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PENAL CODE (AMENDMENT) ACT, 2014

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No. 15 of 2014

PENAL CODE (AMENDMENT) ACT, 2014

AN ACT TO AMEND THE PENAL CODE TO ERADICATE GANGS AND ORGANIZED CRIME AND TO FACILITATE INTERNATIONAL OBLIGATIONS PURSUANT TO THE UNITED NATIONS CONVENTION ON TRANSNATIONAL ORGANIZED CRIME AND FOR CONNECTED PURPOSES

[Date of Assent - 12th June, 2014]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act which amends the Penal Code (*Ch. 84*) may be cited as the Penal Code (Amendment) Act, 2014.
- (2) This Act shall come into force on such date as the Minister may appoint by Notice published in the *Gazette*.

2. Amendment of section 4 of the principal Act.

Section 4 of the principal Act is amended by the insertion, in the appropriate alphabetical position, of the following —

“bullet proof vest” means a vest that is capable of providing protection from the penetration of bullets;

“financial or other material benefit” means any type of financial or non-financial inducement, payment, bribe, reward, advantage, privilege, or service including sexual or other services;

“unlawful gang” means a formal or informal organized criminal group or other body that —

- (a) consists of three or more persons; and
- (b) has as one of its purposes or activities the facilitation or commission of an indictable offence under this Code, or an

offence under the Firearms Act (*Ch.213*) or the Dangerous Drugs Act (*Ch.228*);”.

“organized criminal group” means a structured group of three or more persons or legal entity, existing for a period of time and acting in concert, with the intention of committing a serious offence, in order to obtain, directly or indirectly a financial benefit;

“United Nations Convention Against Transnational Crime” means the United Nations Convention Against Transnational Organized Crime adopted by the United Nations General Assembly on the 15th November, 2000; signed in December, 2000 at Palermo, Italy; entered into force on the 29th September, 2003; deposited with the Secretary General of the United Nations; and signed by The Bahamas on the 9th April, 2001.”.

3. Amendment of section 86 of the principal Act.

Subsection (1) of section 86 of the principal Act is amended by the insertion, immediately after the word “procures”, the words, “organizes, directs”.

4. Insertion of new sections 90A and 90B into the principal Act.

The principal Act is amended by the insertion, immediately after section 90, of the following as new sections 90A and 90B —

“90A. Gang Membership.

(1) A person who —

- (a) is a member of an unlawful gang; or
- (b) participates in or contributes to the activities of an unlawful gang where any or all of the members of the unlawful gang engage in or have, within the preceding three years, engaged in the commission of indictable offences under this Code,

commits an offence and is liable on conviction to a fine of five hundred thousand dollars and to imprisonment for twenty years.

(2) For the purposes of this section, in determining whether persons participate in or actively contribute to unlawful gang activity, the court may consider whether the person —

- (a) uses a name, word, or other representation that identifies, or is associated with, an unlawful gang;
- (b) uses a similar symbol, tattoo or other body markings, clothing, signs and codes that identifies, or is associated with an unlawful gang;
- (c) frequently associates with any of the persons who constitute an unlawful gang;

- (d) receives any benefit from an unlawful gang; or
 - (e) frequently engages in activities at the instruction of any of the persons who constitute an unlawful gang.
- (3) A person who —
- (a) participates in or contributes to the activities of an unlawful gang where any or all of the members of the unlawful gang engage in the commission of indictable offences under this Code or offences under the Dangerous Drugs Act (*Ch. 228*); and
 - (b) is party to the commission of an indictable offence under this Code, for the benefit of, at the discretion of, in association with the unlawful gang.

commits an offence and is liable on conviction to a fine of five hundred thousand dollars and to imprisonment for twenty years.

- (4) A person who, whether lawfully obtained or not, has in his possession or under his care or control a bullet-proof vest for the benefit of, at the direction of, or in association with, an unlawful gang, commits an offence and is liable on conviction to a fine of one hundred thousand dollars and to imprisonment for twenty years.

90B. Participation in an organized criminal group.

- (1) A person who —
- (a) is a member of an organized criminal group; or
 - (b) participates in or contributes to the activities of an organized criminal group of three or more persons, where any or all of the members of the group engage in or have engaged in the commission of an indictable offence under this Code or offences under the Dangerous Drugs Act (*Ch.228*),

commits an offence and is liable on conviction to a fine of five hundred thousand dollars and to imprisonment for twenty years.

- (2) For the purposes of this section, in determining whether persons participate in or actively contribute to an organized criminal group, whether formally or informally organized, the court may consider whether they have as their objective —
- (a) obtaining material benefits from the commission of an indictable offence;
 - (b) obtaining material benefits from conduct outside of The Bahamas that if it occurred in The Bahamas would constitute the commission of indictable offences;

- (c) participates or contributes to the commission of indictable offences under this Code or offences under the Dangerous Drugs Act (*Ch.228*);
 - (d) conduct outside of The Bahamas that if it occurred in The Bahamas would constitute participation in or contributes to the commission of indictable offences under this Code.
- (3) For the purposes of this section in determining whether a group of persons are members of an organized criminal group the court may consider whether —
 - (a) some of them are subordinates or employees of others;
 - (b) only some of the persons involved in the planning, arrangement, or execution at that time of any particular action, activity or transaction; or
 - (c) its membership changes from time to time.

5. Amendment of section 420 of the principal Act.

Section 420 of the principal Act is amended by the deletion of the words “to imprisonment for four years.” and the substitution therefor of the words “on conviction to imprisonment for ten years.”.