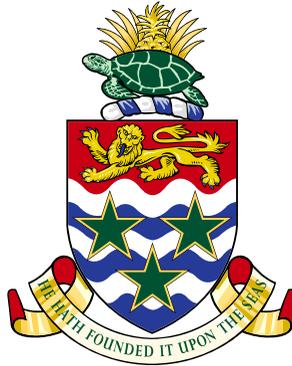


CAYMAN ISLANDS



ALTERNATIVE SENTENCING LAW

(2008 Revision)

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CAYMAN ISLANDS



ALTERNATIVE SENTENCING LAW

(2008 Revision)

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SCHEDULE**37**

CAYMAN ISLANDS**ALTERNATIVE SENTENCING LAW****(2008 Revision)**

ENACTED by the Legislature of the Cayman Islands.

Introductory**Short title and commencement**

1. (1) This Law may be cited as the Alternative Sentencing Law (2008 Revision).
- (2) This Law shall come into force on such date as may be appointed by order made by the Governor in Cabinet, and different dates may be appointed for different provisions of this Law and in relation to different matters.

Definitions

2. In this Law —

“**Category B offence**” means an offence triable upon indictment which, with the consent of the prosecution and the person charged (or all of the persons charged if there be more than one), may be tried summarily;

“**Category C offence**” means an offence triable summarily and not otherwise;

“**common law partner**”, in relation to a person, means a person of the opposite sex who, although not legally married to that person, lives with such person in the same household under the same domestic arrangements as a legal husband or wife and has been so living with that person for a continuous period of five years or more;

“**court**” means a court of competent jurisdiction;



“**fine**” includes a pecuniary penalty or other sum of money, but does not include restitution;

“**law**” includes any order, rule or regulation made under the authority of any law;

“**money**” includes bank notes, bank drafts, cheques and any other orders, warrants or requests for the payment of money;

“**offence**” means a Category B or a Category C offence;

“**person**” means a natural person;

“**possession**” includes not only having in one’s own personal possession, but knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or any other person, and if there are two or more persons and any one of them or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

“**principal probation officer**” means a person appointed to be a principal probation officer under this Law;

“**probation committee**” means a committee appointed to be a probation committee under this Law;

“**probationer**” means a person placed under supervision by a probation order;

“**probation officer**” means a person appointed to be a probation officer under this

Law;

“**probation order**” means an order made under this Law placing a person under the supervision of a probation officer; and

“**property**” includes money and all other property, real or personal, including things in action and other intangible property.

Alternative Punishment Generally

Different kinds of punishments and discretion respecting punishment

3. (1) A court may, subject to this Law, in addition to or as an alternative for a punishment imposed by any other law, impose any of the punishments provided by this Law for any offence.
- (2) Notwithstanding subsection (1), a court, where the sentence for an offence is fixed by any law, shall not impose any of the following orders —
 - (a) a curfew order;



- (b) a probation order; or
- (c) a suspended sentence supervision order.

Purpose of punishment

4. A court shall, in imposing a punishment under this Law, take into account the following principles —
- (a) that the fundamental purpose of punishment is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives —
 - (i) to denounce unlawful conduct;
 - (ii) to deter the convicted person and other persons from committing offences;
 - (iii) to separate convicted persons from society, where necessary;
 - (iv) to assist in rehabilitating convicted persons;
 - (v) to provide reparations for harm done to victims or to the community; and
 - (vi) to promote a sense of responsibility in convicted persons, and acknowledgment of the harm done to victims and to the community;
 - (b) that a punishment must be proportionate to the gravity of the offence and the degree of responsibility of the convicted person;
 - (c) that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the convicted person, and, without limiting the generality of the foregoing, the following shall be considered to be aggravating circumstances —
 - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor;
 - (ii) evidence that the offence was committed against a child, an elderly or an otherwise vulnerable person;
 - (iii) evidence that the offence committed is a prevalent offence in the society;
 - (iv) evidence that the offence forms part of a series of offences committed by the offender;
 - (v) evidence that the offender is a repeat offender;

- (vi) evidence that the convicted person, in committing the offence, abused the convicted person's spouse or common-law partner or child;
 - (vii) evidence that the convicted person, in committing the offence, abused a position of trust or authority in relation to the victim;
 - (viii) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organisation; or
 - (ix) evidence that the offence was a terrorism offence;
- (d) a sentence should be similar or proportionate to sentences imposed on similar convicted persons for similar offences committed in similar circumstances;
- (e) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (f) a convicted person should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances; and
- (g) all available sanctions other than imprisonment that are reasonable in the circumstances of each case should be considered for all convicted persons.
- (ii) evidence that the offence committed is a prevalent offence in the society;
 - (iv) evidence that the offence forms part of a series of offence committed by the offender;
 - (v) evidence that the offender is a repeat offender;
 - (vi) evidence that the convicted person, in committing the offence, abused the convicted person's spouse or common-law partner or child;
 - (vii) evidence that the convicted person, in committing the offence, abused a position of trust or authority in relation to the victim;
 - (viii) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organisation; or
 - (ix) evidence that the offence was a terrorism offence,
- (d) a sentence should be similar or proportionate to sentences imposed on similar convicted persons for similar offences committed in similar circumstances;
- (e) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (f) a convicted person should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances; and



- (g) all available sanctions other than imprisonment that are reasonable in the circumstances of each case should be considered for all convicted persons.

Curfew Orders

Curfew orders

5. (1) Where a person is convicted of an offence, the court by or before which he is convicted may, subject to this Law, in addition to or instead of dealing with him in any other way, make an order requiring him to remain, for periods specified in the order, at a place so specified.
- (2) An order under subsection (1) is, in this Law, referred to as a “curfew order”.
- (3) A curfew order may be for such period as the court considers just and may specify different places or different periods for different days.
- (4) The requirements in a curfew order shall, as far as practicable, be such as to avoid —
- (a) any conflict with the convicted person’s religious beliefs or with the requirements of any other community service order to which he may be subject; and
- (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.
- (5) A curfew order shall include provision for making a person responsible (“the responsible officer”) for monitoring the convicted person’s whereabouts during the curfew periods specified in the order; and a person who is made so responsible shall be a probation officer or such other person designated by the court.
- (6) Before making a curfew order, the court shall obtain and consider information about the place or places proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the convicted person).
- (7) Before making a curfew order, the court shall explain to the convicted person in ordinary language —
- (a) the effect of the order including any additional requirements proposed to be included in the order in accordance with section 6;
- (b) the consequences which may follow under section 7 if he fails to comply with any of the requirements of the order; and
- (c) that the court has power under section 8 or 9 to review the order on the application either of the convicted person or of the responsible officer.

- (8) The court by which a curfew order is made shall give a copy of the order to the convicted person and to the responsible officer.

Electronic monitoring of curfew orders.

6. (1) Subject to subsection (2), a curfew order may, in addition, include requirements for securing the electronic monitoring of the convicted person's whereabouts during the curfew periods specified in the order.
- (2) A court shall not make a curfew order which includes the requirements specified in subsection (1) unless the court —
- (a) has been notified by the Ministry or portfolio responsible for electronic monitoring arrangements that such arrangements are available in the area in which the place or places proposed to be specified in the order is or are situated; and
 - (b) is satisfied that the necessary provision can be made under those arrangements.
- (3) Electronic monitoring arrangements made by the responsible Ministry or portfolio under this section may include entering into contracts with other persons, whether public or private, for the electronic monitoring by those persons of the whereabouts of convicted persons.
- (4) Subject to subsection (5), a person who is subject to electronic monitoring may be required under the electronic monitoring arrangements to pay for the cost of such monitoring where the responsible Ministry or portfolio finds that that person has the ability to pay such costs; and such costs shall be a debt owing to the Crown and may be recovered from the person in a court of civil jurisdiction.
- (5) In determining whether a person has the ability to pay for the cost of electronic monitoring, the Ministry or portfolio shall consider any amounts the person has been ordered to pay in fines, restitution or such other costs and shall give priority to the payment of those items before requiring that the person pay for the electronic monitoring.
- (6) Whoever damages, destroys or tampers with any device used for or to facilitate his or any other person's electronic monitoring is guilty of an offence and liable on summary conviction to a fine of five hundred dollars and to imprisonment for one year.
- (7) Any document or information in relation to a convicted person provided under electronic monitoring arrangements of such convicted person by the person responsible for such monitoring shall *prima facie* be admissible in any courts in the Islands.



Breach of curfew orders

7. (1) If, at any time, while a curfew order is in force in respect of any person, it appears on information to the court that made the order that that person has failed to comply with any of the requirements of section 5 or 6, the court may issue a summons directing that person to appear before it, or may, if the information is in writing and on oath, issue a warrant for his arrest and for him to be brought before it.
- (2) If it is proved to the satisfaction of the court that the convicted person has failed without reasonable excuse to comply with any of the requirements of section 5 or 6, the court may, without prejudice to the continuance of the order —
- (a) impose on the convicted person a fine of two thousand dollars;
 - (b) revoke the order and impose, in substitution therefor, in addition to any other sentence either by way of fine or imprisonment, or both, which may have already been imposed at the time of the conviction —
 - (i) a further fine;
 - (ii) a further term of imprisonment; or
 - (iii) a further fine and term of imprisonment, but not so as to cause such further fine or further term of imprisonment when added to any fine or term of imprisonment imposed at the time of the original conviction to exceed the maximum fine or the maximum term of imprisonment laid down in the law in respect of contravention of which he was originally sentenced; and
 - (c) impose, where no fine or imprisonment was imposed at the time of the original conviction, such fine or imprisonment or both, as could have been imposed at that time.

Amendment by reason of change of residence

8. (1) This section applies where, at any time while a curfew order is in force in respect of a convicted person, a court is satisfied that the convicted person proposes to change, or has changed, his residence.
- (2) Subject to subsection (3), the court may and, on the application of the responsible officer shall, amend the relevant order by substituting another area for the area specified in the order or a place in that other area for the place so specified.
- (3) The court shall not amend under this section a curfew order which contains requirements which, in the opinion of the court, cannot be complied with unless the convicted person continues to reside in the area concerned unless, in accordance with section 9, it either —
- (a) cancels those requirements; or

- (b) substitutes for those requirements other requirements which can be complied with if the convicted person ceases to reside in that area.

Amendment of requirements of a curfew order

- 9.** (1) Without prejudice to section 8 but subject to subsection (2), a court may, on the application of the convicted person or the responsible officer, by order, amend a curfew order by cancelling any of the requirements of the curfew order.
- (2) A court shall not under subsection (1) amend a curfew order by extending the curfew periods beyond the end of six months from the date of the original order.

Curfew orders: supplementary

- 10.** (1) The Chief Justice may make rules for regulating —
- (a) the monitoring of the whereabouts of persons who are subject to curfew orders (including electronic monitoring in cases where arrangements for such monitoring are available); and
 - (b) without prejudice to the generality of paragraph (a), the functions of the responsible officers of persons who are subject to curfew orders.
- (2) The Chief Justice may by order direct —
- (a) that section 5 (3) shall have effect with the substitution, for any period there specified, of such period as may be specified in the order; or
 - (b) that subsection (4) of that section shall have effect with such additional restrictions as may be so specified.

Exclusion Orders

Exclusion orders

- 11.** (1) Where a person is convicted of an offence, the court by or before which he is convicted may, subject to this Law and in addition to or instead of dealing with him in any other way, make an order prohibiting him from entering a place specified in the order for a period so specified of not more than two years.
- (2) An order under subsection (1) is, in this Law, referred to as an “exclusion order”.
- (3) An exclusion order —
- (a) may provide for the prohibition to operate only during the periods specified in the order; and
 - (b) may specify different places for different periods or days.



- (4) The requirements in an exclusion order shall, as far as practicable, be such as to avoid —
 - (a) any conflict with the convicted person's religious beliefs or with the requirements of any other order to which he may be subject; and
 - (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.
- (5) An exclusion order shall include provision for making a person responsible ("the responsible officer") for monitoring the convicted person's whereabouts during the periods when the prohibition operates; and a person who is made so responsible shall be a probation officer.
- (6) An exclusion order shall specify the area in which the convicted person resides or will reside.
- (7) A court shall not make an exclusion order unless the court has been notified by the Ministry responsible for community services that arrangements for monitoring the convicted person's whereabouts are available in the area in which the place proposed to be specified in the order is situated and the notice has not been withdrawn.
- (8) Before making an exclusion order in respect of an offender who on conviction is under the age of seventeen years, the court shall obtain and consider information about his family circumstances and the likely effect of such an order on those circumstances.
- (9) The court, before making an exclusion order, shall explain to the convicted person in ordinary language —
 - (a) the effect of the order;
 - (b) the consequences which may follow under section 12 if he fails to comply with any of the requirements of the order; and
 - (c) that the court has power under section 13 to review the order on the application of the convicted person, the responsible officer or any affected person.
- (10) The court by which an exclusion order is made shall —
 - (a) cause a copy of the order to be given to the convicted person and the responsible officer; and
 - (b) give to any affected person any information relating to the order which the court considers it appropriate for him to have.
- (11) In this section —

"place" includes an area.
- (12) For the purposes of this Law, a person is an affected person in relation to an exclusion order if a prohibition is included in the order for the purpose (or

partly for the purpose) of protecting him from being approached by the offender.

Breach of exclusion order

12. (1) If, at any time, while an exclusion order is in force in respect of any person, it appears on information to the court that made the order that that person has failed to comply with any of the requirements of section 11, the court may issue a summons directing him to appear before it, or may, if the information is in writing and on oath, issue a warrant for his arrest and for him to be brought before it.
- (2) If it is proved to the satisfaction of the court that the convicted person has failed without reasonable excuse to comply with any of the requirements of section 11, the court may, without prejudice to the continuance of the order —
- (a) impose on the convicted person a fine of two thousand dollars;
 - (b) revoke the order and impose in substitution therefor, in addition to any other sentence either by way of fine or imprisonment, or both, which may have already been imposed at the time of the conviction —
 - (i) a further fine;
 - (ii) a further term of imprisonment; or
 - (iii) a further fine and a further term of imprisonment,but not so as to cause the further fine or further term of imprisonment when added to any fine or term of imprisonment imposed at the time of the original conviction to exceed the maximum fine or the maximum term of imprisonment laid down in the law in respect of contravention of which he was originally sentenced; and
 - (c) revoke the order and impose, where no fine or imprisonment was imposed at the time of the original conviction, such fine or imprisonment or both, as could have been imposed at that time.

Amendment of exclusion order

13. Where an exclusion order is in force in respect of a convicted person and, on his application or that of the relevant officer, it appears to the court that made the order that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice to do so, the court may extend the order for a further period of twelve months.

Exclusion orders: supplementary

14. (1) The Chief Justice may make rules for regulating —
- (a) the monitoring of the whereabouts of persons who are subject to exclusion orders; and



- (b) without prejudice to the generality of paragraph (a), the functions of persons who are responsible officers in relation to convicted persons subject to exclusion orders.
- (2) The Chief Justice may, by order, direct that section 11(4) shall have effect with such additional restrictions as may be specified in the order.

Conditional Sentences

Definitions relating to conditional sentence of imprisonment

15. In sections 16 to 19 —

“change”, in relation to optional conditions, includes deletions and additions;

“optional conditions” means the conditions referred to in section 17(2); and

“supervisor” means a public officer appointed for the purposes of sections 16 to 19.

Imposing of conditional sentence

16. Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court —

- (a) imposes a sentence of imprisonment of less than two years; and
- (b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in section 4,

the court may, for the purpose of supervising the convicted person’s behaviour in the community, order that the convicted person serve the sentence or any part thereof in the community, subject to the convicted person’s complying with the conditions of a conditional sentence order made under section 17.

Compulsory conditions of conditional sentence order

17. (1) The court shall prescribe, as conditions of a conditional sentence order, that a convicted person do all of the following —

- (a) keep the peace and be of good behaviour;
- (b) appear before the court when required to do so by the court;
- (c) report to a supervisor —
 - (i) within two working days, or such longer period as the court directs, after the making of the conditional sentence order, and
 - (ii) thereafter, when required by the supervisor and in the manner directed by the supervisor;
- (d) remain within the Islands unless written permission to go outside the Islands is obtained from the court or the supervisor; and

- (e) notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.
- (2) The court may prescribe, as additional conditions of a conditional sentence order, that the convicted person do one or more of the following —
- (a) abstain from —
 - (i) the consumption of alcohol or other intoxicating substances; or
 - (ii) the consumption of drugs except in accordance with a medical prescription;
 - (b) abstain from owning, possessing or carrying a weapon;
 - (c) provide for the support or care of dependants;
 - (d) perform up to 240 hours of community service over a period not exceeding eighteen months;
 - (e) attend an approved treatment programme;
 - (f) comply with such other reasonable conditions as the court considers desirable, subject to any other Law, for securing the good conduct of the convicted person and for preventing a repetition by the convicted person of the same offence or the commission of other offences.
- (3) A court that makes an order under this section shall —
- (a) cause to be given to the convicted person —
 - (i) a copy of the order; and
 - (ii) an explanation of the substance of this section; and
 - (b) take reasonable measures to ensure that the convicted person understands the order and the explanation given to the convicted person under paragraph (a).

Procedure on breach of condition

- 18.** (1) If at any time while a conditional sentence order is in force in respect of any person, it appears on information to the court that made the order that he has failed to comply with any of the requirements of section 17 (including any failure satisfactorily to perform any work which he has been instructed to do) or that he has been convicted of another offence, it may issue a summons directing him to appear before it, or may, if the information is in writing and on oath, issue a warrant for his arrest and for him to be brought before it.
- (2) An allegation of a breach of condition may be heard by any court having jurisdiction to hear that allegation, and any allegation of a breach shall be heard —
- (a) where a warrant was issued within thirty days after the convicted person's arrest or as soon thereafter as is practicable; or



- (b) where a summons was issued, within thirty days after the issue of the summons or as soon thereafter as is practicable.
- (3) An allegation of a breach of condition shall be supported by a written report of the supervisor, which report shall include, where appropriate, signed statements of witnesses.
- (4) The convicted person may, with leave of the court, require the attendance, for cross-examination, of the supervisor or of any witness whose signed statement is included in the report.
- (5) Where the convicted person has been convicted for another offence or the court is satisfied that the convicted person has without reasonable excuse, breached a condition of the conditional sentence order, the court may —
 - (a) take no action;
 - (b) change the optional conditions of the order;
 - (c) suspend the conditional sentence order and direct —
 - (i) that the convicted person serve in prison a portion of the unexpired sentence; and
 - (ii) that the conditional sentence order resume on the convicted person's release from imprisonment, either with or without changes to the optional conditions; or
 - (d) terminate the conditional sentence order and direct that the offender be committed to prison until the expiration of the sentence.

Person imprisoned for new offence

- 19.** (1) Where a convicted person who is subject to a conditional sentence is imprisoned as a result of a sentence imposed for another offence, whenever committed, the running of the conditional sentence is suspended during the period of imprisonment for that other offence.
- (2) Where an order is made under section 18 (5) (c) or (d) to commit a convicted person to custody, the custodial period ordered shall, unless the court considers that it would not be in the interests of justice, be served consecutively to any other period of imprisonment that the convicted person is serving when that order is made.
 - (3) Where a convicted person is serving both a custodial period referred to in subsection (2) and any other period of imprisonment, the periods shall be deemed to constitute one sentence of imprisonment.
 - (4) The running of any period of the conditional sentence that is to be served in the community resumes upon the release of the convicted person from prison on statutory release, on earned remission or at the expiration of the sentence.



Intermittent Sentences

Intermittent sentences

20. (1) Where the court imposes a sentence of imprisonment of ninety days or less on a person convicted of an offence, whether in default of payment of a fine or otherwise, the court may, having regard to —
- (a) the age and character of the convicted person;
 - (b) the nature of the offence and the circumstances surrounding its commission; and
 - (c) the availability of appropriate accommodation to ensure compliance with the sentence, order —
 - (i) that the sentence be served intermittently at such times as are specified in the order; and
 - (ii) that the convicted person comply with the conditions prescribed in a probation order when not in confinement during the period that the sentence is being served and, if the court so orders, on release from prison after completing the intermittent sentence.
- (2) A convicted person who is ordered to serve a sentence of imprisonment intermittently may, on giving notice to the prosecutor, apply to the court that imposed the sentence to allow the sentence to be served on consecutive days.
- (3) Where a court imposes a sentence of imprisonment on a person who is subject to an intermittent sentence in respect of another offence, the unexpired portion of the intermittent sentence shall be served on consecutive days unless the court otherwise orders.

Suspended Sentence Supervision Orders

Suspended sentence supervision orders

21. (1) Where a court passes on a convicted person a suspended sentence for a term of more than six months for a single offence, the court may make a suspended sentence supervision order, (“a suspended sentence supervision order”), placing the convicted person under the supervision of a supervising officer for a period which is specified in the order, being a period which does not exceed the operational period of the suspended sentence.
- (2) A suspended sentence supervision order shall specify the area in which the convicted person resides or will reside; and the supervising officer shall be a probation officer appointed for or assigned to the area for the time being specified in the order.
- (3) A convicted person in respect of whom a suspended sentence supervision order is in force shall keep in touch with the supervising officer in accordance



with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.

- (4) On making a suspended sentence supervision order, the court shall explain its effect to the convicted person in ordinary language.
- (5) The court by which a suspended sentence supervision order is made shall, as soon as reasonably practicable, cause copies of the order to be given to a probation officer assigned to the court, and he shall give a copy of the order to the convicted person and to the supervising officer.
- (6) A suspended sentence supervision order shall cease to have effect if before the end of the period specified in it —
 - (a) a court orders that a suspended sentence passed in the proceedings in which the order was made shall have effect; or
 - (b) the order is discharged or replaced under the subsequent provision of this section.
- (7) A suspended sentence supervision order may be discharged, on the application of the supervising officer or the convicted person, by the court that made the order.
- (8) Where, under section 24 of the *Penal Code (2007 Revision)*, a court deals with a convicted person in respect of a suspended sentence by varying the operational period of the sentence or by making no order with respect to the sentence, the court may make a suspended sentence supervision order in respect of the convicted person —
 - (a) in place of any such order made when the suspended sentence was passed;
 - (b) if the court which passed the sentence could have made such an order but did not do so; or
 - (c) if that court could not then have made such an order but would have had power to do so if subsection (1) had then had effect as it has effect at the time when the convicted person is dealt with under section 24 of the *Penal Code (2007 Revision)*.

Breach of requirement of suspended sentence supervision order

- 22.** (1) If, at any time while a suspended sentence supervision order is in force in respect of a convicted person, it appears on information to a court that the offender has failed to comply with any of the requirements of section 21 (3) the court may —
- (a) issue a summons requiring the offender to appear at the place and time specified in it; or
 - (b) if the information is in writing and on oath, issue a warrant for his arrest.

- (2) If it is proved to the satisfaction of the court before which an offender appears or is brought under this section that he has failed without reasonable cause to comply with any of the requirements of section 21 (3), the court may, without prejudice to the continuance of the order, impose on him a fine of one thousand dollars.
- (3) An allegation of a breach of a requirement of section 21 (3) shall be supported by a written report of the supervisor, which report shall include, where appropriate, signed statements of witnesses.
- (4) A fine imposed under subsection (2) shall be deemed, for the purposes of any law, to be a sum adjudged to be paid by a conviction.

Restitution and Restitution Centres

Restitution to victims of offences

23. Where a person is convicted of an offence or discharged under section 41 of the *Penal Code (2007 Revision)*, the court imposing sentence on or discharging the convicted person may, on application of the Attorney-General, of a person who is the victim of the offence or on its own motion, in addition to any other measure imposed on the convicted person, order that the convicted person make restitution to another person as follows —

- (a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the convicted person, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable;
- (b) in the case of bodily harm to any person as a result of the commission of the offence or the arrest or attempted arrest of the convicted person, by paying to the person an amount not exceeding all pecuniary damages, including loss of income or support, incurred as a result of the bodily harm, where the amount is readily ascertainable; and
- (c) in the case of bodily harm or threat of bodily harm resulting from the commission of the offence or the arrest or attempted arrest of the convicted person and caused to —
 - (i) the convicted person's spouse;
 - (ii) the common-law partner or child of the convicted person; or
 - (iii) any other person,

where the spouse or common-law partner, child or other person was a member of the convicted person's household at the relevant time, by paying to the



person in question, independently of any amount ordered to be paid under paragraphs (a) or (b), an amount not exceeding actual and reasonable expenses incurred by that person, as a result of moving out of the convicted person's household, for temporary housing, food, child care and transportation, where the amount is readily ascertainable.

Restitution to persons acting in good faith

24. Where a person is convicted of an offence or discharged under section 41 of the *Penal Code (2007 Revision)* and —

- (a) any property obtained as a result of the commission of the offence has been conveyed or transferred for valuable consideration to a person acting in good faith and without notice, or
- (b) the convicted person has borrowed money on the security of that property from a person acting in good faith and without notice,

the court may, where that property has been returned to the lawful owner or the person who had lawful possession of that property at the time the offence was committed, order the convicted person to pay as restitution to the person referred to in paragraph (a) or (b) an amount not exceeding the amount of consideration for that property or the total amount outstanding in respect of the loan, as the case may be

Priority to restitution

25. Where the court finds it applicable and appropriate in the circumstances of a case to make, in relation to a convicted person, an order of restitution under section 23 or 24, and —

- (a) an order of forfeiture under this or any other law may be made in respect of property that is the same property in respect of which the order of restitution may be made, or
- (b) the court is considering ordering the convicted person to pay a fine and it appears to the court that the convicted person would not have the means or ability to comply with both the order of restitution and the order to pay the fine,

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

Enforcing restitution order

26. (1) Where an amount that is ordered to be paid under section 23 or 24 is not paid forthwith, the Clerk of the Court shall enter as a judgment the amount ordered to be paid in any court that has jurisdiction to enter a

judgment for that amount, and that judgment is enforceable by the person to whom the amount is ordered to be paid against the convicted person in the same manner as if it were a judgment rendered against the convicted person in that court in civil proceedings.

Moneys found on convicted person

27. All or any part of an amount that is ordered to be paid under section 23 or 24 may be taken out of moneys found in the possession of the convicted person at the time of the arrest of the convicted person if the court making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the convicted person, so directs.

Notice of restitution order

28. Where a court makes an order of restitution under section 23 or 24, it shall cause notice of the content of the order, or a copy of the order, to be given to the person to whom the restitution is ordered to be paid.

Civil remedy not affected

29. A civil remedy for an act or omission is not affected by reason only that an order for restitution under section 23 or 24 has been made in respect of that act or omission.

Restitution centres

- 30.** (1) The Governor in Cabinet may establish facilities to be known as restitution centres.
- (2) The purpose of a restitution centre is to provide a means for a person sentenced to prison to be able to pay his victim's financial restitution as ordered by the sentencing court, or as agreed upon by the convicted person and his victims.

Regulation of restitution centres

- 31.** (1) Subject to this Law, the Governor in Cabinet shall by regulations provide —
- (a) for the supervision, management, and control of the restitution centres;
 - (b) for the transfer of convicted persons to the restitution centres;
 - (c) for the care, custody, discipline, and employment of persons confined therein; and
 - (d) generally for the operation of such centres.
- (2) The supervision of inmates in the restitution centres may be by contract with private nonprofit or profit corporations, or by prison officers on a twenty-four hour basis.



Eligibility for placement in a restitution centre

- 32.** A convicted person is eligible for placement in a restitution centre if —
- (a) he has not served a prison term within the five years prior to the present conviction;
 - (b) he does not have a criminal history of a conviction for the misuse of drugs or for a crime involving violence or sex;
 - (c) he did not receive a sentence of more than thirty-six months;
 - (d) he presents no unacceptable risk to the community; and
 - (e) he is employable.

Payment of convicted person

- 33.** (1) Convicted persons shall perform all the labour reasonably required to maintain the restitution centre and meet the convicted person's needs unless the operator of the centre finds that a particular task can be better performed by other persons.
- (2) The operator of the centre may employ and pay compensation to convicted persons to perform work at a centre.
- (3) Wages earned by a convicted person shall be paid directly to the Courts Administrator.
- (4) Wages received by the Courts Administrator shall be used to reimburse the convicted person for costs directly associated with continued employment, including transportation, special tools or clothing, meals away from the centre and other employee related costs, and the remaining wages shall, notwithstanding any other law, be distributed as follows —
- (a) one-third shall be transferred to the operator of the centre to pay the costs of operating and maintaining the restitution centre;
 - (b) one-third shall be used to pay restitution pursuant to the agreement or court order; and
 - (c) after the restitution is paid, the Courts Administrator shall use the remainder of the moneys, to defray the court costs and attorney fees incurred in the convicted person's prosecution, and if all restitution, court costs and attorney fees are paid, the remainder not expended pursuant to this section at the time the convicted person is released from the restitution centre shall be paid to the convicted person.

Fine Option Programme

Fine option programme

34. (1) A convicted person who is fined under any law may, whether or not he is serving a term of imprisonment imposed in default of payment of the fine, discharge the fine in whole or in part by earning credits for work performed during a period not greater than two years in a programme (“the fine option programme”) established for that purpose by the Governor in Cabinet if the convicted person is admissible to such a programme.
- (2) A programme referred to in subsection (1) shall determine the rate at which credits are earned and may provide for the manner of crediting any amounts earned against the fine and any other matters necessary for or incidental to carrying out the programme.
- (3) Credits earned for work performed as provided by subsection (1) shall, for the purposes of this Law, be deemed to be payment in respect of a fine.

Probation

Power of court to permit conditional release of offenders

35. (1) Where any person is charged with an offence which is punishable on summary conviction, and the court thinks that the charge is proved but is of opinion that having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may —
- (a) convict the offender and make a probation order; or
- (b) without proceeding to conviction, make a probation order.
- (2) Notwithstanding subsection (1), before making a probation order, the court shall explain to the offender in ordinary language the effect of the order and that, if he fails in any way to comply therewith or commits another offence, he will be liable to be sentenced or to be convicted and sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the order.
- (3) Where any person is convicted of an offence which is not punishable on summary conviction, and the court is of opinion that, having regard to the circumstances, including the nature of the offence and the character and home surroundings of the offender, it is expedient to release the offender on probation, the court may, in lieu of imposing a sentence of imprisonment, make a probation order.
- (4) Notwithstanding subsection (3), before making a probation order, the court shall explain to the offender in ordinary language the effect of the order and



that, if he fails in any respect to comply therewith or commits another offence, he will be liable to be sentenced for the original offence, and the court shall not make a probation order unless the offender expresses his willingness to comply with the order.

Probation order

- 36.** (1) A probation order shall have effect for such period being not less than one year and not more than three years from the date of the order as may be specified therein, and shall —
- (a) require the probationer to submit during that period to the supervision of a probation officer appointed for or assigned to the district in which the probationer will reside after the making of the order; and
 - (b) contain such provisions as the court considers necessary for securing the supervision of the offender, and such additional conditions as to residence and other matters as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition of the same offence or the commission of other offences.
- (2) Where a probation order contains a provision as to residence, the place at which and the period for which the probationer is to reside shall be specified in the order, and where any such provision requires the probationer to reside in an institution, the period for which the probationer is required so to reside shall not extend beyond twelve months from the date of the order, and the court shall forthwith give notice of the terms of the order to the Governor.
- (3) A probation order may require the offender to participate or refrain from participating in activities specified in the order —
- (a) on a day or days so specified; or
 - (b) during the probation period or such portion of it as may be so specified, provided that the court is satisfied that it is feasible to secure compliance with such a requirement.
- (4) A court shall not include a requirement to participate in activities if it would involve the co-operation of a person other than the offender and the offender's probation officer, unless that other person consents to its inclusion.
- (5) A requirement to participate in activities shall operate to require the offender —
- (a) in accordance with instructions given by his probation officer, to participate in activities for not more than sixty days in the aggregate; and
 - (b) while participating, to comply with instructions given by, or under the authority of, the person in charge of the activities.

- (6) Instructions given by the offender's probation officer under subsection (5) shall, as far as practicable, be such as to avoid —
 - (a) any conflict with the offender's religious beliefs or with the requirements of any other order to which he may be subject; and
 - (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.
- (7) The court by which a probation order is made shall furnish two copies of the order, one copy to be given to the probationer and the other to the probation officer under whose supervision he is placed.

Further provisions where court makes probation order

37. (1) Where a person is placed by a probation order under the supervision of a probation officer, the court may, without prejudice to its powers of awarding costs against the offender, order the offender to pay such damages for injury or compensation for loss as the court thinks reasonable, but not, in the case of an order made by a court of summary jurisdiction, exceeding in the aggregate fifty dollars or such greater sum as may be allowed by any enactment relating to the offence.
- (2) Where a court makes any such order for the payment of damages or compensation as aforesaid, the order may be enforced in like manner as an order for the payment of costs by the offender, and where the court, in addition to making such an order for the payment of damages or compensation to any person, orders the offender to pay to that person any costs, the orders for the payment of damages or compensation and for the payment of costs may be enforced as if they constituted a single order for the payment of costs.

Commission of further offences by probationers

38. (1) If it appears to a judge or any magistrate that a probationer has been convicted of an offence committed while the probation order was in force, he may issue a summons requiring the probationer to appear at the place and time specified therein or may issue a warrant for his arrest.
- (2) A magistrate shall not issue such a summons or warrant under subsection (1) except on information in writing and on oath.
- (3) A summons or warrant issued under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made.
- (4) Where a probationer is convicted by a magistrate of an offence committed while the probation order was in force, the magistrate may commit the probationer to custody or release him on bail, with or without sureties, until he can be brought or appear before the court by which the probation order was made.



- (5) Where it is proved to the satisfaction of the court by which the probation order was made that the probationer has been convicted of an offence while the probation order was in force, then, if the probationer —
 - (a) was not convicted of the original offence in respect of which the probation order was made, the court may convict him of that offence and pass any sentence which it could pass if the probationer had just been convicted before that court of that offence; or
 - (b) was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence.
- (6) Where a probationer, in respect of whom a probation order has been made by a magistrate, is convicted before the Grand Court of an offence committed while the probation order was in force, then, if the probationer —
 - (a) was not convicted of the original offence in respect of which the probation order was made, the Grand Court may convict him of that offence and may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence; or
 - (b) was convicted of the original offence in respect of which the probation order was made, the Grand Court may pass any sentence which the court which made the probation order could pass if the probationer had just been convicted before that court of that offence.

Failure by probationer to comply with probation order

- 39.** (1) If it appears to a judge or magistrate that a probationer has failed to comply with any of the provisions of the probation order, he may issue a summons to the probationer requiring him to appear at the place and time specified therein or may issue a warrant for his arrest.
- (2) A magistrate shall not issue such a summons except on information, and shall not issue such a warrant except on information in writing and on oath.
 - (3) A summons or warrant under this section shall direct the probationer to appear or to be brought before the court by which the probation order was made.
 - (4) If it is proved to the satisfaction of the court by which the probation order was made that the probationer has failed to comply with any of the provisions of the probation order, then —
 - (a) without prejudice to the continuance in force of the probation order, the court may impose on the probationer a fine of five hundred dollars;
 - (b) if the probationer was not convicted of the original offence in respect of which the probation order was made, the court may convict him and pass

- any sentence which it could pass if the probationer had just been convicted before that court of that offence; or
- (c) if the probationer was convicted of the original offence in respect of which the probation order was made, the court may pass any sentence which it could pass if the probationer had just been convicted before that court of that offence:
- (5) Where a court has, under subsection (4) (a), imposed a fine on the probationer, then, on any subsequent sentence being passed upon the probationer under section 38 or this section, the imposition of the said fine shall be taken into account in fixing the amount of the sentence.

Probation order; disqualification or disability

40. (1) Where a person is convicted of an offence and is released under a probation order, his conviction for that offence shall be disregarded for the purposes of any enactment by or under which any disqualification or disability is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of a second or subsequent offence or in respect of an offence committed after previous conviction.
- (2) Notwithstanding subsection (1), if the probationer is subsequently sentenced for the original offence, this section shall cease to apply in respect of that offence, and he shall be deemed, for the purposes of any such enactment imposing a disqualification or disability, to have been convicted on the date of sentence.
- (3) Where a person is released on probation without the court having proceeded to conviction, and he is subsequently convicted and sentenced for the original offence, then he shall be deemed, for the purposes of any enactment by or under which any disqualification is imposed upon convicted persons or by or under which provision is made for a different penalty in respect of a second or subsequent offence or in respect of an offence committed after a previous conviction, to have been convicted on the date of such conviction and sentence.

Transmission of documents when case is remitted to another court

41. Where a probationer is committed to custody or released on bail by a magistrate until he can be brought or appear before the court which made the probation order, the magistrate shall transmit to the said court such particulars of the case as he thinks desirable, and where the probationer has been convicted of a subsequent offence by a magistrate, the magistrate shall transmit to the said court a certificate to that effect, signed by him, and for the purposes of proceedings in the court to which it is transmitted, any such certificate, if purporting to be so signed, shall be admissible as evidence of the conviction.



Amendment of probation order

- 42.** (1) Subject to subsections (2) to (5), where, on the application of a probationer or of the probation officer responsible for his supervision, the court which made the probation order is satisfied that the provisions of the probation order should be varied, or that any provisions should be inserted or cancelled, the court may, by order, amend the probation order accordingly.
- (2) No order shall be made under this section reducing the period of duration of the probation order, or extending that period beyond a period of three years from the date of the probation order.
- (3) An order under subsection (1) may require a probationer to reside in an institution for any period not extending beyond twelve months from the date of that order, if the total period or the aggregate of the periods for which he is required to reside in any institution or institutions under the probation order does not exceed twelve months.
- (4) The court shall, if it is satisfied, on the application of the probation officer responsible for the supervision of the probationer, that the probationer has changed, or is about to change, his residence from the district named in the order to another district, by order, vary the probation order by substituting for the reference to the district named therein a reference to the district where the probationer is residing or is about to reside, and shall transmit to the court for the new district all documents and information relating to the case, and thereupon the last mentioned court shall be deemed, for all the purposes of this Law, to be the court by which the probation order was made.
- (5) An order under this section cancelling a provision of a probation order or substituting a new district for the district named therein may be made without summoning the probationer, but no other order under this section shall be made except on the application or in the presence of the probationer.
- (6) Where an order is made under this section for the variation, insertion or cancellation of a provision requiring a probationer to reside in an institution, the court shall forthwith give notice of the terms of the order to the Governor.

Discharge of probationer

- 43.** (1) The court by which a probation order was made may, on the application of the probationer or of the probation officer responsible for his supervision, discharge the probation order, and, where the application is made by the probation officer, the court may deal with it without summoning the probationer.
- (2) Where an offender, in respect of whom a probation order has been made, is subsequently sentenced for the offence, in respect of which the probation order was made, the probation order shall cease to have effect.



Transmission of copies of orders for amendment or discharge of probation order

44. Where an order is made for the amendment or discharge of a probation order, the clerk of the court by which the order is made, shall furnish two copies of the order to the probation officer responsible for the supervision of the probationer, or in the case of an order for the discharge of a probation order, to the probation officer who was so responsible before the making of the order, one copy to be given by him to the probationer.

Power to release offenders conditionally upon entering into recognizances

45. (1) Subject to subsections (3) and (4), in any case where a court might make a probation order under paragraph (a) of section 35(1) or under section 35(2), if the court is of the opinion that it is expedient to release the offender on probation and that by reason of the special circumstances of the case no useful purpose would be served by placing the offender under the supervision of a probation officer, the court may convict the offender and make an order discharging the offender conditionally upon his entering into a recognizance, with or without surety, to be of good behaviour and to appear for sentence when called upon at any time during such period not exceeding three years as may be specified in the recognizance.
- (2) Subject to subsections (3) and (4), in any case where a court might make a probation order under paragraph (b) of section 35(1), if the court is satisfied that it is expedient to release the offender on probation and that by reason of the special circumstances of the case no useful purpose would be served by placing the offender under the supervision of a probation officer, the court may, without proceeding to conviction, make an order discharging the offender conditionally upon his entering into a recognizance, with or without a surety, to be of good behaviour and to appear for conviction and sentence when called upon, at any time during such period not exceeding three years, as may be specified in the recognizance.
- (3) Before making an order under this section, the court shall explain to the offender in ordinary language the effect of the recognizance into which he is to be required to enter and that if he fails in any respect to comply therewith or commits another offence, he will be liable in the case of an offender who is required to enter into a recognizance under subsection (2) to be convicted and sentenced for the original offence and in the case of an offender who is required to enter into a recognizance under subsection (1) to be sentenced for the original offence, and in either case his recognizance will be liable to be escheated.
- (4) No order shall be made under this section unless the offender expresses his willingness to comply with the conditions of the recognizance into which he is required by such order to enter.



Recognizances

- 46.** (1) Every recognizance entered into pursuant to an order under section 45 shall contain such conditions (being conditions which might be contained in a probation order under this Law) as may be specified in such order.
- (2) Where a recognizance contains a condition as to residence, the place at which and the period for which the person who enters into the recognizance is to reside shall be specified in the recognizance, and where any such condition requires such person to reside in an institution, the period for which such person is required so to reside shall not extend beyond twelve months from the date of the recognizance.
- (3) The court by which any order under section 45 is made shall furnish a copy of the recognizance entered into pursuant to such order to the person who enters into such recognizance.

Application of certain provisions to persons entering into recognizances under section 45

- 47.** Sections 37 to 44 shall apply to any person required, under section 45, to enter into a recognizance as they apply to a probationer, subject to the modifications specified in the Schedule.

Selection of probation officers

- 48.** (1) The probation officer who is to be responsible for the supervision of any probationer shall be selected by the court which makes the probation order, and, if the probation officer so selected dies or is unable for any reason to carry out his duties, or if the probation committee dealing with the case considers it desirable that another officer shall take his place, another probation officer shall be selected by the court.
- (2) Where a woman or girl is placed under the supervision of a probation officer, the probation officer shall, as far as possible, be a woman.
- (3) The Governor may, by order, suspend the application of this section to any district specified in such order for such period as may be so specified.

Contributions towards homes and hostels

- 49.** Such contributions may be made towards the establishment or maintenance of homes or hostels for the reception of persons placed under the supervision of probation officers as may be provided by resolution of the Legislative Assembly.

Appointments

- 50.** The Governor shall appoint —

- (a) a principal probation officer who shall organise and supervise the probation service in the Islands in accordance with rules made under this Law;
- (b) a sufficient number of probation officers, qualified by character and experience to be probation officers, who shall perform such duties as specified under this Law and as may be prescribed by rules made under this Law; and
- (c) a probation committee or probation committees, consisting of such persons as the Governor shall think fit, who shall review the work of probation officers in individual cases and perform such duties in connection with probation as may be prescribed by rules made under this Law.

Rules

51. The Governor may by order make rules prescribing —

- (a) the duties of a principal probation officer;
- (b) the duties of probation officers;
- (c) the constitution and duties of a probation committee or probation committees;
- (d) the form of records to be kept under this Law; and
- (e) the remuneration of any person appointed to carry out any duties under this Law and the fees and charges to be made for any act, matter or thing under this Law to be done or observed.

Orders for Persistent Petty Offenders

Curfew orders and community service orders for persistent petty offenders

52. (1) This section applies where —

- (a) a person aged of or over the age of seventeen years is convicted of an offence;
- (b) the court by or before which he is convicted is satisfied that each of the conditions mentioned in subsection (2) is fulfilled; and
- (c) if it were not so satisfied, the court would be minded to impose a fine in respect of the offence.

(2) The conditions are that —

- (a) one or more fines imposed on the offender in respect of one or more previous offences have not been paid; and



- (b) if a fine were imposed in an amount which was commensurate with the seriousness of the offence, the offender would not have sufficient means to pay it.
- (3) The court may —
 - (a) subject to subsection (4), make a curfew order under section 5(1); or
 - (b) subject to subsection (4), make a community service order under section 42(1) of the *Penal Code (2007 Revision)*, in respect of the offender instead of imposing a fine.
- (4) A court shall not make an order by virtue of subsection (3)(a) or (b) unless the court has been notified by the Governor in Cabinet that arrangements for implementing orders so made are available in the relevant area and the notice has not been withdrawn.
- (5) In subsection (4) —
 - “relevant area” means —
 - (a) in relation to a curfew order, the area in which the place proposed to be specified in the order is situated; and
 - (b) in relation to a community service order, the area proposed to be specified in the order.

General

Victim impact statement

- 53.** (1) For the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged pursuant to section 41 of the *Penal Code (2007 Revision)* in respect of any offence, the court may, in addition to any other matter, consider any statement made by the victim or by the prosecution on behalf of the victim describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.
- (2) A victim impact statement shall be in written form prepared by the victim and shall be filed with the court.
- (3) At the request of a victim, the court may instruct the Clerk of the Court to read the statement into the record in open court.
- (4) Where the victim impact statement discloses confidential or sensitive information or material that may cause embarrassment or distress to the victim or his family, the court may direct that the statement be dealt with in camera.
- (5) The prosecutor shall notify the victim as soon as a date has been set for sentencing as to the date fixed for sentencing and the right of the victim to make a victim impact statement.

- (6) The Clerk of the Court shall provide a copy of the victim impact statement, as soon as possible after a finding of guilt, to the offender or counsel for the offender and the prosecutor.
- (7) As soon as practicable after a finding of guilt and in any event before sentence, the court shall inquire of the prosecutor or a victim of the offence whether the victim has been advised of the opportunity to make a victim impact statement.
- (8) In this section —
“victim”, in relation to an offence —
 - (a) means the person to whom harm is done or who suffers physical, financial or emotional loss as a result of the commission of the offence; and
 - (b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a statement referred to in subsection (1), includes the spouse or any relative of that person, anyone who has, in law or fact, the custody of that person or is responsible for the care or support of that person or any dependant of that person.

Community service orders and electronic monitoring

- 54.** Where a court, in dealing with a convicted person, imposes a community service order pursuant to section 42 of the *Penal Code (2007 Revision)* it may include requirements for securing the electronic monitoring of the convicted person’s whereabouts while he is subject to such order; and the provisions of section 6 (2) and (3) shall apply for the purposes of this section.

Regulations

- 55.** The Governor in Cabinet may make regulations in relation to any matter appearing to the Governor in Cabinet to be necessary or expedient for the purpose of giving due effect to this Law.

Assisting convicted person in contravening Law

- 56.** Subject to section 6, whoever conspires with or assists a convicted person in preventing or defeating the execution of this Law or any order made by a court under this Law is guilty of an offence and liable on summary conviction to a fine of one thousand dollars and to imprisonment for one year.

Repeal and consequential amendments

1999 Revision

- 57.** (1) Section 264 of the *Penal Code (2007 Revision)* is repealed.
(2) The *Probation of Offenders Law (1999 Revision)* is repealed.



Transitional

- 58.** (1) The repeal of section 264 of the *Penal Code (2007 Revision)* and the *Probation of Offenders Law (1999 Revision)* shall not affect any trial, appeal or proceedings commenced before the repeal and accordingly any such trial, appeal or proceedings may be continued, or enforced and any order may be imposed in accordance with such trial, appeal or proceedings as if this Law had not been passed.
- (2) Any person who, immediately before the coming into force of this Law, was a probation officer appointed under the *Probation of Offenders Law (1999 Revision)* or was a member of a probation committee appointed under the *Probation of Offenders Law (1999 Revision)*, continues to be a probation officer or such member under and for the purposes of this Law as if that person had been appointed under this Law on the same terms and conditions.
- (3) In so far as anything done under the *Probation of Offenders Law (1999 Revision)* could have been done under a corresponding provision of this Law it shall not be invalidated by the repeal but shall have effect as if done under that provision.

SCHEDULE

(Section 47)

Sections to be modified	Nature of modification
Sections 37 to 41, and 43	<p>(1) The substitution for references to a probationer of references to a person required under section 45 to enter into a recognizance.</p> <p>(2) The substitution for references to the court by which a probation order was made of references to the court by which an order was made under section 45 requiring an offender to enter into a recognizance.</p> <p>(3) The substitution for references to a probation order of references to a recognizance required to be entered into under section 45.</p> <p>(4) The deletion of all references to a probation officer.</p>
Section 42	<p>(1) The substitution for all references to a probationer of references to a person required under section 45 to enter into a recognizance.</p> <p>(2) The substitution for all references to a probation order of references to a recognizance.</p> <p>(3) The substitution for all references to the terms of a probation order of references to the conditions of a recognizance.</p> <p>(4) The deletion from subsection (1) of the reference to a probation officer.</p> <p>(5) The insertion of the following proviso to subsection (1) - “Provided that no order shall be made under this section varying a recognizance entered into with a surety unless the surety consents to the variation of such recognizance so, however, that where the court is satisfied that it is expedient to vary any recognizance entered into with a surety and the does not consent to such variation, the court may discharge the surety from all liability under the recognizance and thereupon may vary the recognizance by order under this section.”.</p> <p>(6) The deletion from subsection (3) of the words “probation officer responsible for the supervision of the probationer, that the probationer” and the substitution therefor of the words “person required to enter into a recognizance under section 45 or his surety that the person first referred to in this subsection”.</p>



Sections to be modified	Nature of modification
Section 44	(1) The substitution for the reference to a probation order of a reference to a recognizance. (2) The deletion of all the words coming after the word "furnish" in the section and the substitution therefore of the following words- "one copy of the order to the person required to enter into the recognizance and one copy to each of his sureties (if any).".

**Publication in consolidated and revised form authorised by the Governor in Cabinet
this 13th day of May, 2008.**

Carmena Watler
Clerk of Cabinet

