

TASMANIA

SENTENCING LEGISLATION AMENDMENT BILL
2016

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draft Only

**SENTENCING LEGISLATION AMENDMENT BILL
2016**

*(Brought in by the Minister for Justice, the Honourable Dr
Vanessa Goodwin)*

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
Legislation 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 7 amended (Sentencing orders)

Section 7 of the Principal Act is amended as follows:

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

5. Section 8A inserted

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

8A. Adjournment for deferral of sentencing

- (1) Subject to section 58C(3), proceedings in relation to an offence may not be adjourned under section 7(eb) for a period of more than 12 months from the date of the finding of guilt in respect of the offence.
- (2) Section 7(eb) does not limit the power of the Court to adjourn proceedings, grant bail in relation to a period of adjournment or defer sentencing an

offender otherwise than under
section 7(eb).

6. Section 27A amended (Interpretation of Part)

Section 27A of the Principal Act is amended by
omitting the definition of *court*.

7. Section 27BA inserted

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

**27BA. Court constituted by magistrate may refer
sentencing to other magistrate**

Despite any other provision of this or any
other Act, if a person before a court
constituted by a magistrate has pleaded
guilty to, or been found guilty of, an
offence and the magistrate is of the
opinion that a court should, in sentencing
the offender in relation to the offence,
consider making a drug treatment
order –

- (a) the magistrate may refer the
offence to another magistrate for
sentencing; and
- (b) any sentence imposed by the
magistrate to which 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

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who presided at the trial, or received the plea, in relation to the offence.

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

Section 27B(3) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) it is satisfied that a facility likely to be used for the treatment and supervision part of the order has sufficient staff to be able to provide the treatment and supervision or is able to place the offender in a program providing the treatment or supervision; and

9. 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 a court directs”;
- (b) by omitting from subsection (1)(d) “the court” and substituting “a court”;
- (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 inserting in subsection (5) “that made a drug treatment order” after “court”;
- (f) by inserting the following subsection after subsection (5):
 - (6) Nothing in this or any other Act is to be taken to prevent a court from remanding in custody an offender arrested under a warrant issued under subsection (5).

10. Section 27I amended (Case conferences)

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

- (a) by inserting in subsection (1) “constituted by a magistrate” after “A court”;
- (b) by inserting in subsection (1) “(including such an order made by a court not constituted by a magistrate)” after “order”;
- (c) by inserting the following paragraph after paragraph (c) in subsection (3):
 - (ca) in the case of an order made by a court not constituted by a magistrate – the DPP or a person authorised by the DPP;

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

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

- (a) by inserting in subsection (1) “constituted by a magistrate” after “A court”;
- (b) by inserting in subsection (1) “(including such an order made by a court not constituted by a magistrate)” after “order”;
- (c) by inserting in subsection (2)(b) “, except in the case of an application in relation to an order made by a court not constituted by a magistrate” after “prosecutor”;
- (d) by inserting the following paragraph after paragraph (b) in subsection (2):
 - (ba) in the case of an order made by a court not constituted by a magistrate – the DPP or a person authorised by the DPP; or

12. Section 27M amended (Contravention of order)

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

- (a) by omitting from subsection (2)(b) “circumstances.” and substituting “circumstances –”;

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- (b) by inserting the following after paragraph (b) in subsection (2):

“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 purposes of a drug treatment order set out in section 27C.”

- (c) by inserting the following subsection after subsection (3):

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

- (d) by inserting in subsection (7)(a) “, except in the case of an application in relation to an order made by a court not constituted by a magistrate” after “prosecutor”;

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(e) by inserting the following paragraph after paragraph (a) in subsection (7):

(ba) in the case of an application in relation to an order made by a court not constituted by a magistrate – the DPP or a person authorised by the DPP; or

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

Section 27O(2) of the Principal Act is amended as follows:

(a) by inserting in paragraph (a) “, except in the case of an application in relation to an order made by a court not constituted by a magistrate” after “prosecutor”;

(b) by inserting the following paragraph after paragraph (a):

(ba) in the case of an application in relation to an order made by a court not constituted by a magistrate – the DPP or a person authorised by the DPP; or

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

Section 27P(1)(a) of the Principal Act is amended by omitting “a court” and substituting “the court that made the order, or a court other than a court constituted by a magistrate,”.

15. Section 27Q amended (Cancellation)

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

- (a) by inserting in subsection (1) “made by the court” after “a drug treatment order”;
- (b) by inserting in subsection (3)(b) “, except in the case of an application in relation to an order made by a court not constituted by a magistrate” after “prosecutor”;
- (c) by inserting the following paragraph after paragraph (b) in subsection (3):
 - (ba) in the case of an application in relation to an order made by a court not constituted by a magistrate – the DPP or a person authorised by the DPP; or

16. 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:

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- (4) On completion of a review in relation to a drug treatment order, the court must –
- (a) if the court made the order, cancel the treatment and supervision part of the order and exercise its powers under section 27Q(2); or
 - (b) if the court did not make 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 its powers under section 27Q(2).

17. 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”;
- (b) by inserting in subsection (4) “make such an order or” after “directions,”.

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

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

19. 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

58A. When sentence may be deferred under section 7(eb)

- (1) The 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.
- (2) The Court may defer, in accordance with this Division, sentencing an offender –
 - (a) so as to allow for the assessment of the offender’s capacity, and prospects, for rehabilitation; or
 - (b) to allow the offender to demonstrate that the offender is being, or has been, rehabilitated; or

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- (c) to allow the offender to participate in a reintegration program.
- (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 admit the offender to bail; and
 - (c) the Court defers sentencing the offender for all the offences for which the Court may sentence the offender, whether or not the offences are punishable by imprisonment.
- (4) For the purposes of this Division, a ***reintegration program*** is a structured treatment program designed to reduce the likelihood of an offender committing further offences.
- (5) 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.

58B. 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 conditions requiring the offender to comply with a reintegration program referred to in section 58A; and
 - (b) 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
 - (c) may include any other conditions that the Court considers appropriate for a purpose referred to in section 58A(2).

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- (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 reintegration program, referred to in section 58A, 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.

58C. Amendment of date of order deferring sentence

- (1) The Court may amend 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, so as to enable completion of a reintegration program.
- (3) A later date to which an order may be altered must not extend the period of the order so that the total period of the order continues for more than 18 months from the date of the finding of guilt in respect of which the order was made.
- (4) In determining whether, under this section, to amend the date of an order, the Court must consider –
- (a) any report on the offender prepared by a person who has been managing or administering a reintegration program, referred to in section 58A, 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.

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- (5) The Court must not, under this section, amend an order in relation to an offender unless the offender is before the Court.

58D. When order deferring sentence may be revoked

- (1) The Court 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 only if –

(a) the Court is of the opinion that the purposes, referred to in section 58A(2), for which the sentencing of the offender was deferred are unlikely to be fulfilled; or

(b) the offender requests the revocation of the order.

- (2) The Court must not, under this section, revoke an order in relation to an offender unless the offender is before the Court.

20. 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

21. 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.

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