

BELIZE

CRIMINAL CODE (AMENDMENT) (NO. 2) ACT, 2014

ARRANGEMENT OF SECTIONS

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22. Repeal and substitution of section 77.
23. Insertion of section 77A.
24. Repeal of section 92.
25. Amendment of section 100.
26. Insertion of section 262A.
27. Repeal and substitution of section 263.



No. 12 of 2014

I assent,

(SIR COLVILLE N. YOUNG)
Governor-General

19th February, 2014.

AN ACT to amend the Criminal Code, Chapter 101 of the Substantive Laws of Belize, Revised Edition 2000-2003, to make provisions to reform the law in relation to sexual offences against children, abduction, kidnapping, procurement, incest, inducement to abandon criminal proceedings and perverting the course of justice; and to provide for matters connected therewith or incidental thereto.

(Gazetted 22nd February, 2014)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:

1. This Act may be cited as the

Short title.

CRIMINAL CODE (AMENDMENT) (NO. 2)
ACT, 2014.

CAP.101
R.E 2003

35/2005
11/2006
29/2010.

and shall be read and construed as one with the *Criminal Code*, which, as amended, is hereinafter referred to as the principal Act.

Amendment of
section 12.

2. The principal Act is amended by deleting section 12(*b*) and substituting the following -

"(*b*) In the case of a sexual assault upon a person, a consent shall be void if the person giving it is under sixteen years of age without prejudice to any other grounds set out in this section."

Amendment of
section 45.

3. The principal Act is amended in section 45 -

(*a*) by deleting paragraph (*f*);

(*b*) in paragraph (*g*) by deleting the words "male child or any female" appearing immediately after the words "assault upon any" and substituting the word "person";

(*c*) by deleting the word "two" and substituting the word "three"; and

(*d*) by deleting the proviso and substituting the following -

"Provided that a person convicted under this section in respect of an assault under paragraph (*g*) is liable to imprisonment for five years instead of three years."

Insertion of
section 45A.

4. The principal Act is amended by inserting immediately after section 45 the following section -

"Sexual
assault.

45A. (1) Every person who intentionally touches another person, that touching being sexual in nature, without that person's consent,

or a reasonable belief that that person consents,
and where the touching involved –

- (a) that person's vagina, penis, anus, breast or any other part of that person's body; or
- (b) that person being made to touch the person's vagina, penis, anus or breast or any other part of the person's body,

commits an offence and is liable –

- (i) where that person is sixteen years or over at the time the offence was committed, on summary conviction of a term of imprisonment for a term of five years or on conviction on indictment to a term of imprisonment for ten years; or
- (ii) where that person was under sixteen years at the time the offence was committed, on summary conviction of a term of imprisonment for a term of seven years or on conviction on indictment to a term of imprisonment for twelve years.

(2) Whether a belief is reasonable is to be determined having regards to all the circumstances, including the steps the person has taken to ascertain whether the other person consents.” .”

Repeal and substitution of section 47.

5. The principal Act is amended by repealing section 47 and the marginal note thereto and substituting the following-

“Unlawful sexual intercourse

47.- (1) Every person who, with or without consent, has sexual intercourse with a person who is under the age of fourteen years commits the offence of unlawful sexual intercourse and is liable on conviction on indictment to imprisonment for a term that is not less than twelve years but may extend to imprisonment for life.

(2) Every person who has unlawful sexual intercourse with a person who is above the age of fourteen years but under the age of sixteen years, commits an offence and is liable on conviction on indictment to imprisonment for a term that is not less than five years but no more than ten years:

Provided that with regard to subsection (2) –

- (i) in the case of a person who is charged with a crime under that subsection who is under the age of eighteen years, the presence of reasonable cause to believe that that other person was above the age of sixteen years shall be a valid defence on the first occasion on which such accused person is charged with a crime under that subsection; or
- (ii) in the case of a person who is charged with a crime under that subsection who is of or above the age of eighteen years, the

presence of reasonable cause to believe that the complainant was over the age of sixteen years shall be a mitigating circumstance for the purpose of sentencing on the first occasion on which such accused person is charged with a crime under that subsection, and in any such case the mandatory minimum sentence of five years prescribed above shall not apply.”.

6. The principal Act is amended by inserting immediately after section 47 the following sections –

Insertion of sections 47A, 47B, 47C, 47D, 47E, 47F, and 47G.

“Rape of a child.

47A. Every person who rapes another person and that person is under the age of sixteen years commits an offence and is liable on conviction on indictment to –

- (a) imprisonment for not less than twelve years, but may extend to life, where that other person was over fourteen but under the age of sixteen years at the time the offence was committed; or
- (b) imprisonment for not less than fifteen years, but may extend to life, where that other person was under the age of fourteen years at the time the offence was committed.”

Assault of a child under sixteen by penetration.

47B. Every person who intentionally penetrates the mouth, vagina or anus of another person who is under the age of sixteen years with a part

of his body other than his penis or anything else and that penetration is sexual in nature, commits the offence of assault on that person and is liable on conviction on indictment to imprisonment for not less than twelve years but may extend to imprisonment for life.

Engaging in sexual activity in the presence of a child.

47C. (1) A person who being eighteen years or over engages in an activity that is sexual in nature and for the purpose of obtaining sexual gratification engages in it –

- (a) with another person in the presence of or in a place from which a person who is under sixteen years can observe; and
- (b) knowing or believing that he is being observed or intending to be observed by –
 - (i) a person who is under sixteen years and does not reasonably believe that that person is sixteen years or over; or
 - (ii) a person who is under fourteen years,

commits an offence and is liable on summary conviction to imprisonment for a term of five years or on conviction on indictment to imprisonment for a term of ten years.

(2) A person who, being eighteen years or over, for the purpose of obtaining sexual gratification, causes –

- (a) another person to watch a third person engaging in activity that is sexual in nature; or
- (b) another person to look at an image of any person engaging in an activity that is sexual in nature,

where the other person is under sixteen years and he does not reasonably believe that the other person is sixteen years or over or the other person is under fourteen years, commits an offence and is liable on summary conviction to imprisonment for a term of five years or on conviction on indictment to imprisonment for a term of ten years.

Sexual offences committed by children.

47D. Every person who, being under eighteen years, does anything which would be an offence under section 47C if he were eighteen years of age commits an offence and is liable on summary conviction to imprisonment for a term of two years.

Sexual activity with a person who is mentally defective or of unsound mind.

47E. (1) Every person who, intentionally touches another person and that touching is sexual in nature, knows or could reasonably be expected to know that the other person is mentally defective or has an unsound mind and that-

- (a) because of it that person is unable to refuse because he lacks the capacity to choose whether to agree to the touching either due to lack of understanding of the nature or reasonably foreseeable consequences of what is being done or for any other reason; or

- (b) that person is unable to communicate such a choice to the person who is touching him,

commits an offence and is liable, on conviction on indictment, to imprisonment for life.

(2) For the purposes of subsection (1), touching is sexual in nature where it involves -

- (a) the penetration or touching of the person's anus or vagina; or
- (b) the penetration or touching of the person's mouth with a penis; or
- (c) the penetration or touching of the person's anus, penis or vagina by the other person.

Causing or inciting a person who is mentally defective or has an unsound mind to engage in sexual activity.

47F. (1) Every person who -

- (a) intentionally causes, induces, threatens or incites another person to engage in an activity that is sexual in nature and the other person is unable to refuse because of or for a reason related to a mental defect; and
- (b) the person who causes, induces, threatens or incites knows or could reasonably be expected to know that the other person has a mental defect or an unsound mind and that because of it or for a reason related to

it that person is likely to be unable to refuse,

commits an offence and is liable, on conviction on indictment, to imprisonment for life.

(2) A person who is being induced is unable to refuse if-

- (a) that person lacks the capacity to choose whether to agree to engage in the activity either due to lack of understanding of the nature or reasonably foreseeable consequences of the activity, or for any other reason; or
- (b) the person being induced is unable to communicate such a choice to the person doing the inducing.

Engaging in sexual activity in the presence of a person who is mentally defective or has an unsound mind.

47G. Every person who, intentionally engages in an activity that is sexual in nature and for the purpose of obtaining sexual gratification, he engages in it when another person is present who is mentally defective or has an unsound mind, or is in a place from which he can be observed by that person; and he knows or believes that the other person is aware, or intending that the other person should be aware, commits an offence and is liable on summary conviction to imprisonment for a term of five years or on conviction on indictment to a term of ten years.

7. The principal Act is amended by repealing section 49 and substituting the following –

Repeal and substitution of section 49.

“49. Every person who procures or attempts to procure –

- (a) a person under eighteen years, to have unlawful sexual intercourse or any other sexual activity with any other person or persons either within or outside of Belize;
- (b) a person, whether male or female to become a prostitute either within or outside of Belize; or
- (c) a person to leave Belize with intent that he or she may become an inmate of or frequent a brothel,

commits an offence and is liable upon conviction on indictment to imprisonment for a term of eight years.”.

Repeal and substitution of section 50.

8. The principal Act is amended by repealing section 50 and the marginal note thereto and substituting the following -

" Procuring defilement of a person by threats or fraud or administration of drugs.

50. Every person who –

- (a) by threats of intimidation or any other method of compulsion, procures or attempts to procure another person to engage in any sexual activity with any person, either within or outside of Belize; or

- (b) by false pretense or false representation procures any person to engage in unlawful sexual intercourse or any sexual activity with any person either within or outside of Belize; or
- (c) intentionally administers a substance to or causes a substance to be taken by any person knowing that the person does not consent and with the intention of stupefying or overpowering the person, so as to enable that person to engage in unlawful sexual intercourse or any sexual activity that involves that person,

commits an offence and is liable on conviction on indictment, to imprisonment for life.”.

9. The principal Act is amended by repealing section 51 and the marginal note thereto and substituting the following –

Repeal and substitution of section 51.

“Owner or occupier permitting use of premises for unlawful sexual intercourse.

51. Every person who, being the owner or occupier of any premises or having, acting, or assisting in the management or control thereof, induces or knowingly suffers any person, to be in or upon such premises for the purpose of being engaged in unlawful sexual intercourse or any sexual activity with any person, commits an offence and is where the victim of the unlawful sexual activity is -

- (a) under the age of twelve years, liable on conviction on indictment to imprisonment for life; or
- (b) twelve years or over but under the age of sixteen years, liable on conviction on indictment to imprisonment for ten years; or
- (c) above sixteen years, liable on conviction on indictment to imprisonment for five years.”.

Insertion of
section 53A.

10. The principal Act is amended by inserting immediately after section 53 the following sections -

“Evidential
Presumptions
about
Consent.

53A. (1) If in proceedings for a sexual offence to which consent applies, it is proved that—

- (a) the accused person committed the act;
- (b) any of the circumstances specified in subsection (2) existed; and
- (c) the accused person knew that those circumstances existed,

the complainant is to be taken not to have consented to the alleged offence unless sufficient evidence is adduced to raise an issue as to whether he consented, and the defendant is to be taken not to have reasonably believed that the complainant consented unless sufficient evidence is adduced to raise an issue as to whether he reasonably believed it.

(2) For the purposes of subsection (1)(b) the circumstances are that-

- (a) a person was at the time of the alleged offence or immediately before it begun, using violence against him or another person or causing the complainant to fear that immediate violence would be used against that other person;
- (b) a person was at the time of the alleged offence or immediately before it begun, causing the complainant to fear that violence was being used, or that immediate violence would be used against another person;
- (c) the complainant was unlawfully detained at the time of the alleged offence;
- (d) the complainant was asleep or otherwise unconscious at the time of the alleged offence;
- (e) because of the complainant's physical disability, the complainant would not have been able at the time of the alleged offence to communicate to the defendant whether the complainant consented; or
- (f) a person had administered to or caused to be taken by the complainant, without the

complainant's consent, a substance which, having regard to when it was administered or taken, was capable of causing or enabling the complainant to be stupefied or overpowered at the time of the alleged offence.

(3) If in proceedings for a sexual offence to which consent applies, it is proven that the accused person committed the act and that any of the circumstances specified in subsection (2) existed, it is to be conclusively presumed-

- (a) that the complainant did not consent to the alleged offence; and
- (b) that the accused person did not believe that the complainant consented to the relevant act.

(4) For the purposes of subsection (1) the circumstances are that –

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

(5) For the purposes of this Part –

- (a) “mental defect” has the same meaning as “mental defectiveness” under section 2 of the Unsoundness of Mind Act including mental impairment, severe mental impairment, psychopathic disorder and a mental subnormal states which means a state of arrested or incomplete development of mind which includes a significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned and any other disorder or disability of the mind;
- (b) “penetration” includes the continuing act from entry to withdrawal of the penis into the anus or vagina;
- (c) “sexual in nature” in relation to penetration, touching or any other activity is sexual if a reasonable person would consider that whatever its circumstances or any person’s purpose in relation to it, it is because of its nature sexual or because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it or both, it is sexual;

(d) “touching” includes touching with any part of the body or with anything else, or through anything else;

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(e) “unsound mind” has the same meaning as given by section 2 of the Unsoundness of Mind Act.”.

Insertion of section 53B.

11. The principal Act is amended by inserting next after the newly inserted section 53A the following as section 53B–

“53B. Notwithstanding any law to the contrary, the penalty of a fine shall not apply to proceedings in relation to offences under this Part.”.

Repeal of section 54.

12. The principal Act is amended by repealing section 54.

Repeal of section 55.

13. The principal Act is amended by repealing section 55.

Repeal of section 56.

14. The principal Act is amended by repealing section 56.

Repeal and substitution of section 60.

15. The principal Act is amended by repealing section 60 and the marginal note thereto and substituting the following –

“ Cruelty to children including abandonment.

60.(1) Every person who, being eighteen years or over and by virtue of law or any agreement or employment has the custody, charge to maintain, or care of a person under the age of eighteen years and who willfully assaults, ill-

treats, neglects, abandons or exposes that person in a manner likely to cause that person unnecessary suffering, grievous harm or injury to health, commits an offence and is liable on conviction on indictment to imprisonment for a term of ten years.

(2) Every person who, being eighteen years or over and having abducted a person under eighteen years in furtherance of an offence under subsection (1) commits an offence and is liable on indictment to imprisonment for a term not exceeding twenty years.

(3) Notwithstanding the provisions of subsections (1) and (2), where a person who, being eighteen years or over, commits an offence under subsection (1) or (2) and that offence is in relation to a person who is below twelve years, he is liable on conviction on indictment to imprisonment for a term not less than fifteen years but may extend to imprisonment for life.

(4) For the purposes of this section –

“custody” means having responsibility for;

“willfully” means deliberately and intentionally, not accidentally or inadvertently; and

“abandon” means to leave a child to its own fate.”.

16. The principal Act is amended by repealing section 61.

Repeal of
section 61.

Repeal and
substitution of
section 62.

17. The principal Act is amended by repealing section 62 and the marginal note thereto and substituting the following –

“ Incest

62.–(1) Any person who carnally knows another person who is to that person's knowledge, that person's grandchild, child, sibling, niece, nephew or parent, commits an offence and shall on conviction thereof be liable to imprisonment for not less than twelve years but may extend to imprisonment for life.

(2) For the purposes of this section, it is immaterial whether the other person consents to the penetration of the mouth, anus or vagina.

(3) Where in proceedings for an offence under this section it is proven that the defendant was related to the other person, it is to be taken that the defendant knew or could reasonably have been expected to know that he was related in that way unless sufficient evidence is adduced to raise an issue as to whether he knew or could reasonably have been expected to know that he was.

(4) On conviction before any court of any person of an offence under this section against another person, where that other person is under eighteen years of age, the court may divest the offender of all authority over the person, and if the offender is the guardian, remove that offender from the guardianship and appoint any person or persons to be the guardian during that person's minority or any less period.

(5) The relation between persons is within this section if it falls within any of the subsections

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(6) and (8) below or where either person is legally adopted within the meaning prescribed by the Families and Children Act 2000.

(6) The relation between persons is within this section if either person is the other's parent, step parent, grandparent, brother, sister, half-brother, half-sister, aunt, uncle or if either person is or was the foster parent of the other.

(7) The relation of persons is within this section if a person lives or has lived in the same household, or if the person is or has been regularly involved in caring for, training, supervising or being in sole charge of the other person.

(8) For the purpose of this section –

“aunt” means the sister or the half-sister of a person's parent and “uncle” has been a corresponding meaning;

“foster parent” in relation to a child means that the person is not the biological mother or father of the child but a person who has assumed responsibility of the child by way of a care order under the Families and Children Act;

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“parent's partner” means another person with whom a person lives with as a family;

“step-parent” includes a parents partner; and

“step-brother” and “step-sister include the child of a parent's partner.”.

Amendment of section 65.

18. The principal Act is amended in section 65 by deleting subsection (1) and substituting the following –

“(1) Where a person is convicted of a sexual offence specified in subsection (2) below and unlawful sexual intercourse, the court shall, in addition to the penalties prescribed for that offence, order that such convicted person be subject to counseling, medical or psychiatric treatment, as the court may consider appropriate having regards to the facts of the case.”.

Insertion of 65A, 65B and 65C.

19. The principal Act is amended by inserting immediately after section 65, the following sections –

“Sexual
Offender
Notification

65A. – (1) A person becomes subject to sex offender notification requirements in accordance with subsection (2) where –

- (a) he is convicted of a sexual offence specified in section 65(2); or
- (b) he is found not guilty of such an offence by reason of insanity, or disability having committed the act of which he is charged.

(2) A person referred to in subsection (1) shall be required to notify the police in accordance with subsection (3) of the following information on the relevant date –

- (a) his name and where he uses one or more of other names, each of those names;
- (b) his home address and if that address changes, the new address shall be provided within fourteen days after leaving the former address;
- (c) his date of birth;
- (d) his occupation and address of his place of work; and
- (e) his criminal convictions and corresponding sentences.

(3) A person who is subject to sex offender notification requirements as determined within subsection (1) may provide such notification –

- (a) by attending at any police station in his district and giving an oral notification to any police officer, or any person authorized for the purpose by the officer in charge of the station; or
- (b) by sending a written notification to any such police station.

(4) A person's details shall be kept on the sex offender database for a period of ten years or for such longer period as specified by the Minister of National Security or the Commissioner of Police.

(5) Notification under this section shall be acknowledged and any acknowledgement under this subsection shall be in writing and in such form as the Commissioner of Police may direct.

(6) The information received by such notification as stated in subsection (2) shall be collated and recorded on database known as the “National Sex Offender Database” and –

- (a) shall be updated each time a new notification is received nationwide;
- (b) it shall be the responsibility of the Commissioner of Police and the Minister of National Security to oversee the institution of, maintenance of, update of and general management of the national sex offender database, and who shall exercise their discretion in granting access to the national database;
- (c) the information contained within such database may be made available to the persons mentioned in subsection (7) on successful application to the Commissioner of Police and Minister of National Security;
- (d) all applications to the Commissioner of Police and Minister of National Security

requesting access to the national sex offender database must be done in written form and must indicate the reason for the request.

(7) The persons who may be made privy to the information on the national sex offender database include but are not limited to the principals and managers of schools, child care facilities and any other bodies involved with the care and education of children and ultimately the Minister for Human Development and any other authorized officials within the Ministry of Human Development.

(8) The Superintendent of Prisons shall notify the Commissioner of Police and Director of Human Development as soon as a sex offender is released from the Prison after serving any sentence for a sexual offence.

(9) For the purposes of this section-

“home address” in relation to any person means the address of his home or place of residence, that is to say his sole or main residence in Belize or, where he has no such residence, premises in Belize which he regularly visits;

“local police area” in relation to any person means the police area in which his home is situated; and

“relevant date” means the day after the date on which any of the situations

described in section 65A (1) subsection (a) to **(b)** occur.

**Failure to
comply.**

65B. (1) If a sex offender –

- (a)** fails, without reasonable excuse, to comply with the notification requirements described in section 65A (1) and (2); or
- (b)** provides any information which he knows to be false,

he shall be liable on conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term of five years or both.

(2) A person commits an offence under subsection (1)(a) on the day on which he first fails, without reasonable excuse, to comply with section 65A(2) and (3) and continues to commit it throughout any period during which the failure continues but a person shall not be prosecuted more than once in respect of the same failure.

(3) Proceedings for an offence under this section may be commenced in any summary court having jurisdiction in any place where the person charged with the offence resides or is found.

**Prohibition of
contact order.**

65C. A court shall, in a case where allegations in relation to child abuse including any sexual offences are made, impose an order that from the date the complaint is made to the police until the matter is resolved in court or otherwise, the

alleged perpetrator shall have no personal contact with the complainant or the complainant's parents or legal guardians.”.

20. The principal Act is amended by repealing section 71 and substituting the following section –

Repeal and substitution of section 71.

"71. (1) Rape is the penetration of a person's mouth, vagina or anus, with a penis, without that person's consent.

(2) It is hereby declared that if at a trial for rape the jury has to consider whether a man believed that a person was consenting to the penetration by his penis, the presence or absence of reasonable grounds for such a belief is a matter to which the jury is to have regard, in conjunction with any other relevant matters, in considering whether he so believed.”.

21. The principal Act is amended by repealing section 75 and substituting the following section –

Repeal and substitution of section 75.

" **Kidnapping** 75. – Every person who –

- (a) takes another person without his consent or from the control of a parent or guardian; or
- (b) unlawfully holds a person captive and takes him out of the jurisdiction of the courts without his consent or detains a person against his will,

by the use of force, threat of force or deception without a lawful excuse, is liable on conviction on indictment to imprisonment for a term which shall not be less than ten

years but which may extend to imprisonment for life.”.

Repeal and substitution of section 77.

22. The principal Act is amended by repealing section 77 and substituting the following section -

“Abduction defined.

77. Every person who unlawfully takes another person with intent to permanently or temporarily deprive a person of his freedom against his will or with intent to force a person to be married or to have sexual intercourse or engage in sexual activity with any person commits the offence of abduction and is liable on conviction on indictment to imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.”.

Insertion of section 77A.

23. The principal Act is amended by inserting immediately after section 77, the following section -

“Abduction of a child.

77A. Every person who unlawfully removes or takes a person under the age of eighteen away from the lawful control, care, guardianship or responsibility of another, with intent to permanently or temporarily deprive the child of his freedom by the use of persuasion, deception or fraud, commits the offence of abduction of a child and shall be liable on conviction on indictment to a term of imprisonment for a term of ten years.”.

Repeal of section 92.

24. The principal Act is amended by repealing section 92.

Amendment of section 100.

25. The principal Act is amended in section 100 by inserting immediately after subsection (9) the following subsection -

“(10) A person who has failed in his duty as described in the above subsections of this section commits an offence and shall be liable on conviction on indictment to imprisonment for a term of ten years.”.

26. The principal Act is amended by inserting immediately after section 262 the following section 262A –

Insertion of section 262A.

"Inducement to abandon criminal proceedings.

262A. (1) Every person who being an accused either by himself or someone acting on his behalf, provides or attempts to provide an inducement whether financial or otherwise, to a complainant or a person acting on his behalf in order to encourage the complainant or a person acting on his behalf to abandon criminal proceedings or retract criminal charges against the accused, commits an offence and is liable on summary conviction to a term of imprisonment of two years or on conviction on indictment to a term of imprisonment of ten years.

(2) Every person who being a complainant or anyone acting on behalf of the complainant, accepts an inducement from anyone in order to abandon criminal proceedings or criminal charges as described in subsection (1), commits an offence and is liable on summary conviction to a term of imprisonment for two years or on conviction on indictment to a term of imprisonment of ten years.”.

27. The principal Act is amended by repealing section 263 and substituting therefor the following –

Repeal and substitution of section 263.

"Perverting the course of Justice.

263.(1) Any person who does any act tending to pervert the course of justice, intending that the course of justice should thereby be perverted,

commits an offence and is liable on summary conviction to imprisonment for five years or on conviction on indictment to imprisonment for a term of ten years.

(2) It shall be within the discretion of the Director of Public Prosecutions to determine whether this offence is tried summarily or on indictment.”.