

CRIMINAL JUSTICE (REFORM) ACT

CHAPTER 12:35

Act
3 of 1981
Amended by
12 of 1990

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**Note
on
Subsidiary Legislation**

This Chapter contains no Subsidiary Legislation.

CHAPTER 12:35

CRIMINAL JUSTICE (REFORM) ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
 2. Interpretation.
 3. Other punishment in lieu of imprisonment in certain circumstances.
 4. Powers of Court in relation to fines.
 5. Attendance at day training centres.
 6. Suspended sentences.
 7. Subsequent offence during operational period.
 8. Discovery of further offence.
 9. Suspended sentence supervision order.
 10. Community service order.
 11. Breach of requirement of community service order.
 12. Forfeiture of property used for commission of offence.
 13. Short sentences of imprisonment.
 14. Rules.
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CHAPTER 12:35

CRIMINAL JUSTICE (REFORM) ACT

3 of 1981. **AN ACT to provide for reform of sentencing powers of the Courts and for matters incidental thereto or connected therewith.**

Commencement. [29th January 1981]*

Short title. **1. This Act may be cited as the –
CRIMINAL JUSTICE (REFORM) ACT.**

Interpretation. **2. In this Act –**
 “Court” includes a Magistrate’s Court;
 “day training centre” means any premises declared by the Minister to be a place at which persons may be required to attend by a probation order made under section 5;
 Ch. 15:51. “firearm” has the same meaning as in section 2 of the Firearms Act;
 “sentence of imprisonment” does not include a committal in default of payment of any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone;
 “suspended sentence” as respects any offender, means a sentence which is ordered, pursuant to section 6, not to take effect unless the offender commits another offence.

Other punishment in lieu of imprisonment in certain circumstances. **3. (1) Subject to subsection (2), where a person who has attained the age of eighteen years but is under the age of twenty-three years is convicted in any Court for any offence, the Court, instead of sentencing that person to imprisonment, shall deal with him in any other manner prescribed by law.**

- (2) Subsection (1) shall not apply where –**
- (a) the Court is of the opinion that no other method of dealing with the offender is appropriate;**
 - (b) a sentence of imprisonment for the offence is fixed by law; or**
 - (c) violence or threat of violence has been used in the commission of the offence; or**

(d) the person at the time of commission of the offence was in illegal possession of a firearm.

(3) Where a Court is of opinion that no other method of dealing with an offender mentioned in subsection (1) is appropriate, and passes a sentence of imprisonment on the offender, the Court shall state the reason for so doing; and for the purpose of determining whether any other method of dealing with any such person is appropriate the Court shall take into account the nature of the offence and shall obtain and consider information relating to the character, home surroundings and physical and mental conditions of the offender.

(4) Where for the purposes of subsection (1) it is necessary to determine the age of any person the Court shall make due enquiry as to the age of that person and shall take such evidence as may be forthcoming at the hearing of the case, but an order or judgment of the Court shall not be invalidated by any subsequent proof that the age of that person has not been correctly stated to the Court; and the age presumed or declared by the Court to be the age of that person shall, for the purposes of this Act, be deemed to be the true age of that person.

4. (1) Where any fine has been imposed by a Court, the Court at the time when the fine is imposed or at any time thereafter may –

Powers of Court
in relation to
fines.
[12 of 1990].

(a) allow time for payment of the fine; or

(b) direct that the fine be paid by instalments; or

(c) extend the time allowed for the payment of the fine or for the payment of any instalment thereof, and the person liable to pay the fine may be required, if the Court thinks fit, to enter into recognizance with or without surety to the satisfaction of the Court for the due payment thereof.

(2) Where any fine is directed to be paid by instalments, the person liable to pay the fine shall, on making default in the payment of any instalment thereof, be liable to be imprisoned for such proportion of the full term passed upon him in default of payment of the fine, as

5. (1) Where a Court makes a probation order under section 5 of the Probation of Offenders Act, the Court may, in addition to the requirements specified in section 6 of that Act, and subject to this section, include in the probation order a requirement that the proban-

Attendance at day
training centres.
Ch. 12:33.

tioner shall during the period of the probation attend a day training centre specified in the order.

(2) A Court shall not include such a requirement in a probation order unless the Court is satisfied that –

- (a) a day training centre exists and is appropriate for the attendance of the offender; and
- (b) arrangements can be made for his attendance at the centre.

(3) A requirement included in a probation order by virtue of this section shall operate to require the probationer –

- (a) in accordance with instructions given by the probation officer responsible for his supervision, to attend on not more than one hundred and twenty days at the centre as specified in the order;
- (b) while attending there to comply with instructions given by, or under the authority of, the person in charge of the centre.

(4) The Minister may by Order declare any premises to be a day training centre for the purposes of this Act.

Suspended sentences.

6. (1) A Court which passes a sentence of imprisonment on any offender for a term of not more than three years for any offence, may order that the sentence shall not take effect unless, during a period specified in the order being not less than one year or more than three years from the date of the order (hereinafter referred to as the “operational period”), the offender commits in Dominica another offence punishable with imprisonment for a period exceeding six months (hereinafter in this section and sections 7 and 8 referred to as a “subsequent offence”) and thereafter a Court having power to do so orders under section 7 that the original sentence shall take effect.

(2) Subsection (1) shall not apply where –

- (a) a sentence of imprisonment for the offence is fixed by ...
- (b) the person at the time of commission of the offence was in illegal possession of a firearm.

(3) A Court shall not deal with an offender by means of a suspended sentence unless the case appears to the Court to be one in

respect of which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under subsection (1).

(4) A Court which passes a suspended sentence on any offender for an offence shall not make a probation order in the offender's case in respect of another offence of which he is convicted before that Court.

(5) Where a Court passes a suspended sentence on an offender in respect of an offence and a term of imprisonment in respect of another offence, the Court shall direct that the suspended sentence be concurrent with the term of imprisonment.

(6) On passing a suspended sentence the Court shall explain to the offender in ordinary language his liability under section 7 if during the operational period he commits a subsequent offence punishable with imprisonment.

7. (1) Subject to subsection (3), where an offender is convicted of a subsequent offence committed during the operational period of a suspended sentence, the Court before which he is convicted for the subsequent offence may order that the suspended sentence shall take effect with the original term unaltered or the Court may substitute a lesser term of imprisonment for the original term.

Subsequent
offence during
operational
period.

(2) Where a Court deals with an offender in respect of a suspended sentence passed by another Court, the Court dealing with the offender shall notify the Court which passed the subsequent sentence of the manner in which the offender was dealt with.

(3) Where a Magistrate's Court deals with an offender in respect of whom a suspended sentence passed by the High Court is in operation, the Magistrate dealing with the offender for the subsequent offence shall forward to the Registrar of the High Court a certificate signed by him and under the seal of the Court certifying that the offender has been convicted for a subsequent offence, together with

desirable; whereupon a Judge of the High Court before whom the offender is brought may, without prejudice to the order of the Magistrate with respect to the subsequent offence, order that the suspended sentence shall take effect with the original term unaltered or with the substitution of a lesser term for the original term.

Discovery of
further offence.

8. (1) Where during the operational period a person is convicted by a Court of a subsequent offence but the Court was not aware of the suspended sentence or of some feature affecting the operation of that sentence, any Court may, on receipt of information relating to the suspended sentence or of such feature thereof as aforesaid and the conviction for the subsequent offence, issue a summons requiring the person to appear at the place and time specified therein or may issue a warrant for his arrest.

(2) A summons or warrant issued under subsection (1) shall direct the person to appear or be brought before the Court by which he was convicted in respect of the subsequent offence and upon the person appearing or being brought, the Court shall proceed to deal with him under section 7 in respect of the suspended sentence.

Suspended
sentence
supervision
order.

9. (1) Where a Court passes on an offender a suspended sentence the Court may make a suspended sentence supervision order (hereinafter referred to as "a supervision order") placing the offender under the supervision of a probation officer for such period as may be specified in the order not exceeding the period during which the sentence is suspended.

(2) A supervision order shall specify the place of residence of the offender and the probation officer mentioned in subsection (1) shall be the probation officer appointed or assigned to the area in which the offender resides or such other probation officer as the Court may specify.

(3) An offender in respect of whom a supervision order is in force shall keep in touch with the probation officer in accordance with such instructions as may from time to time be given to him by that officer and the offender shall notify the probation officer of any change of address.

(4) If, at any time while a supervision order is in force in respect of an offender, it appears on information provided by the probation officer mentioned in subsection (1) to a Magistrate, that the offender has failed to comply with any of the requirements of subsection (3), the Magistrate may issue a summons requiring the offender to appear before the Magistrate's Court of the area in which the offender resides at a time specified in the summons, or may, if the information is in writing and on oath, issue a warrant for his arrest.

(5) If it is proved to the satisfaction of the Court before which the offender appears or is brought under this subsection in the fulfilment

without reasonable cause to comply with any of the requirements of the supervision order, the Court may, without prejudice to the continuance of the order, impose on him a fine of one hundred and fifty dollars.

10. (1) (a) Where a person of or over eighteen years of age is convicted of an offence punishable with imprisonment, the Court before which he is convicted may, instead of dealing with him in any other way, make, with his consent, an order (hereinafter referred to as “a community service order”) requiring him to perform unpaid work in accordance with the provisions of this section for such number of hours (being in the aggregate not less than forty nor more than two hundred and forty) as may be specified in the order.

(b) A community service order shall not be made –

- (i) where the offence involved the use of or threat of violence;
- (ii) where the offence involved the use of or the illegal possession of a firearm; or
- (iii) where a sentence of imprisonment for the offence is fixed by law.

(2) A Court shall not make a community service order under subsection (1) in respect of any offender unless the Court is satisfied –

- (a) that arrangements can be made in the area in which the offender resides, or will reside, for him to perform work under the order and for proper supervision of that work; and
- (b) after considering a report by a probation officer in respect of the offender and his circumstances and (if the Court thinks it necessary) after hearing a probation officer, that the offender is a suitable person to perform work under such an order.

(3) Where a Court makes community service orders in respect of two or more offences of which the offender has been convicted, the Court may direct that the periods of service shall be concurrent with or consecutive to those specified in any of those orders: but where the Court directs that the periods of service shall be consecutive the aggregate of the periods of service shall not exceed four hundred and eighty hours.

(4) A community service order shall specify the area in which the offender resides or will reside and the Court shall ensure that

Community
service order.

the order to be delivered to a probation officer carrying out duties in that area, hereinafter referred to as the relevant probation officer.

(5) An offender in respect of whom a community service order is in force shall –

- (a) report to the relevant probation officer and subsequently from time to time notify him of any change of address; and
- (b) perform for the number of hours specified in the order at such times as he may be instructed by the relevant probation officer.

(6) The instructions given by the relevant probation officer under this section shall, as far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the time, if any, at which he normally works or attends a school or other educational establishment.

Breach of
requirement of
community
service order.

11. (1) If at any time during which a community service order is in force in respect of an offender it appears on information to a Magistrate that the offender has failed to comply with any of the requirements of the community service order (including any failure to perform satisfactorily the work which he has been instructed to do), the Magistrate may issue a summons requiring the offender to appear before the Magistrate's Court by which the community service order was made (or in the case of a community service order made by the High Court, before the Magistrate's Court for the district in which the offender resides) at a time specified in the summons, or may, if the information is in writing and on oath, issue a warrant for his arrest.

(2) Where the community service order was made by a Magistrate's Court, the Magistrate, upon proof to his satisfaction that the offender has failed without reasonable excuse to comply with any of the requirements, may –

- (a) without prejudice to the continuance of the order, impose on the offender a fine of one hundred and fifty dollars; or
- (b) revoke the order and deal with the offender for the offence in respect of which the order was made in any manner in which he could have been dealt with for that offence by the Court, if the order had not been made.

(3) Where the community service order was made by the High Court, the Magistrate shall, upon proof to his satisfaction that the offender has failed without reasonable excuse to comply with any of the requirements, forward to the Registrar of the High Court a certificate signed by him and under the seal of the Court, specifying the details of the failure together with such other particulars of the case as may be desirable; and a certificate purporting to be so signed and sealed shall be admissible as evidence of the failure; whereupon a Judge of the High Court before whom the offender is brought may –

- (a) without prejudice to the continuance of the order, impose on the offender a fine of three hundred dollars; or
- (b) revoke the order and deal with the offender for the offence in respect of which the order was made in any manner in which he could have been dealt with for that offence by the High Court, if the order had not been made.

12. (1) Where a person is convicted of an offence punishable on indictment with imprisonment for a term of two years or more and the Court before which he is convicted is satisfied that any property which was in his possession or under his control at the time of his apprehension –

Forfeiture of property used for commission of offence.

- (a) has been used for the purpose of committing or facilitating the commission of the offence; or
- (b) was intended by him to be used for that purpose;

the Court may make an order of forfeiture of the property to the State.

(2) In this section, facilitating the commission of an offence includes the taking of any steps after the offence has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection; and the expression “offence punishable with imprisonment” shall be construed without regard to any prohibition or restriction imposed by law on the imprisonment of an offender under the age of eighteen years.

(3) An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall (if not already in the custody of the police) be taken into custody by the police.

(4) Where any property is forfeited by an order under this section, any claimant may within a period of six months from the date of the determination of the case make an application before the Court which made the order and thereupon the Court, if satisfied that –

- (a) he is the lawful owner; and
- (b) he had not consented to the offender having possession or did not know or had no reason to believe or suspect that the property was likely to be used for the commission of the offence,

may order that the property be restored to the claimant; but the State shall not be responsible for any damage or deterioration to the property.

Short sentences
of imprisonment.

13. (1) Where a Court passes a sentence of imprisonment on an offender for a period not exceeding three months, or where a convicted person is required to serve a sentence of such description and duration in lieu of payment of a fine, and the Court is satisfied –

- (a) on an application made before it by or on behalf of the convicted person of the existence of the conditions set out in subsection (2); and
- (b) on a report from the Superintendent of Prisons that satisfactory arrangements exist for the sentence to be served in the manner applied for;

it may order that the sentence be served at stated periods.

(2) The conditions required for the purpose of subsection (1) shall be that –

- (a) the convicted person was in employment at the time of the commission of the offence or that he is or was in employment at the time of conviction;
- (b) the convicted person would continue to be in such employment but for such conviction and the obligation to serve the sentence of imprisonment;
- (c) the discontinuance from such employment would cause hardship to his dependants, and
- (d) the convicted person consents to serve the sentence of imprisonment in the manner ordered by the Court.

(3) Where an order under subsection (1) is made, the Court shall cause a copy of the order to be served on the offender, and on the

in charge of the police station in the district in which the convicted person resides or will reside.

(4) A stated period for purposes of this section shall be at the discretion of the Court but shall not be less than twenty-four hours of continuous duration for any one week.

(5) When any such convicted person has failed to serve any stated portion of his sentence, the Superintendent of Prisons may, on application made by way of summons, so inform the Court which sentenced such person under subsection (1) and the Court may thereupon, after hearing the convicted person, revoke the order for imprisonment at stated periods and substitute therefore a continuous sentence not exceeding the unserved portion of the sentence originally passed.

(6) The Court may on application made by a convicted person vary the commencement or duration of a stated period.

14. The Minister responsible for the administration of justice may make Rules for giving effect to the provisions of this Act and in particular without prejudice to the generality of the foregoing may make Rules –

- (a) for the enforcement of state periods of imprisonment;
 - (b) for regulating the training given at day training centres;
 - (c) for the performance of work under community service orders; and
 - (d) prescribing forms for supervision orders.
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