



BERMUDA

CRIMINAL CODE AMENDMENT ACT 2016

2016 : 30

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WHEREAS it is expedient to amend the Criminal Code Act 1907 to provide, as an alternative to incarceration, for the establishment of a Mental Health Treatment Programme and for the administration of the Programme by the courts:

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:

Citation

1 This Act, which amends the Criminal Code Act 1907 (the "principal Act"), may be cited as the Criminal Code Amendment Act 2016.

Interpretation

2 In this Act—

"commencement day" means the day on which this Act comes into operation;

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“Mental Health Treatment Pilot Programme” means the Mental Health Treatment Pilot Programme administered by the court from 13 October 2013 to the day before commencement day.

Inserts sections 68A and 68B

3 The principal Act is amended by inserting the following after section 68—

*“MENTAL HEALTH TREATMENT PROGRAMME*

Mental Health Treatment Programme

68A (1) There is established a programme to be known as the Mental Health Treatment Programme.

(2) The Chief Justice may designate any Judge or magistrate to administer the Programme.

(3) Where a person is accused of an offence and the court is satisfied, on the written or oral evidence of a responsible medical officer, that the person is suffering from a mental disorder or has a mental impairment and—

- (a) the person, having attained the age of eighteen years, has pleaded guilty to or been found guilty of the offence;
- (b) it appears to the court that the person may be suitable for participation in the Programme; and
- (c) the person agrees to undergo an assessment to determine whether he is suitable for participation in the Programme,

the court may by order direct that the offender undergo an assessment to determine whether he is suitable for participation in the Programme.

(4) Where, after an assessment, it is determined that—

- (a) the offender is suitable for participation in the Programme;
- (b) the offender agrees to be enrolled in the Programme;
- (c) the offender is able to be maintained in the community;
- (d) it is in the best interests of the offender that he be enrolled in the Programme; and
- (e) it is not contrary to the public interest that the offender be enrolled in the Programme,

the court may, instead of convicting the offender, by order direct that he be enrolled in the Programme for such period and subject to such conditions as may be specified in the order, but no order shall continue in force for more than five years after the date on which the order came into force.

(5) Where a person is—

- (a) discharged under section 544 from the charge of which he was acquitted or with respect to which another verdict was given showing that he is not liable to punishment;
- (b) found to be insane and is discharged from a charge of an indictable offence under section 545 for want of prosecution; or
- (c) acquitted of a charge of an indictable offence under section 546 on account that the person was found to be insane at the time when the act or omission which constitutes the alleged offence took place,

then notwithstanding that the court would otherwise be required to deal with the person in accordance with those sections, the court may instead by order direct that the person be enrolled in the Programme under subsection (4), provided the person has attained the age of eighteen years and the requirements of subsection (3)(b) and (c) and subsection (4)(a) to (e) are met.

(6) Where the court makes an order under this subsection directing that an offender be enrolled in the Programme as a condition of a probation order under section 70, the offender must have—

- (a) attained the age of eighteen years; and
- (b) met the requirements of subsection (3)(b) and (c) and subsection (4)(a) to (e),

and the order may be made for such period and subject to such conditions as may be specified in the order, but no such order shall continue in force after the day on which the probation order expires.

(7) Where the court makes an order under this subsection directing that an offender be enrolled in the Programme as a condition of a supervision order under section 329E(4)(d), the offender must have—

- (a) attained the age of eighteen years; and
- (b) met the requirements of subsection (3)(b) and (c) and subsection (4)(a) to (e),

and the order may be made for such period and subject to such conditions as may be specified in the order, but no such order shall continue in force after the date on which the supervision order expires.

(8) In this section and section 68B—

“court” means a court of summary jurisdiction or the Supreme Court;

“mental disorder” and “mental impairment” have the meanings given in section 1(1) of the Mental Health Act 1968;

“order” means a mental health treatment programme order;

“Programme” means the Mental Health Treatment Programme;

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“responsible medical officer” has the meaning given in section 1(1) of the Mental Health Act 1968.

Additional provisions applying to the Mental Health Treatment Programme

- 68B (1) Subject to subsections (2), (3) and (4)—
- (a) subsection (5), (6), and (7) of section 68 apply, with the necessary modifications, in the case of an offender enrolled in the Programme as they apply to an offender enrolled in the drug treatment programme;
  - (b) sections 70A, 70B, 70C, 70CA, 70E, 70D and 70H apply, with the necessary modifications, in the case of an offender enrolled in the Programme as they apply to an offender discharged on a probation order;
  - (c) sections 71A and 71B apply, with the necessary modifications, in the case of an offender enrolled in the Programme as they apply to an offender who is subject to a community service order.
- (2) The section referred to in subsection (1)(a) is further modified as follows—
- (a) in subsection (6), delete “a drug treatment programme or any conditions set out in an order under subsection (4), the Drug Treatment Court may” and substitute “the Mental Health Treatment Programme or any conditions set out in an order under section 68A, the court may”;
  - (b) in subsection (7)(b), delete “a drug treatment programme” and substitute “the Mental Health Treatment Programme under section 68A(4)”.
- (3) The sections referred to in subsection (1)(b) are further modified as follows—
- (a) in section 70B—
    - (i) in paragraph (a), delete “up to 1000 hours” and substitute “not less than 40 and not more than 1000 hours”;
    - (ii) in paragraph (d), delete “offender and” and substitute “offender, and after consulting with”; and delete “drug prevention” and substitute “public safety or health, as the case may be,”;
    - (iii) insert after paragraph (ha) a new paragraph (hb) reading “comply with any sanctions, including paying a penalty, for failing to comply, without reasonable excuse, with the rules of the Mental Health Treatment Programme or any condition set out in an order;”;

- (iv) insert after the new paragraph (hb) a new paragraph (hc) reading “receive a reward for complying with the rules of the Mental Health Treatment Programme or any condition set out in an order.”;
- (b) in section 70C—
  - (i) in subsection (1)(c), delete “on probation under section 69” and substitute “enrolled in the Mental Health Treatment Programme”;
  - (ii) delete all the words in subsection (2) and substitute “A mental health treatment programme order comes into force when the order is made except that where the offender at that time is serving time in prison or has been admitted to a hospital, it shall come into force when the offender is released from prison or discharged from the hospital.”;
  - (iii) delete all the words in subsection (3) and substitute “If a person who is bound by a mental health treatment programme order is subsequently convicted of an offence or is imprisoned or has been admitted to a hospital, the order continues in force except in so far as the imprisonment or hospitalization renders it impossible for the offender to comply with the order.”;
  - (iv) delete subsection (4);
  - (v) delete subsection (10);
- (c) in section 70CA—
  - (i) in subsection (1) and throughout the section, delete “probation period” and substitute “enrolment period”; and delete “probationer” and substitute “offender”;
  - (ii) in subsection (2)(a)(ii), delete “three” and substitute “five”; and after “force” insert “, where the order is made under section 68A(4)”; and
  - (iii) insert after subsection (2)(a)(ii) a new subparagraph (iia) reading “where the order is made under section 68A(6) or (7), extend the period of the order but so that the period of the order as extended shall not go beyond the date on which the probation order or supervision order expires.”;
  - (iv) in subsection (2)(a)(iii), delete “where the order was made under section 70(1)(b).”;
  - (v) in subsection (3)(b)(ii), delete “three” and substitute “five”; and after “force” insert “, where the order is made under section 68A(4)”;

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- (vi) insert after subsection (3)(b)(ii) a new subparagraph (iia) reading “where the order is made under section 68A(6) or (7), extend the period of the order but so that the period of the order as extended shall not go beyond the date on which the probation order or supervision order expires;”;
  - (vii) in subsection (3)(b)(iii), delete “where the order was made under section 70(1)(b),”;
  - (d) in section 70E, insert after subsection (3) a new subsection (3A) reading “The Director shall assist the court in the administration of the Drug Treatment Programme and the Mental Health Treatment Programme, and in particular shall co-ordinate any treatment or rehabilitative programme in which participation is required of persons enrolled in those Programmes.”
  - (e) in section 70H—
    - (i) in subsection (2)(a), delete “probation order; or” and substitute “mental health treatment programme order;”;
    - (ii) delete subsection (2)(b).
- (4) Section 71A, referred to in subsection (1)(c), is further modified by deleting subsection (1).”.

### Amends section 70

4 Section 70 of the principal Act is amended—

- (a) in subsection (1) by deleting the semicolon at the end of paragraph (b) and substituting a comma;
- (b) by inserting a continuation paragraph after subsection (1)(b) reading “and the court may prescribe, as a condition of a probation order, that the offender be enrolled in the Mental Health Treatment Programme under section 68A(6)”.

### Amends section 329E

5 Section 329E(4)(d) of the principal Act is amended by inserting after “are so specified” the words “, and such order may specify a condition that the offender be enrolled in the Mental Health Treatment Programme under section 68A(7)”.

### Validation

6 Every order made under the Mental Health Treatment Pilot Programme which would have been in compliance with section 68A and 68B of the Criminal Code Act 1907, had those provisions been in force at the time of the making of such orders, shall be deemed to have been validly made.

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### Commencement

7 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette.

[Assent Date: 12 July 2016]

[Operative Date: 15 August 2016]