



MINISTERIAL STATEMENT To the Senate

by

**Senator the Hon. Kathy Lynn Simmons, JP
Attorney-General and Minister of Legal Affairs**

Criminal Code Amendment Act 2020

Wednesday, 24th June 2020

Madame President, I am pleased to table the Bill entitled “***Criminal Code Amendment Act 2020***” in this Honourable Chamber today. This Bill amends the Criminal Code Act 1907 to strengthen measures to protect young persons, up to the age of 18, from sexual offences committed by persons in a position of trust.

Madame President, an offence of luring currently exists under section 182E of the Criminal Code Act 1907. However, this offence is not

specific to a position of trust and provides protections for a child up to the age of 16 years old. Currently, luring targets online/electronic predatory conduct designed to facilitate later sexual activity with a child who is under the age of 16 years old, but there are no protections in place if communication by the predator is in writing or otherwise. These gaps in the Act have now been addressed by creating a specific offence of luring by a person in a position of trust in relation to a young person under the age of 18 years old and extending the current luring offence to include written communications and other forms of communications.

Madame President, society has unfortunately been too aware of instances where teachers and other authority figures have preyed upon our young persons with persistent attempts to engage in inappropriate sexual or romantic relationships. This egregious, predatory behaviour is called ‘luring’ or sometimes referred to as ‘grooming’. Real-life victims, child safeguarding advocates and child protection entities have each called for “urgent changes” to the criminal law to increase the age for luring offences to include young persons between 16 and 17 years old.

Currently, the offence of luring is tied to the age of consent, 16 years of age.

Although 16 and 17 year olds have reached the age of consent, the overwhelming public sentiment and advocacy supports that sexual relations between adults in positions of trust and young persons between 16 and 17 is improper and must not be tolerated. When considering that luring behaviours by a person in a position of trust can take place before a young person reaches the age of consent, and persist well beyond 16 years of age, we can see that 16 and 17 year olds are left exposed to exploitation without legal redress. In such scenarios, perpetrators in a position of trust can escape prosecution for luring altogether. Additionally, most of our young people are still in secondary education up to 18 years old. Britain, and other jurisdictions, have addressed this problem by instituting specific offences criminalizing such abuses of power which harm and inflict trauma to young persons, including 16 and 17 year olds.

Madame President, the Bill inserts a section 182EA into the Criminal Code Act 1907, which details the elements of the offence of luring a young person by a person in a position of trust. The new offence will cover all young persons under the age of 18. The section is intended to cover situations where an adult, who is in a position of trust, through any form of communication, gains a young person's trust for the purpose of committing a sexual offence against the young person. The intended offence does not have to take place. The evidence of the adult's intention to commit an offence against a young person may be drawn from their communications with the young person or may be drawn from other circumstances.

Madame President, the penalty prescribed in law for this offence will be: on summary conviction, imprisonment for five (5) years; and for conviction on indictment to imprisonment for fifteen (15) years. These penalties correspond to the seriousness of the offence and are sufficiently dissuasive as a deterrent.

Madame President, the effects of the Bill are that certain relevant factors may be considered at trial for a person being prosecuted for an offence under the new provision. Factors that might be taken into consideration may include the ages of the parties, whether there was consent, and the relationship between the parties such as whether an accused is a person in a position of trust with respect to the young person. This Bill also confirms that the evidential presumptions about consent with respect to an offence where an accused is a person in a position of trust, have not been affected by the creation of the new section 182EA offence.

Madame President, it is also recognized that in numerous sexual crimes against children and young persons by adults in a position of trust or authority, it is common for the perpetrator to use assorted forms of communication mediums to groom or lure for sexual purposes. When reviewing the existing law, it was evident that the law criminalizes a perpetrator's digital and electronic communications with a young person for the purposes of luring, but did not include other forms of communicating, such as handwritten notes and verbal communications. Drafted this narrowly, the existing law rightly encapsulates social media

and online communications, however, it overlooks that handwriting is not yet obsolete – especially for students. For these reasons, the Bill amends the Criminal Code Act to include additional methods of communication, other than electronic means, such as orally and in writing.

Madame President, the proposed legislative amendments also enhance Bermuda's child protection regime for the progressive realization of the international standards of the *Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*. Article 18 of the Lanzarote Convention, requires countries to criminalize international conduct involving a person engaging in sexual activities with a child, where abuse is made of a recognized position of trust, authority or influence over the child *including within the family*. The amendment proposed in the Bill is drafted to also include 'relationships of dependency' and is designed to capture familial relationships.

In closing, **Madame President**, the Government is unwavering in its commitment to our youth to ensure that they can learn and thrive in safe environments and that they can access care and helping services without

being subject to exploitation. I am thankful to our public sector and third-sector entities who unselfishly provide child protection services to our community and give voices to the voiceless. The process of progressing these amendments is testament to active community engagement and direct advocacy which challenges the Government to perpetually review and improve our laws to reflect present-day views and best practice. These legislative changes will strengthen Bermuda's child safeguarding regime, providing further protection to our most vulnerable population and future leaders – our youth.

Thank you, **Madame President.**