

A BILL

entitled

CRIMINAL CODE AMENDMENT ACT 2012

WHEREAS it is expedient to amend the Criminal Code Act 1907;

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

Citation

1 This Act, which amends the Criminal Code Act 1907 (the "principal Act") may be cited as the Criminal Code Amendment Act 2012.

Inserts section 33A

2 The principal Act is amended by inserting next after section 33 the following—

"Instructing a person who participates in an unlawful gang to commit an offence

33A (1) Any person who knowingly instructs, directly or indirectly, a person who participates in or actively contributes to unlawful gang activity to commit an offence is guilty of an offence of the same kind, and is liable to the same punishment (including an additional element under section 70JB) as if he himself had committed that offence.

(2) In a prosecution for an offence under subsection (1), it shall not be necessary to prove that—

- (a) an offence other than the offence under subsection (1) was actually committed;
- (b) the accused person instructed a particular person to commit an offence; or
- (c) the accused person knew the identity of all of the persons who constitute the unlawful gang.

(3) Section 70JA (unlawful gang and unlawful gang activity-interpretation) applies for the purposes of this section."

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Inserts sections 70JA and 70JB

3 The principal Act is amended by inserting immediately after section 70J the following—

“Unlawful gang and unlawful gang activity - interpretation

70JA (1) For the purpose of this section and section 70JB —

“unlawful gang” means a group, however organised, that—

- (a) is composed of three or more persons; and
- (b) has as one of its purposes or activities the facilitation or commission of one or more offences, that, if committed, would likely result in the direct or indirect receipt of a material benefit (including a financial benefit), by the group or by one of the persons who constitute the group;

“unlawful gang activity” means unlawful criminal acts committed by—

- (a) an unlawful gang; or
- (b) a person participating in or actively contributing to the activity of an unlawful gang.

(2) In determining whether a person participates in or actively contributes to unlawful gang activity, the court may consider if the person—

- (a) uses a name, word, symbol, or other representation that identifies, or is associated with, an unlawful gang;
- (b) frequently associates with any of the persons who constitute an unlawful gang;
- (c) receives any benefit from an unlawful gang; or
- (d) frequently engages in activities at the instruction of any of the persons who constitute an unlawful gang.

Unlawful gang activity - increased penalty

70JB (1) Where a person is being sentenced for an offence which (whether wholly or partly) falls within the definition of unlawful gang activity, the court shall—

- (a) first determine the sentence (“the basic sentence”) in accordance with established principles but without regard to this section; then
- (b) where the basic sentence includes a term of imprisonment or a fine, increase the sentence by adding an additional element determined in accordance with subsection (2).

(2) The additional element shall be—

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- (a) a term of imprisonment of at least three years but not more than five years, where the basic sentence includes a term of imprisonment of seven years or more; or
 - (b) a term of imprisonment of at least one year but not more than three years, where the basic sentence includes a term of imprisonment for less than seven years; or
 - (c) a fine of at least \$1,000 but not more than \$10,000, where the basic sentence includes a fine.
- (3) The court shall not add an additional element under this section where the basic sentence is one of imprisonment for life.”.

Duration of sections 2 and 3

4 (1) Sections 2 and 3 of this Act shall continue in operation until 31 December 2015 and then expire, unless the Minister responsible for justice, by Notice published in the Gazette on or before that date, extends its duration beyond 31 December 2015.

(2) Where the Minister responsible for justice issues a Notice under subsection (1) to extend the duration of sections 2 and 3 beyond 31 December 2015, he may, from time to time, but before expiration of a Notice already issued, issue another Notice to extend the duration of sections 2 and 3, as and when needed.

(3) On the expiration of sections 2 and 3 of this Act, section 16 of the Interpretation Act 1951 shall apply as if sections 2 and 3 of this Act had been repealed by another Act.

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EXPLANATORY MEMORANDUM

The Bill for consideration is the Criminal Code Amendment Act 2012. This Bill amends the Criminal Code Act 1907 (hereinafter referred to as the “principal Act”).

Clause 1 is the citation.

Clause 2 inserts section 33A into the principal Act— (a) making it unlawful for any person to instruct a person who participates in an unlawful gang to commit an offence; (b) indicating the prescribed punishment to be applied to this offence; (c) indicating the factors not required to be proven in order to establish the offence.

Clause 3 inserts new sections 70JA and 70JB into the principal Act. In particular, section 70JA defines “unlawful gang” and the factors that a court can consider for determining if there is “unlawful gang activity”. Section 70JB sets out the penalty criteria to be applied, on a court concluding that the offence committed is connected to or arises from unlawful gang activity.

Clause 4 is a “sunset” provision, which provides for these new gang-related offences to cease to be operative on 31 December 2015, unless extended by the Minister of Justice by notice in the Gazette.