that receive a sentence of life imprisonment are ineligible.⁴⁸ In the Cayman Islands, convictions resulting in a term of life imprisonment are ineligible for expungement, while convictions resulting in imprisonment for a term exceeding five years are eligible on application to the Expungement Board.⁴⁹

- 3.4.3 Unless a spent convictions scheme operates entirely on application with an individual assessment of each offender's rehabilitation, it is difficult to envisage how a scheme can fairly take into consideration the broad spectrum of offending behaviour without relying on the sentence imposed. A very wide range of offences would need to be excluded to ensure that convictions for more serious offending could not become spent and compromise public safety. As noted by the Law Reform Commission of Ireland —

*“[B]y excluding the application of a spent convictions scheme on the basis of the offence in question alone, the circumstances of the commission of the offence or the offender cannot be given adequate consideration. Aggravating or mitigating factors in relation to the commission of any offence are very important to a full understanding of the offence and indeed, the offender in question.”*⁵⁰

Including a sentencing threshold allows for most offences to be eligible to become spent if the offending is on the lower end of the spectrum.

⁴⁴ New Zealand, s 7.

⁴⁵ Australian Capital Territory, s 11; Northern Territory, s 6; New South Wales, s 7; South Australia, s 3; Victoria, s 3; Tasmania, s 3; Queensland, s 3. In Western Australia, a sentence of 1 year imprisonment may be spent on application to the District Court, s 6, s 9.

⁴⁶ Bermuda, s 3; Barbados, s 3 - the sentence can be higher if it is a first offence.

⁴⁷ Jamaica, s 3.

⁴⁸ UK, s 5.

⁴⁹ CSRCA, s 15A.

⁵⁰ Law Reform Commission of Ireland, 52.

3.5 Excluded offences

- 3.5.1 In addition to sentence limits, most jurisdictions also exclude some serious offences from the spent convictions scheme altogether. Generally, sexual offences are excluded, with some jurisdictions also excluding serious violent offences.⁵¹ In addition, Jamaica excludes a range of offences relating to treason, drugs, trafficking of persons, firearms, care and protection of children, child pornography and criminal organisations.⁵² The UK does not exclude any offences, but serious violent offences, sexual offences and terrorism offences are only eligible to be spent if the sentence imposed does not exceed four years' imprisonment.⁵³ In the Cayman Islands, treason, murder, manslaughter, and offences relating to terrorism, trafficking of persons, care and protection of vulnerable persons, child pornography and firearms are excluded altogether. Sexual offences and offences against the person are only excluded if the sentence imposed is at least five years' imprisonment.⁵⁴
- 3.5.2 Excluding certain offences from the scheme reflects a policy approach that views certain offences as too harmful to justify the “statutory lie” of a spent conviction. In addition, these offences may be indicative of predispositions of the offender that make them less likely to be rehabilitated to the point that they should no longer be required to disclose their offending.⁵⁵ It is also important to consider the views of the community towards certain offences, as noted by the Australian Law Reform Commission —

*“The less serious the offence, the more likely it is that, after a period of time, it will cease to be relevant. The converse, however, is also true. The more serious the offence, the longer it is likely to remain relevant to decision making. Seriousness is relative. But the question of public acceptability of a spent convictions scheme must be squarely addressed.”*⁵⁶

⁵¹ Australian Capital Territory, s 11; New South Wales, s 7; Northern Territory, s 5; Tasmania, s 3; New Zealand, s 3; Canada, s 4; Jamaica, Third Schedule.

⁵² Jamaica, Third Sch.

⁵³ UK, s 5.

⁵⁴ CRSCA, Sch 2.

⁵⁵ Law Reform Commission of Ireland, 50.

⁵⁶ Australian Law Reform Commission, 28.

- 3.5.3 The hybrid approach of sentence limits and excluded offences allows for a spent convictions scheme to fairly accommodate the spectrum of offending for most offences, while acknowledging the harm and negative public perception of some offences.

3.6 Intervening offences

- 3.6.1 Most jurisdictions disregard some minor offences for the purposes of calculating the crime-free period. The most common exception is for minor traffic offences, which are disregarded in determining the crime-free period for non-traffic offences. In the jurisdictions that disregard minor traffic offences, non-traffic offences are usually disregarded in determining the crime-free period for traffic offences.⁵⁷ Some jurisdictions disregard minor offences without limitation to traffic offences. Minor offences may be defined by reference to the penalty imposed⁵⁸ or the manner of trial.⁵⁹
- 3.6.2 The CRSCA disregards all traffic offences except those that result in death or bodily harm.⁶⁰ This is too broad an exception. A range of very serious traffic offences may not, in the particular circumstances of the offence, result in death or bodily harm, but have the potential to do so. In addition, it seems unfair that a person convicted of a minor offence such as littering should be required to begin their crime-free period again, while a person convicted of driving under the influence should not. A fairer standard would be to disregard minor offences resulting in a low fine, such as a fine under \$500.

3.7 Subsequent offences

- 3.7.1 In most jurisdictions, a spent conviction is not revived by a subsequent offence.⁶¹ In others, a spent conviction is revived by subsequent offences other than certain traffic offences or minor offences.⁶²

⁵⁷ Australian Capital Territory, s14; Northern Territory, s 6; Tasmania, s 7; New South Wales, s 11.

⁵⁸ South Australia, s 3; Victoria, s 10.

⁵⁹ UK, s 6.

⁶⁰ CRSCA, s 23.

⁶¹ Cayman Islands, UK, Australian Capital Territory, South Australia, Victoria, New South Wales, New Zealand, Jamaica, Barbados, Bermuda.

⁶² Northern Territory, s 10; Queensland, s 11. In Tasmania, a spent conviction can be revived by court order, s 10.

3.7.2 The policy rationale for allowing convictions to become spent is that the offender has demonstrated their rehabilitation by remaining crime-free for a prescribed period. The question then arises as to whether a subsequent offence is sufficient evidence that the offender has not been rehabilitated, even if the subsequent conviction is for an offence of an entirely different nature to the original offence. Also, the subsequent offence could have occurred many years after the earlier conviction became spent. In such circumstances, it seems unfair to revive the earlier conviction.

3.8 Disclosure exceptions

3.8.1 Spent convictions schemes should balance the interests of the offender with the interests of the community. This necessitates exceptions to the scheme to require offenders to disclose offences where it is in the public interest to do so. In most jurisdictions, disclosure is required when applying to be engaged in a position involving vulnerable people or requiring high standards of integrity, when applying for admission to professions involving public trust and when applying for certain licences. Table 2 in Appendix B summarises the disclosure exceptions in the jurisdictions examined.

3.8.2 Disclosure exceptions should apply whether or not the offender is seeking to engage in an activity resulting in financial reward. The policy rationale for disclosure is community protection, not preventing the offender from receiving financial reward. As such, all exceptions relating to positions involving vulnerable people or requiring high standards of integrity should apply whether the position is voluntary or paid.

3.8.3 Public officials holding criminal records should be permitted to disclose details of spent convictions to the police or to overseas law enforcement agencies to assist in the prevention, detection, investigation or prosecution of offences. The purpose of a spent convictions scheme is to allow the offender to be fully integrated into society, not to inhibit the prevention and investigation of offences.⁶³

3.8.4 In addition, most jurisdictions allow the admission of evidence of spent convictions in criminal proceedings. A number of jurisdictions extend this to civil proceedings, either

⁶³ Australian Law Reform Commission, 15.

entirely or in limited circumstances. The difficulty of limiting the circumstances in which such evidence may be admitted is that it requires all the possible types of matter in which it may be relevant and desirable to admit such evidence to be identified. For example, a spent conviction could be relevant to civil proceedings involving professional disciplinary matters, the cancellation of licences, fraud, and motor vehicle accidents (and many more). As such, many jurisdictions allow evidence of spent convictions to be admitted in all court proceedings. To mitigate the impact on the offender, this exception is usually accompanied by a requirement that the court take steps to prevent or minimise publication of the evidence.

4 WHY IS REFORM NECESSARY?

The CRSCA is complex and contains a range of inconsistencies and anomalies. The Expungement Board and its secretariat have reported a number of difficulties in interpreting and administering the scheme. In addition, some of the anomalies in the Act result in unfair outcomes for offenders.

4.1 Distinction between expungement and spent convictions

4.1.1 Section 2 of the Act defines “expunged” and “spent” as follows —

““expunged”, in relation to a criminal record, means a criminal record that has been spent and has been expunged from the criminal records pursuant to this Law;

“spent”, in relation to a conviction, means a conviction where the relevant crime-free period has expired and the Board has declared it to be spent;”

4.1.2 These definitions, operating together, mean that a conviction can only become expunged if it is spent, which requires it to be so declared by the Board. However, section 20 specifies that a conviction is spent on completion of the crime-free period (that is, automatically). No provision is made in the Act for the Board to declare a conviction to be spent. In addition, section 15 provides for automatic expungement of certain offences, with no application to the Board for the conviction to first be declared spent, as required by the definitions of “spent” and “expunged”.

4.1.3 The position is further confused by the objects provision of the Act, section 4 —

“The primary object of this Law is to implement a scheme to limit the effect of a person’s conviction for a range of offences if the person, having served that person’s sentence, subsequently completes a period of crime-free behaviour and on completion of that period, the conviction shall be regarded as spent and, subject to some exceptions, a person is eligible to apply for the expungement of that criminal record.”

This suggests that —

- (a) there is no requirement for the Board to declare a conviction to be spent, contrary to the definition in section 2; and
- (b) all expungements must be on application, contrary to section 15, which provides for automatic expungement of certain offences.

4.1.4 Further, if there was an intention to keep the concepts of spent and expunged convictions distinct, the Act contains no provisions to govern the disclosure of spent convictions that have not been expunged. Section 20 is, in fact, the only substantive provision of the Act (other than the definition in section 2) that makes mention of spent convictions.

4.2 Overseas applicants

4.2.1 Section 10 contains specific provisions relating to convicted persons who are deported from the Islands. It does not, however, contain any provisions relating to persons who left the Islands following a conviction without being deported. Such persons could include —

- (a) those who voluntarily departed after the imposition of a non-custodial sentence, without the need for a deportation order;
- (b) those who voluntarily departed before a deportation order took effect;
- (c) those transferred to overseas penal institutions to serve their sentence; and
- (d) Caymanians living overseas.

- 4.2.2 It is unclear why this provision is required. The reason a person left the Islands, or where they are at the time they apply for expungement, do not seem to be relevant to the policy goals of the Act.

4.3 Inconsistencies in right to automatic expungement

- 4.3.1 The Act provides three primary “gateways” to expungement —

1. Section 14: Minor marijuana offences – expungement by the Board on application on completion of sentence.
2. Section 15: Offences punished by up to five years in prison – automatic expungement on completion of crime-free period (which begins on completion of sentence).
3. Section 15A: Offences punished by more than five years in prison – expungement by the Board on application on completion of crime-free period.

- 4.3.2 The Act does not provide clarity as to which procedure should be followed in cases that arguably qualify for expungement under both sections 14 and 15. For example, if a person is convicted of a minor marijuana offence that qualifies for expungement under section 14 (no crime-free period) but the person does not apply for expungement, is the conviction automatically expunged under section 15 on completion of the crime-free period for non-marijuana offences?

- 4.3.3 Further, in the case of minor marijuana offences, the Act does not provide parameters around the Board’s decision-making power in relation to the application for expungement. The Act and the Regulations specify factors to be considered in the case of applications under section 15A (where the sentence exceeds five years’ imprisonment), but not in the case of minor marijuana offences. In essence, the Board does not have discretion to refuse an application if the offence and sentence qualify under section 14 and if the sentence has been completed. As such, there does not seem to be a logical reason why expungement should not be automatic.

- 4.3.4 These issues reveal a policy dissonance between sections 14 and 15. Why should a person convicted of a minor marijuana offence who has not received a custodial sentence be required to apply for expungement when a person sentenced for up to five years receives

automatic expungement on completion of the crime-free period? While the crime-free period is significant, the entitlement to expungement is automatic, whereas the person convicted of the minor marijuana offence is at the mercy of the Expungement Board. A more consistent approach would be to provide a reduced crime-free period for minor offences, along with automatic expungement.

- 4.3.5 Section 15 provides for automatic expungement of any offence if the offender is sentenced to up to five years' imprisonment. However, it is conceivable that a person could receive a sentence not exceeding five years for some of the offences that are ineligible for expungement under section 12(1)(a) (that is, the offences listed in Schedule 2). Section 15 should therefore be expressed to be subject to section 12(1)(a), to resolve this inconsistency. In addition, section 15 does not mention persons who receive a non-custodial sentence, who presumably should also be entitled to automatic expungement.

4.4 Disclosure issues

- 4.4.1 Section 28 provides —

“Where a question arises in a non-judicial proceeding with respect to a person's criminal history, the person —

- (a) may answer in the negative; and*
- (b) shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure, in the answer, to acknowledge or disclose an expunged criminal record or ancillary circumstances.”*

There is no clarity on what is meant by a “non-judicial proceeding”. A literal interpretation of this provision would suggest that no-one needs to disclose any of their “criminal history” to any person at any time, since the protection is not restricted to expunged records.

- 4.4.2 Section 33 lists the circumstances in which a person is required to disclose an expunged criminal record, including when the person is seeking to be made a member of a specified profession, be appointed to a specified office of employment, be engaged in a specified business or be elected as a member of Parliament. However, the provision does not cover volunteers, such as volunteers engaged by hospitals, nursing homes, schools, sports organisations, residential facilities and prisons. Further, section 34, which creates the

offence of failing to disclose an expunged record when required under section 33, only applies if the person failing to disclose accrues a benefit from doing so. As such, a volunteer would not be covered by the offence. These are obviously significant gaps in provisions designed to provide exceptions to the general scheme in the interests of community safety.

4.4.3 The Act does not contain any requirement for disclosure of an expunged record when applying for licences not related to professional licensing, such as a firearms import permit or a firearms user permit under the *Firearms Act (2025 Revision)*, or a liquor licence under the *Liquor Licensing Act (2019 Revision)*. This is a significant gap in terms of ensuring community safety.

4.4.4 Section 35 contains an offence for disclosure of an expunged criminal record —

“(1) *A person —*

(a) *who, in the course of official duties, has or has had custody of or access to information constituting part of a criminal record; or*

(b) *who, knowing or having reasonable cause to suspect that any such information was obtained in the course of the official duties,*

discloses that information to any other person, commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(2) *In proceedings for an offence under subsection (1) it is a defence for the accused person to show that the disclosure was made to —*

(a) *the person whose criminal record has been expunged or to another person at the express written request of the person whose criminal record has been expunged;*

(b) *a person whom the accused reasonably believed to be the person whose criminal record has been expunged; or*

(c) *another person at the express written request of a person whom the accused reasonably believed to be the person whose criminal record had been expunged.”*

There is no exception to the offence for a person who discloses the information in the course of their official duties, such as a civil servant who is required to communicate details of criminal records, without the permission of the subject, to fulfil their lawful duties. This leaves civil servants exposed to criminal liability.

4.5 Multiple offences

4.5.1 Under section 42, there is a limit on the number of expungements —

“A person shall not be eligible to obtain more than two expungements unless the convictions are for multiple offences for which concurrent sentences were imposed, in which case those sentences shall be considered to be one conviction.”

This may give rise to anomalies when dealing with cases involving multiple convictions (which can often be for minor offences). A person who receives multiple concurrent prison sentences for a series of relatively serious offences may have them all expunged as a single conviction, but a person who receives multiple (cumulative) financial penalties for a series of very minor offences may not.

4.5.2 The use of the word “obtain” implies that this provision may only concern situations in which a person is required to apply for expungement. Even if that interpretation is incorrect, the Act does not make provision for how the limit would be applied in cases of automatic expungement. If the limit were not to apply in cases of automatic expungement, it would lead to a situation in which there is a limit on expungements for minor marijuana offences (which may not attract automatic expungement), but there would be no limit on expungements for far more serious offences.

4.6 Offences incapable of expungement

4.6.1 Schedule 2 lists offences that are excluded from the scheme. Some of the descriptions of these offences are vague and difficult to interpret. For example, it is not clear what “offences relating to care and protection of children and vulnerable persons” encompasses. Is it intended only to capture offences akin to child neglect, such as section 225 of the Penal Code? Alternatively, is it intended to include scenarios where a person commits an offence which is not in the category of neglect, such as indecent assault committed in a care home? This is important because sexual offences and offences against the person are only excluded from the scheme if a custodial sentence of five years or more is imposed. As such, a sexual offence or other assault against a child or vulnerable person that does not attract such a sentence may not be excluded from the scheme if it is not interpreted to be an offence

“relating to care and protection”. The excluded offences should be clearly identified to avoid doubt.

4.7 Miscellaneous inconsistencies

4.7.1 Section 12(1) lists convictions that cannot be expunged. Section 12(1)(c) and (f) specify that the following offences cannot be expunged —

“(c) *a conviction resulting in a term exceeding five years, subject to the power in section 16(1)(c);*

.....

(f) *a conviction for an offence described in paragraph (c), regardless of the sentence imposed where the person convicted is not under seventeen years old and it is a first offence.”*

Paragraph (f) refers to a conviction for an offence described in paragraph (c), regardless of the sentence imposed, even though paragraph (c) only deals with offences by reference to the sentence imposed. In addition, since the provision deals with offences that cannot be expunged, presumably paragraph (f) should specify “it is not a first offence”, rather than “it is a first offence”.

4.7.2 The definition of “conviction” in section 2 is —

““conviction” means —

(a) *a conviction in the Islands;*

(b) *a conviction by or before a court outside the Islands; or*

(c) *a finding in criminal proceedings that a person has committed an offence, done an act or made the omission charged;”*

Paragraph (c) indicates that, for the purposes of the Act, a finding that the offence is proved is taken to be a conviction even if the court elects not to record a conviction under

section 41(1) of the *Penal Code (2026 Revision)* (the “Penal Code”).⁶⁴ However, section 20(3) (dealing with spent convictions) provides —

“(3) *A finding that an offence has been proved, or that a person is guilty of an offence, without proceeding to a conviction, shall not be considered a conviction.*”

The position expressed in section 20(3) seems to be consistent with a spent convictions scheme, since the purpose of section 41(1) of the Penal Code is to avoid burdening an offender with a criminal record. As such, the definition of “conviction” requires amendment.

4.7.3 Section 20(7) specifies —

“(7) *A conviction which is expunged shall not be revived by a subsequent conviction.*”

This appears to be incorrect for two reasons. First, section 20 is about spent convictions, not expungement. Second, the distinction between a spent conviction and an expunged conviction is that a spent conviction remains on the record, but “hidden” for certain purposes. An expunged conviction has been struck from the record, so can never be revived. As such, the word “expunged” in section 20(7) should be replaced with “spent”.

5 REFORM OF THE CAYMAN ISLANDS SCHEME

The existing regime under the CRSCA is cumbersome, internally inconsistent and burdened by anomalies. It does not operate in the best interests of offenders, administrators or the community. Rather than attempting to fix the scheme by way of numerous

⁶⁴ Section 41(1) provides –

“(1) Where, in a trial, a court thinks that the charge is proved, but is of the opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order either —

- (a) discharging the accused absolutely; or
- (b) if the court thinks fit, discharge the accused subject to the condition that the accused commits no offence during such period not exceeding three years from the date of the order, as may be specified in the order.”

amendments, the Commission favours repealing the CRSCA and replacing it with a streamlined scheme.

5.1 Expunged vs spent convictions

5.1.1 The Commission accepts the view that spent convictions schemes balance the interests of rehabilitated offenders and the community by providing for disclosure exceptions. Allowing offenders who have completed their sentence and remained crime-free for an extended period to lead their lives without the stigma of a past offence aids in their continued rehabilitation and avoids indirectly extending the original sentence. Requiring disclosure of offences in certain circumstances protects the community.

5.1.2 However, the Commission recognises that there may be additional rehabilitative value in allowing for a narrow category of spent convictions to be expunged from the record entirely, with the effect that such convictions would not be required to be disclosed in any circumstances. The Commission also recognises that complete expungement, if permitted, should only occur in exceptional cases. As such, the Commission considers that the inclusion of expungement in the legislative scheme can only be supported if it requires an application to an Expungement Board. The criteria for expungement should be carefully and narrowly drawn with a focus on establishing that the offender has been rehabilitated. In addition, the Commission considers that the category of offences eligible for expungement on application should be sub-category of the offences eligible to be spent, consisting of less serious offences.

5.2 Application vs self-executing

5.2.1 One of the most problematic aspects of the existing regime is the confusion in relation to the entitlement to automatic expungement, and the anomalous requirement that minor marijuana offences can only be expunged on application, while more serious offences qualify for automatic expungement. The Commission favours a self-executing system with convictions becoming spent automatically on completion of the crime-free period.

5.2.2 However, should expungement be permitted, the Commission holds the strong view that this should only occur on application.

5.3 Crime-free period

- 5.3.1 The Commission recognises that imposing a single crime-free period may disproportionately disadvantage some offenders and does not take account of the assessment, during sentencing, of the offending behaviour and the risk of re-offending. The Commission also recognises that young offenders are less likely to re-offend as they age if they are provided with the right conditions for rehabilitation, such as the ability to be employed. As such, the Commission recommends a simplified scale of crime-free periods based on the sentence imposed, as follows —

Sentence (including suspended sentence)	Crime-free period	
	Adult	Young person
Non-custodial or up to 1 year imprisonment	5 years	2.5 years
1-3 years' imprisonment	7 years	3.5 years
3-5 years' imprisonment	10 years	5 years
Over 5 years' imprisonment	<i>Cannot be spent</i>	

- 5.3.2 In the case of young offenders, although the *Youth Justice Act (2021 Revision)* only applies to offenders under the age of 17, the Commission favours defining “young person” to mean a person under the age of 18. This is consistent with the goal of rehabilitation. In addition, a youth rehabilitation order requiring detention at a rehabilitation school under section 27 of the *Youth Justice Act (2021 Revision)* should not be considered to be a custodial sentence.
- 5.3.3 The crime-free period should begin on the date the offender has completed their sentence. This includes, for non-custodial orders, having completed all the requirements of that order, including the payment of any fine and the completion of any other requirement. For custodial sentences, the crime-free period should begin on the date the actual sentence imposed expires, rather than the date the offender is conditionally released.

5.4 Sentence limits

5.4.1 The Commission accepts that the sentence imposed should be one factor in determining whether an offence is eligible to be spent. The CRSCA is extremely lenient in this regard, with only sentences of life imprisonment entirely excluded from eligibility. However, the extremely strict sentencing thresholds imposed by some jurisdictions lean too far to the opposite extreme. The Commission recommends imposing a sentence threshold of five years' imprisonment.

5.5 Excluded offences

5.5.1 The Commission accepts that it is in the public interest to exclude certain serious offences from the scheme. In particular, the most serious offences against the person, sexual offences and offences targeting children should be incapable of being spent. In addition, the Commission considers it essential to be precise in excluding offences, rather than relying on vague descriptions as the CRSCA does. A self-executing spent convictions scheme can have no room for interpretation as to whether or not an offence is eligible to be spent.

5.5.2 The Commission recommends excluding the following offences from eligibility —

Penal Code (2026 Revision)	Description
Section 127	Rape
Section 129	Attempted rape
Section 130	Taking away a person against their will for purpose of marriage or carnal knowledge
Section 132	Indecent assault on a female
Section 132A	Assault by penetration
Section 134	Defilement of girls
Section 134A	Gross indecency
Section 135	Sexual assault of a mentally impaired person
Section 137	Administering drugs to a person to enable unlawful carnal knowledge

Section 138	Detention in a brothel
Section 145	Indecent assault on a male
Section 180	Manslaughter
Section 181	Murder
Sections 203 & 204	Wounding or causing grievous bodily harm
Section 208	Unlawful use of firearms
Sections 228A-228L	Child pornography and child sex offences
Firearms Act (2025 Revision)	
Section 3(1)	Import or export of firearm without permit
Section 3(1A)	Import or export of prohibited device or prohibited weapon
Section 8(3)(a)	Sale of firearm without permit
Section 12	Shortening or converting firearm without proper authority
Section 12A	Altering ballistic signature or converting item into firearm
Section 15(1)	Possession of firearm or ammunition without licence
Section 15(4A)	Possession of prohibited device or prohibited weapon
Section 16	Carrying firearm in public without licence
Section 17	Carrying firearm in restricted place without permit
Section 18(1)	Discharging firearm
Section 18(6)	Possession of firearm with intent
Section 18A(1)	Assembly, manufacture or supply of firearm, ammunition or firearm parts kit
Misuse of Drugs Act (2026 Revision)	
Section 3(1)(a), (b), (c)	Import, export or production of controlled drug
Other	
Any other offence prescribed by the regulations	

5.6 Intervening offence

- 5.6.1 The Commission accepts that some intervening offences should be disregarded in calculating the crime-free period. However, the distinction between traffic offences and non-traffic offences does not seem to be a particularly useful standard for determining which offences are insufficiently serious to be disregarded. Instead, the Commission recommends disregarding a single minor offence committed during the crime-free period, being an offence defined as follows —

“*minor offence*” means an offence (other than an excluded offence) where, on conviction —

- (a) the defendant is discharged without penalty; or
- (b) the only penalty imposed on the defendant is a fine not exceeding \$500 or a higher amount prescribed by the regulations.

5.7 Disclosure exceptions

- 5.7.1 The Commission recommends closing the gaps in the existing disclosure exceptions by requiring disclosure by anyone seeking to be engaged in any capacity in the offices, professions, organisations and facilities currently listed in the CRSCA, including in a volunteering or contracting capacity. In addition, disclosure of spent convictions should be required when applying for licences under the *Firearms Act (2025 Revision)* and the *Liquor Licensing Act (2019 Revision)*.

6 QUESTIONS FOR CONSULTATION

- 6.1 The Commission invites submissions on the issues identified in this Paper and the recommendations made in Part 5. In particular, the Commission welcomes submissions in relation to the following questions —

- 1. Should the spent convictions scheme be generally self-executing, so that eligible convictions become spent automatically on completion of the relevant crime-free period (see paragraph 5.2.1)?
- 2. Should complete expungement of some convictions be permitted, so there is no requirement for disclosure of such offences (see paragraph 5.1.2)?

3. Do you agree with the crime-free periods proposed by the Commission (see paragraph 5.3.1)?
4. Do you agree with the sentence limit of five years' imprisonment proposed by the Commission (see paragraph 5.4.1)?
5. Do you agree with the proposed list of excluded offences that are not eligible to be spent (see paragraph 5.5.2)?

7 CONCLUSION

- 7.1 The options for reform outlined in this Discussion Paper provide the basis for consultation to determine the best option for reform in the Cayman Islands.

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Cayman Islands

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Firearms Act (2025 Revision)

Liquor Licensing Act (2019 Revision)

Misuse of Drugs Act (2026 Revision)

Penal Code (2026 Revision)

Youth Justice Act (2021 Revision)

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Criminal Records Act 1991 (New South Wales)

Criminal Records (Spent Convictions) Act 1992 (Northern Territory)

Criminal Law (Rehabilitation of Offenders) Act 1986 (Queensland)

Spent Convictions Act 2009 (South Australia)

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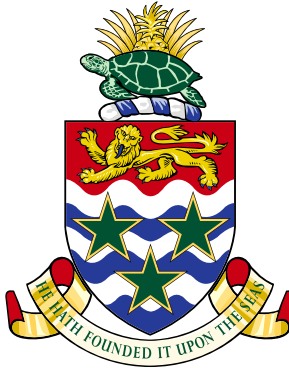
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APPENDIX A

CRIMINAL RECORDS (SPENT CONVICTIONS) ACT (2018 REVISION)

CAYMAN ISLANDS



CRIMINAL RECORDS (SPENT CONVICTIONS) LAW

(2018 Revision)

Supplement No. 10 published with Extraordinary Gazette No. 22 of 16th March, 2018.

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Revised under the authority of the Law Revision Law (1999 Revision).

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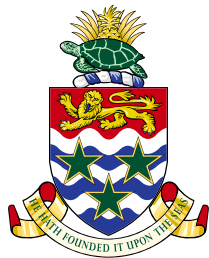
Law 42 of 2016-24th October, 2016

Law 4 of 2017-27th March, 2017.

Consolidated and revised this 28th day of February, 2018.



CAYMAN ISLANDS



CRIMINAL RECORDS (SPENT CONVICTIONS)
LAW
(2018 Revision)

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CAYMAN ISLANDS



CRIMINAL RECORDS (SPENT CONVICTIONS) LAW

(2018 Revision)

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

Short title

1. This Law may be cited as the *Criminal Records (Spent Convictions) Law (2018 Revision)*.

Interpretation

2. In this Law —

“**Board**” means the Expungement Board established by section 5;

“**Caymanian**” has the same meaning as in section 2 of the *Immigration Law (2015 Revision)*;

“**Chairperson**” means the Chairperson of the Board appointed pursuant to paragraph 2 of Schedule 1;

“**Commissioner**” means the Commissioner of Police appointed under section 8 of the *Police Law (2017 Revision)*;

“**conviction**” means —

- (a) a conviction in the Islands;
- (b) a conviction by or before a court outside the Islands; or



(c) a finding in criminal proceedings that a person has committed an offence, done an act or made the omission charged;

“**crime-free period**”, in relation to a court other than a juvenile court, has the meaning assigned in section 21;

“**crime-free period**”, in relation to a juvenile court, has the meaning assigned in section 22;

“**criminal record**” means a record containing a person’s information in relation to a conviction for an offence, which is kept —

(a) by a court;

(b) by the Royal Cayman Islands Police Service;

(c) by a department of Government or any other public authority; or

(d) for the purposes of Her Majesty’s forces, whether in the Islands or elsewhere;

“**expunged**”, in relation to a criminal record, means a criminal record that has been spent and has been expunged from the criminal records pursuant to this Law;

“**firearm**” has the same meaning as in section 2 of the *Firearms Law (2008 Revision)*;

“**Governor**” means the person for the time being holding the office of Governor of the Cayman Islands, and includes any person for the time being lawfully performing the functions of that office;

“**information**”, in relation to criminality, means information imputing that a named or otherwise identifiable living person has committed or been charged with or prosecuted for, or convicted of, or sentenced for, any offence which is the subject of an expunged criminal record;

“**proceedings before a judicial authority**” includes, in addition to proceedings before a court of law, proceedings before a tribunal, body or person having power —

(a) by virtue of any law, custom or practice;

(b) under the rules governing an association, institution, profession, occupation or employment; or

(c) under a provision of an agreement providing for arbitration with respect to questions arising under the agreement,

to determine a question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of that question;

“**sentence**” includes an order made by a court dealing with a person in respect of a conviction for an offence directing anything to be done or not to be done by the person and includes —



- (a) an order for committal or other order made in default of payment of a fine or other sum adjudged to be paid by or imposed on conviction; and
- (b) an order dealing with a person in respect of a suspended sentence of imprisonment;

“**spent**”, in relation to a conviction, means a conviction where the relevant crime-free period has expired and the Board has declared it to be spent; and

“**vulnerable person**” means a person referred to in section 38.

- (2) For the purposes of this Law, the following are “**ancillary circumstances**” in relation to a conviction —
 - (a) the offence which is the subject of that conviction;
 - (b) the conduct constituting the offence;
 - (c) a process or proceedings preliminary to that conviction;
 - (d) a sentence imposed in respect of that conviction;
 - (e) proceedings, whether by way of appeal or otherwise, for reviewing that conviction or that sentence; and
 - (f) anything done under or in compliance with a sentence.
- (3) For the purposes of this Law —
 - (a) the following are to be treated as a single term of imprisonment —
 - (i) consecutive terms of imprisonment;
 - (ii) terms of imprisonment which are wholly or partly concurrent, and which were imposed in respect of offences of which a person was convicted in the same proceedings;
 - (b) no account shall be taken of any subsequent variation of a term originally imposed by a court in dealing with a person in respect of a suspended sentence of imprisonment; and
 - (c) a sentence imposed by a court outside the Islands which is substantially the same as a sentence of any description mentioned in this Law shall be treated as being the same as a sentence described in this Law.

Law binds the Crown

- 3. This Law binds the Crown.

Object of this Law

- 4. The primary object of this Law is to implement a scheme to limit the effect of a person’s conviction for a range of offences if the person, having served that person’s sentence, subsequently completes a period of crime-free behaviour and on completion of that period, the conviction shall be regarded as spent and, subject to some exceptions, a person is eligible to apply for the expungement of that criminal record.



PART 2 - EXPUNGEMENT BOARD

Expungement Board established

5. (1) There is established for the purposes of this Law a body to be known as the Expungement Board.
- (2) The provisions of Schedule 1 shall have effect as to the constitution of the Board and otherwise in relation to the Board.

Functions of the Board

6. (1) The functions of the Board are to —
- (a) receive, consider, review and determine applications for the expungement from the criminal records of spent convictions;
 - (b) consider representations made to it by or on behalf of persons who apply to the Board for the expungement of criminal records;
 - (c) advise the Governor on policy and strategic matters;
 - (d) submit reports to the Governor, at intervals required by the Governor, on the discharge of the Board's functions; and
 - (e) carry out other functions assigned by the Governor.
- (2) The Board shall have the power to approve, disapprove or revoke the expungement of a criminal record, and this power shall be exercised in a manner that is lawful, rational, proportionate and procedurally fair.
- (3) The Governor may give the Board policy directions relating to applications for expunging records, including related inquiries and proceedings and the Board shall ensure that the policies are brought to the attention of the public.
- (4) A hearing by the Board shall be in private and may be conducted without the applicant appearing unless the Board sees it fit to hear the applicant in person.

PART 3 - EXPUNGEMENT OF CONVICTIONS

Criteria for expunging a criminal record

Findings and orders considered to be convictions

7. The following findings or orders of a court shall be treated as convictions for the purposes of this Law —
- (a) a finding that an offence has been proved, or that a person is guilty of an offence, and the discharging of, or the making of an order releasing, the person conditionally on entering into a recognisance to be of good behaviour for a specified period or on other conditions determined by the court; and



- (b) in the case of the juvenile court an order other than an order dismissing a charge.

Convictions imposed or expunged in other countries

8. (1) This Law shall apply to a conviction for an offence against laws other than the Laws of the Cayman Islands and a reference in this Law to an offence, conviction and court includes a reference to an offence, conviction and court of a place other than the Islands which correspond, or which correspond as closely as possible, to the relevant offence, conviction and court of the Islands.
- (2) Where a person's conviction was expunged in another country for a conviction in that country, that person is entitled to protection under this Law as if the offence had been committed in the Islands and the conviction expunged under this Law.
- (3) A prisoner who is Caymanian and has been convicted of an offence in another country and who is transferred to the Islands to serve that prisoner's sentence, or the rest of that sentence, shall be entitled to expungement as if that offence had been committed in the Islands in accordance with the criteria set out in this Law.
- (4) For the purposes of this Law, the offence that a transferred prisoner has been found guilty of, is deemed to be a "Category A offence" under section 23 of the *Penal Code (2018 Revision)*.

Convictions of prohibited immigrants

9. (1) Where a person has been declared a prohibited immigrant in the Islands on the basis of a criminal offence committed outside the Islands and the person's criminal record is expunged in the country in which the conviction took place, that expungement shall be recognised under this Law as if it had been given by the Board in respect of an offence committed in the Islands.
- (2) Where a person's criminal record has been expunged in circumstances described in subsection (1), that person may, subject to the provisions of the *Immigration Law (2015 Revision)*, re-enter the Islands to live or visit.

Convictions of deportees

10. (1) Where a person is deported from the Islands following a conviction, that person may apply to the Board for expungement of that person's criminal record if it is shown that that person has lived the relevant crime-free period in the country in which that person has lived since being deported.
- (2) Where a person's criminal record has been expunged in circumstances described in subsection (1), that person may, subject to the provisions of the *Immigration Law (2015 Revision)*, re-enter the Islands to live or visit.



Convictions before the commencement of [Law 42 of 2016]

- 11.** A person who has been convicted before the 1st February, 2018, the date of the coming into force of the *Criminal Records (Spent Convictions) Law, 2016*, and has not completed the crime-free period under the *Rehabilitation of Offenders Law (1998 Revision)* —
- (a) may apply; or
 - (b) if the application was pending, may reapply,
- for an expungement of a criminal record under this Law as if the conviction took place when this Law was in force.

Convictions that cannot be expunged

- 12.** (1) The following convictions cannot be expunged -
- (a) a conviction for an offence specified in Schedule 2;
 - (b) a conviction resulting in a sentence of imprisonment for life;
 - (c) a conviction resulting in a term exceeding five years, subject to the power in section 16(1)(c);
 - (d) a conviction against a corporate body;
 - (e) a conviction resulting in a sentence of detention during the court's pleasure; and
 - (f) a conviction for an offence described in paragraph (c), regardless of the sentence imposed where the person convicted is not under seventeen years old and it is a first offence.
- (2) The Cabinet may by Order amend Schedule 2 to —
- (a) add or delete categories; or
 - (b) impose exceptions or conditions.
- (3) An Order made pursuant to section (2) shall be subject to affirmative resolution of the Legislative Assembly.
- (4) Where a sentence that is eligible for expungement is reduced by an exercise of a prerogative power, privilege or the court's pleasure, the reduced sentence shall, for the purposes of determining the crime-free period, be treated as if it was the sentence imposed by the court.

Pending charges

- 13.** (1) Where a person makes an application for expungement of a criminal record and that person is alleged to have committed a new offence, the Board may, on terms and conditions it thinks fit, and in exceptional circumstances, approve the expungement of the record.



- (2) The Board shall, in exercising the Board's power under subsection (1), take into account the following —
 - (a) the nature of the offence for which suspension is being sought and the nature of the new offence;
 - (b) the provisions of this Law in relation to the period during which the new offence can be suspended;
 - (c) the length of time it has taken without the charge for the new offence being disposed of; and
 - (d) any other factor the Board considers relevant.
- (3) A person who applies for expungement shall disclose to the Board any allegations in relation to that person of the commission of a new offence and, if that person fails to disclose those allegations in relation to a new offence, that person commits an offence and is liable upon conviction to a fine not exceeding ten thousand dollars.
- (4) In this section “**new offence**” means an offence for which a person seeking expungement of an earlier offence is charged or in respect of which that person is named by the police as a suspect in the Islands or elsewhere.

Minor offences relating to marijuana

- 14.** (1) A person convicted of any of the following offences —
- (a) possession not involving an aggravating factor such as trafficking or intent to supply;
 - (b) possession of pipes or other utensils for the consumption of marijuana; or
 - (c) smoking or other unlawful use of marijuana,
- or a similar offence under a Law, before 1st February, 2018, the date of the coming into force of the *Criminal Records (Spent Conviction) Law, 2016 [Law 42 of 2016]*, may apply to the Board for an expungement of that person's criminal record under this Law.
- (2) Where a person is convicted of any of the offences referred to in subsection (1), after the 1st February, 2018, the date of the coming into force of the *Criminal Records (Spent Conviction) Law, 2016 [Law 42 of 2016]*, that person may apply to the Board for an expungement if the sentence is non-custodial and, if a fine is imposed, where that fine does not exceed five thousand dollars.
 - (3) The Cabinet may —
 - (a) by Order amend this section; and
 - (b) make regulations relating to the administration of this section.
 - (4) An Order made pursuant to section (3)(a) shall be subject to affirmative resolution of the Legislative Assembly.



Procedures for expunging criminal records

Automatic expungement

- 15.** Where a person has been convicted of an offence and has been sentenced for a period not exceeding five years, upon the expiration of the prescribed crime-free period, that person's criminal record shall be treated as expunged.

Application for expungement

- 15A.** (1) Where a person has been convicted of an offence and has been sentenced for a period exceeding five years, upon the expiration of the prescribed crime-free period, that person may apply to the Board for that person's criminal record to be expunged.
- (2) An application for expungement shall be made in the prescribed manner and accompanied by the prescribed fee.

Inquiries by Board

- 16.** (1) On receipt of an application for an expungement of a criminal record, the Board —
- (a) shall cause inquiries to be made to ascertain whether the applicant is eligible to make the application;
 - (b) shall, if the applicant is eligible, cause inquiries to be made to ascertain whether section 13 applies; and
 - (c) may, in the case of an offence referred to in Schedule 3, item 2, cause inquiries to be made with respect to factors which are relevant to determining whether approving an expungement of a criminal record would bring the administration of justice into disrepute.
- (2) Without limiting the generality of the power in subsection (1)(c), Cabinet may make regulations as to what factors may be taken into account for purposes of determining whether the expungement of a criminal record would bring the administration of justice into disrepute.

Representations

- 17.** (1) If the Board proposes to deny an application for expungement of a criminal record, the Board shall notify the applicant in writing and advise the applicant that the applicant may make, or have made on the applicant's behalf, representation to the Board, either in writing within twenty-one days from the date of the notice or, with the Board's authorisation, orally at a hearing held for that purpose.
- (2) The Board shall, before making its decision, consider any representations made to it by the applicant or on the applicant's behalf.



Computing date of expiration of sentence

- 18.** For the purposes of this Law, a reference to the expiration according to law of a sentence of imprisonment imposed for an offence shall be read as a reference to the day on which the sentence expires, without taking into account —
- (a) any period during which the person could be entitled to statutory release or any period following a statutory release date;
 - (b) any remission that stands to the credit of the person in respect of the offence; or
 - (c) an earlier date of release due to parole.

Re-applying

- 19.** Where an application has been denied, the applicant may not re-apply until the expiration of one year after the day on which the Board refused to approve the expungement of the criminal record.

General**Spent convictions**

- 20.** (1) A conviction shall be spent on completion of the relevant crime-free period, except as provided by this section.
- (2) A conviction shall not be spent unless the person has served or otherwise fully complied with the sentence imposed in respect of that conviction.
 - (3) A finding that an offence has been proved, or that a person is guilty of an offence, without proceeding to a conviction, shall not be considered a conviction.
 - (4) An order of a juvenile court dismissing a charge and administering a caution shall not to be considered a conviction.
 - (5) A finding that an offence has been proved, or that a person is guilty of an offence, and —
 - (a) the discharging of, or the making of an order releasing, the person conditionally —
 - (i) on entering into a good behaviour bond for a specified period;
 - (ii) on participating in an intervention program; or
 - (iii) on other conditions determined by the court; or
 - (b) the releasing of that person on probation on conditions determined by the court, for such period of time as it thinks fit,
- shall be treated as spent on the satisfactory completion of the period or the satisfactory compliance with the program (including any intervention plan arising out of the program) or conditions, as the case may require.

- (6) A conviction for an offence which has ceased, by operation of law, to be an offence shall be immediately spent when that offence —
 - (a) ceases to be an offence; and
 - (b) is prescribed by Regulations made by Cabinet to be an offence to which this subsection applies.
- (7) A conviction which is expunged shall not be revived by a subsequent conviction.
- (8) A reference in subsection (5)(a)(i) to a good behaviour bond includes a reference to a recognisance to be of good behaviour made before the commencement of the *Alternative Sentencing Law (2008 Revision)*.

Crime-free period for convictions of courts (other than a juvenile court)

- 21.** (1) The crime-free period (in the case of an order of a court other than an order of a juvenile court) means the period after a sentence is served during which the person has not been —
- (a) convicted of an offence punishable by imprisonment;
 - (b) in prison because of a conviction for an offence; and
 - (c) unlawfully at large.
- (2) The crime-free period may commence before the date of the commencement of this Law.

Crime free period for orders of a juvenile court

- 22.** (1) The crime-free period (in the case of an order of the juvenile court) is the period after the date of the order during which the person has not been —
- (a) subject to a control order;
 - (b) convicted of an offence punishable by imprisonment;
 - (c) in prison because of a conviction for an offence; and
 - (d) unlawfully at large.
- (2) The crime-free period may commence before the date of the commencement of this Law.

Convictions in relation to traffic offences

- 23.** (1) A conviction for a traffic offence and any period of imprisonment imposed as a consequence of such a conviction shall be disregarded in calculating the crime-free period for a conviction for a non-traffic offence and a conviction for a traffic offence is of relevance only in calculating the crime-free period for a conviction for an earlier traffic offence.
- (2) A conviction for a non-traffic offence and any period of imprisonment imposed as a consequence of such a conviction shall be disregarded in



calculating the crime-free period for a conviction for a traffic offence and a conviction for a non-traffic offence is of relevance only in calculating the crime-free period for an earlier non-traffic offence.

- (3) Notwithstanding subsections (1) and (2), regard shall be had to a conviction for an offence resulting in —

- (a) death; or
- (b) bodily harm,

in calculating the crime-free period for any conviction (whether for a traffic offence or a non-traffic offence) and a conviction for any of those shall be of relevance in determining the crime-free period for any earlier offence.

- (4) In this section, traffic offence means an offence arising out of the use of a motor vehicle or trailer within the meaning of the *Traffic Law, 2011* [Law 26 of 2011] and non-traffic offence means any other offence.

Applicable crime-free period

24. The crime-free period in relation to a sentence specified in the first column of Schedule 3 shall be the period specified in the second column thereof; the period being reckoned from the date of the expiration of the sentence as defined in section 18.

Crime-free period in relation to multiple sentences

25. Where a person has been convicted of multiple offences and the sentence imposed in respect of the convictions (whether or not in the same proceedings) differ, the crime-free period in relation to those convictions shall be determined by the longer or the longest of those sentences.

PART 4 - EFFECT OF EXPUNGEMENT

Effect of expungement of a criminal record in general

26. A person shall, where the criminal record of that person has been expunged, be treated, for all purposes in law, as a person who has not —

- (a) committed;
- (b) been charged with;
- (c) been prosecuted for;
- (d) been convicted of; or
- (e) been sentenced for,

the offence which was the subject of that criminal record.

Effect of expungement in judicial proceedings

- 27.** (1) Notwithstanding any other written or unwritten law —
- (a) no evidence shall be admissible in proceedings before a judicial authority to prove that a person has —
 - (i) committed;
 - (ii) been charged with;
 - (iii) been prosecuted for;
 - (iv) been convicted of; or
 - (v) been sentenced for,the offence which was the subject of an expunged criminal record; and
 - (b) a person shall not, in any proceedings, be asked and, if asked, may answer in the negative any question relating to the person's criminal record which cannot be answered without acknowledging or referring to a conviction which forms the basis of an expunged criminal record or any ancillary circumstances.
- (2) If, in judicial proceedings the judicial authority is satisfied that justice cannot be done except by requiring or admitting evidence relating to a person's expunged criminal record or to ancillary circumstances to it, that authority may —
- (a) require or admit the evidence in question, but a court before which such evidence is admitted shall, in appropriate circumstances, take reasonable steps to prevent or minimise publication of that evidence; and
 - (b) determine any issue to which the evidence relates.
- (3) In the performance of its functions, the Department of Community Rehabilitation shall be entitled to have access to the criminal record.

Effect of expungement in non-judicial proceedings

- 28.** Where a question arises in a non-judicial proceeding with respect to a person's criminal history, the person —
- (a) may answer in the negative; and
 - (b) shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure, in the answer, to acknowledge or disclose an expunged criminal record or ancillary circumstances.

Effect of expungement on laws, agreements and arrangements.

- 29.** Notwithstanding section 33, a disclosure obligation imposed on a person by a rule of law or by the provisions of an agreement or arrangement shall not extend to requiring that person to disclose an expunged criminal record or ancillary circumstances.



Effect of expungement in relation to disqualification pursuant to section 62(1)(e) of the Constitution

- 30.** For the avoidance of doubt, the provisions of this Part shall not operate to prevent a person from being disqualified to be elected as a member of the Legislative Assembly pursuant to section 62(1)(e) of Schedule 2 of the *Cayman Islands Constitution Order, 2009* [UKSI 1379 of 2009].

Defamation actions

- 31.** The law of defamation applies to an expunged criminal record as if the person had never committed the offence but shall not protect a person if the publication complained of took place before the conviction was expunged.

Saving the Royal Prerogative

- 32.** Nothing in this Law affects the right of Her Majesty, by virtue of Her Royal Prerogative or otherwise, to grant a free pardon, to quash a conviction or sentence, to commute a sentence or to expunge a criminal record.

PART 5 - DISCLOSURE OF EXPUNGED RECORDS**Circumstances where persons shall disclose expunged criminal record**

- 33.** (1) A person shall, if requested to do so, disclose particulars of an expunged criminal record when seeking to —
- (a) be made a member of a professional body or any of the professions specified in Part 1 of Schedule 4;
 - (b) be appointed to an office of employment specified in Part 2 of Schedule 4;
 - (c) become engaged in a business of the type specified in Part 3 of Schedule 4; or
 - (d) be elected as a member of the Legislative Assembly.
- (2) A disclosure of particulars of an expunged criminal record under subsection (1) shall be made —
- (a) to a person authorised by the —
 - (i) professional body concerned; or
 - (ii) organisation responsible for the office of employment;
 - (b) in relation to a business, to —
 - (i) the chief operating officer of the business; or
 - (ii) a person ostensibly authorised to receive the disclosure;
 - (c) a person designated by regulations made by Cabinet for the purpose; or

- (d) to the Supervisor of Elections.
- (3) The Cabinet may by Order amend Schedule 4 by —
 - (a) add or delete categories; or
 - (b) impose exceptions or conditions.
- (4) An Order made pursuant to section (3) shall be subject to affirmative resolution of the Legislative Assembly.
- (5) The particulars of an expunged criminal record disclosed to an authorised person under this section may be published or communicated on the following conditions —
 - (a) the publication or communication shall be in accordance with rules applying to the professional body, office of employment or business; and
 - (b) the general disclosure or publication of the particulars of the expunged criminal record shall be to authorised persons.

Failure to disclose expunged criminal record where disclosure required

- 34.** (1) Where a person who is required to disclose the particulars of an expunged conviction under section 33 fails to do so, that person commits an offence and is liable on summary conviction to a fine of five thousand dollars.
- (2) A person shall not be convicted of an offence under this section unless the court is satisfied that a benefit was conferred on that person and that such benefit would not have accrued if the person had not committed the act alleged to constitute the offence.

Unauthorised disclosure of expunged criminal record

- 35.** (1) A person —
- (a) who, in the course of official duties, has or has had custody of or access to information constituting part of a criminal record; or
 - (b) who, knowing or having reasonable cause to suspect that any such information was obtained in the course of the official duties, discloses that information to any other person, commits an offence and is liable on summary conviction to a fine of five thousand dollars.
- (2) In proceedings for an offence under subsection (1) it is a defence for the accused person to show that the disclosure was made to —
- (a) the person whose criminal record has been expunged or to another person at the express written request of the person whose criminal record has been expunged;
 - (b) a person whom the accused reasonably believed to be the person whose criminal record has been expunged; or



- (c) another person at the express written request of a person whom the accused reasonably believed to be the person whose criminal record had been expunged.
- (3) A person who obtains any information from an expunged criminal record by means of fraud, dishonesty or a bribe commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of six months, or to both.

PART 6 - CUSTODY AND MANAGEMENT OF EXPUNGED CRIMINAL RECORDS

Custody and protection of records

Keeping and protection of expunged criminal records

- 36.** (1) The Governor may, by direction in writing addressed to a person having the custody or control of a judicial record of a conviction for which an expungement has been approved, require that person to deliver that judicial record into the Commissioner's custody.
- (2) A judicial record of a conviction for which an expungement has been approved that is in the custody of the Commissioner or of any department or agency of the Government of the Islands shall be kept separate from other criminal records and that judicial record shall not be disclosed to any person, nor may the existence of the judicial record or the fact of the conviction be disclosed to any person, without the prior approval of the Governor.
- (3) The Governor shall, before granting the approval for disclosure referred to in subsection (2), be satisfied that the disclosure is in the interests of the administration of justice or for any purpose related to the safety or security of the Islands or any state allied or associated with the Islands.
- (4) For greater certainty, a judicial record includes any information in relation to the conviction that may be contained in a convicted person's index of a national DNA data bank as may be established.

Protection of disclosures of discharges

- 37.** (1) No judicial record of a discharge under any Law that is in the custody of the Commissioner or of any department or agency of the Government of the Islands shall be disclosed to any person, nor may the existence of the judicial record or the fact of the discharge be disclosed to any person, without the prior approval of the Governor unless —
- (a) more than one year has elapsed since the person was discharged absolutely; or

- (b) more than three years have elapsed since the person was discharged on the conditions prescribed in a probation order.
- (2) On the expiration of the relevant period referred to in subsection (1), the Commissioner shall remove all references to a discharge under any Law from the criminal conviction records retrieval system that may be maintained by the Police Service.
- (3) Notwithstanding sections 36 and subsections (1) and (2), the name, date of birth and last known address of a person whose criminal record is expunged and who has received a discharge referred to in subsection (1) may be disclosed to the Police Service if a fingerprint, identified as that of the person, is found —
 - (a) at the scene of a crime during an investigation of the crime; or
 - (b) during an attempt to identify a deceased person or a person suffering from amnesia.

Protecting vulnerable persons

Notation and verification of records

- 38.** (1) In this section, vulnerable person means a person who, because of that person's age, a disability or other circumstances, whether temporary or permanent is —
- (a) in a position of dependency on others; or
 - (b) at a greater risk than the general population of being harmed by a person in a position of trust or authority towards them.
- (2) The Commissioner shall make, in the criminal conviction records retrieval system maintained by the Police Service, a notation enabling a member of the Police Service or other authorised body to determine whether there is a criminal record of a person's conviction for an offence listed in Schedules 2 and 3 in respect of which the expungement of a criminal record has been approved.
- (3) At the request of any person or organisation responsible for the well-being of a child or vulnerable person and to whom or to which an application is made for a paid or volunteer position, a member of the Police Service or other authorised body shall verify whether the applicant is the subject of a notation made in accordance with subsection (2) if —
- (a) the position is one of trust or authority towards that child or vulnerable person; and
 - (b) the applicant has consented in writing to the verification.
- (4) Except as authorised by subsection (3), no person may verify whether a person is the subject of a notation made in accordance with subsection (2).



- (5) The Police Service or other authorised body that identifies an applicant for a position referred to in subsection (3)(a) as being a person who is the subject of a notation made in accordance with subsection (2) shall request the Commissioner to provide the Governor with any record of a conviction of that applicant, and the Commissioner shall transmit any such record to the Governor.

Disclosure and use of information

- 39.** (1) The Governor may disclose to the Police Service or other authorised body all or part of the information contained in a record transmitted by the Commissioner under section 38(5).
- (2) The Police Service or other authorised body shall disclose the information referred to in subsection (1) to the person or organisation that requested the verification if the applicant for a position has consented in writing to the disclosure.
- (3) A person or organisation that acquires information under this section in relation to an application for a position shall not use it or communicate it except in relation to the assessment of the application.
- (4) The Cabinet may by Order amend Schedule 2 and 3 by adding or deleting a reference to an offence, sentence or period.
- (5) An Order made pursuant to section (4) shall be subject to affirmative resolution of the Legislative Assembly.

PART 7 - MISCELLANEOUS

Revocation of expungement

- 40.** The expungement of a criminal record may be revoked by the Board on evidence establishing to the satisfaction of the Board —
- (a) that the person to whom it relates knowingly made a false or deceptive statement in relation to the application for the expungement, or knowingly concealed some material particular in relation to that application; or
 - (b) that new information shows that the person was not eligible for the expungement when it was approved.

Representations

41. (1) If the Board proposes to revoke an expunged criminal record, the Board shall notify the applicant in writing and advise the applicant that the applicant may make, or have made on the applicant's behalf, representation to the Board either in writing within twenty-one days from the date of the notice or, with the Board's authorisation, orally at a hearing held for that purpose.
- (2) The Board shall, before making its decision, consider any representations made to it by the applicant or on the applicant's behalf.

Limitation on expungements

42. A person shall not be eligible to obtain more than two expungements unless the convictions are for multiple offences for which concurrent sentences were imposed, in which case those sentences shall be considered to be one conviction.

Disclosure of decisions relating to expunged criminal records

43. The Board may disclose the number of decisions on approvals and disapprovals of expungement applications, and related matters with the exception that the Board may not disclose information that could reasonably be expected to identify a person unless that person authorises the disclosure in writing.

Reports to Legislative Assembly

44. (1) The Board shall, within three months after the end of each financial year, submit to the Governor a report for that year containing the following information —
- (a) the number of applications for expungement of criminal records made in respect of the offences referred to in Schedule 2;
 - (b) the number of expungement of criminal records that the Board approved or disapproved, in respect of the offences referred to in Schedule 2;
 - (c) the number of expungement of criminal records approved, categorised by the offence to which they relate and, if applicable, the district of residence of the applicant; and
 - (d) any other information required by the Governor.
- (2) The Governor shall cause the report to be laid before the Legislative Assembly on any of the first thirty days on which the House is sitting after the day on which the Governor receives it.

Law does not authorise contraventions of other Laws

45. Nothing in this Law authorises a person to disclose a conviction or to take a conviction into account if to do so would contravene any other Law.



Law does not affect certain other lawful acts

46. Nothing in this Law affects anything lawfully done before a conviction is expunged.

Non-destruction of records

47. This Law does not authorise the destruction by or on behalf of a public authority of an expunged criminal record.

Judicial review

48. A person affected by a decision of the Board may, within forty-five days of that decision, appeal to the Grand Court by way of judicial review of the decision.

Regulations

49. Cabinet may make Regulations generally for administering this Law by prescribing anything required or permitted by this Law to be prescribed, or is necessary or convenient to be prescribed in order to give effect to the objects of this Law and, in particular, may prescribe —

- (a) the additions, deletions, exceptions and conditions referred to in section 33(3);
- (b) the form of police clearance reports;
- (c) the procedure relating to applications for the expungement of criminal records;
- (d) the persons to whom disclosures can be made under section 33(2)(b);
- (e) the forms to be used for applications made under this Law;
- (f) the rules respecting the making of notations in respect of records of conviction, and the verification of such records, for the purposes of section 36(3);
- (g) the rules respecting the consent given by applicants to the searching of records and the disclosure of information contained in them, including the information to be given to applicants before obtaining their consent and the manner in which consent shall be given, for the purposes of sections 39(1) and (2);
- (h) rules governing the disclosure of decisions under section 43; and
- (i) what the exceptional circumstances that apply for the purposes of any part of this Law.

Repeal of the Rehabilitation of Offenders Law 1998 Revision

- 50.** (1) The *Rehabilitation of Offenders Law (1998 Revision)*, hereinafter referred to as the “repealed Law”, is hereby repealed.
- (2) The rights or benefits of any person where those rights or benefits —
- (a) were acquired under the repealed Law; and



(b) existed immediately prior to the commencement of this Law,
shall not be adversely affected by this Law.



SCHEDULE 1

(Section 5)

EXPUNGEMENT BOARD

Constitution of the Board

1. (1) The Board shall consist of not less than three nor more than five members as the Governor may appoint.
- (2) The Board shall include at least one of each of the following —
 - (a) a person who —
 - (i) is an attorney-at-law of at least five years' standing;
 - (ii) is a Judge;
 - (iii) is qualified to hold office as a Judge even if that person may have reached the retirement age for Judges; or
 - (iv) is a Magistrate;
 - (b) a person appearing to the Governor to be interested in the rehabilitation of persons convicted of criminal offences being, but not limited to —
 - (i) a psychiatrist or psychologist; or
 - (ii) a social worker; or
 - (c) a member of the public other than one referred to in paragraph (2)(a), (b) or (c) who may be a justice of the peace, minister of religion or other person.
- (3) For purposes of assessing the qualifications and experience of persons to be considered for appointment to the Board, the Governor may appoint a panel which may or may not include members of the Cabinet.

Chairperson and Secretary

2. (1) The Governor shall appoint as Chairperson a member of the Board appointed under paragraph 1(2)(a)(i), (ii) or (iii).
- (2) Where the Chairperson is absent or unable to act, the Governor shall appoint a member to perform the functions of Chairperson.
- (3) Where the Chairperson is unable to attend a meeting and no person has been appointed under subsection (2) or, where one has been appointed but that person is also unable to attend, the other members at the meeting shall elect one of their number to act as Chairperson at that meeting.



- (4) The Chief Officer in the Ministry responsible for the rehabilitation of offenders shall appoint a Secretary to the Board.

Seal

3. (1) The Board shall have a seal which shall be in the custody of the Chairperson or the Secretary and the seal shall be affixed to instruments pursuant to a resolution of the Board in the presence of the Chairperson or any other member of the Board and the Secretary.
- (2) The seal of the Board shall be authenticated by the signature of the Chairperson or a member of the Board authorised to act in that behalf and the Secretary, and the seal shall be officially and judicially noticed.
- (3) Documents, other than those required by law to be under seal, made by, and all decisions of, the Board may be signed by the Chairperson or any other member authorised to act in that behalf, or the Secretary.

Tenure of office of members

4. Subject to the provisions of this Schedule, the appointment of members of the Board shall be for a period not exceeding three years and each member is eligible for reappointment.

Temporary appointments

5. Where a member is absent or unable to act, the Governor shall appoint another person to act temporarily in the place of that member.

Filling vacancies

6. (1) If a vacancy occurs on the Board, the vacancy shall be filled by the appointment of another member who shall, subject to the provisions of this Schedule, hold office for the remainder of the period for which the previous member was appointed.
- (2) In the making of appointments pursuant to this paragraph regard shall be had to the requirements of paragraph 1(2).

Resignations

7. (1) The Chairperson may at any time resign by instrument in writing addressed to the Governor and the resignation shall take effect from the date of receipt by the Governor of the instrument.
- (2) A member other than the Chairperson may resign by instrument in writing addressed to the Governor and transmitted through the Chairperson, and from



the date of the receipt by the Governor of that instrument that member ceases to be a member of the Board.

Revocation of appointments

8. The Governor may at any time revoke the appointment of any member of the Board.

Publication of membership

9. The names of all members of the Board as first constituted and every change in membership shall be published in the Gazette.

Procedure for meetings

10. (1) The Board shall meet at such times as may be necessary or expedient for the transaction of its business and the meetings shall be held at such places and times and on such days as the Chairperson may determine.
- (2) Minutes in proper form of each meeting of the Board shall be kept by the Secretary.
- (3) Decisions of the Board shall be by a majority of the members present and voting and be in writing.
- (4) The Chairperson or, in the case of the absence or inability of the Chairperson to act, the person appointed or elected to act as Chairperson in accordance with paragraph 6 shall preside at the meetings of the Board, and when so presiding shall, in addition to an original vote, have a casting vote in any case in which the voting is equal.
- (5) The quorum of the Board shall be three.
- (6) Subject to the provisions of this Law the Board shall regulate its own proceedings.
- (7) The validity of any proceedings of the Board shall not be affected by any vacancy amongst the members or by any defect in the appointment of a member.

Conflict of interest

11. (1) Where a member of the Board has a possible or perceived conflict of interest with respect to any matter that comes up for discussion, that member shall say so but not disclose the nature of the interest and —
- (a) shall, as soon as the matter comes up on the agenda, immediately leave the place in which the deliberations are taking place and shall not participate, directly or indirectly, in the deliberations touching such

matter and shall not return while the matter is under discussion until a decision has been taken by the Board; and

- (b) shall otherwise comply with Regulations Cabinet may make with regard to conflict of interest.
- (2) A declaration of interest made under this section and the absence of the member concerned are to be recorded in the minutes of the meeting.

Transaction of business outside of meetings or by telephone

12. (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board, and a resolution in writing approved in writing by a majority of those members shall be taken to be a decision of the Board.
- (2) A Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of —
- (a) the approval of a resolution under sub-paragraph (1); or
 - (b) a meeting held in accordance with sub-paragraph (2),
- the Chairperson and each member shall have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under sub-paragraph (1) or (2) shall be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of sub-paragraph (1) by facsimile or other transmission of the information in the papers concerned.

Remuneration of members

13. Members who are not public officers as defined by section 124 of the Constitution [UKSI 1379/2009] shall be paid allowances as the Governor may determine.

Protection from liability

14. (1) A member shall not be personally liable in damages for anything done or omitted in the discharge or purported discharge of that member's functions, responsibilities, powers and duties under this Law unless it is shown that the act or omission was negligent or in bad faith.
- (2) The Government shall indemnify a member against all claims, damages, costs, charges or expenses incurred by that member in the discharge or purported



discharge of that member's functions, responsibilities, powers and duties under this Law, except claims, damages, costs, charges or expenses caused by the negligence or bad faith of that member.

SCHEDULE 2

(Sections 12, 38, 39 and 44)

OFFENCES THE RECORDS OF WHICH CANNOT BE EXPUNGED*(Regardless of sentence, unless otherwise stated)*

1. Treason
2. Murder
3. Manslaughter
4. Offences Against Morality under Part VB of the *Penal Code (2018 Revision)* where a person is sentenced to a custodial sentence of five years or more
5. Offences Against the Person under Part VI of the *Penal Code (2018 Revision)* where a person is sentenced to a custodial sentence of five years or more
6. Offences relating to terrorism
7. Offences relating to the trafficking of persons
8. Offences relating to care and protection of children and vulnerable persons
9. Offences relating to child pornography
10. Offences relating to a firearm as defined in section 2



SCHEDULE 3

(Sections 16, 24 and 38)

CRIME-FREE PERIODS IN RELATION TO SENTENCES

Sentence	Crime-free period
1. A sentence of life imprisonment	No expungement
2. A sentence exceeding five years	15 years, but subject to the approval of the Board in accordance with the criteria prescribed in and under section 16(1)(c)
3. A sentence of imprisonment for a term exceeding three years but not exceeding five years	10 years
4. Sentence of imprisonment for a term exceeding six months but not exceeding three years	7 years (adult) 5 years (juvenile)
5. A sentence of imprisonment for a term not exceeding six months	5 years (adult) 2.5 years (juvenile)
6. A fine or any community based order	5 years (adult) 2.5 years (juvenile)
7. An order sending the person to a rehabilitation school under section 21(1)(b) as read with section 20(3)(a) of the Youth Justice Law (2005 Revision)	2.5 years
8. A sentence of probation	5 years
9. A community service order under section 42 of the <i>Penal Code (2018 Revision)</i>	5 years
10. An order made under section 20(1)(b) of the <i>Youth Justice Law (2005 Revision)</i>	2.5 years
11. An order imposing a disqualification, disability or prohibition, or any other penalty other than a conviction	A period beginning with the date of conviction and ending on the date on which that disqualification, disability, prohibition or other penalty, other than a fine or conviction ceases or ceased to have effect
12. A curfew order or exclusion order as defined in sections 5 and 11, respectively, of the <i>Alternative Sentencing Law, (2008 Revision)</i>	5 years



Sentence	Crime-free period
13. A sentence of being bound over to keep the peace, an absolute discharge, conditional discharge, or admonishment and discharge	6 months. If the order itself exceeds 6 months, then the crime-free period will be completed at the time of completion of the order
14. A suspended sentence (including a suspended sentence supervision order referred to in section 21 of the <i>Alternative Sentencing Law, (2008 Revision)</i>)	7 years
15. An order under section 158 of the <i>Criminal Procedure Code (2017 Revision)</i> (Special verdict where accused found insane, after trial, at the time of offence charged)	7 years for a term not exceeding 6 months but not exceeding 36 months and 5 years for a sentence of imprisonment for a term not exceeding 6 months



SCHEDULE 4

(Section 33)

PERSONS WHO MUST DISCLOSE EXPUNGED CRIMINAL RECORDS

Part 1 - Professions

1. Attorney-at-Law
2. Certified or Chartered Accountant
3. Dentist
4. Medical Practitioner
5. Midwife
6. Optician
7. Pharmacist
8. School Teacher
9. Registered Nurse
10. Veterinary Surgeon
11. Any profession which can be practiced only upon being licensed under a Law.

Part 2 - Offices of Employment

Office of Employment	Categories of Employment
1. Judicial Service, that is, Judges, Magistrates and Justices of the Peace	All
2. Public Service, that is, the civil service and employees of statutory authorities and government companies	All
3. Members of statutory boards and boards of directors of government companies	All
4. Police Service	All
5. Prison Service	All
6. Fire Service	All
7. Monetary Authority	All
8. Financial Institutions	All
9. Insurance Companies	All
10. Hospitals and Nursing Homes	All
11. Educational Institutions	All
12. Residential facilities for the care and protection of children and other vulnerable persons	All
13. Sports organisations for children, in-home care agencies, after-school programmes and other services and facilities for vulnerable persons	All
14. Security Services Organisations	Director, Manager, Security Guard



Part 3 - Nature of Business

1. Bonds and other Securities
2. Stock Broking
3. Firearms Dealing

**Publication in consolidated and revised form authorised by the Governor in Cabinet
this 13th day of March, 2018.**

Kim Bullings
Clerk of the Cabinet

APPENDIX B

COMPARATIVE TABLES

TABLE 1 – BASIC FEATURES OF SPENT CONVICTION SCHEMES

Jurisdiction	Sentencing threshold	Excluded offences	Crime-free period
Cayman Islands	• Life imprisonment • >5 years: on application	• Treason • Murder • Manslaughter • Sexual offences if sentence 5 years+ • Offences against the person if sentence 5 years+ • Terrorism • Trafficking of persons • Care & protection of children/vulnerable persons • Child pornography • Firearms	Sentence-based Adult: • 0-15 years: ○ Marijuana: none ○ Discharge: 6 months ○ Curfew: 5 years ○ Community based order: 5 years ○ Probation: 5 years ○ Fine: 5 years ○ 6 months: 5 years ○ >6 months-3 years: 7 years ○ Suspended: 7 years ○ >3-5 years: 10 years ○ >5 years: 15 years Under 17: • 6 months-5 years: ○ Youth rehabilitation order: 2.5 years ○ Fine: 2.5 years ○ 6 months: 2.5 years ○ >6 months-3 years: 5 years
United Kingdom	• Life imprisonment • Schedule 18 offence (serious violent, sexual and terrorism offences): 4 years	None	Sentence-based Adult: • 1-7 years (custodial): ○ >1 years: 1 years ○ 1-4 years: 4 years ○ >4 years: 7 years • At end of order (non-custodial) Under 18:

TABLE 1 – BASIC FEATURES OF SPENT CONVICTION SCHEMES

			• 6 months-3.5 years (custodial): ○ >1 years: 6 months ○ 1-4 years: 2 years ○ >4 years: 3.5 years
Australian Capital Territory	6 months	• Sexual offences • Convictions of corporations • Prescribed convictions	• Adult: 10 years • Under 18: 5 years
Northern Territory	6 months	• Sexual offences • Convictions of corporations • Prescribed convictions	• Adult: 10 years • Youth Justice Court: 5 years • Under 18 (not YJct): 5 years on application
Western Australia	>1 years or \$15k fine: on application to Court	None	• 10 years • 3 years: minor cannabis offences
South Australia	Adult: 12 months Under 18: 2 years	Sexual offences if sentence includes any period of imprisonment	• 10 years • Under 18: 5 years
Victoria	2.5 years	• Sexual offences • Serious violent offences • May be spent on application to Court if: ○ Under 18 ○ No imprisonment	• Adult: 10 years • Under 18: 5 years • Under 15: none • Children's Court fine: none*
Tasmania	6 months	• Sexual offences • Prescribed offences	• Adult: 10 years • Under 18: 5 years
New South Wales	6 months	• Sexual offences • Convictions of bodies corporate • Prescribed convictions	• 10 years • Children's Court: 3 years • Children's Court caution: none • Conditional discharge/release: none
Queensland	2.5 years	None	• Indictment & adult: 10 years • Other: 5 years

TABLE 1 – BASIC FEATURES OF SPENT CONVICTION SCHEMES

New Zealand	Any custodial sentence ineligible	• Sexual offences	• 7 years
Canada	None	• Sexual offences (exceptions if offender not in position of trust, did not use violence etc)	• Indictment: 10 years • Summary: 5 years • Cannabis offences: may apply early
Jamaica	5 years	• Serious violent offences • Treason • Serious drug offences • Trafficking • Sexual offences • Terrorism • Gang-related offences	• Adult: ○ No imprisonment: 3 years ○ 6 months: 5 years ○ >6-36 months: 7 years ○ >36 months-5 years: 10 years • Under 18: ○ No imprisonment: 1.5 years ○ 6 months: 2.5 years ○ >6 months-3 years: 3.5 years ○ >3-5 years: 5 years • Requirements of sentence/order must be satisfied
Bermuda	3 years	None	• 7 years
Barbados	3 years unless first conviction	None	• 12 months: 7 years • >1-3 years: 10 years • Non-custodial: 5 years • Under 16: ○ Summary offence & no further offence until age of 20: none ○ Indictable offence & no further offence until age of 23: none

TABLE 2 – DISCLOSURE REQUIREMENTS

	CI ¹	UK	ACT	NT	WA	SA	Vic	Tas	NSW	Qld	JM	BM	BB
Appointments, occupations, employment, volunteering²													
Judge	x	x	x	x		x	x	x	x	x	x		x
Magistrate	x	x	x	x		x	x	x	x	x	x		x
Justice of the Peace	x		x	x		x		x	x	x			
Police officer	x	x	x	x		x	x	x		x	x		x
Prison officer	x	x	x	x		x	x	x	x	x	x		x
Teacher	x	x	x	x	x	x	x	x	x	x	x		x
Teacher's aid	x	x	x	x	x	x	x	x	x	x			
Lawyer	x	x				x	x	x		x	x		x
Accountant	x	x									x		x
Medical practitioner	x	x					x	x			x		x
Health practitioner	x	x					x	x			x		x
Pharmacist		x					x	x			x		x
Vet	x	x									x		x
Firefighter ³	x		x	x		x		x	x				
Care/supervision/ instruction of children, persons with a disability or older persons ⁴	x	x	x	x	x	x	x	x	x	x	x		x
Licences													
Gaming		x	x			x	x	x	x	x			
Firearms		x	x	x		x	x	x					
Security			x			x		x	x		x		x

¹ Volunteering not included.

² Including professional admission, licensing or registration, where applicable.

³ ACT, NT, SA, NSW – only disclosure of arson offences required.

⁴ Including employment/engagement in any capacity at a facility that provides such care, supervision or instruction.

TABLE 2 – DISCLOSURE REQUIREMENTS

	CI ¹	UK	ACT	NT	WA	SA	Vic	Tas	NSW	Qld	JM	BM	BB
Liquor								x		x			
Court proceedings													
All proceedings			x	x		x	x		x				
Criminal proceedings		x			x						x	x	x
Civil proceedings - limited circumstances	x	x										x	

Key:

CI	Cayman Islands
UK	United Kingdom
ACT	Australian Capital Territory
NT	Northern Territory (Australia)
WA	Western Australia
SA	South Australia
Vic	Victoria (Australia)
Tas	Tasmania (Australia)
NSW	New South Wales (Australia)
Qld	Queensland (Australia)
JM	Jamaica
BM	Bermuda
BB	Barbados