

CHAPTER 11:05

CRIMINAL LAW REFORM

ARRANGEMENT OF SECTIONS

SECTION

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AN ACT to make provision for suspended sentences and for certain other matters relating to sentences. A.D. 1988

[14TH JULY 1988]

1. This Act may be cited as the Criminal Law Reform Act. Short title.
2. In this Act — Interpretation.
 - (a) “appropriate officer”, in relation to a court, means—
 - (i) in the case of the High Court or Court of Appeal, the Registrar of the Supreme Court; and
 - (ii) in the case of a magistrate’s court, the clerk of that court;

(b) “court” does not include a court martial;

(c) “operational period” means the period specified under section 3(1) as the period during which, subject to the provisions of that section, a sentence of imprisonment shall not take effect;

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

(e) “supervision order” means a suspended sentence supervision order made under section 6(1);

(f) “suspended sentence” means a sentence to which an order under section 3(1) relates.

Suspended
sentence of
imprisonment.

3. (1) Subject to the other provisions of this section, and section 10, where any court passes on any person a sentence of imprisonment for a term of not more than two years for an offence, it may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year or more than two years from the date of the order, such person commits in Guyana another offence punishable with imprisonment and thereafter a court having power to do so orders under section 4 that the original sentence shall take effect with or without variation of its term.

(2) A court shall not, on passing a sentence of imprisonment on any person for an offence, make an order under subsection (1) if it is proved that he has been previously convicted of any offence for which a sentence of imprisonment has been passed on him.

(3) A court shall, before it makes an order under subsection (1) in respect of a person convicted by or before it, ascertain whether that person has been previously convicted of any offence for which a sentence of imprisonment has been passed on him and for that purpose may, where it becomes necessary, defer the passing of sentence on him.

(4) Where a written law does not prescribe a mandatory sentence of imprisonment for an offence, a court shall not deal with any person convicted of the offence by means of a suspended sentence unless it appears to the court that the case is one in which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under subsection (1).

(5) Where a person is convicted by or before a court upon two or more counts or two or more charges of offences, tried jointly, and the court is of the view that the sentence of imprisonment proposed to be imposed on the person for any one or more of such counts or charges of offences should not be suspended, the court shall not deal with the person by means of a suspended sentence in respect of the other or any of the other counts or charges of offences so jointly tried.

(6) A court, passing a suspended sentence on any person in respect of one offence, shall not make a probation order in the same case in respect of another offence of which he is convicted by or before the court or for which he is dealt with by the court.

(7) A court shall, on passing a suspended sentence on any person, explain to him in ordinary language his liability under section 4 if during the operational period of that sentence he commits an offence punishable with imprisonment.

(8) Save as otherwise provided in subsection (9), for the purposes of all written laws a suspended sentence passed on any person, whether or not it has taken effect under section 4 (1), shall be treated as a sentence of imprisonment passed on the date of the order of the suspended sentence.

(9) A suspended sentence passed on any person which has not taken effect under section 4(1) shall not be treated as a sentence of imprisonment for the purposes of any written law which provides for disqualification for, or loss of, any office (not being an office created by the Constitution) or forfeiture of pension, of any person sentenced to imprisonment; and where it has been ordered under section 4 that the suspended sentence passed on any person shall take effect, for the purposes of any such written law the person shall be treated as having

been convicted and sentenced to imprisonment on the ordinary date on which the period allowed for making an appeal against an order under that section expires or, if such an appeal is made, the date on which it is finally disposed of by confirming the order that the suspended sentence shall take effect, whether with or without variation, or it is abandoned or fails for prosecution.

Method of dealing with person on conviction of further offence during operational period.

4. (1) Where any person is convicted by or before a court of an offence punishable with imprisonment committed during the operational period of a suspended sentence, the court shall, on proof that the conviction is for an offence committed during the operational period of the suspended sentence, deal with that person in respect of the suspended sentence by one of the following methods, unless the suspended sentence has already taken effect,—

(a) the court may order that the suspended sentence shall take effect with the original term unaltered;

(b) the court may order that the suspended sentence shall take effect with the substitution of a lesser term for the original term;

(c) the court may, by order, vary the original order passing the suspended sentence by substituting for the operational period specified therein an operational period expiring not later than two years from the date of the variation; or

(d) the court may order that no order need be made under paragraph (a), (b) or (c) with respect to the suspended sentence:

Provided that a court acting under this subsection shall make an order under paragraph (a) unless it is of the opinion that it would be unjust to do so in view of all the circumstances of the case, including the facts of the subsequent offence; and where it is of that opinion, the court shall having regard to all the circumstances of the case, and for reasons to be recorded in writing, deal with the person by one of the methods mentioned in paragraph (b), (c) or (d).

(2) Where a court orders that the suspended sentence passed on any person shall take effect with or without any variation of the original term, the court may order that the sentence shall take effect immediately or that the term thereof shall commence on the expiration of another term of imprisonment passed on the person by that or another court.

(3) For the purposes of this section and section 5, in proceedings in the High Court for dealing with a person in respect of a suspended sentence the question whether a person has been convicted of an offence committed during the operational period of a suspended sentence shall be determined by the judge and not by the verdict of a jury.

(4) Where under this section a court deals with any person on whom a suspended sentence was passed by another court, the appropriate officer of the court first mentioned shall notify the appropriate officer of the court which passed the suspended sentence of the method adopted.

(5) For the purposes of any written law conferring a right of appeal in criminal cases, an order made by a court under subsection (1) (a), (b) or (c) shall be deemed to be an order passing a sentence of imprisonment on the offender by that court for the offence for which the suspended sentence was passed.

5. (1) Where it appears to any court having jurisdiction under subsection (2) that any person has been convicted in Guyana of an offence punishable with imprisonment committed during the operational period of a suspended sentence and that he has not been dealt with by an order under any paragraph of section 4 (1) by the court by or before which he was so convicted, in respect of the suspended sentence, the court first mentioned may issue a summons requiring the person to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

Procedure where court convicting of further offence does not deal with suspended sentence.

(2) For the purposes of subsection (1) the court having jurisdiction shall be—

- (a) where the court convicting him of the offence referred to in subsection (1) is the High Court, that court; or
- (b) in any other case, any magistrate's court.

(3) A summons or warrant issued under subsection (1) shall direct the person to whom or in respect of whom it is issued to appear or to be brought before the court by or before which he was convicted of the offence referred to in subsection (1) and, upon such person appearing or being brought before the court, the court shall proceed to deal with him under section 4.

Suspended sentence supervision order.

6. (1) Where a court passes on any person a suspended sentence, the court may make a suspended sentence supervision order placing the person under the supervision of a supervising officer for such period, not exceeding the operational period of the suspended sentence, as may be specified in the order.

(2) A supervision order, in relation to any person, shall specify the magisterial district in which he resides or will reside and the supervising officer referred to in subsection (1) shall be the probation officer appointed for or assigned to the magisterial district so specified for the time being in the supervision order.

(3) One copy of a supervision order made under subsection (1) shall be sent by the appropriate officer of the court making the order to each of the following—

- (a) if the court making the order is not the magistrate's court having jurisdiction over the magisterial district specified under subsection (2), the appropriate officer of the said magistrate's court together with such documents and information relating to the case as the court first mentioned considers likely to be of assistance to the aforesaid magistrate's court in exercising its functions in relation to the order; and
- (b) the supervising officer.

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

(5) Where a magistrate's court, having jurisdiction over the magisterial district for the time being specified in the supervision order is satisfied that the aforesaid person proposes to change, or has changed, his residence from that district to another magisterial district, that court may, and on the application of the supervising officer shall, amend the supervision order by substituting the other magisterial district for the magisterial district specified in that order.

(6) Where a supervision order is amended by a magistrate's court under subsection (5), the appropriate officer of that court shall send a copy of the amended order to -

- (a) the appropriate officer of the magistrate's court having jurisdiction for the magisterial district specified in the amended order, together with such documents and information relating to the case as the court first mentioned considers likely to be of assistance to the court second mentioned in exercising its functions in relation to the order;
- (b) where the supervision order was made by the High Court, the Registrar of the Supreme Court: and
- (c) the new supervising officer and the immediately previous supervising officer.

(7) A supervision order shall cease to have effect if before the end of the period specified in it—

- (a) a court orders under section 4 that the suspended sentence passed in the proceedings in which the supervision order was made shall take effect whether with or without variation; or
- (b) the order is discharged or replaced under subsection (8) or (9).

(8) A supervision order may be discharged on the application of the supervising officer or the person in relation to whom it was made—

(a) if it was made by the High Court and includes a direction reserving the power of discharging it to that court, by the High Court; or

(b) in any other case, by a magistrate's court having jurisdiction over the magisterial district for the time being specified in the supervision order as the area of residence of the said person.

(9) Where under section 4 of this Act a court deals with a person in respect of a suspended sentence by varying the operational period of that sentence or by ordering that no order need be made under subsection (1)(a), (b) or (c) of that section, the court may—

(a) if a supervision order has been made in respect of that person with reference to that suspended sentence, replace it by another supervision order for such period, not exceeding the operational period of the suspended sentence as so varied, as may be specified in the new supervision order; or

(b) if the court which passed the suspended sentence could have made a supervision order but did not do so, make a supervision order in respect of the person.

(10) A court shall, on making a supervision order, explain to the person, in relation to whom it is made, its effect in ordinary language.

Breach of
requirement of
supervision
order.
[6 of 1997]

7. (1) If at any time while a supervision order is in force in respect of a person it appears on information to a magistrate's court, having jurisdiction over the magisterial district for the time being specified in the order as the area of that person's residence, that the person has failed to comply with any of the requirements of section 6 (4), the magistrate may issue a summons requiring that person to appear at the place and time specified therein, or may, if the information is in writing and on oath, issue a warrant for his arrest.

(2) Any summons or warrant issued under this section shall direct the person to whom or in respect of whom it is issued to appear or to be brought before a magistrate's court for the magisterial district for the time being specified in the supervision order as the area of his residence.

(3) If it is proved to the satisfaction of a magistrate's court before which the person appears or is brought under this section that he has failed without reasonable cause to comply with any of the requirements of section 6 (4), that court may, without prejudice to the continuance of the supervision order, impose on him a fine of three thousand dollars.

8. Where a person is convicted by or before a court for an offence for which a written law empowers the passing of a sentence of imprisonment, but the court is also empowered to deal with him under the preceding provisions of this Act or under the *Extra-Mural Work Act*, or the *Probation of Offenders Act*, the court shall, before sentencing him to any period of imprisonment, consider whether he may suitably be dealt with under any of the provisions aforesaid.

Before sentencing to imprisonment court to consider whether convicted person to be dealt with otherwise.
c. 11:02
c. 11:04

9. (1) Where a court passes on any person convicted of an offence—

Short sentences of imprisonment.

(a) a sentence of imprisonment for a period not exceeding three months;

(b) a sentence of imprisonment and fine, and the aggregate of the period of such imprisonment and the period of imprisonment he is ordered to undergo consequent on failure to pay the fine does not exceed three months; or

(c) a sentence of fine, and the period of imprisonment he is ordered to undergo consequent on failure to pay the fine does not exceed three months,

and the court is satisfied—

(i) on an application made before it by or on behalf of such person, of the existence of the conditions set out in subsection (2); and

(ii) on a report from the Director of Prisons that satisfactory arrangements exist for the sentence to be served in the manner applied for,

the court may order that the sentence be served at stated periods.

(2) The conditions required for the purpose of subsection (1) shall be that—

(a) the convicted person was in employment at the time of the commission of the offence or that he is in employment at the time of conviction;

(b) the convicted person would continue to be in such employment but for such conviction and the obligation to serve the sentence of imprisonment;

(c) the discontinuance from such employment would cause hardship to his dependants; and

(d) the convicted person consents to serve the sentence of imprisonment in the manner ordered by the court.

(3) Where an order is made under subsection (1), the court shall cause a copy of such order to be served on the officer in charge of the police station for the area in which the convicted person resides or will reside.

(4) A period stated under subsection (1) or varied under subsection (6) shall be at the discretion of the court but shall not be less than twenty-four hours of continuous duration for any one week.

(5) Where any person, in respect of whom an order has been made under subsection (1), fails to serve any stated period of his sentence, the Director of Prisons shall report the matter to the court which made the order and thereupon the court may, after hearing the said person, revoke the order for serving the sentence of imprisonment at stated periods and substitute therefor an order for serving continuously the unserved portion of the sentence originally passed.

(6) The court, which made an order referred to in subsection (1), may, on application made by a convicted person, vary, subject to subsection (4), the commencement or duration of a stated period, in respect of the serving of a sentence of imprisonment.

10. (1) The preceding provisions of this Act shall not apply in the case of persons who are convicted by or before a court of any offence for which a written law prescribes a mandatory sentence of imprisonment. Exemption.

(2) For the purposes of this section, a written law shall not be deemed to prescribe a sentence of imprisonment which is not mandatory only by reason that—

(a) the written law empowers the court to impose any other penalty, instead of the sentence of imprisonment, if there are special reasons;

(b) section 19 of the Criminal Law (Offences) Act or any other written law empowers the court to substitute any other punishment for the sentence of imprisonment; or c. 8:01

(c) power is vested in any authority to remit the sentence of imprisonment, to substitute another form of punishment for the sentence of imprisonment, or to accept compensation in substitution for proceedings in a court.

11. The Minister may make regulations to carry out the purposes of this Act. Power to make regulations.