

ANTIGUA AND BARBUDA



SENTENCING (REFORM) ACT 2017

NO. OF 2017

SENTENCING (REFORM) ACT, 2017

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ANTIGUA & BARBUDA

A

BILL FOR

An ACT to prescribe rules relating to aims of sentencing and the principles of sentencing to be applied by courts when exercising their powers of sentencing; extend the powers of the court to impose, in appropriate cases, sentences, other than sentences of imprisonment; to enable certain offences to be dealt with by civil mediation, instead of criminal prosecution.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I

PRELIMINARY

1. Citation

This Act may be cited as the Sentencing (Reform) Act, 2017

2. Interpretation

(1) In this Act

“attendance centre” and “attendance centre orders” have the meanings assigned by sections 28 and 29 , respectively;

“combination order” has the meaning assigned by section34;

“community order” means any of the following orders:

- (a) an attendance centre order,
- (b) a combination order,
- (c) a community service order,
- (d) a curfew order,
- (e) a probation order;

“community service order” has the meaning assigned by section 28(1);

“curfew order” has the meaning assigned by section 22 (2);

“custodial sentence” means a sentence of imprisonment or of detention in school established by law for the purpose;

“Minister” means the Attorney General;

“pre-sentence report” has the meaning assigned by section 8 (5);

“probation officer” and “probation order” have the meanings that those expressions have in the **Probation of Offenders Act, Cap. 345**;

“responsible officer” means-

- (a) in relation to an offender who is subject to a probation order, the probation officer responsible for that offender’s supervision;
- (b) in relation to an offender who is subject to community service order, the probation officer mentioned in section 28 (8);
- (c) in relation to an offender who is subject to a curfew order, the probation officer who is required by section 28(8) to be responsible for monitoring the offender’s whereabouts during the curfew period specified in the curfew order;

“sentence of imprisonment” does not include a committal or attachment for contempt of court;

“sexual offence” means an offence under the **Sexual Offences Act, 1995**;

“violent offence” means an offence which leads or is likely to lead, to a person’s death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall under this definition).

(2) For the purposes of this Act, an offence (“the associated offence”) is associated with another offence (“the primary offence”) if

- (a) the offender is convicted of the associated offence in the proceedings in which the offender is convicted of the primary offence or, although or convicted of the associated offence in earlier proceedings, is sentenced for the associated offence at the same time as the offender is sentenced for the primary offence;
- (b) the offender and the commission of the associated offence in the proceedings in which the offender is sentenced for the primary offence and requests the court to take the associated offence into consideration in passing sentence for the primary offence; or
- (c) to provide for mediation, rather than prosecution with respect to certain offences.

PART II

PURPOSES OF THIS ACT AND PRINCIPLES OF SENTENCING

3. Purposes of the Act and principles sentencing

(1) The purposes of this Act are-

- (a) to set out the circumstances in which offenders may be sentenced or otherwise dealt with;
- (b) to promote those purposes, that aid in the public understanding of sentencing practices, by providing principles and guidelines to be applied by courts in sentencing or otherwise dealing with offenders;
- (c) to provide a sufficient range of sentences and other means of dealing with offenders; and
- (d) to provide for the interests of victims of crime.

(2) The power vested in criminal courts by this Act are not in substitution for the powers granted under the enactment under which a person is charged; but a court may apply any of the powers conferred by this Act if that court is satisfied that such exercise is warranted in the particular case with the attendant circumstances.

PART III

AIMS OF SENTENCING AND SPECIAL POWERS OF THE COURT

4. Aims of sentencing

The aims of a court sentencing a person convicted of an offence are deterrence, rehabilitation, denunciation and protection of society in order to:

- (a) ensure that the offender is adequately punished for the offence;
- (b) prevent crime by deterring the offender and other persons from committing similar offence;
- (c) protect the community from the offender;
- (d) to establish conditions that the court considers will enable the offender to be rehabilitated; and
- (e) announce, condemn or censure the type of conduct engaged in by the offender.

5. Special powers of the courts

(1) Without prejudice to any sentencing power conferred on a court by any enactment and subject to this Act, a Court may impose any of the sentences specified in subsection (2), instead of or in addition to any sentence prescribed any enactment under which an accused was found guilty.

(2) The orders that may be made are as follows:

- (a) curfew orders;
- (b) electronic monitoring of curfew orders;
- (c) attendance centre order, and
- (d) community service order.

(3) In imposing a sentence under subsection (2) a court shall ensure that the aims of sentencing and principles of sentencing are manifest.

PART IV

SENTENCING

6. Sentencing procedure

(1) After an accused has been found guilty, no sentence may be imposed until the court has ordered that a pre-sentence report to be prepared by a probation officer or a welfare officer and submitted to the court within 14 days after such an order.

(2) Three copies of the pre-sentence report must be submitted to the Registrar of the High Court and a further copy to the attorney-at-law for the offender or to the offender personally, if the offender does not have legal representation.

(3) The probation officer or welfare officer shall attend court on the date set for sentencing for the purpose of cross-examination, if such is requested.

(4) The offender may request the court to hear person in his community or a family member to speak on his behalf on the day set for the sentencing.

7. Aggravating and mitigating factors

(1) In making a determination regarding the sentence to be imposed on a person who was found guilty or has pleaded guilty, to an offence, the court in making such determination shall bring into the sentencing equation all mitigating and aggravating factors as derived for the evidence adduced at the trial and any other evidence given by

persons who were permitted to speak on behalf of such an accused person and cross-examined.

(2) Where any aggravating factors of an offence are disclosed by the circumstances of other offences committed by the offender, nothing in this Act prevents the court from taking those factors into account for the purposes of forming an opinion as to the seriousness or otherwise of the offence.

8. Procedural requirements for custodial sentences

(1) Subject to subsection (2), a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in subsection 10(2) or section 11.

(2) Where the offence or any other offence associated with it is triable only on indictment, subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

(3) In forming any such opinion as is mentioned in subsection 10(2) or section 11, a court:

- (a) shall take into account all such information about the circumstances of the offences (including any aggravating or mitigating factors) as are available to the court; and
- (b) in the case of any such opinion the court, may take into account any information about the offender which is before the court.

(4) A custodial sentence which was passed in a case to which subsection (1) applies, is not invalidated by reason of the failure of a court to comply with that subsection, but any court on an appeal against such a sentence-

- (a) shall take into account all such information about the circumstances of the offence (including any aggravation or mitigating factors) as is available to the court; and
- (b) in the case of any such opinion as is mentioned in paragraph (b) of that subsection, may take into account any information about the offender which is before the court.

(5) A “pre-sentence report” in this Act means a written report which is made by a probation officer with a view to assisting the court in the determination as to the most suitable method of dealing with the offender, without making any recommendation as to the sentence.

9. General judicial guidelines

(1) Without prejudice to anything contained in sections 9 to 13, 15 to 16, 18, 37 and 38, a court in sentencing an offender convicted by or before the court must observe the general guidelines.

(2) The guidelines are as follows:

- (a) the rehabilitation of the offender is one of the aims of sentencing;
- (b) the gravity of the punishment must be commensurate with the gravity of the offence;
- (c) an offender must not be sentenced except for an offence of which the offender has been convicted or for another offence which the offender has asked the court to take into account in passing sentence.

(4) Where a fine is imposed, the court in fixing the amount of the fine must take into account, the relevant considerations, the such as means of the offender so as far as these are known to the court, regardless whether or not this will increase or reduce the amount of the fine.

PART V

CUSTODIAL SENTENCES

10. Restriction on imposition of custodial sentences

(1) This section applies in the circumstances where a person is convicted of an offence which carries a custodial sentence other than one fixed by law.

(2) Subject to subsection (3), the court shall not impose a custodial sentence on an offender unless it is of opinion -

- (a) that the offence, or the combination of the offence and other offence associated with the offence is so serious that only such a sentence can be justified for the offence; or
- (b) where the offence is of a violent or sexual offence nature, that only such a sentence would be adequate to protect the public from serious harm from the offender.

(3) Nothing in subsection (2) prevents consent to the court from passing a custodial sentence on an offender, if the offender refuses to consent to a community service order which is proposed by the court and which requires that consent.

(4) Where a court imposes a custodial sentence it is the duty of the court-

- (a) in a case not falling within subsection (3) to state in open court that it is of the opinion that either or both of paragraphs (a) and (b) of subsection (2) apply, and why it is of that opinion; and
- (b) in any case, to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on the offender.

(5) A court shall cause a reason stated by it under subsection (4) to be specified in the warrant of commitment and be entered in the record of the court.

11. Length of custodial sentences

(1) This section applies where a court imposes a custodial other than one fixed by law.

(2) The custodial sentence shall be-

- (a) for such term (not exceeding the prescribed maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with the offence; or
- (b) where the offence is of a violent or sexual nature for such longer term (not exceeding the maximum prescribed) as in the opinion of the court is necessary to protect the public from serious harm; or
- (c) where the victim is a minor, regardless of the crime, the sentence must be that which in the opinion of the court (not exceeding maximum prescribed) would deter others.

(3) Where the court imposes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or that combination of the offence and other offences associated with it, the court shall-

- (a) state in open court that it is of opinion that subsection (2) (b) applies, and why it is of that opinion; and
- (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.

(4) A court shall cause a reason stated by it under subsection (3) to be specified in the warrant of commitment and to be entered in records of the court.

12. Time on remand

In any sentence imposed on an offender all time on remand shall be counted as part of the sentence, and accordingly reduced by such an amount,

13. Previous convictions

(1) In making a determination regarding a custodial sentence, the court shall take into account all previous convictions as outlined in court by a police officer or an officer of the office of the Director of Public Prosecutions.

(2) Greater weight shall be given to a previous conviction which is similar to the present offence for which the offender is to be sentenced.

(3) All information on previous conviction must be given to the court by an police officer or officer of the Office of the Director of Public Prosecutions.

14. Restrictions on the imposition of community sentences

(1) A court shall not impose on an offender a community sentence, that is to say, a sentence which consists of or includes one or more community orders, unless it is of opinion that the offence, or the combination of the offence and one other offence associated with the offence, was serious enough to warrant such a sentence.

(2) Subject to subsection (3), where a court passes a community sentence-

- (a) the particular order or orders comprising or forming part of the sentence shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and
- (b) the restrictions on liberty imposed shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with the offence.

(3) In consequence of the provision made under sections 17 and 18 with respect to combination orders, a community sentence shall not consist of or include both a probation order and a community service order, or both a probation order and a curfew order.

15. Award of compensation

(1) Where a person is injured as a result of a criminal act, upon application to the court by the victim, the court may award such compensation as the court determines.

(2) Medical reports, receipts and any other relevant documents must be filed with the application in order to assist the court in making such a determination as to the quantum of compensation.

(3) In making an award of compensation the court shall fix a time within which the compensation and a period of imprisonment in the event of a failure to pay the

compensation in whole or in part and such imprisonment must be which is prescribed by the statute which created an offence.

(4) No award of compensation under this section shall exceed one hundred thousand dollars, Eastern Caribbean currency.

16. Guilty Pleas

(1) The following provisions shall apply with respect to an accused charged with a indictable offence and enters a guilty plea-

- (a) during the conduct of the preliminary inquiry or at the end thereof in the Magistrate's Court;
- (b) at the time of arraignment in the High Court;
- (c) at the start of the trial in the High Court;
- (d) at some stage before the Prosecution has completed its case in the High Court;
- (e) at the end of the Prosecution's case in the High Court;
- (f) at sometime during the defence of the accused has ended;
- (g) at the end of the case for the defence but before the case is put in the hands of the jury.

(2) An accused is entitled the following discounts on a notional sentence calculated by the trial judge:

- (a) during the preliminary inquiry in the Magistrate's Court or at the end thereof **50%**;
- (b) at the time of the arraignment of the accused the High Court, **45%**;
- (c) at the start of the trial in the High Court; **40%**;
- (d) at some point before the Prosecution's case is completed in the High Court; **35%**;
- (e) at the end of the Prosecution's case in the High Court, **30%**;
- (f) at some time during the presentation of the defence's case, **20%**;
- (g) at the end of the case for the defence but before the case is put to the jury, **10%**.

(3) The trial judge shall arrive at notional sentence by considering the following: the maximum sentence under the law, for the offence, the prosecution's case, the age of the offender, the prior convictions of the accused, if any, the prevalence of the offence in the State of Antigua and Barbuda, any other relevance consideration before the court.

PART VI

ADDITIONAL POWERS OF THE COURT

17. Powers of the court in relation to fines

(1) Where a fine is imposed by a court, the court at the time the fine was imposed or at any time thereafter, upon application, may-

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

(2) Where any fine is directed to be paid by instalments, the offender 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 determined by the court.

(3) It is within the powers of the court to carry out a means test, if this is considered necessary with respect to the payment of the fine by the offender.

18. Absolute and conditional discharge

(1) Where a court by or before which a person is convicted of an offence (and being an offence the sentence of which is, fixed by law) is of opinion that in all the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to impose punishment and that a probation order is not appropriate, the court may make an order discharging the offender.

(2) An order under subsection (1) may discharge the offender subject to the condition that the offender, commits no offence during such period, not exceeding three years from the date of the order, to be styled "an order for conditional discharge", and the period specified in such an order and the period specified in the order for conditional discharge to be styled "the period of conditional discharge".

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

(4) Where, under provisions of this Part, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, the order for conditional discharge ceases to have effect.

19. Commission of further offence by an offender conditionally discharged

(1) If it appears to a Judge that an offender in whose case an order for conditional discharge has been made has been convicted in Antigua and Barbuda of an offence committed during the period of conditional discharge and has been dealt with in respect of that offence, then, subject to subsection (2), the Judge may issue a summons requiring that person to appear at the time and place specified in the summons or may issue a warrant for that offender's arrest.

(2) A Magistrate shall not issue such a summons except on information, and shall not issue a warrant except on information in writing and on oath.

(3) A summons or warrant issued under subsection (1) shall direct that the offender to whom it relates appears or is brought before the court that made the order for conditional discharge.

(4) If a person in whose case an order for conditional discharge has been made to the High Court is convicted in a Magistrate's Court of an offence committed during the period of conditional discharge, the Magistrate may either commit the offender to custody, or may release the offender on bail, until the offender can be brought before High Court; and if the Magistrate does so, the Magistrate shall register in High Court a copy of the record of the conviction entered in the registrar of the Magistrate's Court signed by the clerk of that court.

(5) Where it is proved to the satisfaction of the court that made the order for conditional discharge that the offender in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with the offender, for the offence for which the order was made, in any manner in which it could deal with the offender if the offender had first been convicted by or before that court of that offence.

(6) If a person in whose case an order for conditional discharge made by a Magistrate's Court

- (a) is convicted before the High Court of an offence committed during the period of conditional discharge; or
- (b) is dealt with by the High Court for any such offence in respect of which the offender was committed for sentence to the High Court,

the High Court may deal with the offender, for the offence for which the order was made, in any manner in which the Magistrate's Court could deal with the offender if it had just convicted the offender of that offence.

20. Suspended sentences

(1) Subject to this section, a court which passes a sentence of imprisonment or an offender for a term of 3 years or less for an offence may suspend the sentence by ordering that the sentence shall not take effect unless-

(a) during a period specified in the order, being not less than 12 months nor more than 3 years from the date of the order (in this Act referred to as "the operational period") the offender commits in Antigua or Barbuda another, offence punishable with a term of imprisonment exceeding 6 months hereinafter in this section and section and referred to as "subsequent offence; and

(b) thereafter a court having power to do so, orders that the original offence shall take effect.

(2) An offence shall not be suspended under subsection (1), if it involved the use or the illegal possession of a firearm or imitation firearm.

(3) A court shall deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of power to suspend such sentence by order under subsection (1).

(4) A court which imposes a suspended sentence on an offender for an offence shall not make a probation order in the offender's case in respect of another offence of which the offender is convicted by or before that court.

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

(6) On imposing a suspended sentence, the court shall explain to the offender in ordinary language, the offender's liability under the section, if the offender should commit a subsequent during the operational period.

(7) This section applies to accused persons who are between the ages of 16 and 25 at the time of the trial.

21. Entitlement to rehabilitation leave to exemplary offenders

(1) Subject to this section, an offender who is not imprisoned with respect to any of the offences specified in the First Schedule is entitled to apply to the Rehabilitation Leave Committee for leave to see his family to be spent in Antigua and Barbuda.

(2) There is hereby established the Rehabilitation Leave Committee for the purposes of this Act, and shall consist of the Superintendent of Prison, the Commissioner of Police and the Chaplain of the Majesty's Prison, who are hereby appointed to the said Committee which shall be chaired by the Superintendent of Prisons.

(3) The members of the Committee shall hold membership of the Committee for as long as they hold their substantive post as Superintendent of Prison, the Commissioner of Police and Prison Chaplain, respectively.

(4) The authority to grant such leave rests with the said Rehabilitations Leave Committee and application for leave must be in such form as the Committee approves; and such application must be submitted at least two weeks prior to the date of the leave for which application is made.

(5) The leave period is from Friday at 12:00 noon and ends on the following Monday at 10:00am, and each exemplary offender is entitled to one grant of leave in every *three months*.

(6) An offender who

- (a) returns to Her Majesty's Prison later than 10:00 am on Monday;
- (b) is arrested for any offence during his leave;
- (c) brings or attempts to bring into Her Majesty's Prison any illegal or prohibited plant, liquid or solid, or any electronic device,

shall be disbarred from any further grant of leave while at Her Majesty's Prison.

(7) Any grant of rehabilitation leave shall not diminish or affect the sentence a prisoner is serving at Her Majesty's Prison.

PART VIII

ORDERS AS CONSTITUENTS OF SENTENCING

22. Curfew Orders

(1) Where a person of 16 years of age or over 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.

(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 6 months beginning with the day on which it is made; or

(b) periods which amount to less than 2 hours or more than 12 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 community 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 (7) and the offender has consented to the making of the order.

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

(a) the purpose and effect of the order (including any additional requirements proposed to be included in the order in accordance with section 27;

(b) the consequences which 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.

(8) 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.

(9) The Minister may by order, subject to negative resolution of Parliament-

(a) amend subsection (3) by substituting, for any period specified in that subsection, such period as may be specified in the order;

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

23. Electronic monitoring of curfew orders

(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 periods ("electronic monitoring requirements").

(2) A court shall not make a curfew order which includes electronic monitoring requirements unless the court-

- (a) has been notified by the Minister that arrangements for electronic monitoring are available at the curfew premises; and
- (b) is satisfied that the necessary provision can be made under those arrangements.

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

24. Provisions of regulation and management of attendance centres

(1) The Minister may provide attendance centres for the purposes of this Act.

(2) In this Act "attendance centre" means a place at which offenders under 21 years of age may be required to attend and be given under supervision appropriate training, occupation or instruction, in pursuance of orders made by the High Court or a Magistrate's Court under section 10 or any other enactment.

(3) The Minister may make rules for the regulation and management of attendance centres.

25. Attendance centre orders

(1) Subject to this section, where a court

- (a) is given power under the Juvenile Act, Cap. 229 to pass a sentence of imprisonment on a person who is under 21 years of age or to commit such a person to prison in default of payment of a sum of money or for failing to do or abstain from doing anything required to be done or left undone; or
- (b) has power to deal with such a person under section 9 of the *Probation of Offenders Act Cap. 345* for failure to comply with any of the requirements of a probation order,

the court may, if it has been notified by the Minister that an attendance centre is available for the reception of persons of that person's description, order that person to attend at such a centre, to be specified in the order, for such number of hours, as may be so specified.

(2) An order under this section is referred to in this Act as an "attendance centre order".

(3) An attendance centre order shall not be made in the case of an offender who has been previously sentenced

(a) to imprisonment; or

(b) to detention in a school established under *the Training Schools Act, Cap.436*,

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

(4) The *Third Schedule* has effect with respect to attendance centre orders and the powers of courts in relation to such orders.

26. Discharge and variation of attendance centre orders

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

(2) An application under subsection (1) shall be made to a Judge or a Magistrate and, subject to subsection (3), the discharge of such an order shall be by order of the court.

(3) Where the court that made the order is the High Court and that court has included in the order a direction reserving to itself the power to discharge the order, the power shall be exercised by the High Court.

(4) An attendance centre order may be varied by a Magistrate's Court on the application of the offender or the officer in charge of the relevant attendance centre.

(5) 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 relevant circumstances.

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

(7) 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 paragraph (5)(b).

27. Breach of attendance centre order

(1) Where an attendance centre order has been made and it appears on information to a Magistrate that the offender-

- (a) has failed to attend in accordance with the order; or
- (b) while attending has committed a breach of rules made under section 10(2) which cannot be adequately dealt with under those rules,

the Magistrate may issue a summons requiring the offender to appear at the place and time specified in the summons before a Magistrate's Court or, if the information is in writing and on oath, may issue a warrant for the offender's arrest requiring the offender to be brought before such a court.

(2) If it is proved to the satisfaction of the Magistrate's Court before which an offender appears or is brought under this section, that the offender has failed without reasonable excuse to attend as mentioned in paragraph (a) of subsection (1), or has committed such a breach of rules as is mentioned in paragraph (b) of that subsection, the court-

- (a) if the attendance centre order was made by a Magistrate's Court, 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 the offender could have been dealt with for that offence by the court which made the order if the order had not been made;
- (b) if the order was made by the High Court, may commit the offender in custody or release the offender on bail until the offender can be brought or appear before the High Court.

(3) A Magistrate's Court which deals with an offender's case under paragraph (2)(b) shall send to the High Court a certificate signed by the Magistrate giving particulars of the offender's failure to attend or, as the case may be, the breach of the rules that the offender has committed, together with such particulars of the case as may be desirable;

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

(4) Where it is proved to the satisfaction of a Judge of the High Court that an offender who has been brought or appeared before that court by virtue of subsection (2)(b), has failed to attend as mentioned in paragraph (a) of subsection (1) or has committed such a breach of rules as is mentioned in paragraph (b) of that subsection, that court may revoke the attendance centre order and deal with the offender, for the offence in respect of which the order was made, in any manner in which that court could have dealt with the offender if it had not made the order under the relevant law.

(5) A person sentenced under paragraph (2)(a) for an offence may appeal to the Court of Appeal against the sentence.

(6) In proceedings before the High Court under this section, any question whether there has been a failure to attend or a breach of the rules shall be determined by the Court and not by the verdict of a jury.

28. Community service orders

(1) Where a person of 16 years of age or over is convicted of an offence punishable with imprisonment, the court by or before which that person is convicted may, subject to subsection (3), make an order (referred to in this Act as a "community service order") requiring the offender to perform unpaid work in accordance with this section and section 29.

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

(3) A court shall not make a community service order in respect of an offender unless-

- (a) after considering a written report by a probation officer in respect of the offender and the offender's circumstances (and, if the court thinks it necessary, after hearing a probation officer), the court is satisfied that the offender is a suitable person to perform work under such an order; and
- (b) the court is also satisfied that arrangements can be made in the area in which the offender lives, or will live, for the offender to perform work under such an order and for that work to be properly supervised; and
- (c) the court has first explained to the offender, in ordinary languages, the matters specified in subsection (4) and the offender has consented to the making of the order.

(4) The matters referred to in subsection (3)(c) are:

- (a) the purpose and effect of the order (and in particular the requirements specified in section 14); and
- (b) the consequences that may follow under the *Second Schedule* 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.

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

- (a) be less than 80; or
- (b) be more,
 - (i) in the case of an offender aged 16, more than 140; and
 - (ii) in any other case, more than 240.

(6) Where a court makes community service orders in respect of 2 or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders; but the total number of hours which are not concurrent must not exceed the maximum specified in paragraph (b) (i) or (ii) of this subsection.

(7) The Minister may by order amend the maximum number of hours for the time being specified in paragraph (b) (i) or (ii) of subsection (5).

(8) A community service order shall specify the area in which the offender lives or will live, and the court shall cause copies of the order to be sent to the Chief Probation Officer for delivery to the probation officer assigned to that area (hereinafter referred to as "the probation officer").

29. Obligation of persons under community service order

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

- (a) keep in touch with the probation officer in accordance with such instructions as the offender may from time to time be given by that officer, and notify that officer of any change of address; and
- (b) perform for the number of hours specified in the order such work at such times as the offender may be instructed by that officer.

(2) The work required to be performed under a community service order shall be performed during the period of 12 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 probation officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs, or with the requirements of any other community order to which the offender may be subject, and any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

30. Combination orders

(1) Where a court by or before which a person of 16 years of age or over is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law) is of the opinion mentioned in subsection (3), the court may make a combination order.

(2) A "combination order" in this Act is an order which requires an offender either

(a) both

- (i) to be under the supervision of a probation officer for a period specified in the order, being not less than 12 months nor more than 3 years; and
- (ii) to perform unpaid work for a number of hours so specified, being in the aggregate not less than 80 nor more than the maximum specified in section 32(5); or

(b) both

- (i) to be under the supervision of a probation officer for a period specified in the order, being not less than 12 months nor more than 3 years; and
- (ii) to remain at a specified place or specified places for specified periods within the limits set forth at section 25(1).

(3) 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.

31. Application of relevant law

(1) Subject to section 30, the *Probation of Offenders Act, Cap. 345* applies in relation to a combination order, in so far as the order imposes a requirement such as is mentioned in sub-paragraph (i) of paragraph (a) or (b) of section 34(2), as if the order were a probation order.

(2) Subject to section 30, this Act applies in relation to a combination order, in so far as the order imposes a requirement such as is mentioned in sub-paragraph (ii) of paragraph (a) of section 34(2), as if the order were a community service order.

(3) Subject to section 30, this Act applies in relation to a combination order, in so far as the order imposes a requirement such as is mentioned in sub-paragraph (ii) of paragraph (b) of section 34(2), as if the order were a curfew order.

(4) The **Second Schedule** has effect to make provision for the following purposes.

- (a) dealing with failures to comply with the requirements of certain community orders;
- (b) amending certain orders; and
- (c) revoking certain community orders with or without the substitution of other sentences,.

PART VII

SENTENCING CERTAIN OFFENDERS

32. Procedures relating to a mentally disordered offender

(1) Subject to subsection (2), in any case where section 33 applies and the offender is or appears to be mentally disordered the court shall order and consider psychiatric evaluation of the offender before imposing sentence, if any.

(2) Such an evaluation must be submitted to the court within 14 days from the date of the order, or such further time as the court may permit.

(3) Subsection (1) does not apply if, in the circumstances of the case the court is the opinion that it is unnecessary to obtain the psychiatric evaluation.

(4) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider any information before it which relates to the offender's mental condition (whether in given the psychiatric).

33. Procedure relating to an offender claiming pregnancy or illness

(1) Where at the time of sentencing an offender claims to be medically ill or pregnant the court shall cause the offender to be medically examined and a report submitted to the court within 14 days of the court's order.

(2) Upon receipt of the medical report must consider the same and make a determination as to the nature of the sentence to be impose on the offender in accordance with this Act.

PART IX

MEDIATION

34. Interpretation

(1) In this Part

"complainant" means a person who, acting otherwise than in the course of official duty, lays an information, or causes an information to be laid, alleging the commission by the defendant of a scheduled offence;

"court" means, a Magistrate's Court;

"mediation" has the meaning given by subsections (2) and (3);

"scheduled offence" means a summary offence listed in the *Third Schedule*.

(2) For the purposes of this Part, mediation means, subject to subsection (3), the settlement, by a third person called a "mediator", of a dispute or difference between one party and another by the employment of methods which consist of or include the discharge by one party of one or more of the following obligations:

- (a) doing unpaid work for the benefit of the other;
- (b) paying compensation to the other;
- (c) participating in an education or rehabilitation programme.

(3) Where mediation is carried out under this Part, an obligation of a person under subsection (2) must not conflict with that person's religious beliefs or interfere with the times, if any, at which that person normally works or attends a school or other educational establishment.

(4) Where the Minister is satisfied that a person has adequate knowledge of mediation, the Minister may by notice published in the *Gazette* approve that person as a mediator for the purposes of this Part, and a person so approved is referred to in this Part as an "approved mediator".

35. Eligibility for mediation

A person who is charged for the first time with a scheduled offence is eligible for mediation if-

- (a) that person is 21 years of age or under and has not before been charged with, or convicted of, any offence; and
- (b) the charge is one that has been laid by or on behalf of a complainant as defined in section 34(1).

36. Eligible defendant to be offered mediation

A court which is about to try a scheduled offence alleged to have been committed by a defendant who is eligible for mediation shall, before the trial commences, invite the defendant to apply for mediation.

37. Adjournment pending application

(1) Where a defendant in response to an invitation under section 36 indicates to the court that the defendant wishes to apply for mediation, the court shall adjourn the trial of the offence to such a day as will allow the defendant sufficient time to make the application.

(2) Where

- (a) a defendant fails to make the application before the day appointed under subsection (1), or before such later day as the court may in its discretion appoint; or
- (b) the application is rejected by the court,

the court shall proceed to trial of the offence.

(3) An inference of guilt shall not be drawn from the fact that a defendant applied, or indicated the defendant's wish to apply, for mediation.

38. Application for mediation

(1) An application for mediation shall be made in duplicate in a form acceptable to the court.

(2) On receiving the application, the clerk of the court

- (a) shall mark on the copy
 - (i) the court's acknowledgment of receipt of the application; and
 - (ii) the date on which the defendant is required to appear before the court for the resumption of the proceedings; and

(b) shall return the copy so marked to the defendant.

39. Restrictions on making mediation order.

- (1) A court shall not approve an application for mediation unless-
 - (a) after considering a report in writing by a probation officer on the defendant and the defendant's circumstances and, if the court thinks it necessary, after hearing a probation officer, the court is satisfied that the charge is one that may appropriately be dealt with by mediation;
 - (b) the complainant has agreed that the charge should be so dealt with; and
 - (c) the defendant and the complainant have agreed on an approved mediator who has agreed to act.
- (2) The Director of Public Prosecutions is entitled to be heard by the court before the court determines to make any mediation order.

40. Mediation Orders

- (1) Where a court approves an application for mediation, it shall, subject to section 27, make an order under this section , in this Act referred to as a "mediation order".
- (2) A mediation order shall contain provisions-
 - (a) suspending the trial of the offence, subject to sections 42(b) and 43;
 - (b) appointing the person referred to in section 39(1)(c) to be the mediator; and
 - (c) referring the subject matter of the charge to that person for mediation.
- (3) A mediation order shall-
 - (a) subject to sections 42 and 43, have effect for such period not exceeding 12 months beginning with the date of the order as may be specified in the order;
 - (b) require the defendant to submit during that period to the supervision of a probation officer, in this Part referred to as "the probation officer"; and
 - (c) contain such conditions as the court thinks necessary for securing the supervision of the defendant; and
 - (d) contain such other conditions as to residence or other matters as the court, having regard to the circumstances of the case, considers necessary or expedient for the success of the proposed mediation.
- (4) Where the complainant and the defendant both agree, a mediation order may require the defendant to assume an obligation described in section 34(2) and (3) or any other obligation the court thinks fit.

(5) A court which has made a mediation order shall furnish 4 copies to the probation officer, one for retention by the probation officer and the other 3 for distribution to the mediator, the complainant and the defendant.

41. Explanation to defendant

Before making a mediation order, the court shall explain to the defendant, in ordinary language-

- (a) the effect and purpose of the order; and
- (b) the court's power to review the order under section 42; and
- (c) the consequences which may follow under section 42 if the defendant fails to comply with any requirements of the order; and
- (d) the benefit which may follow under section 45 if the mediation is successful.

42. Review of mediation order

Where a mediation order is in force in respect of a defendant and, on the application of the defendant or the complainant or the mediator or the probation officer, it appears to the court to be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may-

- (a) with the consent of the defendant and the complainant, extend the duration of the order; or
- (b) revoke the order and proceed to the trial which was suspended by the order under of section 40(2)(a).

43. Breach of mediation order

(1) If at any time while a mediation order is in force in respect of a defendant it appears to a Magistrate on information that the defendant has failed to comply with any of the requirements of the order, the Magistrate may issue a summons requiring the defendant to appear before a Magistrate's Court at the place and time specified in the summons; and if a defendant fails to comply with such a summons, the court may issue a warrant for the defendant's arrest directing that the defendant be brought before the court.

(2) Where it is proved to the satisfaction of a court before which a defendant appears or is brought under subsection (1) that the defendant has failed without reasonable excuse to comply with any of the requirements of the mediation order, the court may revoke the order and proceed to the trial which was suspended by the order by virtue of section 40 (2)(a).

44. Protection against self-incrimination

(1) An incriminating statement made during, and as part of, mediation under this Part is not admissible in any court against the person making the incriminating statement.

(2) In this section, "court" includes a court other than a Magistrate's Court.

45. Action of court after end of mediation

(1) Subject to this section, if a court is satisfied that the purposes of a mediation order have been fulfilled, the court shall dismiss the charge of the scheduled offence in respect of which the order was made.

(2) Before the court exercises its powers under subsection (1), the court shall obtain and consider

- (a) a report in writing by the mediator appointed by the order; and
- (b) a report in writing by the probation officer; and

46. Combination Orders

(1) Where a court by or before which a person of 16 years of age or over is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law) is of the opinion mentioned in subsection (3), the court may make a combination order.

(2) A "combination order" in this Act is an order which requires an offender either

(a) both

- (i) to be under the supervision of a probation officer for a period specified in the order, being not less than 12 months nor more than 3 years; and
- (ii) to perform unpaid work for a number of hours so specified, being in the aggregate not less than 80 nor more than the maximum specified in section 28(5); or

(b) both

- (i) to be under the supervision of a probation officer for a period specified in the order, being not less than 12 months nor more than 3 years; and
- (ii) to remain at a specified place or specified places for specified periods within the limits set forth at section 22(3).

(3) 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;
- (c) any evidence, whether oral or in writing, being evidence relevant to the question whether the court should exercise its powers under subsection (1), which the mediator or the probation officer or the complainant or the defendant may wish to proffer to the court.

(3) A court shall not exercise its powers under subsection (1) if in any report or evidence made or proffered to the court under subsection (2) the person making the report or proffering the evidence states that the purposes of the mediation order have in that person's opinion not been fulfilled.

(4) Where subsection (3) applies, the court, unless it is open to the court to extend the duration of the mediation order made section 28, and the court is satisfied that the powers conferred by that paragraph should be exercised, shall proceed to the trial which was suspended by the order by virtue of section 37.

47. Regulations for Part IX

(1) The Minister may make regulations under this section for carrying out the objects of this Part.

(2) Without prejudice to the generality of subsection (1), regulations may be made under this section prescribing

- (a) the practice and procedure to be followed in relation to the conduct of any proceedings under this Part;
- (b) the fees, charges and costs in relation to any such proceedings;
- (c) subject to the consent of the Minister responsible for Finance, the remuneration of mediators at the public expense.

(3) Regulations under this section are subject to affirmative resolution.

PART X

MISCELLANEOUS

48. Regulations

Without prejudice to section 47, the Minister may make regulations to give effect to the intent and purposes of the Act.

49. Amendment of Schedules

The Minister may by order amend the *First Schedule*; and any such order is subject to affirmative resolution of Parliament.

50. Commencement

(1) Subject to subsection (2), the Minister may by notice published in the Gazette fixed a date for the commencement of this Act.

(2) The Minister may fix different dates of commencement Parts or specific sections of the Act.

FIRST SCHEDULE

(Section 25 (8))

**OFFENDERS CONVICTED OF ANY OF THE FOLLOWING OFFENCES ARE
NOT ELIGIBLE FOR REHABILITATION LEAVE**

1. Aggravated assault against any person
2. Burglary
3. Manslaughter
4. Murder
5. Possession or use of a firearm to commit an offence
6. Sexual offence

SECOND SCHEDULE

(Section 36)

PART I

ENFORCEMENT ETC. OF CERTAIN COMMUNITY ORDERS

1. Preliminary

(1) In this Schedule "relevant order" means any of the following orders, namely, a probation order, a community service order and a curfew order.

(2) This Schedule applies in relation to combination orders

- (a) in so far as they impose such a requirement as is mentioned in paragraph(a)(i) or (b)(i) of subsection (2) of section 30 of this Act, as if they were probation orders;
- (b) in so far as they impose such a requirement as is mentioned in paragraph (a)(ii) of that subsection, as if they were community service orders; and
- (c) in so far as they impose such a requirement as is mentioned in paragraph (b)(ii) of that subsection, as if they were curfew orders.

PART II

BREACH OF REQUIREMENT OF ORDER

2. Issue of summons or warrant

(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 offender's arrest.

(2) Any summons or warrant issued under this paragraph shall direct that the offender appear or be brought before a Magistrate's Court.

3. Powers of Magistrate's Court

(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 \$2,500;
- (b) subject to paragraphs 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 25 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 sub-paragraph (1)(d) a Magistrate's 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 those requirements, that the offender has refused to consent to a community sentence which 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 sub-paragraph (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 which 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 so signed shall be admissible as evidence of the failure before the High Court.

(5) A person sentenced under sub-paragraph (1)(d) for an offence may appeal to the Court of Appeal against the sentence.

4. Powers of High Court

(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 \$3,500;
- (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 10 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 of the offence.

(2) In dealing with an offender under sub-paragraph (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 those requirements, that the offender has refused to consent to a community sentence which 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 the requirements of the relevant order shall be determined by the Court and not by the verdict of a jury.

5. Exclusions

(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.

6. Supplemental

(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 80 in the aggregate; and

(b) where the relevant order is a community service order, shall not be such that the total number of hours under both orders exceeds the maximum specified in section 13(5) of this Act.

(3) Sections 13 and 14 of this Act and, so far as applicable, 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 subparagraph (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

REVOCATION OF ORDER

7. Revocation of order with or without re-sentencing

(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 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 sub-paragraph (2)(a)(i) include the offender's making good progress or responding satisfactorily to supervision.

(4) In dealing with an offender under sub-paragraph (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 sub-paragraph (2)(a)(ii) may appeal to the Court of Appeal against the sentence.

(6) Where the court deals with an offender's case under sub-paragraph (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 sub-paragraph (1) while an appeal against the relevant order is pending.

8. (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; or

(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 7(2)(b).

(2) If it appears to the High Court to be in the interests of justice to do so, having regard to circumstances which 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 or before the Court of the offence.

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

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

9. Supplemental

(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.

PART IV

AMENDMENT OF ORDER

10. Amendment of requirements of probation or curfew order

10. (1) Subject to sub-paragraph (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; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were then making the order.

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

- (a) the court shall not amend a probation order
 - (i) by reducing the probation period, or by extending that period beyond the end of 3 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, unless the amending order is made within 3 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 6 months from the date of the original order.

(3) In this paragraph and paragraph 11, references to the offender's dependency on drugs or alcohol include references to his propensity towards the misuse of drugs or alcohol.

11. Amendment of certain requirements of probation order

(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, 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 10 to a Magistrate's Court 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.

12. Extension of community service order

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 magistrate's court 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 12 months specified in section 29(2) of this Act.

Supplemental

13. An application may not be made under paragraph 10 or 12 while an appeal against the relevant order is pending.

14. (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 a relevant order.

15. (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 for the district in which the new place is situated
 - (i) copies of the amending order; and
 - (ii) such documents and information relating to the case as the clerk considers likely to be of assistance to a court acting for that district in exercising its functions in relation to the order;

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

THIRD SCHEDULE

(Section 29 (4))

ATTENDANCE CENTRE ORDERS

1. An attendance centre order shall not be made unless the court is satisfied that the attendance centre to be specified in the order is reasonably accessible to the person concerned, having regard to the age of the offender, the means of access available to the offender, and any other circumstances.

2. The times at which an offender is required to attend at an attendance centre 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 the offender normally works or attends a school or other educational establishment.

3. The first such time shall be a time at which the centre is available for the attendance of the offender in accordance with the notification of the Minister, and shall be specified in the order.

4. The subsequent times shall be fixed by the officer in charge of the centre, having regard to the offender's circumstances.

5. The aggregate number of hours for which an attendance centre order may require an offender to attend at an attendance centre shall not be less than 24, except where the offender is less than 14 years of age and the court is of opinion that 24 hours would be excessive having regard to the offender's age or any other circumstances.

6. The aggregate number of hours shall not exceed 24, except where the court is of opinion, having regard to all the circumstances that 24 hours would be inadequate, and in that case shall not exceed 36 where the offender is under 17 years of age, or 48 hours where the offender is under 21 but not less than 17 years of age.

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

8. 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.

9. 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.

10. Where an offender has been ordered to attend at an attendance centre in default of the 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.

FOURTH SCHEDULE

(Sections 34(1))

SUMMARY OFFENCES WHICH MAY BE DEALT

WITH BY MEDIATION

1. Malicious Damage to Property Act, Cap. 258
section 23: destroying fence, wall or gate
2. Offences Against the Person Act, Cap. 300
section 43: common assault
section 44: aggravated assault made on female children under the age of 14
section 37: disturbing or interrupting assemblage of persons
3. Litter Act, Cap. 250
section 4: disposed of litter from vehicle or trailer
4. Small Charges Act, Cap. 408
section 17: depasturing stock
section 33: malicious damage
section 51: Trespass to land
5. Larceny Act Cap. 241
Section 12: Praedial larceny

EXPLANATORY MEMORANDUM

The Bill for the enactment of the Sentencing (Reform) Act 2017 contains a number of existing sentencing rules and procedures but it also contains a number of proposed new rules that do not form part of the laws of Antigua and Barbuda.

These are: an elaborate regime to accommodate accused persons entering guilty pleas at varying stages; rehabilitation leave for certain exemplary offenders, being offenders not found guilty of serious crimes such as murder, and sexual offences. The final area of reform concerns mediation which seeks to allow the consequences of a crime being settled; based on the civil law concept of mediation to avoid criminal trial, if successful.

The Bill has ten parts and four Schedules: the purposes of the Acts are the principles of sentencing, and aims of sentencing and the special powers of the court, sentencing, custodial sentences, additional powers of the court, orders as constituents of sentencing, sentencing of certain offenders, mediation and miscellaneous.

The First to the Fourth schedules cover the following: First Schedule lists the offences, and a connection or any of these offence would render such offenders' ineligible from rehabilitation leave. The Second Schedule deals with the enforcement of certain community orders. The Third Schedule addresses the matter of the making an attendance centre order. And the Fourth Schedule identifies the offences that all amenable to mediation.

PART I

In the usual way this part is short and contains the citation and some definitions.

The definition that stands out is that of “associated offence”. Thus it applies in the context where an offender is convicted in earlier proceedings with respect to another offence, being the primary offence, and is to be sentenced for both offences at the same time. It also arises where the offender admits the associated offence at the time of sentencing for the primary offences and asks the court to take that admissions into account.

PART II

This part sets out the purposes of the Act. Included is: the purpose of providing for the interest of the victim of a crime.

As far as the principles sentencing are concerned, these are not new since they were outlined in the English case of *R. v Sargeant* and developed by the then Chief Justice, Sir Dennis Byron in the seminal case of **Desmond Baptiste v The Queen** ****High Court Criminal Appeal No. 8 of 2003**. In developing the principles, the learned Chief Justice elaborated substantially on ruling by Lawton LJ in the said case of **R v Sargeant**. The following is his reasoning in part:

“Sentencing Objectives

Perhaps the most difficult and controversial area for the sentence is fitting the punishment to the crime committed. The St. Vincent and the Grenadines legislature has not, in any of the legislation affecting the subject crimes, or indeed in any other legislation set out the purpose(s) of sentencing. A comparative study of the Saint Vincent legislation with that of other member states of the Eastern Caribbean States has revealed little in the way of gleaning the purpose of sentencing. On the contrary, in some other countries this is done. For example, a Sentencing Act in Australia espouses comprehensive and useful goals that sentencing is supposed to fulfill. Section 5(1) of that Act states:

“The only purposes for which may be imposed are-

- [a] to punish the offender to an extent and in a manner which is just in all the circumstances; or
- [b] to deter the offender or other persons from committing offences of the same or a similar character; or
- [c] to establish conditions within which it is considered by the Court that rehabilitation of the offender may be facilitated; or
- [d] to manifest a denunciation by the Court of the type of conduct in which the offender is engaged; or
- [e] to protect the community from the offender, or
- [f] a combination of two or more of those purposes.”

The legislative provision appears to be an amplification of the dictum of **Lawton LJ** in **R v Sargeant*****60 CR App R. 74, 77** where he identified the classical principles of sentencing as being retribution, deterrence, prevention and rehabilitation. It would be instructive to comment upon each of the heads referred to by Lawton LJ.

Retribution

Retribution at first glance tends to reflect the Old Testament biblical concept of an eye for an eye, which is no longer tenable in the law⁴. It is rather a reflection of society's intolerance for criminal conduct. Lawton LJ stated at page 77 that: "...society through the courts, must show its abhorrence of particular types of crimes, and the only way the courts can show this is by the sentences they pass.

Deterrence

Deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour. Of what value however are sentences that are grounded in deterrence? Specific deterrence may be an ineffective tool to combat criminal behaviour that is spontaneous or spawned by circumstances such as addictions or necessity. Drug and alcohol addiction as well as need may trigger high rates of recidivism. Experience shows that general deterrence too is of limited effect. These sentences tend to lose their potency with the passage of time.

Prevention

The goal here is to protect society from those who persist in high rates of criminality. For some offenders, the sound of the shutting iron cell door may have a deterrent effect. Some however never learn lessons from their incarcerations and the only way of curbing their criminality is through protracted sentences whose objective is to keep them away from society. Such sentences are more suitable for repeat offenders.

Rehabilitation

Here the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison. However, the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has in the past borne mixed results. Of course, sentencing ought not to be influenced by executive policy such as the availability of structured activities to facilitate reform.

Fixed Penalties

Increasingly, perhaps to curb inconsistency and disparities in sentencing and also to demonstrate toughness of crime, Parliaments have resorted to prescribing mandatory penalties or statutory minimum penalties. This approach has been criticized on the grounds firstly that it poses serious questions regarding the separation of powers since sentencing is regarded as essentially a judicial function. Secondly, such sentences are

often too harsh and, in individual cases, because of their inflexibility, they invariably result in punishments being imposed that are wholly disproportionate to the crimes committed. The experience of some countries is that in response to tough fixed penalties, criminal justice officials seek ways of avoiding the operation of such penalties. Yet, all Judges would agree that sentencing is perhaps the most difficult area of their work in criminal Courts and this difficulty is not made any easier when Judges have a wide discretion available to them.”

PART III

The principles of sentencing are dealt in this part as set out in clause 3 and clause 4 amounts to an omnibus clause detailing the various orders that may be made by a court; instead of or in addition to any sentence prescribed by any enactment under which an accused was found guilty.”

PART IV

This part deals with various aspects of sentencing: sentencing procedures, the aggravating and mitigating factors, the procedural requirements for a custodial sentence and general guidelines to be followed by the sentencing judge.

It is important to say that these provision do not introduce new law, since the said principles always existed at common law. Now they are to be codified in a statute.

PART V

Custodial Sentences

Clause 10 deals with restrictions on custodial sentences and then subclause (2) places the following restriction on the imposition of a custodial sentence. It reads “Subject to subsection (3), the court shall not impose a custodial sentence on an offender unless it is of the opinion that:-

- (a) the offence, or associated with the offence was so serious that only such a sentence can be justified for the offence; or
- (b) where the offence is of a violent or sexual offence; or
- (c) that only such a sentence would be adequate to protect the public from serious harm from the offender.

Clause II of the Bill dwells on the length of custodial sentences and apart from restating the rule that a court can only impose the maximum prescribed by Parliament, for the offence it goes on to identify some of the central concerns of the court. These are that the

sentence must be commensurate with the offence and where the offence involves violence of a sexual nature.

Clauses 12 and 13 indicate that time on remand must constitute part of the time to be served; and the previous convictions must be brought into the sentencing equation. Very important to this part are clauses 15 and 16.

Clause 15 permits the victim of a crime to apply for compensation to be paid by the offender. And clause 16 gives a wide range of circumstances in which a person can enter a guilty plea. The span runs from the preliminary inquiry in the Magistrate's Court up to the time when the accused is conducting his defence.

The reductions range from **50% to 10%** in the circumstances outlined above. In turn the reductions are to be made from a notional sentence arrived at by the trial judge based on the following considerations: the notional sentence for the offence as prescribed by law, the prosecutor's case, the prior convictions of the accused, if any, and the prevalence of the offence in the state of Antigua and Barbuda and other relevant considerations.

Given the foregoing, it is important to juxtapose the reasoning of the learned Chief Justice Byron in developing the rules with their origins in the English courts; as quoted above. In turn, the deductions are to be made from a notional sentence arrived at by the trial judge based on the following considerations: the maximum sentence for the offence, the prosecutor's case, the prior convictions of the accused, if any, the prevalence of the offence in the State. This the way in which Chief Justice Byron reasoned with respect to guilty pleas:

“In England a plea of guilty normally attracts a significant, approximately a one third, reduction of the sentence. There are sound public policy reasons for this. The criminal justice system benefits from genuine guilty pleas. Such pleas spare the judge, the jury and witnesses the stress and rigours of a full trial. The State saves both time and money. It could be manifestly unfair to accord the identical sentence to co-defendants charged with the same offence where one has pleaded guilty at an early stage and the other has put the State through the ordeal of a long demanding trial. The defendant who has pleaded guilty is entitled to a considerable discount. While suggesting a discount of the order of one third however, Lord Taylor, CJ stressed in **Buffrey** that “it would be quite wrong...to suggest that there was an absolute rule as to what the discount should be. Each case must be assessed by the trial Judge on its own facts and there will be consideration variance between one case and another. In our view our Courts should adopt a similar approach. Clearly, the earlier the defendant pleads guilty, the greater the likelihood that he will receive the full discount permissible. Conversely, a plea of guilty late in the proceedings may not yield much of a discount. The discount should be applied

not to the maximum sentence possible under the statute but rather to a notional sentence might have given save for the guilty plea.

As to the fact that the offender was committing crime for the first time, it seems to us that the importance of this circumstance should be left to the discretion of the sentence as a matter that this to be taken into account with all other mitigating circumstances of the offences. It must be stressed though that the more serious the offence, the less relevant will be this circumstance. In **Turner v the Queen**, a case of armed robbery, Lord Lane, CJ stated that “the fact a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into consideration when the Court is dealing with cases of this gravity”, Conversely, the lack of a criminal record would be a powerful mitigating factor where the offence is an insubstantial nature.

On the issue of the age if the offender is young, a sentence should be mindful of the general undesirability of imprisoning young first offenders. For such offenders, the Court should take care to consider the prospects of rehabilitation and accordingly give increased weight to such prospects. Where imprisonment is required, the duration if incarceration should also take such factors into account. In the same vein, in cases where the offender is a mature individual with no apparent propensity for commission of the offence, the sentence may also take this circumstance into account in weighing the desirability and duration of a prison sentence. As with first time offenders, the more serious the offence, the less relevant will be these circumstances.”

PART VI

The heading for this part reads: **Additional Powers of the court.**

The powers extend to fines, absolute and conditional discharge, further offence by an offender conditionally discharged suspended sentence and entitlement of exemplary offenders to rehabilitation leave.

Under this part clause 17 empowers the court to vary the terms of a fine appropriate to the circumstances of the offender. Clause 18 also vests in the court a power to discharge an offender absolutely or conditionally. Clause 19 is connected to the circumstance when an offender is conditionally discharged and commits a further offence.

Clause 21 is new and speaks to granting rehabilitation leave to exemplary offenders in an effort to prepare them to re-start life in the wider society when discharged as reformed and rehabilitated persons. The leave is for a weekend in every 3 months. But this leave is not for all offenders even if they are exemplary. For this reason, offenders convicted of murder, manslaughter, sexual offences, burglary, grievous bodily harm, possession in case of a firearm and aggravated assault do not qualify.

PART VII

This part is constituted by clauses 22 to 31 and are concerned with orders as constituents of sentencing and otherwise. The headings of the clauses are: curfew orders, electronic monitoring of curfew orders, provision regulation and management of curfew orders, attendance centre orders, discharge and variation of attendance centre orders, community service orders, obligation of persons in community service orders, combination orders.

The purpose or objective here is to extend sentencing in these directions to satisfy the objectives of sentencing in particular circumstances.

And clause 39 (1) prescribe the procedure. It reads as follows:

“39 (1) A court shall not approve an application for mediation unless

- (a) after considering a report in writing by a probation officer or the defendant and the defendants circumstances, and if the court thinks it necessary, after hearing the probation officer, the court is satisfied that the charge is one that may appropriately be dealt with by a mediator;
- (b) the complainant has agreed that the charge should be so dealt with; and
- (c) the defendant and the complainant have agreed on an approved mediator who has agreed to act.”

Clause 39 (2) goes on to give the Director of Public Prosecutions standing at the hearing of the application prior to the making of the order. Finally, in clause 47 the Minister is given a power to make regulations generally.

PART VIII

This part speaks to the sentencing of persons who are mentally disordered and persons claiming to be pregnant on, of, or at the time of sentencing. These persons do not contradict the existing statute law in this regard.

PART IX

As noted before, a mediator in criminal law is entirely new to Antigua and Barbuda. And it is reforming in that it seeks where possible to substitute a civil procedure in a criminal law context. The procedure is prescribed in clauses 34 to 47. However, clause 39 gives certain entitlement obligation on the Director of Public Prosecution at the hearing of the application, prior for the making of an order.

Finally, in clause 47 the Minister is given a power to make regulations for the purposes of the mediator procedure. These purposes are prescribed.

PART X

This part is concerned with matters that are relevant to the entire Bill. As such the Minister is given a further power to make regulations in order to give effect to the intent and purposes of the Act. And clause 49 gives the Minister a further power to amend the First Schedule.

SCHEDULES

There are four schedules. Each one is an extension of a particular provision of the Act. Accordingly, the First Schedule is tied to clause 25 (8) in terms of offences, conviction for which would disqualify an offender from seeking rehabilitation leave.

The Second Schedule is concerned fully with certain community orders made by the court. Accordingly, it prescribes the powers and procedure in dealing with a breach of such an order, both in the Magistrate's Court and in the High Court, revocation of such orders, amendment of an order, and the exclusion of a community service order.

The Third Schedule is concerned with attendance centre order made by the court.

Finally, the Fourth Schedule prescribes the offences to which mediation applies.