

## **CRIMINAL CODE AMENDMENT ACT 2001**

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**BERMUDA  
2001 : 29**

### **CRIMINAL CODE AMENDMENT ACT 2001**

[Date of Assent: 13 August 2001]

[Operative Date: 29 October 2001]

#### ARRANGEMENT OF SECTIONS

1	Citation	7	Amendment of section 463 of principal Act
2	Amendment of section 3 of the principal Act	8	Repeal of section 551 of principal Act
3	Repeal and replacement of sections 53 to 71 of principal Act	9	Amendment of section 552 of principal Act
4	Amendment of section 71A of principal Act	10	Repeal of sections 557 to 562 of principal Act
5	Amendment of section 71B of principal Act	11	Consequential amendments
6	Amendment of section 71D of principal Act	12	Commencement

WHEREAS it is expedient to amend the Criminal Code Act 1907 to revise the methods for dealing with offenders, to provide a wider range of alternatives to incarceration and to make consequential amendments:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

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### **Citation**

1 This Act, which amends the Criminal Code Act 1907 ("the principal Act"), may be cited as the Criminal Code Amendment Act 2001.

### **Amendment of section 3 of the principal Act**

2 Section 3 of the principal Act is amended—

(a) by deleting the definition of "order for conditional discharge" and substituting the following—

""order for conditional discharge" means an order for conditional discharge made under section 69;";

(b) by deleting the definition of "period of conditional discharge";

(c) by deleting the definition of "probation officer" and substituting the following—

""probation officer" means a person appointed to be a probation officer under section 70E;";

(d) by deleting the definition of "probation order" and substituting the following—

""probation order" means an order made under section 70;".

### **Repeal and replacement of sections 53 to 71 of principal Act**

3 Sections 53 to 71 of the principal Act are repealed and the following is substituted—

#### **"PURPOSE AND PRINCIPLES OF SENTENCING**

### **Purpose**

53 The fundamental purpose of sentencing is to promote respect for the law and to maintain a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives—

(a) to protect the community;

(b) to reinforce community-held values by denouncing unlawful conduct;

(c) to deter the offender and other persons from committing offences;

(d) to separate offenders from society, where necessary;

(e) to assist in rehabilitating offenders;

(f) to provide reparation for harm done to victims;

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- (g) to promote a sense of responsibility in offenders by acknowledgement of the harm done to victims and to the community.

### **Fundamental principle**

54 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

### **Imprisonment to be imposed only after consideration of alternatives**

55 (1) A court shall apply the principle that a sentence of imprisonment should only be imposed after consideration of all sanctions other than imprisonment that are authorized by law.

- (2) In sentencing an offender the court shall have regard to—
  - (a) the nature and seriousness of the offence, including any physical or emotional harm done to a victim;
  - (b) the extent to which the offender is to blame for the offence;
  - (c) any damage, injury or loss caused by the offender;
  - (d) the need for the community to be protected from the offender;
  - (e) the prevalence of the offence and the importance of imposing a sentence that will deter others from committing the same or a similar offence;
  - (f) the presence of any aggravating circumstances relating to the offence or the offender, including—
    - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factors;
    - (ii) evidence that the offender, in committing an offence, abused a position of trust or authority in relation to the victim;
  - (g) the presence of any mitigating circumstances relating to the offence or the offender including—
    - (i) an offender's good character, including the absence of a criminal record;
    - (ii) the youth of the offender;
    - (iii) a diminished responsibility of the offender that may be associated with age or mental or intellectual capacity;

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- (iv) a plea of guilty and, in particular, the time at which the offender pleaded guilty or informed the police, the prosecutor or the court of his intention so to plead;
- (v) any assistance the offender gave to the police in the investigation of the offence or other offences;
- (vi) an undertaking given by the offender to co-operate with any public authority in a proceeding about an offence, including a confiscation proceeding;
- (vii) a voluntary apology or reparation provided to a victim by the offender.

### **PUNISHMENT - GENERAL PROVISIONS**

#### **Construction of statutory provisions relating to punishments**

56 Except where otherwise expressly provided, in the construction of this Act or any other enactment—

- (a) a person liable to imprisonment for any term may be sentenced to imprisonment for any shorter term;
- (b) a person liable to a fine of any amount may be sentenced to pay a fine of any lesser amount;
- (c) a person liable to imprisonment may in addition to, or instead of, imprisonment be sentenced to pay—
  - (i) a fine of \$1500 where the term of imprisonment does not exceed 12 months,
  - (ii) a fine of \$3000 where the term of imprisonment exceeds 12 months but does not exceed 2 years,
  - (iii) a fine of \$7,500 where the term of imprisonment exceeds 2 years.

#### **Determination of sentence**

57 (1) Where an enactment prescribes a punishment in respect of an offence, the sentence to be imposed is, subject to the limitations provided in the enactment, in the discretion of the court that convicts a person who commits the offence.

(2) Where an accused is convicted of an offence punishable with both fine and imprisonment and a term of imprisonment in default of payment of the fine is not specified in the enactment that prescribed the punishment to be imposed, the imprisonment that may be imposed in default of payment shall not exceed the term of the imprisonment that is prescribed in respect of the offence.

(3) Where an accused—

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- (a) is sentenced while serving a term of imprisonment for a prior offence, and a term of imprisonment, whether in default of payment of a fine or otherwise, is imposed;
- (b) is convicted of an offence punishable with both a fine and imprisonment and both are imposed; or
- (c) is convicted of more offences than one, and—
  - (i) more than one fine is imposed,
  - (ii) terms of imprisonment for the respective offences are imposed, or
  - (iii) a term of imprisonment is imposed in respect of one offence and a fine is imposed in respect of another offence,

the court that sentences the accused may direct that the terms of imprisonment that are imposed, whether in default of payment of a fine or otherwise, be served consecutively.

### **Time in custody to be taken into account**

58 In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence.

### **Time at large to be excluded from term of imprisonment**

59 Any time during which a convicted person is unlawfully at large or is at large on release on licence does not count as part of any term of imprisonment imposed on the person.

### **Commencement of sentence**

60 (1) Subject to subsections (2) and (3), a sentence commences when it is imposed, except where an enactment otherwise provides.

(2) A term of imprisonment, whether imposed by a trial court or the court appealed to, commences or shall be deemed to be resumed, as the case may be, on the day on which the convicted person is arrested and taken into custody under the sentence.

(3) Where a sentence that is imposed is a fine with a term of imprisonment in default of payment, no time prior to the day of the execution of the warrant of committal counts as part of the term of imprisonment.

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### PROCEDURE AND EVIDENCE

#### **Sentencing proceedings**

61 A court shall, as soon as practicable after an offender has been found guilty, conduct proceedings to determine the appropriate sentence to be imposed.

#### **Presentence report by probation officer**

62 (1) Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, a probation officer, if required to do so by a court, shall, as soon as practicable, prepare and file with the court a report in writing relating to the accused for the purpose of assisting the court in imposing a sentence or in determining whether the accused should be discharged pursuant to section 69.

(2) Upon the report being filed with the court the clerk or registrar of the court shall give a copy of the report to the accused or his counsel.

(3) Unless otherwise specified by the court, the report shall, wherever possible, contain information on the following matters—

- (a) the offender's age, maturity, character, home circumstances, employment history, behaviour, attitude and willingness to make amends;
- (b) the history of previous dispositions under the Young Offenders Act 1950, this Act and any other Act;
- (c) the history of any measures other than imprisonment used to deal with the offender, and the offender's response to those measures; and
- (d) an analysis of the likelihood of the offender to reoffend.

(4) The presentence report shall also contain information on any other matter required by the court, after hearing argument from the prosecutor and the offender, to be included in the report.

(5) Where the court orders a presentence report and the court is considering a probation order which will contain a requirement that the offender submit to treatment for alcohol or drug addiction, the court may order that the offender undergo an assessment by a qualified person for such treatment, which assessment shall form part of the presentence report.

(6) Where—

- (a) a request has been made by the prosecution or the offender for a presentence report; and
- (b) the court rejects the request,

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the court shall give reasons for the rejection of the request.

### **Victim impact statement**

63 (1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 69 in respect of any offence, the court shall consider any statement made by the victim or by the prosecution on behalf of the victim describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

(2) A victim impact statement shall be in written form and shall be filed with the court.

(3) At the request of a victim, the court may instruct the clerk of the court or registrar to read the statement into the record in open court.

(4) Where the victim impact statement discloses confidential or sensitive information or material that may cause embarrassment or distress to the victim or his family, the court may direct that the statement be dealt with *in camera*.

(5) The prosecutor shall notify the victim as soon as a date has been set for sentencing as to the date fixed for sentencing and the right of the victim to make a victim impact statement.

(6) The clerk or registrar of the court shall provide a copy of the victim impact statement, as soon as possible after a finding of guilt, to the offender or counsel for the offender and the prosecutor.

(7) As soon as practicable after a finding of guilt and in any event before sentence, the court shall inquire of the prosecutor or a victim of the offence whether the victim has been advised of the opportunity to make a victim impact statement.

(8) For the purposes of this section, "victim", in relation to an offence—

(a) means the person to whom harm is done or who suffers physical or emotional loss as a result of the commission of the offence; and

(b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or any relative of that person, anyone who has in law or fact the custody of that person or is responsible for the care or support of that person or any dependant of that person.

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### **Evidence relevant to determination of sentence**

64 (1) In determining the sentence, the court shall consider any relevant information placed before it, including any representations or submissions made by or on behalf of the prosecutor or the offender.

(2) Before determining the sentence the court shall give the prosecutor and the offender an opportunity to make submissions relevant to the sentence to be imposed.

(3) In determining the sentence, a court may consider any evidence disclosed at the trial.

(4) The court may, on its own motion, after hearing argument from the prosecutor and the offender require the production of evidence that would assist it in determining the appropriate sentence.

(5) Hearsay evidence is admissible at sentencing proceedings, but the court may, if the court considers it to be in the interests of justice, compel a person to testify where the person—

- (a) has personal knowledge of the matter;
- (b) is reasonably available; and
- (c) is a compellable witness.

(6) Where the court is composed of a judge and jury, the court shall accept as proved all facts, express or implied, that are essential to the jury's verdict of guilty.

(7) Where there is a dispute with respect to any fact that is relevant to the determination of a sentence—

- (a) the court shall request that evidence be adduced as to the existence of the fact unless the court is satisfied that sufficient evidence was adduced at the trial;
- (b) the party wishing to rely on a relevant fact, including a fact contained in a presentence report, has the burden of proving it;
- (c) either party may cross-examine any witness called by the other party;
- (d) subject to paragraph (e), the court must be satisfied on a balance of probabilities of the disputed fact before relying on it in determining the sentence; and
- (e) the prosecutor must establish, by proof beyond a reasonable doubt, the existence of any aggravating fact or any previous conviction by the offender.

### **Other offences taken into consideration**

65 (1) In determining the sentence, the court—



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- (a) shall consider, if it is possible and appropriate to do so, any other offences of which the offender was found guilty by the same court, and shall determine the sentence to be imposed for each of those offences;
  - (b) shall consider, if the Director of Public Prosecutions and the offender consent, any outstanding charges that the court has jurisdiction to try against the offender to which the offender consents to plead guilty and pleads guilty, and shall determine the sentence to be imposed for each charge unless the court is of the opinion that a separate prosecution for any of the outstanding charges is necessary in the public interest; and
  - (c) may consider any facts forming part of the circumstances of the offence that could constitute the basis for a separate charge.
- (2) The court shall, on the information or indictment, note—
- (a) any outstanding charges considered in determining the sentence under paragraph (1)(b); and
  - (b) any facts considered under paragraph (1)(c) in determining the sentence under that paragraph,

and no further proceedings may be taken with respect to any offence described in those charges or disclosed by those facts unless the conviction for the offence of which the offender has been found guilty is set aside or quashed on appeal.

### **Offender may speak to sentence**

66 Before determining the sentence to be imposed, the court shall ask whether the offender, if present, has anything to say.

### **Reasons for sentence**

67 When imposing a sentence, a court shall state the terms of the sentence imposed and the reasons for it, and enter those terms and reasons into the record of the proceedings.

## **DRUG TREATMENT PROGRAMMES**

### **Drug treatment programmes**

68 (1) There is established a special magistrates court to be known as the Drug Treatment Court.

(2) The Chief Justice may designate any magistrate as a judge of the Drug Treatment Court.

(3) Where an accused other than a corporation—

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- (a) pleads guilty to or is found guilty of an offence;
- (b) appears to the court to satisfy the eligibility criteria; and
- (c) is willing to undergo an assessment by a qualified person to determine his suitability for a drug treatment programme,

the court may by order direct the offender to appear before the Drug Treatment Court.

- (4) The Drug Treatment Court on being satisfied—
  - (a) that the offender is suitable for enrollment in a drug treatment programme;
  - (b) that it is in the best interests of the offender that he be enrolled in such programme; and
  - (c) that the offender agrees to be enrolled in such programme,

may, instead of convicting the offender, order that he be enrolled in a drug treatment programme of such description, for such period and subject to such conditions as the Drug Treatment Court may specify in the order.

(5) Where an offender has been enrolled in a drug treatment programme, the Drug Treatment Court shall monitor the progress of the offender throughout the duration of the programme.

(6) Where the offender fails, without reasonable excuse, to comply with the rules of a drug treatment programme or any conditions set out in an order under subsection (4), the Drug Treatment Court may—

- (a) (i) impose any sanction, including, imprisonment for a period not exceeding 20 days, that it could have imposed for the offence in respect of which the order was made; and
- (ii) require the offender to continue in the drug treatment programme; or
- (b) (i) revoke the order,
- (ii) convict the offender of the offence in respect of which the order was made, and
- (iii) impose any sentence that could have been imposed if the offender had been convicted at the time the order was made.

(7) For the avoidance of doubt it is declared that where an accused—

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(a) has pleaded guilty to an offence; and

(b) has been enrolled in a drug treatment programme,

the plea is irrevocable.

(8) For the purposes of the Rehabilitation of Offenders Act 1977 a person shall be deemed to have become a rehabilitated person if he successfully completes a drug treatment programme pursuant to an order under subsection (4).

(9) In this section—

(a) "drug treatment programme" means a drug treatment and rehabilitative programme approved by the Minister of Health and Family Services;

(b) "eligibility criteria" means eligibility criteria for participation in a drug treatment programme that are approved by the Minister of Health and Family Services and are published in the Gazette;

(c) "qualified person" means a person approved by the Minister of Health and Family Services as qualified to conduct an assessment under this section.

### DISCHARGE

#### **Conditional and absolute discharge**

69 (1) Where an accused, other than a corporation, pleads guilty to or is found guilty of an offence, the court may, if it considers it to be in the best interests of the offender and not contrary to the public interest, instead of convicting the offender, by order direct that the offender be discharged absolutely or on conditions prescribed in a probation order made under section 70A or 70B.

(2) Where a court directs under subsection (1) that an offender be discharged of an offence, the offender shall be deemed not to have been convicted of the offence except that—

(a) the offender may appeal from the determination of guilt as if it were a conviction in respect of the offence;

(b) the Director of Public Prosecutions or the informant may appeal from the decision of the court not to convict the offender of the offence as if that decision were a judgment or verdict of acquittal of the offence or a dismissal of the information against the offender; and

(c) the offender may plead *autrefois convict* in respect of any subsequent charge relating to the offence.

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(3) Where an offender who is bound by the conditions of a probation order made at a time when the offender was directed to be discharged under this section is convicted of an offence, including an offence under section 70C(9), the court that made the probation order may, in addition to or in lieu of exercising its authority under section 70C(8), at any time when it may take action under that section—

- (a) revoke the discharge;
- (b) convict the offender of the offence to which the discharge relates; and
- (c) impose any sentence that could have been imposed if the offender had been convicted at the time of discharge,

and no appeal lies from a conviction under this subsection where an appeal was taken from the order directing that the offender is discharged.

### PROBATION

#### **Making of probation order**

70 (1) Where a person is convicted of an offence, a court may, having regard to the age and character of the offender, the nature of the offence and the circumstances surrounding its commission—

- (a) suspend the passing of sentence and direct that the offender be released on conditions prescribed in a probation order; or
- (b) in addition to fining or sentencing the offender to imprisonment for a term not exceeding two years, direct that the offender comply with conditions prescribed in a probation order;

(2) A court may also make a probation order where it discharges an accused under section 69.

#### **Compulsory conditions**

70A The court shall direct, as conditions of a probation order, that the offender—

- (a) not commit another offence during the period of the order;
- (b) appear before the court when required to do so by the court;
- (c) notify the probation officer in writing in advance of any intended change of address and promptly notify the probation officer of any change of employment or occupation;

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- (d) report to a probation officer at the place and within the times stated in the order and thereafter when required by the probation officer and in the manner directed by the probation officer; and
- (e) not leave Bermuda without the written permission of a probation officer.

### **Optional conditions of probation order**

70B The court may direct, as additional conditions of a probation order, that the offender—

- (a) perform up to 1000 hours of community service over a period not exceeding 18 months;
- (b) submit to drug testing as directed by the court;
- (c) abstain from—
  - (i) the consumption of alcohol or other intoxicating substance,
  - (ii) the consumption of controlled drugs within the meaning of the Misuse of Drugs Act 1972 except in accordance with a medical prescription;
- (d) with the agreement of the offender and the director of the relevant programme, participate in a treatment or rehabilitative programme approved by the Minister of Health and Family Services and comply with the rules of the programme;
- (e) complete to the satisfaction of the probation officer any specified course of education or training designed to improve work skills or social skills, or both;
- (f) make restitution of property or make reparation in accordance with sections 70H and 70I;
- (g) refrain from—
  - (i) participating in specified activities or attending specified places,
  - (ii) associating with specified persons or with persons of a specified description;
- (h) abide by conditions of any curfew;
- (i) comply with such other reasonable conditions as the court may direct for facilitating the successful reintegration of the offender into the community.

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### **Probation order**

- 70C (1) A court that makes a probation order shall—
- (a) take reasonable steps to ensure the offender understands the order;
  - (b) explain the procedure for applying under subsection (5) for a change to the optional conditions;
  - (c) explain the consequences of being convicted of an offence while on probation under subsection (8) or under section 69;
  - (d) explain the consequences of non-compliance with the order under subsection (9);
  - (e) require the offender to sign the probation order; and
  - (f) cause a copy of the order to be given to the offender.

(2) A probation order comes into force when the order is made except that where the offender at that time is sentenced to imprisonment under section 70(1)(b) or is serving time in prison, it shall come into force when the offender is released from prison.

(3) If a person who is bound by a probation order is subsequently convicted of an offence or is imprisoned under section 70(1)(b), the order continues in force except in so far as the imprisonment renders it impossible for the offender to comply with the order.

(4) A probation order continues in force for such period as the court may specify in it but no probation order shall continue in force for more than three years after the date on which the order came into force.

(5) A court that makes a probation order may at any time, on application by the offender, the probation officer or the prosecutor, require the offender to appear before it and, after hearing the offender and one or both of the probation officer and the prosecutor—

- (a) make any changes to the optional conditions that in the opinion of the court are rendered desirable by a change in the circumstances since those conditions were imposed under section 70B;
- (b) relieve the offender, either absolutely or on such terms or for such period as the court thinks desirable of compliance with any optional condition; or
- (c) decrease the period for which the probation order is to remain in force,

and the court shall thereupon endorse the probation order accordingly and inform the offender of its action and require the offender to sign the

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probation order as amended and cause a copy of the order to be given to the offender.

(6) Where a court that makes a probation order imposes a condition that the offender be treated for drug or alcohol addiction and report to a magistrate who is designated to monitor such order, the powers set out in subsection (5) may be exercised by that magistrate.

(7) All the functions of the court under subsection (5) may be exercised in chambers.

(8) Where an offender who is bound by a probation order made under section 70(1)(a) is convicted of an offence including an offence under subsection (9) which is committed during the term of the probation order, in addition to any punishment that may be imposed for that offence, the court may, on application by the prosecutor and after hearing the prosecutor and the offender—

(a) revoke the order that was made under section 70(1)(a) and impose any sentence that could have been imposed if the passing of sentence had not been suspended; or

(b) make such changes to the optional conditions set out in section 70A as the court considers desirable, or extend the period for which the order is to remain in force for such period, not exceeding one year, as the court considers desirable

and the court shall thereupon endorse the probation order accordingly and shall inform the offender of its action and require the offender to sign the probation order as amended and cause a copy of the amended order to be given to the offender.

(9) An offender who is bound by a probation order and who, without reasonable excuse, fails or refuses to comply with that order is guilty of—

(a) an indictable offence and is liable to imprisonment for a term of two years; or

(b) an offence punishable on summary conviction and is liable to imprisonment for 18 months, or to a fine of \$2000, or both.

(10) Nothing in this section or sections 70, 70A or 70B affects a probation order or an order for conditional or absolute discharge made in respect of a person under the age of 16 years under the Young Offenders Act 1950.

### **Presentence report**

70D (1) Before imposing a condition under section 70B(a), (d) or (e) the court must have before it a presentence report prepared by a probation officer, which has addressed the following—

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- (a) the offender's circumstances;
- (b) the feasibility of securing compliance with the relevant condition;
- (c) where participation in any programme or activities would involve the co-operation of a person other than the offender and the probation officer who is responsible for his supervision, that person's written consent to the inclusion of the offender in the programme or activities;

(2) Where the court orders a presentence report and the court is considering the making of a probation order containing a condition that the offender participate in a treatment or rehabilitation programme for alcohol or drug abuse, the court may order at the time when a presentence report is requested that the offender undergo an assessment by a qualified person of the suitability of the offender for such programme.

### **Appointment, functions etc of probation officers**

70E (1) The Governor may appoint such number of probation officers as may appear to him to be necessary.

(2) A probation officer shall have the powers and discharge the duties conferred or imposed on a probation officer under this Act or any other enactment and, in particular, it shall be the duty of a probation officer—

- (a) to supervise, having regard to the requirements of the probation orders made in their respective cases, the offenders placed under his supervision;
- (b) to advise and assist them;
- (c) to inquire, without prejudice to any special directions that may be given by the court, into the circumstances and past and present environment of any accused or convicted person, with the view to assisting the court in determining the most suitable way of dealing with his case;
- (d) to assist the court by which a probation order was made in determining how best to exercise its powers in relation to the offender; and
- (e) to advise and assist offenders who, on release from custody, have been placed under his supervision.

(3) It shall be the duty of the Director, subject to any general or special directions given to him by the responsible Minister, to provide for the efficient carrying out of the work of probation officers and to review the work of probation officers in individual cases.



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(4) The probation officer who is to be responsible for the supervision of an offender shall be selected under arrangements made by the Director from among the available probation officers; and, if the probation officer so selected dies or is unable for any reason to carry out his or her duties, or if the Director thinks it desirable that another probation officer should take his or her place, then another probation officer shall be selected in like manner from among the available probation officers.

(5) In this section "the Director" means the public officer responsible for probation services.

### **FINES**

#### **Fines**

70F (1) Subject to subsection (2), a court that convicts a person, other than a corporation, of an offence may fine the offender in addition to or in lieu of any other sanction that the court is authorized to impose.

(2) In fixing the amount of any fine to be imposed on an offender, the court shall take into consideration the means and responsibilities of the offender so far as they appear or are known to the court.

(3) Where the court is of the opinion that the offender is unable to pay a fine, it shall determine whether the offender would be a suitable candidate to perform community service as a condition of a probation order.

(4) All or any part of a fine imposed under this section may be taken out of moneys found in the possession of the offender at the time of the arrest of the offender if the court making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender, so directs.

(5) A court that fines an offender under subsection (1) may order that the fine be paid by instalments at stipulated times or may allow the offender time to pay the fine and, on the application of the offender, may extend the time for payment of the fine.

(6) In the absence of an order under subsection (5) the fine shall be due and payable on the twenty-eighth day after the order was made.

(7) The court may secure the payment of the fine by imposing such terms as the court thinks appropriate.

(8) If the fine is not paid within the time by which the fine or any portion thereof fails to be paid under this section the fine may be enforced—

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- (a) in the case of a fine imposed by the Supreme Court, as a civil debt owed to the Crown; or
- (b) in the case of a fine imposed by a court of summary jurisdiction, as a civil debt owed to the Crown or pursuant to section 30 of the Summary Jurisdiction Act 1930.

and in either case the court may provide for payment of the fine by garnishment or attachment of the offender's wages.

### **Fines on corporations**

70G (1) A corporation that is convicted of an offence is liable, in lieu of any imprisonment that is prescribed as punishment for that offence, to be fined in an amount, except where otherwise provided by law—

- (a) that is in the discretion of the court, where the offence is an indictable offence; or
- (b) not exceeding \$20,000, where the offence is a summary offence.

## RESTITUTION AND REPARATION

### **Restitution**

70H (1) Where an offender—

- (a) deprives a person of property of which that person was in possession; and
- (b) is in possession of the property,

the court may order the offender to restore the property to the person who was in possession of it immediately before the commission of the offence.

(2) The court may enforce an order for restitution by—

- (a) imposing it as a condition in a probation order; or
- (b) by suspending the passing of sentence to allow the property to be restored before sentencing.

### **Reparation**

70I (1) Where an offender is convicted or discharged, the court imposing sentence on or discharging the offender may, in the case of damage to or the loss or destruction of property of any person as a result of the commission of an offence or the arrest or attempted arrest of the offender, make a reparation order requiring the offender to pay that person an amount not exceeding the replacement value of the property at the date the order is imposed less the value of any part of the property that is returned to that person at the date it is returned.

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(2) Where bodily harm is caused to any person as a result of the commission of an offence or the arrest or attempted arrest of the offender, the court may make a reparation order requiring the offender, to pay to that person out of pocket expenses directly incurred as a result of the bodily harm.

(3) Where the amount of reparation under subsection (1) or (2) is not readily ascertainable, the court may adjourn the proceedings and order a probation officer or any other person designated by the court for the purpose to prepare a report to determine—

- (a) the loss or damage;
- (b) the means of the offender;
- (c) the nature and extent of the offender's existing financial obligations;
- (d) the maximum amount the offender is likely to be able to pay under a sentence to make reparation; and
- (e) where payment by instalments is considered appropriate, the frequency and magnitude of any payments that would be required to make reparation.

(4) The court may make an order attaching any salary, wages or other monies that may become due and payable to the offender.

(5) An order for reparation under subsection (1) or (2) may be enforced as a condition of probation.

(6) Where the court decides not to include a reparation order as a condition of probation, the person who suffered the loss or damage or bodily injury ("victim"), after the time has expired under the reparation order for the offender to pay, may apply to the court for enforcement of the reparation order.

(7) On receipt of an application under subsection (6) the court shall cause a summons to be issued for the appearance of the offender and the victim shall be notified of the hearing date.

(8) Upon the appearance of the offender the court shall enquire into—

- (a) the reasons why the reparation order was not complied with; and
- (b) the offender's present ability to pay the balance of the reparation order.

(9) The court may impose such new terms for the payment of the reparation as it considers necessary to secure payment of the balance owing under the reparation order.

(10) Where—

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- (a) the court—
  - (i) finds it appropriate in the circumstances to make an order for reparation in relation to an offender,
  - (ii) is also considering an order to require the offender to pay a fine; and
- (b) it appears to the court that the offender would not have the means or ability to comply with both an order for reparation and an order to pay the fine,

the court shall first make the order of reparation and shall then consider whether and to what extent an order to pay a fine is appropriate in the circumstances.

(11) Where both reparation and a fine are ordered, payments will be applied first to reparation and secondly towards the fine.

(12) All or any part of any amount that is ordered to be paid by way of reparation under subsection (1) or (2) may be taken out of monies found in the possession of the offender at the time of his arrest if the court is satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender.

(13) Nothing in this section affects the right of any person to recover compensation under the Criminal Injuries (Compensation) Act 1973 or by civil proceedings for damages.

### **IMPRISONMENT**

#### **Calculation of terms of imprisonment**

70J (1) Subject to this section, a sentence of imprisonment passed by the Supreme Court or a court of summary jurisdiction shall, unless the court otherwise directs, have effect from and include the day on which it was passed.

(2) Where a person who is undergoing, or has been sentenced to undergo, imprisonment for an offence, is convicted of another offence, any sentence of imprisonment imposed on him for that other offence shall, unless the court otherwise directs, take effect from the time when the offender would otherwise be released from prison under the previous sentence of imprisonment.

(3) Where a person sentenced to imprisonment by a court of summary jurisdiction appeals against his conviction or sentence to the Supreme Court, the period of time spent by him in prison under that sentence before the determination or abandonment of his appeal shall, unless the Supreme Court otherwise orders, be deducted from the term of imprisonment (if any) which he is required to serve by virtue of the determination of the appeal.

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### **Suspended sentence of imprisonment**

70K (1) If a court sentences an offender to imprisonment for 5 years or less it may order that the term of imprisonment be suspended in whole or in part during the period specified in the order ("the operational period"), which period shall not exceed 5 years, if the court is satisfied that it is appropriate to do so in the circumstances.

(2) A court shall not make an order under subsection (1) if it would not have sentenced the offender to imprisonment in the absence of power to make an order suspending the sentence.

(3) Before making an order under subsection (1) the court shall explain to the offender in ordinary language his liability under subsection (5) if during the operational period he commits in Bermuda an offence for which he is sentenced to imprisonment.

(4) A court making an order under subsection (1) shall specify a suspended sentence that corresponds in length to the sentence of imprisonment that it would have imposed in the absence of power to make an order suspending the sentence.

(5) Where an offender whose term of imprisonment has been suspended under this section is convicted of a further offence which is committed during the operational period and for which he is sentenced to imprisonment, the court which sentences the offender for the further offence shall order that the suspended sentence shall take effect unless it is of the opinion that it is unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the further offence.

(6) Where a court decides under subsection (5) that it would be unjust for a suspended sentence to take effect, the court shall—

(a) order that the suspended sentence—

(i) take effect with a substitution of a lesser term of imprisonment; or

(ii) be cancelled and be replaced by any non-custodial sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the suspended sentence was imposed; or

(b) decline to make any order referred to in paragraph (a) concerning the suspended sentence.

(7) Where pursuant to subsection (5) or subsection (6) a court orders that the suspended sentence shall take effect, the sentence shall commence on the date of the making of that order.

(8) Where a court imposes a suspended sentence for one offence, the court may also impose suspended sentences under

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subsection (1) for other offences for which the offender has appeared for sentence, so long as the total period of all suspended sentences to which the offender is subject does not exceed 5 years from the date of the commencement of the first such sentence, and, where two or more suspended sentences are imposed on an offender, the sentences shall be served concurrently.

(9) For the purposes of any Act conferring rights of appeal in criminal cases any order made by a court under this section shall be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

### **Intermittent sentences**

70L (1) Where the court imposes a sentence of imprisonment of 90 days or less on an offender convicted of an offence, the court may, having regard to—

- (a) the age and character of the offender;
- (b) the nature of the offence and the circumstances surrounding its commission; and
- (c) the availability of the appropriate accommodation to ensure compliance with the sentence,

order—

- (d) that the sentence be served intermittently at such time as is specified in the order; and
- (e) that the offender comply with conditions in a probation order when not in confinement during the period that the sentence is being served and, if the court so orders, on release from prison after completing the intermittent sentence.

(2) An offender who is ordered to serve a sentence of imprisonment intermittently may, on giving notice to the prosecutor, apply to the court that imposed the sentence to allow it to be served on consecutive days.

(3) Where a court imposes a sentence of imprisonment on a person who is subject to an intermittent sentence in respect of another offence, the unexpired portion of the intermittent sentence shall be served on consecutive days unless the court otherwise orders.

### **Effect of escape on punishment**

70M A person undergoing a sentence of imprisonment who escapes from lawful custody is liable on recapture to undergo the punishment which he was undergoing at the time of his escape for a period equal to that during which he was absent from prison after his escape and before

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the expiration of the term of his sentence, whether that term has or has not expired at the time of his recapture.

### **TRAINING, EDUCATIONAL AND REHABILITATION PROGRAMMES IN PRISON**

#### **Prison programmes**

70N (1) Where the court, on sentencing an offender to a period of imprisonment of not less than 12 months, is satisfied that—

- (a) a specified training, educational or rehabilitation programme that is relevant to the needs of the offender can be provided in prison; and
- (b) the report of a qualified person, who has conducted an assessment of the offender, indicates that he would be suitable for enrolment in the specified programme,

the court may by order direct the Commissioner of Prisons to offer the specified programme to the offender.

(2) Where a specified programme has been offered by the Commissioner of Prisons to an offender—

- (a) if the offender completes the programme and complies with all the requirements of the programme to the satisfaction of the Commissioner of Prisons, he shall be entitled to make an immediate application for release on licence;
- (b) if the offender fails to complete the programme or fails to comply with all the requirements of the programme to the satisfaction of the Commissioner of Prisons, he shall not be entitled to apply for release on licence under section 70P after serving one-third of his sentence.

(3) Before making an order under subsection (1) the court shall explain to the offender in ordinary language the effect of subsection (2).

(4) In this section "qualified person" means a person approved by the Minister of Health and Family Services as qualified to conduct an assessment under this section.

### **PAROLE**

#### **Life sentences**

70O Any person who is sentenced to life imprisonment for an offence for which no minimum period of imprisonment is provided before he is eligible for release on licence shall serve at least 15 years of his imprisonment before any application for his release on licence may be entertained or granted by the Parole Board.

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### **Eligibility for parole generally**

70P (1) Subject to section 70N, where no minimum period of imprisonment is provided before a person can apply for his release on licence a person must serve at least one-third of the term of imprisonment before any application for his release on licence may be entertained or granted by the Parole Board in the absence of an order made under subsection (3).

(2) Subsection (1) applies where the sentence was imposed before, on or after the date on which this section comes into operation.

(3) Notwithstanding subsection (1), where an offender receives a sentence of imprisonment for two years or more on conviction on indictment, the court, may, if satisfied, having regard to—

- (a) the circumstances of the commission of the offence; and
- (b) the character and circumstances of the offender,

that the expression of society's denunciation of the offence or the objective of specific or general deterrence so requires, order that the portion of the sentence that must be served before the offender may be released on licence is one-half of the sentence or 10 years, whichever is less.

### **Eligibility for parole, persons under 18 convicted of murder**

70Q Notwithstanding sections 286A and 288 of this Act, where an offender who was under the age of 18 years at the time of the commission of the offence is convicted of premeditated murder or murder and is sentenced to imprisonment for life, the offender shall not be eligible for release on licence until he has served—

- (a) 10 years, in the case of a person convicted of premeditated murder who was 16 or 17 years of age at the time of the commission of the offence; and
- (b) 7 years, in the case of a person convicted of murder who was 16 or 17 years of age at the time of the commission of the offence."

### **Amendment of section 71A of principal Act**

4 Section 71A(2) of the principal Act is amended by deleting the words "be less than forty nor more than two hundred and forty" and substituting the words "exceed 1000".

### **Amendment of section 71B of principal Act**

5 Section 71B of the principal Act is amended—

- (a) by deleting the words "of Social Services" wherever they appear;



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(b) in subsection (2), by deleting the word "twelve" and substituting the word "eighteen";

(c) by adding the following as subsection (4)—

"(4) In this section and section 71D "Director" means the public officer responsible for probation services."

### **Amendment of section 71D of principal Act**

6 Section 71D(1) of the principal Act is amended—

(a) by deleting the words "of Social Services";

(b) by deleting the word "twelve" and substituting the word "eighteen".

### **Amendment of section 463 of principal Act**

7 Section 463(2) of the principal Act is amended by deleting the words "imprisonment or preventive detention" and substituting the words "or imprisonment".

### **Repeal of section 551 of principal Act**

8 Section 551 of the principal Act is repealed.

### **Amendment of section 552 of principal Act**

9 Section 552 of the principal Act is amended—

(a) in subsection (1), by deleting the words "to be sentenced to preventive detention or"

(b) in subsection (2), by deleting the words "has previously been sentenced to preventive detention or (as the case may be)".

(c) in the heading thereto, by deleting the words "to imposing sentence of preventive detention or".

### **Repeal of sections 557 to 562 of principal Act**

10 Sections 557 to 562 of the principal Act are repealed.

### **Consequential amendments**

11 (1) The provisions of the enactments specified in column 1 of the Schedule and described in column 2 of the Schedule are amended in the manner specified in column 3 of the Schedule.

(2) The Young Offenders Act 1950 is amended by inserting the following as section 5—

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### **"Detention during Her Majesty's pleasure**

5 Where a child or young person is convicted of premeditated murder or murder, the court may sentence the offender to be detained in a secure facility during Her Majesty's pleasure and he shall be detained in that facility under such conditions as the Governor may direct."

### **Commencement**

12 This Act comes into operation on such date as the Minister responsible for probation services may appoint by notice published in the Gazette.

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**SCHEDULE (section 9)  
CONSEQUENTIAL AMENDMENTS**

<b>COLUMN 1 ENACTMENT AND PROVISIONS THEREOF</b>	<b>COLUMN 2 DESCRIPTION OF SUBJECT MATTER</b>	<b>COLUMN 3 AMENDMENT</b>
<b>Court of Appeal Act 1964</b>		
section 20(1)(b) and (2)	Effect of notice of appeal	Delete "preventive detention,"
<b>Criminal Appeal Act 1952</b>		
section 1(1)	"compensation order" definition	Delete "being a compensation order within the meaning of section 560" and substitute "being a reparation order within the meaning of section 70I".
	"restitution order" definition	Delete "section 562" and substitute "section 70H".
section 11(2)(d)(i)	Effect of notice of appeal	Delete "section 56(2)" and substitute "section 70J(3)".
<b>Interpretation Act 1951</b>		
section 4(2)	Definitions	Delete the entry defining "preventive detention".
<b>Motor Car Act 1951</b>		
section 90(1)(b)	Cancellation of licence	Delete "or has been sentenced to a term of preventive detention".

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### **Municipalities Act 1923**

section 18(2)(b) and First Schedule paragraph 4(1)(c)(iii) and Form D paragraph 2(d)	Disqualification election	for	Delete "or preventive detention".
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### **Parliamentary Election Rules 1979**

First Schedule PART II paragraph (e)	Election forms	Delete	",preventive detention".
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### **Pensions and Gratuities (War Service) Act 1947**

section 25(1)	suspension of payment during imprisonment	Delete "or to a term of preventive detention," "or as the case may be, of his preventive detention" and "or preventive detention".
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section 25(2)		Delete "or, as the case may be, of preventive detention,".
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### **Prisons Act 1979**

section 1(1)	"probation definition	officer"	Delete "section 66" and substitute "section 70E".
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section 7(3)	Prison rules	Delete "or of preventive detention".
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section 8(2)(b)	Classes of prisoners	Delete
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section 9(3)(b)	Functions of Parole Board	Delete
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section 12(1)	Release on licence	Delete "one-half of his adjudged term of imprisonment or a period of twelve months, whichever is the greater, be released on licence under this section" and substitute "one-third of his adjudged term of imprisonment, be released on licence under this section, but the provisions of this section are subject to section 70P of the Criminal Code".
section 12(2)	Release on licence	Delete "or a term of preventive detention".
section 14	Preventive detention	Delete
section 15(3) and (4)	Release on grounds of ill-health	Delete "or of preventive detention".
section 19(1) and (2)	Persons unlawfully at large	Delete "or to preventive detention".
section 19(2)		Delete "or preventive detention".

### **Prison Rules 1980**

rule 11(2)	Personal record	Delete "or to a term of preventive detention".
rule 62	Assistance after discharge	Delete "or preventive detention".
rule 76	Preventive inoculation	Delete "or of preventive detention".

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rule 83	Medical report	Delete "or (as the case may be) for preventive detention".
rule 100	Separation of prisoners	Delete "or preventive detention".
rule 118	Application of rules	Delete "or preventive detention".
rules 137 to 146	Preventive detention	Delete
rules 166(1)(a)	Release on licence	Delete "at the expiration of twelve months from the date of the sentence; then on the expiration of four years from the date of the sentence and at the end of every four years thereafter" and substitute "when such prisoner first becomes eligible for release on licence under the Criminal Code and thereafter at intervals of 12 months".
rule 166(1)(b)	Release on licence	Delete "one-half" and substitute "one-third".

### **Prisoner's Payment for Work in Prison Order 1980**

paragraph 2(a)(ii)	Rates of pay	Delete
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### **Rehabilitation of Offenders Act 1977**

section 3(d)	Sentences excluded from rehabilitation	Delete
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### **Young Offenders Act 1950**

section 2(1)	"probation officer" definition	Delete "section 66" and substitute "section 70E".
section 16(d)	Powers on conviction	Delete "section 560" and substitute "section 70I".