

No. 10 of 2005

VIRGIN ISLANDS
CRIMINAL JUSTICE
(ALTERNATIVE SENTENCING)
ACT, 2005

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No. 10 of 2005

**Criminal Justice
(Alternative Sentencing)
Act, 2005**

**Virgin
Islands**

I Assent

THOMAS TOWNLEY MACAN
Governor
16th April, 2005

VIRGIN ISLANDS

No. 10 of 2005

An Act respecting alternative sentencing powers of the court and for related matters.

[Gazetted 5th May, 2005]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Criminal Justice (Alternative Sentencing) Act, 2005 and shall come into force on such date or dates as the Governor may, by Proclamation published in the Gazette, appoint and the Governor may appoint different dates for different provisions or parts of the Act.

Interpretation.

2. In this Act, unless the context otherwise requires

“attendance centre” means a youth facility established by the Executive Council under section 15(1)(a) at which a person under twenty-one years of age may be required to attend and be given under supervision appropriate training, occupation or instruction;

“bond” means an agreement (not being a bail agreement) entered into pursuant to the sentence of a court under which the defendant undertakes to the Crown to comply with the conditions of the agreement;

“child” means a person under the age of sixteen years;

“court” means the High Court, the Magistrate’s Court or a youth court;

“drug rehabilitation and after-care centre” means a facility established by the Executive Council under section 15(1)(c) at which a convicted person with

a dependency on or a propensity to misuse drugs or alcohol is sent for treatment;

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“firearm” has the same meaning as defined under section 2 of the Firearms Ordinance;

“information” means a charge laid on oath and reduced to writing;

“young person” means a person who is sixteen years or over but is under the age of eighteen years;

“youth court” means a youth court established under section 2 of the Youth Courts Act, 2005;

“youth custody and training centre” means a facility established by the Executive Council under section 15(1)(b) at which a child or young person may be detained.

PART I

SENTENCING PRINCIPLES AND RESTRICTIONS

Determination of sentence.

3. (1) For the purpose of determining sentence, a court

(a) is not bound by the rules of evidence; and

(b) may inform itself on matters relevant to the determination as it thinks fit.

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(2) Without prejudice to section 29 of the Criminal Code, 1997, but subject to subsection (3), where a court is of the opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that any other order is not appropriate, it may make an order discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified therein.

(3) Before making an order under subsection (2), the court shall explain to the offender in ordinary language that if he commits another offence during the period of the conditional discharge, he will be liable to be sentenced for the original offence.

Sentencing principles.

4. A court, in determining sentence for an offence, shall have regard to such of the following matters as are relevant and known to the court

(a) the circumstances of the offence;

- (b) other offences (if any) that are to be taken into account;
- (c) where the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character, that course of conduct;
- (d) personal circumstances of any victim of the offence;
- (e) injury, loss or damage resulting from the offence;
- (f) the degree to which the defendant has shown contrition for the offence
 - (i) by taking action to make reparation for any injury, loss or damage resulting from the offence; or
 - (ii) in any other manner;
- (g) if the defendant has pleaded guilty to the charge of the offence, that fact;
- (h) the degree to which the defendant has co-operated in the investigation of the offence;
- (i) the need to protect the community from the defendant's criminal acts;
- (j) the deterrent effect any sentence under consideration may have on the defendant or other persons;
- (k) the need to ensure that the defendant is adequately punished for the offence;
- (l) the character, antecedents, age, means and physical or mental condition of the defendant; and
- (m) any other matter that the court considers appropriate.

PART II

CHILDREN AND YOUNG PERSONS SENTENCING ORDERS

Attendance
centre order.

5. (1) A court may make an attendance centre order in the case of a child or young person
- (a) who has been found guilty of an offence punishable by imprisonment (not being an offence the sentence for which is fixed by law);
 - (b) who could have been committed to prison for default of payment of a sum of money; or
 - (c) who has failed to comply with any requirement of a probation order.
- (2) An attendance centre shall operate at such times and under the direction of such persons as the Governor may by Order designate.
- (3) An application to discharge an attendance centre order shall be made to a judge or magistrate and, subject to subsection (4), the discharge of such an order shall be by order of the court.
- (4) Where the court that made the order is the High Court and that court included in the order a direction reserving to itself the power to discharge the order, the power shall be exercised by the High Court.
- (5) An attendance centre order may be varied by a Magistrate's Court or Youth Court on the application of the offender or the officer in charge of the relevant attendance centre.
- (6) The power to vary an attendance centre order is a power by order
- (a) to vary the day or hour specified in the order for the first attendance at the relevant attendance centre; or
 - (b) if the court is satisfied that the offender proposes to change or has changed the offender's residence, to substitute for the relevant attendance centre an attendance centre which the court is satisfied is reasonably accessible to the offender, having regard to the offender's age, the means of access available to the offender and any other circumstances.

(7) Where an application is made under this section by the person in charge of an attendance centre, the court may deal with the application without summoning the offender.

(8) In this section the “relevant attendance centre”, in relation to an attendance centre order, means the attendance centre specified in the order or substituted for the attendance centre so specified by an order made by virtue of subsection (6) (b).

6. (1) A court, before making an attendance centre order, shall

Making of
attendance centre
orders.

- (a) inform itself that the offender is under eighteen years of age;
- (b) if it is of the opinion that it is necessary in the circumstances of the case, consider a pre-sentence report from a probation officer or social worker, or both;
- (c) ensure, after consultation with the person in charge of the centre, that a place is available at an attendance centre for the reception from that court of persons of the offender’s description;
- (d) ensure that the attendance centre is reasonably accessible to the offender having regard to his age, the means of access available to him and any other circumstances;
- (e) ensure that the offender has not previously been sentenced
 - (i) to imprisonment;
 - (ii) to youth custody; or
 - (iii) to detention in a training centre,

unless it appears to the court that there are special circumstances (whether relating to the offence or the offender) that warrant the making of such an order.

(2) A court when making an attendance centre order shall specify in the order the time at which the offender shall attend the centre for the first time, the number of hours, the period and aggregate number of hours per day that the offender is to attend at the attendance centre, except that the times shall be fixed by the officer in charge of the centre having regard to the offender’s circumstances.

(3) Schedule 1 has effect with respect to attendance centre orders and the powers of the court in relation to such orders.

Schedule 1

7. (1) Where an offender subject to an attendance centre order made by a court appears before a court and the court is satisfied that he has failed without reasonable excuse to attend or has committed a breach of the attendance centre rules, the court may revoke the attendance centre order and deal with him 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 if the order had not been made. Breach of attendance centre order or rules.

(2) An attendance centre order may be discharged or varied on an application made by the offender or the officer in charge of the attendance centre.

8. (1) Where a child is found guilty of any offence, punishable with imprisonment, the court may make a care order committing the child to the care of the Department of Social Development. Care order.

(2) Upon a child being placed in its care the Department of Social Development shall assume the responsibilities of parent or guardian.

(3) A child who is the subject of an order under subsection (1) may be placed by the Department of Social Development with a fit and proper person who shall, notwithstanding subsection (2), assume the responsibilities of parent or guardian.

9. (1) A care order shall not be made unless the court is of the opinion Requirements of care order.

(a) that a care order is appropriate; and

(b) that the child is in need of care or control, based on the report and recommendation of a probation officer or social worker, which he is unlikely to receive unless the court makes a care order.

(2) Where the court has made a care order, the parent or guardian of the child shall provide during the period of the care order such financial support as the court may order.

(3) The court may, where appropriate, make a care order in conjunction with a youth custody and training centre order.

10. (1) Where a child is in the care of a children's home or a fit and proper person, the carer of that child shall, subject to subsections (4) and (5), allow the child contact with Parental contact.

(a) his parents; or

(b) any guardians of his.

(2) On an application made by the carer of the child, the court may make such order as it considers appropriate with respect to the contact, which is to be allowed between the child and any named person.

(3) On an application made by

(a) any person mentioned in subsection (1) (a) or (b); or

(b) any person who has obtained the leave of the court to make the application,

the court may make such order, as it considers appropriate, with respect to the contact that is to be allowed between the child and that person.

(4) On an application made by the carer, the court may make an order authorising the carer to refuse to allow contact between the child and any person mentioned in subsection (1) (a) or (b) and named in the order.

(5) A carer may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if

(a) he is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare;

(b) the refusal

(i) is decided upon as a matter of urgency; and

(ii) does not last for more than three days.

(6) An order under this section may impose such conditions as the court considers appropriate.

(7) The court may vary or discharge any order made under this section on the application of the carer, or the person named in the order.

(8) Before making a care order with respect to any child the court shall

(a) consider the arrangements which the carer has made, or proposes to make, for affording any person contact with a child to whom this applies; and

(b) invite the parties to the proceedings to comment on those arrangements.

11. If it appears to a court, on the application of a carer into whose care a child is committed by a care order that it is appropriate to discharge the order, the court may discharge it and on discharging it may, make a probation order in respect of him. Discharge of care order.

12. Subject to sections 13(1) and 14 (3), where a child or young person is found guilty of an offence that is punishable with a sentence of imprisonment, the court may, instead of committing him to imprisonment, order him to be detained in a youth custody and training centre for a term not exceeding five years. Youth custody and training centre.

13. (1) A court shall not make a youth custody and training centre order Requirements of youth custody and training centre order.

- (a) unless it is of the opinion, based on a pre-sentence report from a probation officer or a social worker, or both, that no other method of dealing with the offender is appropriate because
 - (i) he is unwilling or unable to respond to non-custodial penalties;
 - (ii) a custodial sentence is adequate for the protection of the public; or
 - (iii) the offence was so serious that a non-custodial sentence cannot be justified;
- (b) unless it is of the opinion that the child or young person will benefit from the regime of the youth custody and training centre;
- (c) if it considers the child or young person's detention in such a centre would be unsuitable because of his mental or physical condition; or
- (d) if the offender is serving or has ever served a sentence of
 - (i) imprisonment; or
 - (ii) confinement to a youth custody and training centre.

(2) A child or young person who is released from a term of detention in a youth custody and training centre shall be under the supervision of a probation officer for a period of three months.

14. (1) Where a child or young person is convicted on indictment of any offence punishable with imprisonment for fourteen years or more, not being an offence the sentence for which is fixed by law, and the court is of opinion that Youth custody and training sentence.

none of the other methods in which the case may legally be dealt with is appropriate, it may sentence the offender to be detained in a youth custody and training centre.

(2) The maximum term of a youth custody and training centre order that a court may impose on a child or young person convicted of an indictable offence is the same as the maximum term of imprisonment that a court may impose for that offence.

(3) Where a person attains the age of eighteen years while serving a sentence of confinement to a youth custody and training centre, the person shall be brought before the court that imposed the sentence and the court may, taking into account all the circumstances of the case, including the conduct of, and the progress being made by, the person at the youth custody and training centre, order that

(a) the person remain at the youth custody and training centre for such period not exceeding three years as the court thinks fit; or

(b) the person be transferred to a prison established under the Prison Ordinance to serve the remainder of his sentence on such date as the court thinks fit.

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Establishment of centres.

15. (1) The Executive Council may by Order establish under this Act

(a) an attendance centre,

(b) youth custody and training centre,

(c) a drug rehabilitation and after-care centre,

(d) any other institution,

for the punishment and rehabilitation of offenders.

(2) The Executive Council may, for the purposes of this Act, by Order designate any centre outside the Territory for the punishment or rehabilitation of an offender and any such centre shall be deemed to have been established under subsection (1).

PART III

COURTS' GENERAL SENTENCING POWERS

16. (1) Subject to subsection (2), where a young person 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 including a community service order pursuant to section 28. Punishment in lieu of imprisonment.

(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;
- (c) violence or threat of violence has been used in the commission of the offence;
- (d) the person at the time of the commission of the offence was in illegal possession of a firearm.

(3) Where a court is of the 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.

17. (1) A court by or before which a person is convicted of an offence may instead of or in addition to dealing with him in any other way order him to pay Level of fine.

- (a) in the case of a child, a fine not exceeding one hundred dollars;
- (b) in the case of a young person, a fine not exceeding four hundred dollars.

(2) In determining the amount of the fine, the court shall take into consideration among other things the means of the person on whom the fine is imposed so far as they appear or are known to the court.

Powers of court
in relation to
fines.

18. (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

- (a) allow time for payment of the fine; or
- (b) direct that the fine be paid by instalments;
- (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 recognisance 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 the sum remaining unpaid by him bears to the fine imposed upon him.

Short sentence to
be served at
stated periods.

19. (1) Where a court passes a sentence of imprisonment on an offender for a period of six months or less, or where a convicted person is required to serve a sentence of such description and duration in lieu of payment of a fine, it may order that the sentence be served at stated periods if 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.

(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 police officer that is 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 or other process, 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 unreserved 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.

20. (1) A court before whom a child or young person is convicted may order that an award of compensation, a fine or cost be paid by the parent or guardian instead of by the child or young person himself, unless the court is satisfied that

Payment by parent or guardian.

- (a) the parent or guardian cannot be found; or
- (b) it would be unreasonable to make an order for payment having regard to the circumstances of the case.

(2) An order for payment under subsection (1) may be made against a parent or guardian who, having been required to attend, has failed to do so, but otherwise, no such order shall be made without giving the parent or guardian an opportunity of being heard.

21. Notwithstanding section 2 of the Probation of Offenders Act, where a court is of the opinion having regard to the circumstances including the nature of the offence and the character of the offender, it is expedient to do so, it may instead of sentencing him, make a probation order requiring him to be under the supervision of a probation officer for a period to be specified in the order of not less than six months nor more than three years.

Probation. Cap.61

Requirements of probation order.

22. (1) A court may require a person who is subject to a probation order pursuant to section 21 to

- (a) live at a place or places specified for a period or periods specified;
- (b) present himself to a person or persons specified at a place or places and on a day or days specified;
- (c) participate or refrain from activities specified;
- (d) observe a curfew as specified; or
- (e) comply with any other requirement as the court may deem appropriate.

(2) The court may not include any of the requirements referred to in subsection (1) in a probation order unless

- (a) it has first consulted the supervisor as to
 - (i) the offender's circumstances;
 - (ii) the feasibility of securing compliance with the requirements;and is satisfied, having regard to the probation officer's report that it is feasible to secure compliance with them;
- (b) having regard to the circumstances of the case, it considers the requirement necessary for securing the good conduct of the supervised person or for preventing a repetition by him of the same offence or the commission of other offences; and
- (c) the supervised person or, if he is a child or young person his parent or guardian, consents to their inclusion.

(3) In the case of an offender with a mental condition, the court may require the supervised person, for a period specified in the order, to submit to treatment of one of the following descriptions so specified:

- (a) treatment by or under the direction of a fully registered medical practitioner specified in the order;
- (b) treatment as a non-resident patient at a place specified;

- (c) treatment as a resident patient in a hospital or mental nursing home or any such similar facility;

but such a requirement shall not be included in a probation order unless the court is satisfied that arrangements have been or can be made for the treatment in question and, in the case of treatment as a resident patient, for the reception of the patient.

23. The probation officer shall

Duty of probation officer.

- (a) ensure that the offender complies with the requirements of the probation order;
- (b) lay down rules about the behaviour of the offender;
- (c) advise, and provide such reasonable assistance as may be necessary to the offender;
- (d) recommend any other activity, including referral to an agency or an institution that may be considered necessary after the order has been made.

24. If while a probation order is in force, it is proved to the satisfaction of the court, on the application of the probation officer, that the offender has failed to comply with any requirement of his probation as specified in section 22, the court may deal with the offender in any manner specified under Part II of Schedule 2.

Breach of probation order.
Schedule 2

25. (1) Where a child or young person is convicted of an offence, not being an offence for which the sentence is fixed by law, the court by or before which the offender is convicted may make a curfew order.

Curfew orders.

(2) A “curfew order” in this Act is an order requiring the offender to remain, for periods specified in the order, at a place so specified.

(3) A curfew order may specify different places or different periods for different days, but shall not specify

- (a) periods which fall outside the period of six months beginning with the day on which it is made; or
- (b) periods which amount to less than two hours or more than twelve hours in any one day.

(4) The requirements in a curfew order shall, as far as practicable, be such as to avoid

- (a) any conflict with the offender's religious beliefs, or with the requirements of any other order to which the offender may be subject; and
- (b) any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

(5) A curfew order shall include provision for making a probation officer responsible for monitoring the offender's whereabouts during the curfew periods specified in the order ("the curfew periods").

(6) A court shall not make a curfew order in respect of an offender unless it has first explained to the offender in ordinary language the matters specified in subsection (8);

(7) Before making a curfew order, the court shall

- (a) require the attendance in court of the parent or guardian of the offender;
- (b) explain to the parent or guardian of an offender in ordinary language, matters specified in subsection (8);
- (c) place any obligation on the parent or guardian as it deems fit, however that, where a parent or guardian of an offender fails to attend court, the court may proceed with the order.

(8) The matters referred to in subsection (6) and (7) are:

- (a) the purpose and effect of the order, including any additional requirements proposed to be included in the order in accordance with section 26;
- (b) the consequences that may follow under the Second Schedule if the offender fails to comply with any of the requirements of the order; and
- (c) that the order may be reviewed by the court under that Schedule.

(9) Before making a curfew order, the court shall obtain and consider information about the place proposed to be specified in the order ("the curfew premises"), including information as to the attitude of persons likely to be affected by the enforced presence of the offender there.

(10) The Executive Council may, by Order,

(a) vary any period specified in subsection (3);

(b) provide that subsection (4) shall have effect with such additional restrictions as may be specified in the Order.

26. (1) Subject to subsection (2), a curfew order may in addition include requirements for securing the electronic monitoring of the offender's whereabouts during the curfew period ("electronic monitoring requirements").

Electronic monitoring of curfew orders.

(2) A court shall not make a curfew order which includes electronic monitoring requirements unless the court is satisfied that the necessary arrangements can be made for electronic monitoring.

(3) Such arrangements may include arrangements whereby the monitoring of the offender's whereabouts is done by persons acting under contract.

27. (1) Subject to subsection (5), where a court by or before which a young person or a person aged eighteen years or above is convicted of an offence punishable with imprisonment, is of the opinion mentioned in subsection (3), the court may make a combination order.

Combination orders.

(2) In the case of a young person, a "combination order" is an order that requires the young person

(a) to be under the supervision of a probation officer for a period specified in the order, not being less than twelve months nor more than three years; and

(b) to remain at a specified place or specified places for specified periods within the limits set forth at section 27 (3).

(3) In the case of a person aged eighteen years or above, a "combination order" is an order that requires him

(a) to be under the supervision of a probation officer for a period specified in the order, being not less than twelve months nor more than three years; and

(b) to perform unpaid work for a number of hours so specified, being in the aggregate not less than eighty nor more than the maximum specified in section 30 (6).

(4) The opinion referred to in subsection (1) is that the making of a combination order is desirable in the interests of

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from the offender or preventing the commission of further offences by the offender.

(5) Subsection (1) does not apply to an offence for which the sentence is fixed by law.

Community
service orders.

28. (1) Subject to subsections (2) and (3), where a young person or a person aged eighteen years or above 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 and section 31.

(2) The reference in subsection (1) to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of a young person.

(3) A community service order shall not be made

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

(4) A court shall not make a community service order under subsection (1) in respect of any offence unless

- (a) the court is satisfied that arrangements can be made, for him to perform work under the order and for proper supervision of that work;
- (b) after considering a report by a probation officer or a social worker in respect of the offender and his circumstances and (if the court thinks it necessary after hearing a probation officer or a social worker), the court is satisfied that the offender is a suitable person to perform work under such an order; and
- (c) the court has first explained to the offender the matters specified in subsection (5) and the offender has consented to the making of the order.

(5) The matters referred to in subsection (4) (c) are

- (a) the purpose and effect of the order (and in particular the requirements specified in section 29); and
- (b) the consequences that may follow under the Schedule 2 if the offender fails to comply with any of those requirements; and
- (c) that the order may be reviewed by the court under that Schedule.

Schedule 2

(6) The number of hours that a person may be required to work under a community service order shall be specified in the order and shall not in the aggregate

- (a) be less than eighty; or
- (b) be more
 - (i) in the case of an offender who is a young person, than one hundred and forty; and
 - (ii) in any other case, than two hundred and forty.

(7) 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 shall be consecutive and the aggregate of the periods of service shall not exceed four hundred and eighty hours.

(8) The court shall cause copies of the order to be delivered to a probation officer (hereinafter referred to as the “relevant probation officer”) carrying out duties in respect of that particular offender.

(9) The Executive Council may by Order vary the maximum number of hours for the time being specified in subsection (6)(b)(i) or (ii).

29. (1) An offender in respect of whom a community service order is in force shall

Obligation of person under community service order.

- (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 such work at such times as he may be instructed by the relevant probation officer.

(2) Subject to subsection (1), the work required to be performed under a community service order shall be performed during the period of twelve months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under the order for the number of hours specified in the order.

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

Enforcement of relevant orders. Schedule 2

30. (1) For the purposes of this section and Schedule 2, "relevant order" means any of the following orders, namely, a probation order, a community service order and a curfew order.

(2) Schedule 2 has effect in relation to the following purposes:

- (a) dealing with failure to comply with the requirements of a relevant order;
- (b) amending a relevant order; and
- (c) revoking a relevant order with or without the substitution of other sentences.

PART IV

DRUG REHABILITATION AND AFTER-CARE ORDERS

Drug rehabilitation and after-care order.

31. (1) Where a person is convicted of an offence, the court by or before which he is convicted may make a drug rehabilitation and after-care order which

- (a) has effect for a period specified in the order of not less than six months nor more than three years; and
- (b) includes the requirements and provisions mentioned in sections 32 and 33.

(2) A court shall not make a drug rehabilitation and after-care order in respect of an offender unless it is satisfied

- (a) that he is dependent on or has a propensity to misuse drugs;

(b) that his dependency or propensity is such as requires and may be susceptible to treatment; and

(c) that he is willing to comply with its requirements and expresses his willingness in the form as specified in Schedule 3.

Schedule 3

(3) For the purpose of ascertaining whether the offender has any drug in his body the court may by order require him to provide samples of such description as it may specify.

(4) A court shall not make a drug rehabilitation and after-care order unless it is satisfied that arrangements for implementing such orders are available in the facility proposed to be specified in the order and the court is satisfied that space is available at the facility.

(5) Before making a drug rehabilitation and after-care order, the court shall explain to the offender in ordinary language

(a) the effect of the order and of the requirements proposed to be included in it;

(b) the consequences that may follow if he fails to comply with any of those requirements;

(c) that the order will be periodically reviewed at intervals as provided for in the order by virtue of section 33 (5); and

(d) that the order may be reviewed on the application of either the offender or the responsible officer; and “responsible officer” here has the meaning given by section 33 (2).

(6) For the purposes of this Part “drug” has the same meaning assigned to “controlled drug” by section 4 of the Drugs (Prevention of Misuse) Act and includes alcohol.

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32. (1) A drug rehabilitation and after-care order shall include a requirement that the offender shall submit, during the whole of the rehabilitation and after-care period, to treatment by or under the direction of a person having the necessary qualifications or experience (“the treatment provider”) with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse drugs.

Drug rehabilitation and after-care requirements.

(2) The required treatment for any particular period shall be

- (a) treatment as a resident in a drug rehabilitation and after-care centre or in such other institution or place as may be specified in the order;
- (b) treatment as a non-resident in a drug rehabilitation and after-care centre or such other institution or place, and at such intervals, as may be specified;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a) or (b).

(3) A court shall not make a drug rehabilitation and after-care order unless it is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident.

(4) A drug rehabilitation and after-care order shall include a requirement that, for the purpose of ascertaining whether he has any drug in his body during the treatment and testing period, the offender shall during that period, at such times or in such circumstances as may, subject to the provisions of the order, be determined by the treatment provider, provide samples of such description as may be so determined.

(5) The testing requirement shall specify for each month the minimum number of occasions on which samples are to be provided.

Provisions of order as to supervision and periodic review.

33. (1) A drug rehabilitation and after-care order shall provide that, for the treatment and testing period, the offender shall be under the supervision of a probation officer specified in the order.

(2) In this Part “responsible officer”, in relation to an offender who is subject to a drug rehabilitation and after-care order, means the probation officer responsible for his supervision.

(3) A drug rehabilitation and after-care order shall

- (a) require the offender to keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer, and to notify him of any change of address; and
- (b) provide that the results of the tests carried out on the samples provided by the offender in pursuance of the testing requirement shall be communicated to the responsible officer.

(4) Supervision by the responsible officer shall be carried out to such extent only as may be necessary for the purpose of enabling him

- (a) to report on the offender's progress to the court responsible for the order;
- (b) to report to that court any failure by the offender to comply with the requirements of the order; and
- (c) to determine whether the circumstances are such that he should apply to that court for the revocation or amendment of the order.

(5) A drug rehabilitation and after-care order shall

- (a) provide for the order to be reviewed periodically at intervals of not less than one month;
- (b) provide for each review of the order to be made, subject to section 34 (6), at a review hearing held for the purpose by the court responsible for the order;
- (c) require the offender to attend each review hearing;
- (d) provide for the responsible officer to make to the court responsible for the order, before each review, a report in writing on the offender's progress under the order; and
- (e) provide for each such report to include the test results communicated to the responsible officer under subsection (3) (b) and the views of the treatment provider as to the treatment and testing of the offender.

34. (1) At a review hearing pursuant to section 33 (5) the court may, after considering the responsible officer's report referred to in that subsection, amend any requirement or provision of the drug rehabilitation and after-care order.

Amendment of drug rehabilitation and after-care order.

(2) The court

- (a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended;
- (b) shall not amend any provision of the order so as to reduce the treatment and testing period below the minimum specified in section 31 (1), or to increase it above the maximum so specified; and

- (c) except with the consent of the offender, shall not amend any requirement or provision of the order while an appeal against the order is pending.

(3) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may

- (a) revoke the order; and
- (b) deal with him, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted by the court of the offence.

(4) In dealing with him under subsection (3) (b), the court

- (a) shall take into account the extent to which the offender has complied with the requirements of the order; and
- (b) may impose a sentence of imprisonment or youth custody (where the order was made in respect of an offence punishable with such a sentence).

(5) Where the order was made by a Magistrate's Court or youth court in the case of a child in respect of an offence triable only on indictment in the case of a person eighteen years or over, any powers exercisable under subsection (3) (b) in respect of the offender after he attains the age of eighteen shall be powers to do either or both of the following:

- (a) to impose a fine not exceeding five thousand dollars for the offence in respect of which the order was made;
- (b) to deal with the offender for that offence in any way in which the court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.

(6) If at a review hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is satisfactory, the court may so amend the order as to provide for each subsequent review to be made by the court without a hearing.

(7) If at a review without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under

the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

(8) At a review without a hearing the court, after considering that report, may

(a) exercise the power conferred by this section as if the hearing were a review hearing;

(b) so amend the order as to provide for each subsequent review to be made at a review hearing.

(9) In this section any reference to the court, in relation to a review without a hearing, shall be construed -

(a) in the case of the High Court, as a reference to a judge of the court;

(b) in the case of a Magistrate's Court, as a reference to a magistrate.

35. The provisions of section 34 shall have effect, with whatever adaptations that may be necessary in relation to a breach of a drug rehabilitation and after-care order.

Breach of drug rehabilitation and after-care orders.

36. (1) Where a drug rehabilitation and after-care order is made, the court making the order shall, forthwith give copies of the order to the responsible officer.

Copies of order.

(2) Where such an order is amended under section 34 (1), the court amending the order shall forthwith give copies of the order as amended to the responsible officer.

(3) A responsible officer to whom copies of an order are given under this section shall retain a copy and give a copy to

(a) the offender; and

(b) the treatment provider.

37. (1) The Executive Council may by Order vary the minimum or maximum period specified in section 31(1).

Drug rehabilitation and after-care order: supplementary.

(2) Any Order made under subsection (1) shall be subject to a negative resolution of the Legislative Council.

PART V

COURTS' SPECIAL SENTENCING POWERS

Imposition of penalty without conviction.

38. Where a court finds a person guilty of an offence for which it proposes to impose a fine, a sentence of community service, or both and the court is of the opinion that good reason exists for not recording a conviction, having regard to

- (a) the character, antecedents, age or physical or mental condition of the offender;
- (b) the fact that the offence was trifling; or
- (c) any other extenuating circumstances,

the court may impose the penalty without recording a conviction.

Reduction of minimum penalty.

39. Where an Act fixes a minimum penalty in respect of an offence and the court, having regard to

- (a) the character, antecedents, age or physical or mental condition of the offender;
- (b) the fact that the offence was trifling; or
- (c) any other extenuating circumstances,

is of the opinion that good reason exists for reducing the penalty below the minimum, the court may so reduce the penalty.

Addition or substitution of penalties.

40. Where, on convicting an offender, the court thinks that good reason exists for departing from the penalty provided by any Act, the court may sentence the offender as follows:

- (a) where the Act prescribes a sentence of imprisonment only for the offence, the court may instead impose
 - (i) a fine;
 - (ii) a youth custody and training centre order;
 - (iii) a community service order; or
 - (iv) a fine and a youth custody and training centre order; or

- (v) a fine and a community service order; or
- (b) where the Act prescribes a sentence of both imprisonment or youth custody and training and a fine for the offence, the court may instead impose
 - (i) a sentence of imprisonment or a youth custody and training centre order;
 - (ii) a fine;
 - (iii) a community service order; or
 - (iv) both a fine and a community service order; or
- (c) where the Act prescribes a sentence of imprisonment or a fine in the alternative for the offence, the court may instead impose
 - (i) a community service order; or
 - (ii) both a fine and a community service order; or
- (d) where the Act prescribes a fine only for the offence, the court may instead impose a community service order.

41. Nothing in this Part

Mandatory sentences.

- (a) affects the sentence to be imposed by a court for murder or treason; or
- (b) derogates from a provision of an Act that expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

42. (1) Notwithstanding section 29 of the Criminal Code, 1997, where a court has imposed a youth custody and training centre order on an offender, the court may, if it thinks that good reason exists for doing so, suspend the sentence on condition that the offender enter into a bond

Bond, suspension of youth custody or imprisonment. No. 1 of 1997

- (a) to be of good behaviour;
- (b) to comply with the other conditions (if any) of the bond.

(2) Subject to section 29 of the Criminal Code, 1997, where a court has imposed a sentence of imprisonment upon an offender, the court may, if it thinks that good reasons exists for doing so, suspend the sentence on condition that the defendant enter into a bond

(a) to be of good behaviour;

(b) to comply with the other conditions (if any) of the bond.

(3) A sentence of youth custody and training or imprisonment may not be suspended under this section where the sentence is to be served cumulatively upon another term of youth custody and training or imprisonment, or concurrently with another term then being served, or about to be served, by the offender.

(4) Where the period of youth custody and training or imprisonment to which an offender is liable under one or more sentences is more than three months but less than one year, the sentencing court may, by order

(a) direct that the offender serve a specified period (being not less than one month) of the youth custody or imprisonment in a youth custody and training facility or prison, as the case may be;

(b) suspend the remainder on condition that the offender enter into a bond of a kind described in subsection (1) that will have effect on the offender's release from youth custody and training or prison.

(5) The terms of a bond under subsection (4) shall not extend beyond the period of the suspended youth custody and training or imprisonment.

(6) If the court suspends a youth custody and training centre order or imprisonment under this section on the ground that, because of the offender's ill health, disability, it would be unduly harsh for the offender to spend any time in youth custody and training or in prison, the court may, in addition to any other conditions include in the bond a "home detention condition" requiring the offender to reside in a specified place and to remain at that place for a specified period of no more than twelve months, not leaving it except for one of the following purposes

(a) remunerated employment;

(b) necessary medical or dental treatment for the offender;

(c) averting or minimising a serious risk of death or injury (whether to the offender or some other person);

(d) any other purpose approved or directed by the probation officer or a person authorised by the court, to whom the offender is assigned,

and if the court includes a home detention condition it shall also include a condition requiring the offender to be under the supervision of a probation officer or a person authorised by the court for at least the same period.

(7) If an offender under a bond entered into pursuant to this section complies with the conditions of the bond, the youth custody and training centre order or imprisonment is, on the expiration of the bond, wholly extinguished.

43. (1) Where a court finds a person guilty of an offence the court may, if it thinks that good reason exists for doing so, discharge with or without recording a conviction and without imposing a penalty upon condition that the offender enter into a bond

Discharge without sentence but bond.

- (a) to be of good behaviour;
- (b) to comply with the other conditions (if any) of the bond; and
- (c) if the terms of the bond so require, to appear before the court for sentence, or conviction and sentence, if the offender fails during the term of the bond to comply with a condition of the bond,

except that if the offender is not so required to appear in court, the court shall not impose any conditions under paragraph (b).

- (2) Where an offender is discharged under this section
 - (a) no fresh prosecution may be commenced in respect of the offence; and
 - (b) the offender will only be liable to sentence, or conviction and sentence, if he fails to comply with a condition of the bond and the terms of the bond require the offender to appear before the court for sentencing in that event.

44. A bond under this Act is effective for such term not exceeding three years, as is specified in the bond.

Terms of bond.

45. (1) If the court thinks it appropriate

Guarantors.

- (a) a bond under this Act may oblige the offender to pay a sum specified in the bond in the event of non-compliance with a condition of the bond; and
- (b) the court may require the offender to find one or more guarantors of such an obligation.

(2) A court may

- (a) require an offender to find one or more persons to guarantee the offender's compliance with the conditions of the bond; and
- (b) if such a requirement is made, must specify the amount that any such guarantor will be liable to pay in the event of the offender's non-compliance with a condition of the bond.

Conditions of bond.

46. A bond under this Act may include such of the following conditions as the court thinks appropriate and directs be included

- (a) a condition requiring the offender to be under the supervision of a probation officer or a person authorised by the court for a specified period; or
- (b) a condition requiring the offender to reside with a specified person or in a specified place or area; or
- (c) a condition requiring the offender not to reside with a specified person or in a specified place or area; or
- (d) a condition requiring the offender to perform a specified number of hours of community service; or
- (e) a condition requiring the offender to undergo medical psychiatric treatment in accordance with the terms of the bond, where such treatment has been recommended by a registered medical practitioner ; or
- (f) a condition requiring the offender to abstain from drugs of a specified class or from alcohol; or
- (g) a condition requiring the offender
 - (i) to restore misappropriated property to any person apparently entitled to possession of it; or
 - (ii) to pay compensation of a specified amount to any person for injury, loss or damage resulting from the offence; or
- (h) any other condition that the court thinks appropriate.

Variation or discharge of bond.

47. (1) A court may, on its own motion or on the application of the offender or a probation officer or a person authorised by the court, vary or revoke any condition of a bond.

(2) If, on an application for variation under subsection (1), a court extends, beyond the term of the bond, the period within which community service

is to be performed by the offender, the term of the bond is extended accordingly, despite the fact that the term, as so extended, exceeds three years.

(3) A court shall not extend the period within which community service is to be performed by more than six months.

48. (1) Subject to subsections (3) and (4), a court before whom a child or young person is convicted of an offence may, if the relevant condition is fulfilled, make a parenting order in respect of a person who is a parent or guardian of the child or young person. Parenting orders.

(2) A court shall not make a parenting order unless it is satisfied that arrangements for implementing such orders are available in the area in which it appears to the court that the parent resides or will reside and the notice has not been withdrawn.

(3) A parenting order is an order that requires the parent

- (a) to comply, for a period not exceeding twelve months, with such requirements as are specified in the order; and
- (b) subject to subsection (4), to attend, for a concurrent period not exceeding three months and not more than once in any week, such counselling or guidance sessions as may be specified in directions given by the responsible officer;

and in this subsection “week” means a period of seven days beginning with a Sunday.

(4) A parenting order may, but need not, include such a requirement as is mentioned in subsection (3) (b) in any case where such an order has been made in respect of the parent on a previous occasion.

(5) The relevant condition is that the parenting order would be desirable in the interests of preventing

- (a) the commission of any further offence by the child or young person;
- (b) the commission of any further offence under sections 43 and 47 of the Education Act, 2004.

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(6) The requirements that may be specified under subsection (3) (a) are those which the court considers desirable in the interests of preventing any repetition or, as the case may be, the commission of any further offence.

(7) In this section “responsible officer”, in relation to a parenting order, means a probation officer or a social worker.

(8) Before making a parenting order, a court shall explain to the parent in simple language

- (a) the effect of the order and of the requirements proposed to be included in it;
- (b) the consequences that may follow under subsection (12), if he fails to comply with any of the requirements; and
- (c) that the court has power under subsection (10) to review the order on the application either of the parent or of the responsible officer.

(9) Requirements specified in, and directions given under, a parenting order shall, as far as practicable, be such as to avoid

- (a) any conflict with the parent’s religious beliefs; and
- (b) any interference with the times, if any, at which he normally works or attends an educational establishment.

(10) If while a parenting order is in force it appears to the court which made it, on the application of the responsible officer or the parent, that it is appropriate to make an order under this subsection, the court may make an order discharging the parenting order or varying it

- (a) by cancelling any provision included in it; or
- (b) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had power to make it.

(11) Where an application under subsection (10) for the discharge of a parenting order is dismissed, no further application for its discharge shall be made under that subsection by any person except with the consent of the court that made the order.

(12) If while a parenting order is in force the parent without reasonable excuse fails to comply with any requirement included in the order, or specified in directions given by the responsible officer, he is liable on summary conviction to a fine not exceeding two thousand five hundred dollars.

PART VI

MISCELLANEOUS

49. For the avoidance of doubt, a child or young person who is charged with committing an indictable offence shall be tried only by the High Court, and all the safeguards pertaining to the trial of a child or young person as laid down under section 4 of the Youth Courts Act, 2005 shall be applicable. Jurisdiction of High Court.

50. (1) Subject to the provisions of this section, where a person has been convicted of or sentenced for an offence or offences of which he was convicted, if the relevant period in Schedule 4 applicable to the sentence has elapsed, the conviction of that person is spent and that person, in respect of such conviction, shall be treated for all purposes in law as a person who has not committed or been charged with or the subject of that conviction. Spent convictions and their effect. Schedule 4

(2) Notwithstanding the provisions of any other enactment or rule of law to the contrary, but subject to the provisions of this section.

(a) no evidence shall be admissible in any proceedings before a judicial authority exercising its jurisdiction or functions in the Virgin Islands to prove that a person has committed or been charged with or prosecuted for or convicted of or sentenced for any offence which was the subject of a spent conviction; and

(b) a person shall not, in any such proceedings, be asked, and if asked, shall not be required to answer, any question relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.

(3) Subject to the provisions of any Order made under subsection (5), where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a judicial authority

(a) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer thereto may be framed accordingly; and

(b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction or any circumstances ancillary to a spent conviction in his answer to the question.

- (4) Subject to the provisions of any Order made under subsection (5)
- (a) any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other shall not extend to requiring him to disclose a spent conviction or any circumstances ancillary to a spent conviction (whether the conviction is his own or another's); and
 - (b) a conviction that has become spent or any circumstances ancillary thereto, or any failure to disclose a spent conviction or any such circumstances, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment.

(5) The Executive Council may by Order

- (a) make such provisions as seems to it appropriate for excluding or modifying the application of either or both subsection (3) (a) and (b) in relation to questions put in such circumstances as may be specified in the Order;
- (b) provide for such exceptions from the provisions of subsection (4), as seem to it appropriate, in such cases or class of cases, as in relation to convictions of such a description, as may be specified in the Order.

(6) The following sentences are excluded for the purposes of this section:

- (a) a sentence of imprisonment for life;
- (b) a sentence of imprisonment, or detention in a youth custody and training centre for a term exceeding thirty months;
- (c) a sentence of detention during Her Majesty's pleasure.

(7) For the purposes of this Act the relevant period applicable to a sentence is the period specified in Schedule 4 reckoned from the date of the conviction in respect of which the sentence was imposed.

Schedule 4

Right of appeal.

51. An appeal shall lie from any decision or order of a youth court or any other court of summary jurisdiction and the procedure to be followed on the bringing and hearing of such appeal shall be in accordance with the provisions of the Magistrate's Code of Procedure Act.

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52. The Executive Council may make rules generally as it considers necessary for the better implementation of the provisions of the Act and, without prejudice to the generality of the foregoing, may make rules for

Power to make rules.

- (a) the regulation and management of the centres established under section 15;
- (b) the conduct, discipline and duties of the officers employed in the centres;
- (c) the classification, treatment, employment, discipline and control of inmates; or
- (d) any other matters respecting the centres referred to under this Act.

SCHEDULE 1

[Section 6 (3)]

ATTENDANCE CENTRE ORDERS

1. Subject to paragraph 2, the aggregate number of hours for which an attendance centre order may require an offender to attend at an attendance centre shall not exceed twenty-four hours.

2. Where the court is of the opinion, having regard to all the circumstances, that twenty-four hours would be inadequate, the court may require the offender to attend the attendance centre for an aggregate number of hours not exceeding

- (a) in the case of a child, thirty-six hours; or
- (b) in the case of a young person, forty-eight hours.

3. An offender shall not be required to attend at an attendance centre on more than one occasion on any day, or for more than three hours on any occasion.

4. A court may make an attendance centre order in respect of an offender before a previous attendance centre order in respect of that offender has ceased to have effect, and may determine the number of hours to be specified in the order without regard

- (a) to the number specified in the previous order; or
- (b) to the fact that that order is still in effect.

5. Where a court makes an attendance centre order, the clerk of the court shall deliver or send a copy of the order to the officer in charge of the attendance centre specified in the order, and shall also deliver a copy to the offender or send a copy by registered post to the offender's last or usual place of abode.

6. Where an offender has been ordered to attend at an attendance centre in default of a payment of a sum of money, then -

- (a) on payment of the whole sum to any person authorised to receive that sum, the attendance centre order shall cease to have effect;
- (b) on payment of a part of the sum to any such person, the total number of hours for which the offender is required to attend at the centre shall be reduced proportionately, that is to say, by such number of complete hours as bears to the total number the

proportion most nearly approximating to, without exceeding, the proportion that the part bears to that sum.

SCHEDULE 2

RELEVANT ORDERS

[Section 30]

PART I

ENFORCEMENT OF CERTAIN COMMUNITY ORDERS

PRELIMINARY

1. This Schedule applies in relation to combination orders
 - (a) in so far as they impose such a requirement as is mentioned in section 27 (2) (a) or 3 (a) of this Act, as if they were probation orders;
 - (b) in so far as they impose such a requirement as is mentioned in section 27 (3) (b), as if they were community service orders; and
 - (c) in so far as they impose such a requirement as is mentioned in section 27 (2) (b), as if they were curfew orders.

PART II

BREACH OF REQUIREMENT OF ORDER

Issue of summons or warrant

2. (1) If at any time while a relevant 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 order, the magistrate may
 - (a) issue a summons requiring the offender to appear at the place and time specified in the summons; or
 - (b) if the information is in writing and on oath, issue a warrant for the arrest of the offender.
- (2) Any summons or warrant issued under this paragraph shall direct that the offender appear or be brought before a Magistrate's Court.

Powers of Magistrate's Court

3. (1) If it is proved to the satisfaction of the Magistrate's Court before which an offender appears or is brought under paragraph 2 that the offender has failed without reasonable excuse to comply with any of the requirements of the relevant order, the court may deal with the offender in respect of the failure in any one of the following ways, namely:

- (a) it may impose on the offender a fine not exceeding two thousand five hundred dollars;
- (b) subject to paragraph 6 (2) and (3), it may make a community service order in respect of the offender;
- (c) where the relevant order is a probation order and the case is one to which section 6 of this Act applies, it may make an order under that section requiring the offender to attend at an attendance centre;
- (d) where the relevant order was made by a Magistrate's Court, it may revoke the order and deal with the offender for the offence in respect of which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by the court of the offence.

(2) In dealing with an offender under subparagraph (1) (d) a Magistrate's Court

- (a) shall take into account the extent to which the offender has complied with the relevant order; and
- (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with the requirements of a community service order, that the offender has failed to consent to such order that has been proposed by the court and requires that consent.

(3) Where a relevant order was made by the High Court and a Magistrate's Court has power to deal with the offender under subparagraph (1) (a), (b) or (c), the latter court may instead commit the offender to custody or release the offender on bail until the offender can be brought or appear before the High Court.

(4) A Magistrate's Court that deals with an offender's case under subparagraph (3) shall send to the High Court -

(a) a certificate signed by the magistrate certifying that the offender has failed to comply with the requirements of the relevant order in the respect specified in the certificate; and

(b) such other particulars of the case as may be desirable;

and a certificate purporting to be signed shall be admissible as evidence of the failure before the High Court.

(5) A person sentenced under subparagraph (1) (d) for an offence may appeal to the Court of Appeal.

Powers of the High Court

4. (1) Where by virtue of paragraph 3 (3) an offender is brought or appears before the High Court and it is proved to the satisfaction of the court that the offender has failed to comply with any of the requirements of the relevant order, that court may deal with the offender in respect of the failure in any one of the following ways, namely:

(a) it may impose on the offender a fine not exceeding three thousand five hundred dollars;

(b) subject to paragraph 6 (2) and (3), it may make a community service order in respect of the offender;

(c) where the relevant order is a probation order and the case is one to which section 6 of this Act applies, it may make an order under that section requiring the offender to attend at an attendance centre;

(d) it may revoke the order and deal with the offender for the offence in respect of which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by or before the court for the offence.

(2) In dealing with the offender under subparagraph (1) (d), the High Court

(a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and

(b) may assume, in the case of an offender who has wilfully and persistently failed to comply with the requirements of a community service order that the offender has refused to consent

to such order that has been proposed by the court and requires that consent.

(3) In proceedings before the High Court under this paragraph any question whether the offender has failed to comply with those requirements of the relevant order shall be determined by the court and not by the verdict of the jury.

Exclusions

5. (1) Without prejudice to paragraphs 7 and 8, an offender who is convicted of a further offence while a relevant order is in force in respect of the offender shall not on that account be liable to be dealt with under paragraphs 3 and 4 in respect of a failure to comply with any requirement of the order.

(2) An offender who is required by a probation order to submit to treatment for the offender's mental condition, or the offender's dependency on drugs or alcohol, shall not be treated for the purposes of paragraph 3 or 4 as having failed to comply with that requirement on the ground only that the offender has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, the offender's refusal was reasonable having regard to all the circumstances.

Supplemental

6. (1) Any exercise by a court of its powers under paragraph 3 (1) (a), (b) or (c) or 4 (1) (a) or (b) is without prejudice to the continuance of the relevant order.

(2) The number of hours which an offender may be required to work under a community service order made under paragraph 3 (1) (b) or 4 (1) (b)

(a) shall be specified in the order and shall not exceed eighty in the aggregate; and

(b) where the relevant order is a community service order, shall not be such that the total of hours under both orders exceeds the maximum specified in section 28 (6) of this Act.

(3) Sections 28 and 29 of this Act and, so far as possible, the provisions of this Schedule so far as relating to community service orders, have effect in relation to a community service order under paragraph 3 (1) (b) or 4 (1) (b) as they have effect in relation to a community service order in respect of an offender.

(4) Where the provisions of this Schedule have effect as mentioned in sub-paragraph (3), the powers conferred by those provisions to deal with the

offender for the offence in respect of which the community service order was made shall be construed as powers to deal with the offender for the failure to comply with the requirements of the relevant order in respect of which the community service order was made.

PART III

AMENDMENT OF ORDER

Amendment of requirements of probation or curfew order

7. (1) Subject to subparagraph (2), a Magistrate's Court may, on the application of the offender or the responsible officer, by order amend a probation or curfew order

- (a) by cancelling any of the requirements of the order;
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement that the court could include if it were then making the order.

(2) The power of a Magistrate's Court under subparagraph (1) is subject to the following restrictions, namely

- (a) the court shall not amend a probation order
 - (i) by reducing the probation period below the minimum period, or by extending that period beyond the end of three years from the date of the original order; or
 - (ii) by inserting in the order a requirement that the offender shall submit to treatment for the offender's mental condition, or the offender's dependency on drugs or alcohol or both, unless the amending order is made within six months after the date of the original order;
- (b) the court shall not amend a curfew order by extending the curfew periods beyond the end of six months from the date of the original order;
- (c) the court shall not amend any order that was made by the High Court without reference to that court or permitted to do so by law.

(3) In this paragraph and paragraph 8, references to the offender's dependency on drugs or alcohol or both include references to his propensity towards the misuse of drugs or alcohol.

Amendment of certain requirements of probation order

8. (1) Where the medical practitioner or other person by whom or under whose direction an offender is being treated for the offender's mental condition, or the offender's dependency on drugs or alcohol or both in pursuance of any requirement of a probation order

(a) is of the opinion mentioned in sub-paragraph (2); or

(b) is for any reason unwilling to continue to treat or direct the treatment of the offender,

that medical practitioner or other person shall make a report in writing to that effect to the responsible officer and that officer shall apply under paragraph 7 to a High Court or a Magistrate's Court, as the case may be, for the variation or cancellation of the requirement.

(2) The opinion referred to in sub-paragraph (1) is

(a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order; or

(b) that the offender needs different treatment, being treatment of a kind to which the offender could be required to submit in pursuance of a probation order; or

(c) that the offender is not susceptible to treatment; or

(d) that the offender does not require further treatment.

Extension of community service order

9. (1) Where

(a) a community service order is in force in respect of an offender; and

(b) on the application of the offender or the responsible officer, it appears to a High Court or Magistrate's Court, as the case may be, that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was

made, the court may, in relation to the order, extend the period of twelve months specified in section 29(2) of this Act.

10. An application may not be made under paragraph 7 or 9 while an appeal against the relevant order is pending.

11. (1) Subject to sub-paragraph (2), where a court proposes to exercise its powers under this Part of this Schedule otherwise than on the application of the offender, the court

(a) shall summon the offender to appear before the court; and

(b) if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest;

and the court shall not amend a relevant order under this Part of this Schedule unless the offender expresses willingness to comply with the requirements of the order as amended.

(2) This paragraph does not apply to an order cancelling a requirement of a relevant order or reducing the period of any requirement or substituting a new place for the one specified in the relevant order.

12. (1) On a court making under this Part of this Schedule an order amending a relevant order, the clerk to the court shall forthwith

(a) if the order amends the relevant order otherwise than by substituting a new place for the one specified in the relevant order, give copies of the amending order to the responsible officer;

(b) if the order amends the relevant order in the manner excepted by paragraph (a), send to the clerk to the Magistrate's Court in which the new place is situated

(i) copies of the amending order;

(ii) such documents and information relating to the case as the clerk considers likely to be of assistance to a court in exercising its functions in relation to the order;

and in a case falling within subparagraph (1) (b) the clerk to the Magistrate's Court shall give copies of the amending order to the responsible officer.

(2) A responsible officer to whom copies of an order are given in accordance with subparagraph (1) shall give a copy to the offender and to the

person in charge of any institution in which the offender is or was required by the order to reside.

PART IV

REVOCACTION OF ORDER

Revocation of order with or without re-sentencing

13. (1) This paragraph applies where a relevant order is in force in respect of an offender and, on the application of the offender or the responsible officer, it appears to a Magistrate's Court that, having regard to the circumstances which have arisen since the order was made, it would be in the interests of justice

- (a) that the order should be revoked; or
- (b) that the offender should be dealt with in some other manner for the offence in respect of which the order was made.

(2) The court may

- (a) if the order was made by a Magistrate's Court
 - (i) revoke the order; or
 - (ii) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by the court of the offence; or
- (b) if the order was made by the High Court, commit the offender to custody or release the offender on bail until the offender can be brought or appear before the High Court.

(3) The circumstances in which a probation order may be revoked under subparagraph (2) (a) (i) include the offender making good progress or responding satisfactorily to supervision.

(4) In dealing with an offender under subparagraph (2) (a) (ii), a Magistrate's Court shall take into account the extent to which the offender has complied with the requirements of the relevant order.

(5) An offender sentenced under subparagraph (2) (a) (ii) may appeal to the Court of Appeal against the sentence.

(6) Where the court deals with an offender's case under subparagraph (2) (b), it shall send to the High Court such particulars of the case as may be desirable.

(7) Where a Magistrate's Court proposes to exercise its powers under this paragraph otherwise than on the application of the offender, it shall summon the offender to appear before the court and, if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest.

(8) An application may not be made by the offender under subparagraph (1) while an appeal against the relevant order is pending.

14. (1) This paragraph applies where an offender in respect of whom a relevant order is in force

- (a) is convicted of an offence before the High Court;
- (b) is committed by a Magistrate's Court to the High Court for sentence and is brought or appears before the High Court; or
- (c) is brought or appears before the High Court by virtue of paragraph 13 (2) (b).

(2) If it appears to the High Court to be in the interests of justice to do so, having regard to the circumstances that have arisen since the order was made, the High Court may

- (a) revoke the order; 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 it could deal with the offender if the offender had just been convicted by the court of the offence.

(3) The circumstances in which a probation order may be revoked under subparagraph (2) (a) include the offender making good progress or responding satisfactorily to supervision.

(4) In dealing with an offender under subparagraph (2) (b), the High Court shall take into account the extent to which the offender has complied with the requirements of the relevant order.

Supplemental

15. (1) On the making under this Part of this Schedule of an order revoking a relevant order, the clerk to the court shall forthwith give copies of the revoking order to the responsible officer.

(2) A responsible officer to whom in accordance with sub-paragraph (1) copies of a revoking order are given shall give a copy to the offender and to the person in charge of any institution in which the offender was required by the order to reside.

SCHEDULE 3

[Section 31(2)]

I declare and signify by my signature my consent and willingness to participate in any treatment programme and conditions as may be prescribed by the court pursuant to sections 32 and 33 of the Criminal Justice (Alternative Sentencing) Act, 2005.

I further undertake to comply with any directives issued to me by a treatment provider or a responsible officer in respect thereto.

The consequences of my failure to comply with this declaration or undertaking have been fully explained to me.

Signature:.....(Defendant)

Signature:.....(**Designated officer of the Court**)

Date

SCHEDULE 4

[Section 50 (7)]

RELEVANT PERIODS RESPECTING SPENT CONVICTIONS

1. If the sentence was one of more than six months but not more than thirty months imprisonment, detention in a youth custody or training centre the relevant period is seven years from the date of conviction; if the sentence was six months or less imprisonment, detention in a youth custody or training centre, or a fine the period is five years from the date of conviction; if the sentence was suspended, the period is the same as if it had been immediate.

2. If the offender was conditionally discharged, placed on probation, or made the subject of a care order, or an attendance centre order, the relevant period is two years from the date of conviction or that for which the order remains in force, whichever is longer.

Passed by the Legislative Council this 22nd day of March, 2005.

V. INEZ ARCHIBALD,
Speaker.

ALVA MC CALL,
Ag. Clerk of the Legislative Council.