

THE CRIMINAL JUSTICE (REFORM) ACT

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SCHEDULES.

THE CRIMINAL JUSTICE (REFORM) ACT

[1st November, 1978.]

Acts
7 of 1978,
6 of 2001,
1 of 2005
S. 7(2),
20 of 2016
Sch.
Short title.

1. This Act may be cited as the Criminal Justice (Reform) Act.

2. In this Act—

Interpreta-
tion.
6/2001
S. 2(b).

“authorized officer” means a probation officer or such other person as may be specified in the order of the Court;

“Circuit Court” shall be deemed to include the Gun Court;

“day training centre” means any premises declared by the Minister to be a place at which persons may be required to attend by a probation order made under section 5 or by an attendance order under section 12;

6/2001
S. 2 (a).

“firearm” and “imitation firearm” have the same meaning as in section 25 of the Firearms Act;

“sentence of imprisonment” does not include a committal in default of payment of any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone;

“suspended sentence” as respects any offender, means a sentence which is ordered, pursuant to section 6, not to take effect unless the offender commits another offence.

3.—(1) Subject to the provisions of subsection (2), where a person who has attained the age of eighteen years is convicted in any court for any offence, the court, instead of sentencing such person to imprisonment, shall deal with him in any other manner prescribed by law.

Other
punish-
ment in
lieu of
imprison-
ment in
certain cir-
cumstances.
1/2005
S. 7(2)(e).

(2) The provisions of subsection (1) shall not apply where—

(a) the court is of the opinion that no other method of dealing with the offender is appropriate; or

1/2005
S. 7(2)(a).

(b) the offence is murder; or

(c) [*Deleted by Act 6 of 2001.*]

First Schedule
6/2001
S. 3(c).

(d) the person at the time of commission of the offence, was in illegal possession of a weapon referred to in the First Schedule, a firearm or imitation firearm.

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

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

4.—(1) Where a Circuit Court is empowered to impose a sentence of imprisonment (other than where the offence is murder) the Court may, in addition to or in lieu of such sentence of imprisonment, impose a fine and order that in default of payment forthwith of such fine, the person on whom such fine is imposed shall suffer such imprisonment as may be ordered by the Court.

Power of
Court in
relation to
fines.
1/2005
S. 7(2)(b).

(2) Where any fine has been imposed by a Circuit Court the Court at the time when such fine is imposed or at any time thereafter may—

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

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

Provided that the Court may, if it thinks fit, instead of sentencing such person to imprisonment, deal with him in any other manner prescribed by law.

6/2001
S. 4(d).

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

Probation
orders:
ancillary
requirements.
20/2016
Sch.

in the probation order either or both of the following requirements—

20/2016
Sch.

(a) a requirement that the probationer shall, during the period of such probation, attend a day training centre specified in the order; or

20/2016
Sch.

(b) a requirement that the probationer participate in a restorative justice programme specified in the order.

20/2016
Sch.

(2) A court shall not include in a probation order, the requirement specified in subsection (1)(a) unless the court is satisfied that—

(a) a day training centre exists and is appropriate for the attendance of the offender; and

(b) arrangements can be made for his attendance at the centre.

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Sch.

(3) A requirement included in a probation order by virtue of subsection (1)(a) shall operate to require the probationer—

(a) in accordance with instruction given by the probation officer responsible for his supervision, to attend on not more than one hundred and twenty days at the centre as specified in the order;

(b) while attending there to comply with instructions given by, or under the authority of, the person in charge of the centre.

(4) The Minister may, by order published in the *Gazette*, declare any premises to be a day training centre for the purposes of this Act.

5A.—(1) The purpose of restorative justice proceedings is to hold offenders accountable in a more meaningful way to the victim and community and provide an opportunity for healing and the lasting reconciliation of relationships between the victim and offender and their families, where the offender accepts responsibility for the offence and there are one or more victims of the offence concerned.

Purpose and objectives of restorative justice.
20/2016
Sch.

(2) The objectives of a restorative justice programme under section 5 or 16A (as the case may be) shall be to bring together the offender and the victim, guided by a facilitator, in order to—

- (a) address the harm suffered by the victim;
- (b) identify the obligations of the offender to the victim that arise out of the offence concerned;
- (c) attend to the needs of victims by empowering them to participate in identifying reparative measures to be taken by the offender; and
- (d) reintegrate the offender into the community by supporting the rebuilding of broken relationships.

6.—(1) A court which passes a sentence of imprisonment on any offender for a term of not more than three years for any offence, may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year or more than three years from the date of the order (hereinafter referred to as the

Suspended sentences.

“operational period”), the offender commits in Jamaica another offence punishable with imprisonment for a period exceeding six months (hereafter in this section and sections 7 and 8 referred to as a “subsequent offence”) and thereafter a court having power to do so orders under section 7 that the original sentence shall take effect:

First Schedule.
6/2001
S. 5.

Provided that the above provisions of this subsection shall not apply where the offence involved the use, or the illegal possession of, a weapon referred to in the First Schedule, a firearm or imitation firearm.

(2) A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under subsection (1).

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

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

(5) On passing a suspended sentence the court shall explain to the offender in ordinary language his liability under

section 7, if during the operational period he commits a subsequent offence punishable with imprisonment.

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

Subsequent
offence
during
operational
period.

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

(3) Where a Resident Magistrate's Court deals with an offender in respect of whom a suspended sentence passed by a Circuit Court is in operation, the Resident Magistrate dealing with the offender for the subsequent offence, shall forward to the Registrar of the Supreme Court a certificate signed by him and under the seal of the Court certifying that the offender has been convicted for a subsequent offence, together with such other particulars of the case as the Resident Magistrate may consider desirable; whereupon a Judge of the Supreme Court before whom the offender is brought may, without prejudice to the order of the Resident Magistrate with respect to the subsequent offence, order that the suspended sentence shall take effect with the original term unaltered or with the substitution of a lesser term for the original term.

Discovery
of further
offence.

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

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

Suspended
sentence
supervision
order.

6/2001
S. 6(a).

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

6/2001
S. 6(b).

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

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

6/2001
S. 6 (b).

6/2001
S. 6 (b).

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

6/2001
S. 6 (b).

(5) If it is proved to the satisfaction of the court before which the offender appears or is brought under this section that he has failed without reasonable cause to comply with any of the requirements of the supervision order, the court may, without prejudice to the continuance of the order, impose on him a fine not exceeding one hundred dollars.

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

Community
service
order.
1/2005
S. 7(2)(c).

6/2001
S. 7 (a).

Provided that a community service order shall not be made where the offence involved—

(a) murder

1/2005
S. 7(2)(a).

(b) the use of, or the illegal possession of, a firearm; or

First Schedule.
6/2001
S. 7 (c).

- (c) the use of a weapon referred to in the First Schedule, an imitation firearm or the possession of an imitation firearm in circumstances which constitute an offence under section 25 of the Firearms Act.

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

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

(3) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted, the court may direct that the periods of service shall be concurrent with or consecutive to those specified in any other of those orders:

Provided that where the court directs that the periods of service shall be consecutive the aggregate of such periods of service shall not exceed four hundred and eighty hours.

(4) A community service order shall specify the area in which the offender resides or will reside and the court shall cause copies of the order to be delivered to a probation officer carrying out duties in that area, hereinafter referred to as the relevant probation officer.

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

- (a) report to the relevant probation officer and subsequently from time to time notify him of any change of address; and

- (b) perform for the number of hours specified in the order at such times as he may be instructed by the relevant probation officer.

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

11.—(1) If at any time during which an order made under section 10, 12, 13, 14, 15 or 16 is in force in respect of an offender, it appears on information to a Justice of the Peace that the offender has failed to comply with any of the requirements of the order, the Justice of the Peace may—

Breach of
order made
under
section 10,
12, 13, 14,
15 or 16.
6/2001
S. 2.

- (a) where the order was made by a Petty Sessions Court—
 - (i) issue a summons requiring the offender to appear before the Court by which the order was made at a time specified in the summons; or
 - (ii) if the information is in writing and on oath, issue warrant for his arrest; or
- (b) where the order was made by a Resident Magistrate's Court or a Circuit Court—
 - (i) issue a summons requiring the offender to appear before the Resident Magistrate's Court by which the order was made (or in the case an order made by a Circuit Court, before a Resident Magistrate's Court for the parish in which that order was made) at a time specified in the summons; or
 - (ii) if the information is in writing and on oath, issue a warrant for his arrest.

(2) Where the order was made by a Petty Sessions Court or a Resident Magistrate's Court, the Justice or the Resident Magistrate, as the case may be, may act in accordance with subsection (3) upon proof to his satisfaction that the offender has failed without reasonable excuse to comply with any of the requirements of the order.

(3) The Justice or Resident Magistrate may—

- (a) without prejudice to the continuance of the order, impose on the offender a fine not exceeding two thousand dollars; or
- (b) revoke the order and deal with the offender for the offence in respect of which the order was made in any other manner in which he could have been dealt with for the offence by a Petty Sessions Court or a Resident Magistrate's Court, as the case may be, if the order had not been made.

(4) Where the order was made by a Circuit Court, the Resident Magistrate shall, upon proof to his satisfaction that the offender has failed without reasonable excuse to comply with any of the requirements of the order, forward to the Registrar of the Supreme Court a certificate signed by the Resident Magistrate and under the seal of the Resident Magistrate's Court, specifying the details of such failure together with such particulars of the case as may be desirable.

(5) A certificate purporting to be so signed and sealed shall be admissible as evidence of the failure; whereupon a Judge of the Circuit Court before whom the offender is brought may—

- (a) without prejudice to the continuance of the order, impose on the offender a fine not exceeding four thousand dollars; or

- (b) revoke the order and deal with the offender for the offence in respect of which the order was made in any other manner in which he could have been dealt with for that offence by a Circuit Court, if the order had not been made.

12.—(1) Where a person who has attained the age of eighteen years is convicted of an offence (other than murder) punishable with imprisonment, the court may, instead of dealing with him in any other way, make, with his consent, an order (hereinafter referred to as an attendance order) requiring him to attend a day training centre specified in the order, for such number of hours as may be specified in the order.

Attendance
order.
6/2001
S. 9 (a).
1/2005
S. 7(2)(d).
1/2005
S. 7(2)(e).

(2) The court may make an attendance order in respect of an offender if the court is satisfied—

- (a) after considering a report by a probation officer in respect of the offender and his circumstances and (if the court thinks necessary) after hearing a probation officer, that the offender is a suitable person to attend a day training centre under such order; and
- (b) that a day training centre exists and is appropriate for the attendance of the offender and arrangements can be made for his attendance at the centre.

(3) An attendance order made under this section shall require the offender—

- (a) in accordance with instructions given by an authorized officer responsible for his supervision, to attend at the centre as specified in the order; and
- (b) while attending at the centre, to comply with instructions given by or under the authority of the person in charge of the centre.

Curfew
order,
6/2001
S. 9 (b),
1/2005
S. 7(2)(d),
1/2005
S. 7(2)(e).

13.—(1) Where a person who has attained the age of eighteen years is convicted of any offence (other than murder) punishable with imprisonment, the court may, instead of dealing with him in any other way, make an order (hereinafter called a curfew order) requiring the offender to remain at a place specified in the order for a period of time so specified.

(2) A curfew order may specify different places or different periods for different days, being periods—

- (a) not exceeding six months from the date of the order; or
- (b) amounting to not more than twelve hours in any one day.

(3) Before making a curfew order under this section, the court shall—

- (a) explain to the offender in ordinary language the matters specified in subsection (6);
- (b) obtain the offender's written consent to the making of the order.

(4) The requirements of a curfew order made under this section in respect of any offender shall as far as practicable be such as to avoid—

- (a) any conflict with—
 - (i) the offender's religious belief;
 - (ii) the requirements of any other order made under this Act in respect of that offender; and
- (b) any interference with the times, if any, during which the person normally works or attends an educational institution.

(5) A curfew order shall include provision for the monitoring of the offender, during the period specified in the order, by a member of the Constabulary Force or an authorized officer.

(6) The matters referred to in subsection (3) are—

- (a) the purpose and effect of the order, including any additional requirements which are intended to be included under section 14; and
- (b) the consequences of any breach by the offender of any requirements of the order.

14.—(1) Requirements (in this section referred to as "electronic monitoring requirements") may be included in a curfew order for securing the electronic monitoring of the offender's whereabouts while the curfew order remains in force.

Electronic
monitoring
of curfew
orders.
6/2001
S. 9.

(2) A court shall not include electronic monitoring requirements in a curfew order unless the court—

- (a) is notified by the Minister that arrangements for electronic monitoring are available at the place specified in the curfew order; and
- (b) is satisfied that the necessary provisions can be made under those arrangements.

(3) Arrangements made for the purposes of this section may include arrangements whereby the electronic monitoring is carried out by persons acting under contract.

15.—(1) Where a court makes a community service order under section 10, the court may, in addition to the requirements specified in that order, require the offender to be under the supervision of an authorized officer for such period as may be specified in the order, being not less than twelve months nor more than three years.

Combina-
tion
orders.
6/2001
S. 9.

(2) Where a court makes a curfew order under section 13, the court may, in addition to the requirements specified in that order, require the offender to be under the supervision of an authorized officer for such period as may be specified in the order, being not less than twelve months nor more than three years.

(3) The court may act in accordance with subsection (1) or (2) if the court is satisfied that such a requirement is desirable in the interests of securing the rehabilitation of the offender or protecting the public from harm from the offender or preventing the commission of further offences by the offender.

Mediation
order.
Second
Schedule.
6/2001
S. 9

16.—(1) Where a person is charged with any offence contained in the Second Schedule, the court shall, before commencing the trial of the offence, determine, having regard to all the circumstances and with the consent of all the parties, whether the matter can be dealt with by mediation.

(2) If, pursuant to subsection (1), the court determines that the matter is suitable to be dealt with by mediation, the court shall make an order (hereinafter referred to as a mediation order) referring the matter for mediation by an approved mediator.

(3) In this section, "approved mediator" means a mediator appointed by the Chief Justice.

(4) A mediation order made under this section shall operate to suspend the trial of the offence until the date fixed by the court under subsection (5) (c).

(5) A mediation order made under this section shall—

- (a) limit the time within which the mediation shall be concluded;
- (b) limit the time within which a report on the mediation shall be submitted to the court by the mediator setting out—

- (i) whether or not the mediation took place;
 - (ii) whether any agreement was reached; and
 - (iii) the terms of any such agreement; and
- (c) fix a date on which the parties involved shall appear before the court for the purposes of subsection (6).

(6) Where the court is satisfied that—

- (a) the matter has been resolved by mediation, the court shall make an order—
 - (i) dismissing the charge against the person charged; and
 - (ii) incorporating the terms of the mediation agreement (if any) arrived at by the parties, which may include an agreement for restitution, compensation, non-molestation, or such agreement as may be approved by the court; or
- (b) the matter has not been resolved by mediation, the court shall proceed to try the matter.

(7) The following provisions shall apply to any admission made or information disclosed as a result of a mediation proceeding (hereinafter referred to as protected information)—

- (a) protected information shall be treated as confidential;
- (b) protected information shall not be admissible in any proceedings before a court, tribunal or committee and no person shall be compellable in any such proceedings to disclose the information or to produce any document that contains the information; and
- (c) a party to mediation proceedings shall be taken to have authorized the provision of protected information to the mediator and his staff for the purposes of conducting the mediation proceedings in accordance with the provisions of this Act.

(8) The Minister may amend the Schedules by order subject to affirmative resolution.

Determina-
tion that
restorative
justice order
is appropriate.
Part 1.
Third
Schedule.
20/2016
Sch

16A.—(1) Before commencing the trial of a person for an offence listed in Part I of the Third Schedule, the court may, of its own motion or on the recommendation of a Clerk of the Court or a constable, determine that it is appropriate to make an order referring the matter to a restorative justice programme—

Form 1.
Fourth
Schedule.

(a) having regard to all the circumstances and, in particular, the factors set out in subsection (3);

(b) if the person charged consents, as evidenced by signing a completed Form 1 of the Fourth Schedule, to participation in a restorative justice programme; and

Form 2.
Fourth
Schedule.

(c) if there are one or more victims of the offence charged and each such victim consents, as evidenced by signing a completed Form 2 of the Fourth Schedule, to participation in a restorative justice programme.

Part II.
Third
Schedule.

(2) Where the trial of an offence, other than an offence listed in Part II of the Third Schedule, has commenced in respect of a person and has resulted in that person's conviction, the court may, before sentence is passed, determine that it is appropriate to make an order referring the matter to a restorative justice programme—

Form 1.
Fourth
Schedule.

(a) having regard to the factors set out in subsection (3);

(b) if the person convicted consents, as evidenced by signing a completed Form 1 of the Fourth Schedule, to participation in a restorative justice programme; and

(c) if there are one or more victims of the offence charged and at least one such victim consents, as evidenced by signing a completed Form 2 of the

Fourth Schedule, to participation in a restorative justice programme.

Form 2.
Fourth
Schedule.

(3) The factors referred to in subsections (1) and (2) are—

- (a) the possible benefits to be derived, by the alleged offender or the convicted offender (as the case may be), and the victim, from the restorative justice process;
- (b) that a restorative justice programme exists and arrangements can be made for the participation by the parties in the programme;
- (c) where the victim is a person under the age of eighteen years or a person who is incapable of giving consent for the purposes of subsection (1)(c) or (2)(c), the best interests of that person; and
- (d) any matter which in the opinion of the court would make reference to a restorative justice programme inappropriate in the circumstances.

(4) The Minister may by order, subject to affirmative resolution, amend the Third and Fourth Schedules.

Third and
Fourth
Schedules.

(5) Without prejudice to the generality of subsection (4), an order under that subsection may make provision for offences which are eligible or ineligible for referral to a restorative justice programme under subsection (1) or (2) or both.

(6) In any case where a victim is—

- (a) under the age of fourteen years, consent for the purposes of this section may be given on the victim's behalf by the victim's parent or guardian, or by the Children's Advocate (or the nominee of the Children's Advocate) in any case where—
 - (i) such parent or guardian cannot be located; or

- (ii) the court is satisfied that such parent or guardian is incapable of giving consent for the purposes of this section by reason of any physical, intellectual or mental impairment;
- (b) a person who has attained the age of fourteen years but who has not attained the age of eighteen years, consent for the purposes of this section means the consent of both that person and—
 - (i) one of the person's parents, or the person's guardian; or
 - (ii) the Children's Advocate (or the nominee of the Children's Advocate) in any case where—
 - (A) the person's parents or guardian cannot be located; or
 - (B) the court is satisfied that neither of the person's parents, nor the person's guardian, is capable of giving consent for the purposes of this section by reason of any physical, intellectual or mental impairment;
- (c) a person who has attained the age of eighteen years, and who the court is satisfied is unable to give consent for the purposes of this section by reason of any physical, intellectual or mental impairment, that consent may be given by a member of the person's immediate family who has attained the age of eighteen years; or
- (d) deceased, consent for the purposes of this section may be given by a member of the person's immediate family who has attained the age of eighteen years, and the person giving such consent shall be entitled to participate as a party in the restorative justice proceedings.

(7) In this section—

“guardian”, in relation to a child, includes any person who has for the time being the charge of, or control over, the child;

“member of the person’s immediate family” means that person’s—

- (a) spouse, as defined by section 2(1)(d) of the Intestates’ Estates and Property Charges Act;
- (b) child, adopted child or stepchild;
- (c) brother, sister, stepbrother or stepsister;
- (d) parent or stepparent; or
- (e) grandparent,

or any other person who the court determines to be of sufficient proximate relationship (whether by blood or otherwise) to be considered a member of the person’s immediate family;

“victim” means a person against whom the offence concerned is committed or who suffers physical injury, or loss or damage to property, as a result of the commission of the offence concerned.

16B.—(1) In this section—

“approved facilitator” means a facilitator included on a list of facilitators published by the Ministry responsible for justice, whether on its website or otherwise, for the purposes of this section;

“restorative justice agreement” means an agreement signed by the approved facilitator who has conduct of the restorative justice proceedings, the alleged offender or convicted offender (as the case may be), and the victim, and which—

- (a) sets out the commitments that the alleged offender or convicted offender (as the case may be) agrees to undertake in order to

Form and
effect of
restorative
justice
order.
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address the harm the offence has caused to the victim; and

- (b) provides that once the alleged offender or convicted offender (as the case may be) fulfils the commitments referred to in paragraph (a) any criminal charges against the alleged offender or convicted offender (as the case may be) in respect of the offence will be dealt with in accordance with subsection (6) or (7) (as the case may require), and that no civil action will be taken in respect of the harm referred to in paragraph (a);

“victim” has the meaning assigned to it in section 16A and, where applicable, refers to the person entitled to give consent on behalf of a victim for the purposes of that section.

(2) If, pursuant to section 16A, the court determines that an order referring a matter to a restorative justice programme is appropriate, the court shall make an order (hereinafter referred to as a “restorative justice order”) referring the matter to a restorative justice programme conducted by an approved facilitator.

(3) Where a restorative justice order is made in the circumstances specified in section 16A(1) (order made before commencement of trial), the trial of the offence shall not commence unless the court has made the determination referred to in subsection (6)(b).

(4) A restorative justice order made in the circumstances specified in section 16A(2) (order after conviction but before sentence is passed) shall operate as an adjournment of the trial of the offence and the trial shall not resume unless the court has made the determination referred to in subsection (6)(b).

(5) A restorative justice order under this section shall—

- (a) specify the time within which the restorative justice proceedings shall be concluded;
- (b) specify the time within which a report on the outcome of the restorative justice proceedings shall be submitted to the court by the approved facilitator, setting out—
 - (i) whether a restorative justice conference was held;
 - (ii) whether a restorative justice agreement was reached and, if so, a copy of the agreement; and
 - (iii) the steps taken in performance of the commitments made under the restorative justice agreement and outlining any commitments left to be performed; and
- (c) fix a date on which the parties involved shall appear before the court for the purposes of subsection (6) or (7) (as the case may require),

and the court may extend any time or date specified under this subsection.

(6) Where the trial of an offence has been deferred by virtue of subsection (3), or adjourned by virtue of subsection (4) and the court determines that—

- (a) the matter has been resolved by the restorative justice proceedings, and that the commitments required to be performed under the restorative justice agreement have been satisfactorily performed, the court shall make an order dismissing the charge against the person charged; or
- (b) the matter has not been resolved by the restorative justice proceedings, and there is no reasonable prospect of such resolution, the court shall proceed to, or resume, the trial.

(7) Where the trial of a matter has been adjourned by

virtue of subsection (4) after the person charged has been convicted of the offence but prior to sentence being passed, and the court is satisfied that—

- (a) a restorative justice agreement has been arrived at by the parties, the court shall take into account the terms of the agreement, and the extent to which the commitments made in the agreement have been satisfactorily performed, in determining how to proceed in relation to sentence, and shall proceed accordingly; or
- (b) a restorative justice agreement has not been arrived at by the parties, the court shall proceed to sentence the offender as if the restorative justice proceedings had not occurred.

Protections
in relation to
restorative
justice
proceedings.
20/2016
Sch.

16C.—(1) Subject to section 16B, any admission made or information disclosed for the purposes of restorative justice proceedings—

- (a) shall be treated as confidential; and
- (b) shall not be admissible in any proceedings before a court or tribunal, and no person shall be compellable in any such proceedings to disclose the admission or information or to produce any document that contains the admission or information.

(2) An alleged offender's consent to participate in a restorative justice programme or an alleged offender's entry into, or performance of any commitments made under, a restorative justice agreement under this Act shall not amount to or be treated as a confession or an admission of guilt for the purposes of any criminal proceedings.

Pre-charge
restorative
justice
proceedings
not prejudiced.
20/2016
Sch.

16D. Nothing in section 16A or 16B shall preclude the use of restorative justice proceedings as a means of resolving any dispute prior to a charge being brought arising from any such dispute.

17.—(1) On any appeal against sentence by an offender, the Court of Appeal may, if it thinks fit, instead of dealing with the offender in any other way authorized by law, allow the appeal and make an order under section 12, 13, 14 or 15, as the case may be, in substitution for the sentence passed by the court before which the offender was convicted.

Review of sentences by Court of Appeal. 6/2001 S. 9(b).

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

Forfeiture of property used for commission of offence.

- (a) has been used for the purpose of committing, or facilitating the commission of the offence; or
- (b) was intended by him to be used for that purpose, the court may make an order of forfeiture of the said property to the Crown.

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

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

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

- (a) he is the lawful owner; and
- (b) he had not consented to the offender having

possession or did not know or had no reason to believe or suspect that the property was likely to be used for the commission of such offence,

may order that the property be restored to the claimant.

Short
sentences
of imprison-
ment.
6/2001
S. 10(a).

19.—(1) Where a court passes a sentence of imprisonment on an offender for a period not exceeding six months, or where a convicted person is required to serve a sentence of such description and duration in lieu of a payment of a fine, the court may make an order in accordance with subsection (2).

6/2001
S. 10(a).

(2) The court may—

- (a) on an application made before it by or on behalf of such convicted person, or if the court considers it appropriate; and
- (b) if the court is satisfied on a report from the Commissioner of Corrections that satisfactory arrangements exist for the sentence to be served in the manner applied for,

order that the sentence be served in incremental periods, commencing at six o'clock in the evening of every Friday and ending at six o'clock in the evening of every Sunday, until the full term of the sentence has been served.

(3) Where an order under subsection (1) is made, the court shall cause a copy of such order to be served on the Superintendent of Police in the parish which the convicted person resides or will reside.

6/2001
S. 10(a).

(4) Time served in a single incremental period described in subsection (2) shall be deemed to be service of three days imprisonment.

(5) When any such convicted person has failed to serve any stated portion of his sentence, the Commissioner of Corrections may, on application made by way of summons, so inform the court which sentenced such person under subsection (1) and the court may thereupon, after hearing the convicted

person, revoke the order for imprisonment at stated periods and substitute therefor a continuous sentence not exceeding the unserved portion of the sentence originally passed.

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

20. The Minister may make rules for giving effect to the provisions of this Act and in particular without prejudice to the generality of the foregoing may make rules—

Rules.

- (a) for the enforcement of stated period of imprisonment;
- (b) for regulating the training given at day training centres;
- (c) for the performance of work under community service orders;
- (d) prescribing forms for supervision orders;
- (e) prescribing the criteria and procedure for the appointment of mediators for the purposes of this Act; 6/2001 S. 11(c). 20/2016 Sch.
- (f) prescribing the form of proceedings for mediation under section 16; and 6/2001 S. 11(c). 20/2016 Sch.
- (g) as to the procedure upon referral to a restorative justice programme, the conduct of such programmes, and the forms to be used in connection therewith. 20/2016 Sch.

FIRST SCHEDULE

(Section 2)

Prohibited Weapons

1. Daggers.
2. Any knives commonly known as switchblades, flick blades, ratchet knives or rambo knives.
3. Articles made or adapted for use to cause injury to the person.

CRIMINAL JUSTICE (REFORM)

SECOND SCHEDULE

(Section 16)

*Offences in respect of which mediation
order may be made*

1. Unlawful wounding under section 22 of the Offences Against the Person Act;
2. Assault under section 39 of the Offences Against the Person Act;
3. Assault occasioning actual bodily harm under section 43 of the Offences Against the Person Act;
4. Any offence under section 2, 6, 11 or 15 of the Trespass Act;
5. Any offence under section 3 or 5 of the Towns and Communities Act;
6. Any offence under section 4 of the Litter Act;
7. Any offence under section 14, 25 or 43 of the Malicious Injuries to Property Act; and
8. Any offence under section 6 of the Noise Abatement Act.

20/2016
Sch.

THIRD SCHEDULE

(Section 16A)

PART I

*Offences in Respect of which
Referral may be made to a Restorative
Justice Programme before Trial*

1. Any offence for which a term of imprisonment of not more than three years may be imposed, other than any offence under—
 - (a) section 6(1)(b) (grievous sexual assault), 6(d)(ii) (attempt to commit grievous sexual assault), 13 (indecent assault), 28 (anonymity of complainant) or 35 (contravention of reporting requirement by sex offender) of the Sexual Offences Act;
 - (b) section 17 (contravention of direction to protect witness) of the Criminal Justice (Suppression of Criminal Organizations) Act, 2014; or

THIRD SCHEDULE, *cont'd.*

- (c) section 11 (breach of confidentiality as to identity of victim) of the Child Pornography Prevention Act.
- 2. Simple larceny, under section 5 of the Larceny Act, other than larceny of agricultural products or livestock.
- 3. Larceny in a dwelling house, under section 18 of the Larceny Act.
- 4. Larceny from the person, under section 19 of the Larceny Act.
- 5. Larceny by tenants or lodgers, under section 21 of the Larceny Act.
- 6. Larceny or embezzlement by clerks or servants, under section 22 of the Larceny Act.
- 7. Conversion, under section 24 of the Larceny Act.
- 8. Any offence under section 42 of the Malicious Injuries to Property Act.

PART II

*Offences in Respect of which Referral
shall not be made under section 16A(2) to a
Restorative Justice Programme*

- 1. Murder.
- 2. Any offence under section 8, 13, 14, 15, 16, 17, 18, 20, 69 or 70 of the Offences Against the Person Act.
- 3. Any offence under section 2, 3 or 4 of the Treason Felony Act.
- 4. An offence under section 3 of the Malicious Injuries to Property Act (arson of a dwelling house).
- 5. An offence under section 42A of the Larceny Act (extortion).
- 6. An offence under section 4, 9, 10, 20, 24 or 25 of the Firearms Act.
- 7. An offence under section 3, 5, 6, 7, 7A, 7B, 8, 8A, 9, 11 or 21A of the Dangerous Drugs Act.
- 8. An offence under section 4 of the Trafficking in Persons (Prevention, Suppression and Punishment) Act.
- 9. An offence under section 10 of the Child Care and Protection Act (trafficking of children).

PART II, *cont'd.*

10. Any offence under the Terrorism Prevention Act.
11. Any offence under the Sexual Offences Act.
12. Any offence contained in the First Schedule to the Praedial Larceny (Prevention) Act, other than the offence of simple larceny under section 5 of the Larceny Act not involving larceny of agricultural produce or livestock.
13. The offence of perverting the course of justice.
14. Any offence under the Criminal Justice (Suppression of Criminal Organizations) Act.
15. Any offence under the Law Reform (Fraudulent Transactions) (Special Provisions) Act.

FOURTH SCHEDULE

(Section 16A) 20/2016
Sch.

FORM I

*Offender or Alleged Offender Consent Form*GOVERNMENT OF JAMAICA—
MINISTRY OF JUSTICE
NATIONAL RESTORATIVE JUSTICE
PROGRAMME

CONSENT TO PARTICIPATE FORM

*Consent of Person *[Arrested and Charged
with] [Convicted
of] a Relevant Offence to be Referred to a
Restorative Justice Programme*

I, _____

of _____

having been *[arrested and charged with] [convicted of]

the offence of _____

do hereby signify my consent to be referred to a restorative justice
programme......
Signature of person *[arrested
charge] [convicted].....
Date.....
Signature of referral source.....
Date

*Delete the option which does not apply.

20/2016
Sch.FOURTH SCHEDULE, *cont'd.*

FORM 2

*Victim Consent Form*GOVERNMENT OF JAMAICA—
MINISTRY OF JUSTICE
NATIONAL RESTORATIVE JUSTICE
PROGRAMME

CONSENT TO PARTICIPATE FORM

*Consent of Victim to Participate in a Restorative
Justice Programme*

I, _____

of _____

having been impacted by an offence of _____

do hereby signify my consent to participate in a restorative justice
programme......
Signature of victim impacted
by relevant offence.....
Date.....
Signature of referral source.....
Date