

Ordinance 07 of 2022

Published in Gazette No. 2018 of 30 March 2022

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**CRIMINAL CODE (AMENDMENT) ORDINANCE  
2022**

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An Ordinance to amend the Criminal Code.

R. Thomson  
**ADMINISTRATOR**

*29 March 2022*

**BE** it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

**Short title and commencement**

- 1.—(1) This Ordinance may be cited as the Criminal Code (Amendment) Ordinance 2022.
- (2) This Ordinance comes into force on 15 April 2022.

**Amendment to the Criminal Code**

2. The Criminal Code<sup>(a)</sup> is amended as follows.

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(a) Cap. 154, Laws of Cyprus (1959 ed.). Legislation of the former colony of Cyprus has effect in the Areas by virtue of article 5 of the Sovereign Base Areas of Akrotiri and Dhekelia Order in Council 1960 (SI 1960/1369 (UK)). Schedule 2 to the Interpretation Ordinance 2012 (Ordinance 8/2012) makes provision for the interpretation of such legislation.

### **Amendment to section 4 (interpretation)**

3. In section 4(a) after the definition of “offence” insert—

““penetration” is a continuing act from entry to withdrawal;”.

### **Amendment to section 105 (abuse of office)**

4. In section 105 for “three” substitute “seven”.

### **Amendment to section 144 (definition of rape)**

5. For section 144 substitute—

**“144.—**(1) A person (“A”) commits the offence of rape if—

- (a) A intentionally penetrates the vagina, anus or mouth of another person (“B”) with their penis,
- (b) B does not consent to the penetration, and
- (c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 177M and 177N apply to an offence under this section.

(4) A person who commits an offence under this section is guilty of a felony and is liable on conviction to imprisonment for life.”

### **Omission of section 145 (punishment of rape)**

6. Omit section 145.

### **Amendment to section 146 (attempt to commit rape)**

7. In section 146(b) (attempt to commit rape) after “commits rape” insert “as set out in section 144”.

### **Insertion of sections 146A to 146E**

8. After section 146 (attempt to commit rape) insert—

#### **“Sexual assault by penetration**

**146A.—**(1) A person (“A”) commits the offence of sexual assault by penetration if—

- (a) A intentionally penetrates the vagina, anus or mouth of another person (“B”) with any part of their body or anything else,
- (b) the penetration is sexual,
- (c) B does not consent to the penetration, and
- (d) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 177M and 177N apply to an offence under this section.

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(a) Section 4 was previously amended by Ordinances 1/2000, 5/2005 and 1/2019.

(b) Section 146 was previously amended by Ordinance 1/1973.

(4) A person who commits an offence under this section is guilty of a felony and is liable to imprisonment for life.

**Attempt of sexual assault by penetration**

**146B.** A person who attempts sexual assault by penetration is guilty of a felony and is liable to imprisonment for life.

**Coercion to commit rape**

**146C.** A person who by coercion causes a person to commit rape as set out in section 144 against a third person is guilty of a felony and is liable to imprisonment for life.

**Coercion to commit sexual assault by penetration**

**146D.** A person who by coercion causes a person to commit sexual assault by penetration as set out in section 146A against a third person is guilty of a felony and is liable to imprisonment for life.

**Coercion to commit an indecent assault**

**146E.** A person who, by coercion causes another person to commit an indecent assault as set out in sections 151 or 152 against a third person is guilty of a felony and is liable to imprisonment not exceeding ten years.”

**Amendment of section 151 (indecent assault on females)**

**9.—(1)** In section 151(a) the existing text becomes subsection (1).

(2) After that subsection insert—

“(2) Sections 177M and 177N apply to an offence under this section.”

**Amendment of section 152 (indecent assault on males)**

**10.—(1)** In section 152(b) the existing text becomes subsection (1).

(2) After that subsection insert—

“(2) Sections 177M and 177N apply to an offence under this section.”

**Amendment of section 177K (meaning of sexual)**

**11.** In section 177K(c) after “In sections” insert “146A and”.

**Amendment of section 177L (meaning of coercion)**

**12.** In section 177L(d) after “In sections” insert “146C, 146D, 146E,”.

**Insertion of sections 177M, 177N and 177O**

**13.** After section 177L insert—

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(a) Section 151 was previously amended by Ordinance 30/2009.  
(b) Section 152 was previously amended by Ordinance 30/2009.  
(c) Section 177K was inserted by Ordinance 1/2019.  
(d) Section 177L was inserted by Ordinance 1/2019.

### **“Evidential presumptions about consent**

**177M.**—(1) If in proceedings for an offence to which this section applies it is proved—

- (a) that the defendant (“D”) did the relevant act,
- (b) that any of the circumstances specified in subsection (2) existed, and
- (c) that D knew that those circumstances existed,

the complainant (“C”) is to be taken not to have consented to the relevant act unless sufficient evidence is adduced to raise an issue as to whether C consented, and D is to be taken not to have reasonably believed that C consented unless sufficient evidence is adduced to raise an issue as to whether D reasonably believed it.

(2) The circumstances are that—

- (a) any person was, at the time of the relevant act or immediately before it began, using violence against C or causing C to fear that immediate violence would be used against them;
- (b) any person was, at the time of the relevant act or immediately before it began, causing C to fear that violence was being used, or that immediate violence would be used, against another person;
- (c) C was, and D was not, unlawfully detained at the time of the relevant act;
- (d) C was asleep or otherwise unconscious at the time of the relevant act;
- (e) because of C’s physical disability, C would not have been able at the time of the relevant act to communicate to D whether C consented;
- (f) any person had administered to or caused to be taken by C, without C’s consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling C to be stupefied or overpowered at the time of the relevant act.

(3) In subsection (2)(a) and (b), the reference to the time immediately before the relevant act began is, in the case of an act which is one of a continuous series of sexual activities, a reference to the time immediately before the first sexual activity began.

### **Conclusive presumptions about consent**

**177N.**—(1) If in proceedings for an offence to which this section applies it is proved that the defendant (“D”) did the relevant act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed—

- (a) that the complainant (“C”) did not consent to the relevant act, and
- (b) that D did not believe that C consented to the relevant act.

(2) The circumstances are that—

- (a) D intentionally deceived C as to the nature or purpose of the relevant act;
- (b) D intentionally induced C to consent to the relevant act by impersonating a person known personally to C.

**177O.** In relation to an offence to which sections 177M and 177N apply, references in those sections to the relevant act and to the complainant are to be read as follows—

<i>Offence</i>	<i>Relevant Act</i>
An offence under section 144 (rape).	The defendant intentionally penetrating, with their penis, the vagina, anus or mouth of another person (“the complainant”).

An offence under section 146A (sexual assault by penetration).	The defendant intentionally penetrating, with a part of their body or anything else, the vagina or anus of another person (“the complainant”).
An offence under section 151 (indecent assault on females).	The defendant unlawfully and indecently assaults another person (“the complainant”).
An offence under section 152 (indecent assault on males).	The defendant unlawfully and indecently assaults another person (“the complainant”).

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**Substitution of section 235A (abandoning the place of the accident without rendering any assistance)**

14. For section 235A(a) substitute—

**“Abandoning the place of the accident without rendering any assistance**

**235A.**—(1) Any person who, having been implicated in an accident which caused the death of another person, abandons the place of that accident without rendering assistance, is guilty of an offence and is liable to imprisonment not exceeding five years or to a fine not exceeding fifteen thousand euros, or to both.

(2) Any person who, having been implicated in an accident which caused the bodily harm of another person, abandons the place of that accident without rendering assistance, is guilty of an offence and is liable to imprisonment not exceeding two years or to a fine not exceeding ten thousand euros, or to both.

(3) Any person who, having been implicated in an accident which caused damage to property, abandons the place of that accident without rendering assistance, is guilty of an offence and is liable on to imprisonment not exceeding one 1 month or to a fine not exceeding three thousand euros, or to both.

(4) The Court may order that any person convicted under subsections (1) or (2) is deprived of their driving licence for a period not exceeding two years from the date of conviction.

(5) The Court may order that any person convicted under subsection (3) is deprived of their driving licence for a period not exceeding two months from the date of his conviction.”

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(a) Section 235A was inserted by Ordinance 24/1989.

## EXPLANATORY NOTE

*(This note is not part of the Ordinance)*

1. This explanatory note relates to the Criminal Code (Amendment) Ordinance 2021 (the “Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.
2. The Ordinance amends the Criminal Code reflecting amendments made to the Criminal Code of the Republic of Cyprus by Laws 134(I)/2020, 150(I)/2020 and 27(I)/2021.
3. Section 3 amends section 4 (interpretation) of the Criminal Code by inserting the definition of “penetration”.
4. Section 4 amends section 105 (abuse of office) of the Criminal Code by increasing the maximum penalty from three years to seven years imprisonment.
5. Section 5 amends section 144 of the Criminal Code by amending the definition of rape and setting out the maximum penalty.
6. Section 6 omits section 145 of the Criminal Code because the offence and penalty for breaching section 144 is now incorporated into that section.
7. Section 7 amends section 146 (attempt to commit rape).
8. Section 8 inserts new offences of sexual assault by penetration, attempted sexual assault by penetration, and offences involving coercion in new sections 146A to 146E of the Criminal Code.
9. Sections 9 and 10 amend the provisions about indecent assault provisions to apply sections 177M and 177N (which make interpretive and evidential provisions about consent) to these offences.
10. Section 11 applies the definition of “sexual” in section 177K to the offences set out in section 146A of the Criminal Code.
11. Section 12 applies the definition of “coercion” in section 177L to the offences set out in sections 146C to 146E of the Criminal Code.
12. Section 13 inserts evidential presumptions and conclusive presumptions about consent in new sections 177M, 177N and 177O of the Criminal Code.
13. Section 14 amends the offences and penalties in section 235A (abandoning the place of accident without rendering any assistance) of the Criminal Code.

SBA/AG/2/CR133

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