

**THE DRUG COURT (TREATMENT AND
REHABILITATION OF OFFENDERS)
ACT, 1999**

(Act 40 of 1999)

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SCHEDULE.

THE KING'S COLLEGE TREATMENT AND
REHABILITATION OF OFFENDERS

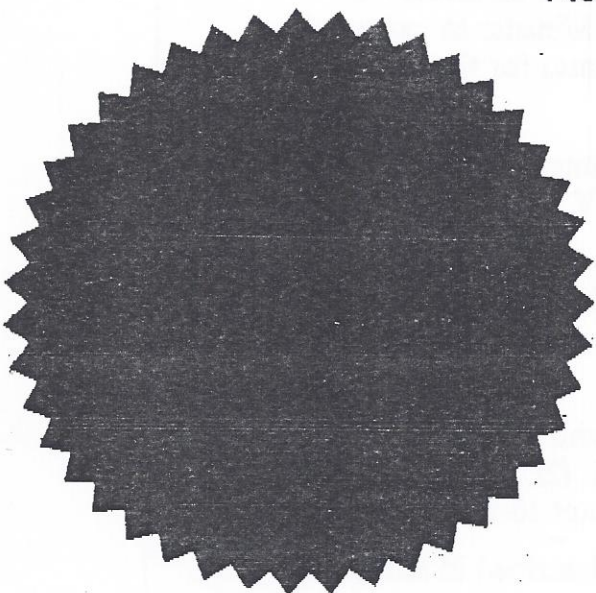
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No. 40 - 1999

I assent,



H. F. Kooler

Governor-General

23rd day of December 1999

AN ACT to Provide for the establishment of a Drug Court in order to facilitate the treatment and rehabilitation of persons who commit certain drug offences or other offences while under the influence of drugs, to provide for the supervision of such persons while undergoing treatment pursuant to a programme prescribed by the Drug Court and for connected matters.

[The date notified by the Minister]

Bringing the Act into operation

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Drug Court (Treatment and Rehabilitation of Offenders) Act, 1999, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title and commencement.

Interpreta-
tion.

2. In this Act, unless the context otherwise requires—

“approved treatment provider” means an individual or organization approved by the Minister to carry out prescribed treatment programmes for the purposes of this Act;

“drug” includes alcohol and any dangerous drug falling within Parts III, IIIA and IV of the Dangerous Drugs Act;

“Drug Court” means the sitting of the Resident Magistrate’s Court declared to be a Drug Court pursuant to section 4;

“drug offender” means a person who is referred to the Drug Court under section 6 (2) (b) or brought before the Drug Court pursuant to section 7;

“eligible person” means a person described in section 5;

“regular sitting” means a sitting of the Resident Magistrate’s Court other than the Drug Court;

“prescribed treatment programme” means a programme for treatment and supervision prescribed by the Drug Court pursuant to section 9;

“relevant offence” means any offence triable by a Resident Magistrate.

Objects of
Act.

3. The objects of this Act are to—

- (a) reduce the incidence of drug use and dependence by persons whose criminal activities are found to be linked to such dependence;
- (b) reduce the level of criminal activity that results from drug abuse;
- (c) provide such assistance to those persons as will enable them to function as law abiding citizens.

4.—(1) The Resident Magistrate presiding in each parish shall declare a sitting of the Resident Magistrate's Court to be a Drug Court for the purposes of this Act.

Declaration
and juris-
diction of
Drug Court.

(2) The Drug Court shall be constituted in accordance with the provisions of the Schedule and when so constituted and sitting shall have the jurisdiction and powers conferred upon it by this Act.

Schedule.

5. A person is an eligible person for the purposes of this Act if—

Eligible
persons.

- (a) the person is charged with a relevant offence;
- (b) the person appears to be dependent on the use of drugs; and
- (c) the person satisfies such other criteria as may be prescribed.

6.—(1) Subject to section 7, where a person is arrested and charged with a relevant offence and the arresting officer has reasonable cause to believe that the person is dependent on any drug, the arresting officer shall include in the police report, a note of the facts giving rise to that belief.

Procedure
after arrest
for relevant
offence.

(2) As soon as practicable after the person is charged with the offence, the Clerk of Courts in the parish in which the person is arrested—

- (a) shall review the police report and the person's criminal record; and
- (b) may, if satisfied that the person is eligible, recommend to the Court that the person be referred to the Drug Court to be dealt with in accordance with section 8.

7.—(1) A person who is arrested and charged with a relevant offence specified in subsection (3) shall be brought before the Drug Court to be dealt with in accordance with section 9.

Persons
who may
be brought
directly
before
Drug Court.

(2) The Drug Court may, on the recommendation of the prosecution in relation to a person brought before it pursuant to subsection (1)—

- (a) defer prosecution of the offence; or
- (b) defer the imposition of a sentence for the offence after a guilty plea.

(3) The offences referred to in subsection (1) are offences under the Dangerous Drugs Act as follows—

- (a) possession of not more than—
 - (i) one ounce of prepared opium;
 - (ii) eight ounces of ganja;
 - (iii) one-tenth of an ounce of cocaine, heroin or morphine, as the case may be;
- (b) possession of any pipes or other utensils for use in connection with the smoking of opium or ganja, as the case may be, or any utensils used in connection with the preparation of opium for smoking;
- (c) smoking or otherwise using ganja or prepared opium, as the case may be;
- (d) frequenting any place used for the purpose of smoking opium.

Assessment of offender and determination of relevant offence.

8.—(1) A person referred to the Drug Court under section 6 or brought before it pursuant to section 7 shall be assessed by an approved treatment provider who shall make a recommendation to the Drug Court as to the person's suitability for participation in a prescribed treatment programme and shall furnish to the Court, a plan of that programme.

(2) Where—

- (a) based upon an assessment by an approved treatment provider, a person is not considered suitable for participation in a prescribed treatment programme; or

(b) a person is not willing to be dealt with by the Drug Court,
the relevant offence in relation to that person shall, subject to subsection (3), be heard and determined in a regular sitting.

(3) A relevant offence specified in section 7 (3) shall be heard and determined by the Drug Court.

9.—(1) The Drug Court may act in accordance with subsection (2) in relation to a person referred to it under section 6 or brought before it pursuant to section 7 if the Court is satisfied that—

Jurisdiction
of Drug
Court.

- (a) the person is an eligible person;
- (b) having regard to the person's antecedents, it would be appropriate for the person to participate in a prescribed treatment programme;
- (c) the person accepts the conditions to be imposed by the Drug Court (whether immediately or at some later date) in relation to his participation in a prescribed treatment programme;
- (d) the person has been informed of the Drug Court's powers under this Act and of the respective consequences of the person's compliance or non-compliance with a prescribed treatment programme.

(2) The Drug Court shall make an order—

- (a) requiring the drug offender to undergo a prescribed treatment programme and to comply with the conditions imposed by the Court pursuant to paragraph (b);
- (b) imposing such conditions as the Court deems fit (hereinafter referred to as specified conditions) in relation to the drug offender's participation in the prescribed treatment programme.

(3) Where the Drug Court makes an order under subsection (2), it shall inform the drug offender of the consequences of any failure to comply with the specified conditions.

(4) The Drug Court may make an order under subsection (2) in relation to an offender who is convicted of a relevant offence before a regular sitting, and in such a case the regular sitting shall defer execution of the sentence during the period for which that order is in force.

(5) Where the court makes an order under subsection (2), the drug offender to whom it relates shall be required to signify his consent in writing to participate in the prescribed treatment programme, and to comply with the specified conditions, including, where applicable, a condition that the offender undergo drug tests at such times as are specified in the order.

Variation of conditions.

10. The Drug Court may, from time to time, on the recommendation of the approved treatment provider, vary or revoke the conditions imposed pursuant to section 9 (2).

Reports.

11.—(1) An approved treatment provider shall submit to the Drug Court, at such intervals as may be prescribed, a progress report in respect of each drug offender who participates in a prescribed treatment programme.

(2) A report under subsection (1) shall include, in any case where the drug offender fails to comply with any directions given by the approved treatment provider or any specified condition, the nature of the non-compliance and the effect or likely effect on the offender's successful completion of the prescribed treatment programme.

Termination of programme.

12.—(1) The Drug Court shall terminate a prescribed treatment programme in relation to a drug offender if—

- (a) the offender successfully completes the programme;
- (b) the offender requests the Drug Court to terminate the programme; or

- (c) based on the report of the approved treatment provider, the Drug Court is satisfied that there is no useful purpose to be served by the drug offender's continued participation in the prescribed treatment programme.

(2) Where a prescribed treatment programme is terminated, the records of any tests performed on the person concerned shall not be admissible in evidence in any proceedings against that person

13.—(1) As soon as may be reasonably practicable after the termination of a prescribed treatment programme, the drug offender shall be brought before the Drug Court to be dealt with in accordance with subsection (2) or (3), as the case may require.

Procedure
on termina-
tion.

(2) If the offender has successfully completed the prescribed treatment programme, the Drug Court shall discharge the offender in relation to the relevant offence and that discharge may be either absolute or conditional as the Court thinks fit.

(3) If the offender has failed to complete the prescribed treatment programme the Drug Court may—

- (a) if the trial was deferred pursuant to section 7 (2)
(a)—
- (i) hear and determine the relevant offence; or
 - (ii) if the Court considers that the circumstances of the case so warrant, make an order requiring the offender to undergo a new prescribed treatment programme for such period and subject to such conditions as the Court may, on the recommendation of an approved treatment provider, specify;
- (b) if sentencing was deferred pursuant to section 7 (2) (b), impose any sentence which it could have imposed for the relevant offence;

- (c) if the execution of a sentence was deferred pursuant to section 9 (4), make an order confirming that sentence;
- (d) if the trial was deferred by a regular sitting, refer the relevant offence back to the regular sitting to be heard and determined by that sitting, unless it is an offence specified in section 7 (3).

(4) Subject to subsection (5), a conviction in respect of a relevant offence shall not form part of the criminal record of any person who successfully completes a prescribed treatment programme.

(5) Subsection (4) shall not apply in any case where a person is convicted of a relevant offence on more than two occasions.

Register.

14. The Clerk of Courts in each parish shall keep a register containing such particulars as may be prescribed in respect of persons who are dealt with by the Drug Court in accordance with this Act.

Arrest
warrant.

15. Where, based upon a report by an approved treatment provider under section 11, the Drug Court is satisfied that a drug offender has failed to comply with the specified conditions, the Court may issue a warrant authorizing a constable to arrest the offender and bring him before the Drug Court to be dealt with under this Act.

Immunity
from
prosecution
for certain
offences.

16.—(1) A person shall not be liable to prosecution for any offence comprising the unlawful possession or use of drugs as a result of any admission made—

- (a) for the purpose of seeking a referral to the Drug Court under this Act;
- (b) for the purpose of satisfying the Drug Court that the person should participate in a prescribed treatment programme;

(c) in connection with the supervision of the prescribed treatment programme in relation to that person.

(2) An admission referred to in subsection (1) shall not be admissible in evidence against the person making it, in proceedings brought as a result of the admission, for an offence referred to in that subsection.

17.—(1) Every approved treatment provider shall forthwith notify the Drug Court of any failure by a drug offender to comply with the prescribed treatment programme. Provision of information.

(2) The following provisions apply to and in respect of information furnished in accordance with this section (hereinafter referred to as protected information)—

(a) the provision of the information—

(i) does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct on the part of the person furnishing it;

(ii) shall not give rise to any action for defamation against that person;

(iii) shall not constitute a ground for civil proceedings for malicious prosecution or for conspiracy;

(b) the information shall not be admissible in any proceedings before a court, tribunal or committee;

(c) a person shall not be compellable in any such proceedings to disclose the information or to produce any document that contains the information.

(3) The provisions of subsection (2) (b) and (c) shall not apply to or in respect of the provision of protected information—

(a) in proceedings before the Drug Court; or

- (b) in support of, or in answer to, any allegation made in proceedings against a person in relation to the exercise of his functions under this Act.

(4) A drug offender shall be taken to have authorized the provision of protected information—

- (a) by an approved treatment provider to the Drug Court;
- (b) by any member of staff of the Drug Court to any other member of staff.

Regulations. 18. The Minister may make regulations generally for giving effect to the provisions of this Act.

SCHEDULE

(Section 4)

1. The Minister shall, in each parish, appoint to a special panel of Justices, those Justices whom he may consider to be specially qualified to deal with cases before the Drug Court, and no Justice of the Peace shall be qualified to sit as a member of the Drug Court unless he is a member of such a panel.

2. A Drug Court shall be constituted of a Resident Magistrate as chairman, and two Justices one of whom shall be a woman and both of whom shall be members of the panel referred to in paragraph 1:

Provided that subject to paragraph 3—

- (a) the Court shall be deemed to be fully constituted where the chairman and only one such Justice sit;
- (b) until the panel referred to in paragraph 1 is prepared, the Court shall be constituted of a Resident Magistrate alone.

3. Where a Drug Court conducts a trial to determine guilt or innocence, the Court shall be constituted of a Resident Magistrate alone.

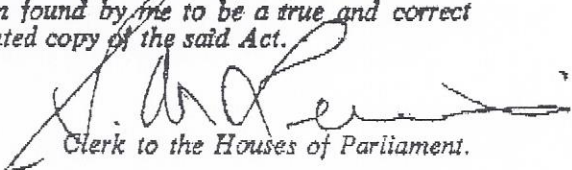
Passed in the House of Representatives this 30th day of November, 1999 with one (1) amendment.

MICHAEL PEART,
Deputy Speaker.

Passed in the Senate this 17th day of December, 1999.

SYRINGA MARSHALL-BURNETT, C.D.,
President.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.


Clerk to the Houses of Parliament.

