

[Act 1999 No 47]



New South Wales

Drug Court Amendment Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Drug Court Act 1998* so as:

- (a) to restrict the classes of persons who may be referred to the Drug Court to persons who are “highly likely to be required to serve a sentence of full-time imprisonment” rather than (as is presently the case) merely “likely to be sentenced to imprisonment” for the offences with which they are charged, and
- (b) to extend to courts exercising criminal appellate jurisdiction the duty imposed on a court by the Act to take steps towards the referral of a person to the Drug Court, and
- (c) to allow a person to be referred to the Drug Court at any time up to the time the person is sentenced or committed for trial or sentence, and

* Amended in committee—see table at end of volume.

- (d) to allow a sentence of imprisonment to be suspended for the purpose of enabling a person to participate in a drug program up to 14 days after the sentence is imposed rather than (as is presently the case) at the same time as the sentence is imposed, and
- (e) to ensure that the Drug Court can accept a person into a drug program and suspend the person's sentence not only in relation to the offence for which the person was referred to the Drug Court but also in relation to any other offence to which the person pleads guilty, and
- (f) to allow the Drug Court, when dealing with a person for two or more offences for which the person has been referred to the Drug Court by two or more courts, to refer the person back to one of those courts for all of the offences for which that court has jurisdiction, and
- (g) to make it a statutory condition of a person's drug program that the Drug Court may commit the person to a correctional centre if such action is necessary to facilitate the person's detoxification or program assessment, and
- (h) to allow the Drug Court's powers to issue arrest warrants to be exercised by the registrar of the Drug Court, and
- (i) to remove any doubt as to the power of the Drug Court to issue a warrant committing a person to a correctional centre in the course of a drug program and as to the authority of a police officer and the governor of a correctional centre to give effect to such a warrant.

The Bill also amends the *Periodic Detention of Prisoners Act 1981* so as:

- (a) to allow leave of absence to be granted under that Act to a person who is participating in a drug program, and
- (b) to provide that, when it sentences a person to imprisonment for more than one month and suspends the sentence so as to allow the person to participate in a drug program, the Drug Court is not required to cancel any periodic detention order to which the person is subject.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Drug Court Act 1998* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Periodic Detention of Prisoners Act 1981* set out in Schedule 2.

Schedule 1 Amendment of Drug Court Act 1998

Schedule 1 [1] amends section 5 (1) of the Act so as to restrict the definition of *eligible person* prescribed by that section to persons who are “highly likely to be required to serve a sentence of full-time imprisonment” rather than (as is presently the case) merely “likely to be sentenced to imprisonment” for the offences with which they are charged.

Schedule 1 [2] extends to courts exercising criminal appellate jurisdiction the duty imposed on a court by section 6 (2) of the Act to take steps towards the referral of a person to the Drug Court. It should be noted that section 6 of the Act applies only to courts prescribed by the regulations and that the current regulations prescribe Local Courts and the District Court only, so that the effect of the amendment will for the time being be to extend the duty to the District Court in its jurisdiction to determine appeals in criminal proceedings under Part 5A of the *Justices Act 1902*.

Schedule 1 [3] substitutes section 6 (3) of the Act so as to allow a person to be referred to the Drug Court at any time up to the time the person is sentenced or committed for trial or sentence.

Schedule 1 [4] amends section 7 of the Act to require a person entering a drug program to consent not only to the conditions imposed by the Drug Court (as is presently the case) but also the statutory conditions imposed by the Act, as a consequence of the insertion of proposed section 8A referred to in Schedule 1 [12].

Schedule 1 [5] amends section 7 of the Act so as to allow a sentence of imprisonment to be suspended for the purpose of enabling a person to participate in a drug program up to 14 days after the sentence is imposed rather than (as is presently the case) at the same time as the sentence is imposed.

Schedule 1 [6] amends section 7 of the Act so as to allow an order suspending a person’s sentence, or accepting a person into a drug program, to be made in the person’s absence.

Schedule 1 [7] amends section 7 of the Act so as to ensure that the Drug Court can accept a person into a drug program and suspend the person’s sentence not only in relation to the offence for which the person was referred to the Drug Court but also in relation to any other offence to which the person pleads guilty.

Schedule 1 [8] amends section 7 of the Act as a consequence of the amendment proposed by Schedule 1 [3].

Schedule 1 [9] amends section 8 so as to allow the Drug Court to decline to deal with a person who has been referred to it for any reason the Drug Court considers appropriate.

Schedule 1 [10] amends section 8 of the Act so as to allow the Drug Court, when dealing with a person for two or more offences for which the person has been referred to the Drug Court by two or more courts, to refer the person back to one of those courts for all of the offences for which that court has jurisdiction.

Schedule 1 [11] amends section 8 of the Act as a consequence of the amendment proposed by Schedule 1 [3].

Schedule 1 [12] inserts a new section 8A into the Act so as to make it a statutory condition of a person's drug program that the Drug Court may commit the person to a correctional centre if such action is necessary to facilitate the person's detoxification or program assessment.

Schedule 1 [13] amends section 12 of the Act so as to ensure that any time spent by a person in custody is taken into account in imposing the person's final sentence.

Schedule 1 [14] amends section 14 of the Act so as to allow the Drug Court's powers to issue arrest warrants to be exercised by the registrar of the Drug Court.

Schedule 1 [15] inserts a new section 14A into the Act so as to remove any doubt as to the power of the Drug Court to issue a warrant committing a person to a correctional centre in the course of a drug program and as to the authority of a police officer and the governor of a correctional centre to give effect to such a warrant.

Schedule 1 [16] amends section 24 of the Act so as to make it clear that the Drug Court is bound by the *Bail Act 1978* when it exercises the functions of a magistrate or justice in the same way as it is bound by the *Justices Act 1902* when it exercises those functions.

Schedule 2 Amendment of Periodic Detention of Prisoners Act 1981

Schedule 2 [1] amends section 20 (1) of the Act so as to allow leave of absence from a periodic detention centre to be granted to a person who is participating in a drug program.

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Schedule 2 [2] amends section 24 (1) of the Act so as to provide that, when it sentences a person to imprisonment for more than one month and suspends the sentence so as to allow the person to participate in a drug program, the Drug Court is not required to cancel any periodic detention order to which the person is subject.

Schedule 2 [3] amends section 24 (1) of the Act so as to provide that, when it sentences a person to imprisonment for more than one month and takes action towards suspending the sentence, the Drug Court is not required to cancel any periodic detention order to which the person is subject.