

TASMANIA

SENTENCING AMENDMENT BILL 2016

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SENTENCING AMENDMENT BILL 2016

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
20 September 2016

(Brought in by the Minister for Building and Construction, the Honourable Guy Barnett)

A BILL FOR

An Act to amend the *Sentencing Act 1997*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Sentencing Amendment Act 2016*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Principal Act

In this Act, the *Sentencing Act 1997** is referred to as the Principal Act.

*No. 59 of 1997

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4. Section 4 amended (Interpretation)

Section 4 of the Principal Act is amended by inserting after the definition of *Parole Board* the following definition:

pre-sentence program means a program aimed at addressing the underlying causes of offending;

5. Section 7 amended (Sentencing orders)

Section 7 of the Principal Act is amended as follows:

- (a) by inserting in paragraph (ab) “or is the Supreme Court or the Court of Criminal Appeal,” after “magistrate”;
- (b) by inserting the following paragraph after paragraph (ea):
 - (eb) adjourn the proceedings, grant bail under the *Bail Act 1994* and, by order, defer, in accordance with Division 1 of Part 8, sentencing the offender until a date specified in the order; or

6. Section 7A inserted

After section 7 of the Principal Act, the following section is inserted in Part 2:

7A. Adjournment for deferral of sentencing

- (1) Subject to section 57C(3), proceedings in relation to an offence may not be adjourned under section 7(eb) for a period of more than 2 years from the date on which the order under section 7(eb) deferring the sentencing is made.
- (2) Section 7(eb) does not limit the power of a court to adjourn proceedings, grant bail in relation to a period of adjournment or defer sentencing an offender otherwise than under section 7(eb).

7. Section 27A amended (Interpretation of Part)

Section 27A of the Principal Act is amended by omitting the definition of *court* and substituting the following definition:

court means a court constituted by a magistrate, the Supreme Court or the Court of Criminal Appeal;

8. Section 27AB inserted

After section 27A of the Principal Act, the following section is inserted in Part 3A:

27AB. Court constituted by magistrate may refer sentencing to other magistrate

Despite any other provision of this or any other Act, if an offender, who is before a court that is to sentence the offender and

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is constituted by a magistrate, has pleaded guilty to, or been found guilty of, an offence, and the magistrate is of the opinion that the court should consider making a drug treatment order –

- (a) the magistrate may refer the offence to another magistrate for sentencing; and
- (b) the magistrate may provide, to the magistrate to whom the sentencing is referred, the information, in relation to the offender and the offence, that the magistrate thinks fit; and
- (c) any sentence imposed by the magistrate to whom an offence is referred under paragraph (a) has for all purposes the same effects and consequences as if it had been passed by the magistrate who presided at the hearing or trial, or received the plea, in relation to the offence.

9. Section 27B amended (Court may make drug treatment order)

Section 27B of the Principal Act is amended as follows:

- (a) by omitting subparagraph (i) from subsection (1)(e);

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(b) by inserting the following paragraph after paragraph (b) in subsection (3):

(ba) it is satisfied that –

(i) there are sufficient staff, in respect of a facility that is likely to be used for the treatment and supervision part of the order, to be able to provide the treatment and supervision; and

(ii) there will be sufficient staff and resources to enable treatment and supervision of the offender to be provided when he or she is not being treated in the facility; and

10. Section 27G amended (Core conditions of drug treatment order)

Section 27G of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(b) “the court whenever it directs” and substituting “a court whenever the court directs”;

(b) by omitting from subsection (1)(d) “the court” and substituting “a court”;

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- (c) by omitting from subsection (1)(g) “the court” and substituting “a court”;
- (d) by omitting from subsection (1)(h) “the court” and substituting “a court”;
- (e) by omitting from subsection (5) “The court” and substituting “A court”;
- (f) by inserting the following subsection after subsection (5):
 - (6) A court or a justice may remand in custody an offender arrested under a warrant issued under subsection (5) to appear before a court as soon as practicable.

11. Section 27I amended (Case conferences)

Section 27I(1) of the Principal Act is amended as follows:

- (a) by inserting “constituted by a magistrate” after “A court”;
- (b) by inserting “(including such an order made by a court not constituted by a magistrate)” after “order”.

12. Section 27J amended (Variation of drug treatment order on assessment of progress)

Section 27J(1) of the Principal Act is amended as follows:

- (a) by inserting “constituted by a magistrate” after “A court”;
- (b) by inserting “(including such an order made by a court not constituted by a magistrate)” after “order”.

13. Section 27K amended (Compliance reward)

Section 27K(1) of the Principal Act is amended by inserting “(including such an order made by another court)” after “a drug treatment order”.

14. Section 27L amended (Cancellation reward)

Section 27L(1) of the Principal Act is amended by inserting “(including such an order made by another court)” after “treatment order”.

15. Section 27M amended (Contravention of order)

Section 27M of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “(including such an order made by another court)” after “a drug treatment order”;
- (b) by omitting from subsection (2)(b) “circumstances.” and substituting “circumstances –”;
- (c) by inserting the following after paragraph (b) in subsection (2):

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“unless the court is satisfied, having regard to information available to the court as to the therapeutic value of the actions that it may take under subsection (1), that taking another action under subsection (1) is more likely to achieve the purpose or purposes of a drug treatment order set out in section 27C.”

(d) by inserting the following subsection after subsection (3):

(3A) Despite subsection (3), the court may take action under subsection (1)(d) despite only being satisfied on the balance of probabilities that the offender has failed to comply with the relevant condition, if the court is satisfied, having regard to information available to the court as to the therapeutic value of taking such action, that it is appropriate to do so.

16. Section 27O amended (Commission of certain offences)

Section 27O of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “(including such an order made by another court)” after “a drug treatment order”;
- (b) by omitting from subsection (1)(b)(ii) “cancel” and substituting “subject to subsection (2A), cancel”;
- (c) by inserting the following subsection after subsection (2):
 - (2A) A court constituted by a magistrate may only take action under subsection (1)(b)(ii) in relation to a drug treatment order if the court made the order.

17. Section 27P amended (Hearing and determining certain offences)

Section 27P of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) Despite subsection (3), a court constituted by a magistrate may only take, in accordance with that subsection, an action under section 27O(1)(b)(ii) in relation to a drug treatment order if the court made the order.

18. Section 27Q amended (Cancellation)

Section 27Q(1) of the Principal Act is amended by inserting “made by the court” after “a drug treatment order”.

19. Section 27QA inserted

After section 27Q of the Principal Act, the following section is inserted in Part 3A:

27QA. Referral of matters to other courts

(1) Despite any other provision of this or any other Act, if –

(a) a drug treatment order that is in force in relation to an offender has been made by a court constituted by a magistrate, by the Supreme Court or by the Court of Criminal Appeal; and

(b) the offender is before the Supreme Court or the Court of Criminal Appeal –

the Supreme Court or the Court of Criminal Appeal, as the case may be, may, if it is of the opinion that a court constituted by a magistrate ought to consider whether to deal with the offender under a provision of this Part, remand the offender on bail, or in custody, to appear before a court constituted by a magistrate.

(2) Despite any other provision of this or any other Act, if –

(a) a drug treatment order that is in force in relation to an offender has been made by the Supreme

Court or the Court of Criminal Appeal; and

- (b) the offender is before a court constituted by a magistrate –

the court constituted by a magistrate may, if it is of the opinion that the Supreme Court ought to consider whether to deal with the offender under a provision of this Part, remand the offender on bail, or in custody, to appear before the Supreme Court.

- (3) If an offender is remanded by a court (*the transferring court*) to appear before another court (*the receiving court*) in accordance with this section –

- (a) the receiving court is to consider whether to deal with the offender under a provision of this Part; and

- (b) if the receiving court considers that –

- (i) it ought to deal with the offender under a provision of this Part, the receiving court may take any action in relation to the offender that it may take under the provision; or

- (ii) it is not appropriate for the offender to be dealt

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with by the receiving court, the receiving court may remand the offender on bail, or in custody, to appear before the transferring court to be dealt with as if the offender had not been remanded to appear before the receiving court.

- (4) Without limiting the generality of subsection (3)(b)(i), the action that a receiving court may take under subsection (3)(b)(i) includes, if an application to the transferring court in relation to the offender has not been disposed of by the transferring court, any action that the receiving court could take if the application had been made to the receiving court.

20. Section 27R amended (Second anniversary review)

Section 27R of the Principal Act is amended as follows:

- (a) by omitting from subsection (2) “the court that made the order” and substituting “a court constituted by a magistrate”;
- (b) by omitting subsection (4) and substituting the following subsections:

- (4) On completion of a review in relation to a drug treatment order, the court must –
- (a) if the court that made the order was constituted by a magistrate, cancel the treatment and supervision part of the order and exercise the court's powers under section 27Q(2); or
 - (b) if the Supreme Court or the Court of Criminal Appeal made the order, provide to the court that made the order a report in relation to the review.
- (5) A court that is provided under subsection (4)(b) with a report in relation to an order must cancel the treatment and supervision part of the order and exercise the court's powers under section 27Q(2).

21. Section 27S amended (Motions to review)

Section 27S of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “cannot” and substituting “may”;

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- (b) by inserting in subsection (4) “make such an order under this Part or” after “it may”.

22. Section 27W amended (Disclosure of compliance information)

Section 27W(1) of the Principal Act is amended by inserting “judge,” after “A”.

23. Part 8: Heading amended

Part 8 of the Principal Act is amended by omitting “**ADJOURNMENTS, DISCHARGES AND DISMISSALS**” from the heading to that Part and substituting “**ADJOURNMENTS, DISCHARGES, DEFERRALS AND DISMISSALS**”.

24. Part 8, Division 1 inserted

Before section 58 of the Principal Act, the following Division is inserted in Part 8:

Division 1 – Deferral of sentencing

57A. When sentence may be deferred under section 7(eb)

- (1) A court may adjourn proceedings in relation to an offender under section 7(eb) so as to defer, in accordance with this Division, sentencing the offender.

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- (2) The court may, for any one or more of the following purposes, defer, in accordance with this Division, sentencing an offender:
- (a) to allow for the assessment of the offender's capacity, and prospects, for rehabilitation;
 - (b) to allow the offender to demonstrate that the offender is being, or has been, rehabilitated;
 - (c) to allow the offender to participate in a pre-sentence program;
 - (d) for any other purpose that the court considers appropriate having regard to the offender and the circumstances of the offending.
- (3) The court may only defer, in accordance with this Division, sentencing an offender, if –
- (a) the offender is not serving a term of imprisonment for another offence; and
 - (b) the court is satisfied it may grant the offender bail; and
 - (c) the court defers sentencing the offender for all the offences for which the court may sentence the

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offender, whether or not the offences are punishable by imprisonment.

- (4) The sentencing of an offender may be deferred in accordance with this Division whether or not the court considers that the seriousness of the offence justifies a sentence of imprisonment.
- (5) The court must give reasons for deferring the sentencing of an offender in accordance with this Division.

57B. Grant of bail and review

- (1) Bail granted to an offender for the purposes of section 7(eb) in relation to an offence has effect for the period for which the sentence in relation to the offence is deferred, unless the bail is revoked earlier.
- (2) Without limiting the conditions that may be imposed in accordance with section 7 of the *Bail Act 1994* on the grant of bail to an offender, the conditions on which bail is granted to an offender for the purposes of section 7(eb) –
 - (a) may include a condition that the offender appear before the court on a date or dates, specified in the conditions of bail, that are earlier than the date to which the sentencing has been deferred, so

as to enable the court to consider the extent to which the offender is complying with any conditions of the bail; and

- (b) may include any other conditions that the court considers appropriate for a purpose referred to in section 57A(2).
- (3) If an offender to whom bail has been granted for the purposes of section 7(eb) appears before the court, the court may amend the conditions of the bail by varying, adding to or substituting any of the conditions.
- (4) In determining whether, under this section, to amend a condition of bail, the court may consider –
- (a) any report on the offender prepared by a person who has been managing or administering a pre-sentence program in which the offender has participated while on bail; and
 - (b) the extent to which, and the manner in which, the offender has complied with the conditions of the bail granted to the offender in respect of the offence.

57C. Alteration of date to which sentencing deferred

- (1) A court, on its own motion or on application under this subsection, may alter an order made under section 7(eb) in relation to an offender by altering the date to which the sentencing of the offender for the offence is deferred.
- (2) The date, referred to in subsection (1), that is specified in an order under section 7(eb) in relation to an offender may be altered under subsection (1) –
 - (a) to an earlier date than the date specified in the order; or
 - (b) to a later date than the date specified in the order –
 - (i) so as to enable the offender to complete a pre-sentence program; or
 - (ii) because the court is of the opinion that there are special circumstances in relation to the offender that justify the alteration.
- (3) The alteration of the date to which the sentencing of an offender may be deferred must not be such that the total period for which the sentencing is deferred is more than 30 months from the date on which the order was made.

- (4) Without limiting the matters that a court may consider in determining whether, under this section, to alter a date specified in an order, the court must consider –
- (a) any report on the offender prepared by a person who has been managing or administering a pre-sentence program in which the offender has participated while on bail; and
 - (b) the extent to which, and the manner in which, the offender has complied with the conditions of the bail granted to the offender in respect of the offence.
- (5) An application under subsection (1) may be made by the offender or the prosecutor.
- (6) An application under subsection (1) is to be in writing.
- (7) A copy of an application under subsection (1) and notice of the time and place of the hearing in relation to the application are to be, at least 7 days before the hearing of the application –
- (a) served on the prosecutor, if the application is made by the offender; or

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- (b) served on the offender, if the application is made by the prosecutor.
- (8) Subsections (6) and (7) do not apply in relation to an application under subsection (1) and the notice of the time and place of the hearing in relation to the application, if the prosecutor and the offender agree that those subsections are not to apply.
- (9) A court must not, under this section, alter an order in relation to an offender unless the offender is before the court.
- (10) The court may order that a warrant to arrest be issued against the offender if the offender does not attend before the court on the hearing of an application under subsection (1).
- (11) A court may remand an offender on bail, or in custody, to appear before another court for the purposes of a hearing if –
 - (a) an application under subsection (1) is made in relation to the offender; or
 - (b) the court is of the opinion that the offender or the prosecutor intends to make an application under subsection (1) in relation to the offender.

57D. When order deferring sentence may be revoked

- (1) A court, on its own motion or on application under this subsection, may revoke an order made under section 7(eb) in relation to an offender in respect of an offence and proceed to sentence the offender under section 7 in respect of the offence.
- (2) An application under subsection (1) may be made by the offender or the prosecutor.
- (3) An application under subsection (1) is to be in writing.
- (4) A copy of an application under subsection (1) and notice of the time and place of the hearing in relation to the application are to be, at least 7 days before the hearing of the application –
 - (a) served on the prosecutor, if the application is made by the offender; or
 - (b) served on the offender, if the application is made by the prosecutor.
- (5) Subsections (3) and (4) do not apply in relation to an application under subsection (1) and the notice of the time and place of the hearing in relation to the application, if the prosecutor and the

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offender agree that those subsections are not to apply.

- (6) A court must not, under this section, revoke an order in relation to an offender unless the offender is before the court.
- (7) The court may order that a warrant to arrest be issued against the offender if the offender does not attend before the court on the hearing of an application under subsection (1).
- (8) A court may remand an offender on bail, or in custody, to appear before another court if –
 - (a) an application under subsection (1) is made in relation to the offender; or
 - (b) the court is of the opinion that the offender or the prosecutor intends to make an application under subsection (1) in relation to the offender.

57E. Referral of offender to Supreme Court when that court made order deferring sentence

- (1) If an order that is in force in relation to an offender is made by the Supreme Court or the Court of Criminal Appeal under section 7(eb) in relation to an offence and the offender appears, in relation to another offence, before a court

constituted by a magistrate, the court constituted by a magistrate may, if it thinks it is appropriate to do so, remand the offender, on bail, or in custody, to appear before the Supreme Court.

- (2) If an offender is remanded, by a court constituted by a magistrate, to appear before the Supreme Court in accordance with this section –
- (a) the Supreme Court is to consider whether to deal with the offender under section 57C or 57D; and
 - (b) if the Supreme Court considers that –
 - (i) it ought to deal with the offender under section 57C or 57D, the Supreme Court may take any action in relation to the offender that it may take under section 57C or 57D, as the case may be; or
 - (ii) it is not appropriate for the offender to be dealt with by the Supreme Court, the Supreme Court may remand the offender on bail, or in custody, to appear before a court constituted by a

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magistrate as if the offender had not been remanded to appear before the Supreme Court.

- (3) Without limiting the generality of subsection (2)(b)(i), the action that the Supreme Court may take under subsection (2)(b)(i) in relation to an offender includes dealing with the offender as if an application under section 57C or 57D made, in relation to the offender, to the court that remanded the offender to appear before the Supreme Court, but not disposed of by that court, had been made to the Supreme Court.

25. Part 8, Division 2: Heading inserted

Part 8 of the Principal Act is amended by inserting the following heading before section 58:

Division 2 – Adjournments, discharge or dismissal

26. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.