

## OBJECTS AND REASONS

This Bill would amend the *Penal System Reform Act*, Cap. 139, to make provision for the High Court, the Court of Appeal and the Caribbean Court of Justice to award compensation for personal injury, loss or damage resulting from an offence for which a conviction has been entered, and to provide for related matters.

### *Arrangement of Sections*

#### *Section*

1. Short title.
2. Amendment of section 2 of Cap. 139.
3. Insertion of sections 16A to 16D into Cap. 139.
4. Amendment of section 17 of Cap. 139.
5. Amendment of the Second Schedule to Cap. 139.

BARBADOS

A Bill entitled

An Act to amend the *Penal System Reform Act*.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Penal System Reform (Amendment) Act, 2010*. Short title.

Amend-  
ment of  
section 2  
of Cap.  
139.

**2.** Section 2 of the *Penal System Reform Act*, in this Act referred to as the principal Act, is amended by

(a) deleting the definition of "community order" and substituting the following:

" "community order" means any of the following orders:

- (a) an attendance centre order;
- (b) a combination order;
- (c) a community service order;
- (d) a curfew order;
- (e) a probation order;
- (f) a compensation order;" and

(b) inserting in the appropriate alphabetical order the following definition:

" "compensation order" has the meaning given by section 16A(1);".

3. The principal Act is amended by inserting immediately after section 16 the following sections:

Insertion  
of sections  
16A to  
16D into  
Cap. 139.

*"Compensation Orders*

Court's  
power to  
order  
payment  
of  
compensa-  
tion.

**16A.** (1) In this Act "compensation order" means an order made by a court requiring an offender to pay compensation for any personal injury, loss or damage resulting from the offence committed by the person that is taken into consideration by the court in determining the sentence.

(2) Where a court by or before which a person of 16 years of age or older is convicted of an offence punishable with imprisonment, not being an offence for which the sentence is fixed by law, is of the opinion that it is just and reasonable to do so in the circumstances, the court may, on application or otherwise, make a compensation order requiring the offender to pay compensation for any personal injury, loss or damage resulting from the offence.

(3) Where a person of 16 years of age or older is convicted of an offence for which the sentence is fixed by law, the court may make a compensation order in addition to the sentence fixed by law.

(4) A compensation order shall be of such an amount as the court considers just and reasonable in the circumstances having regard to any evidence before the court and any representations made by or on behalf of the offender or by the prosecutor.

(5) Where a compensation order has been made and the person in whose favour the compensation order was made files a claim in civil proceedings which arises from the same cause or matter for which

the compensation order was made and the claim is to be determined by a court, the damages shall be assessed without regard to the amount of the compensation order, but the person may only recover an amount equal to the aggregate of the following:

- (a) the amount by which the award exceeds the amount of the compensation order; and
- (b) a sum equal to any portion of the amount of the compensation order which he fails to recover from the offender.

(6) The amount of any compensation to be paid under a compensation order shall be specified in the conviction or in the order, and shall be enforceable as an amount adjudged to be paid on the conviction or under the order.

(7) For the purposes of this section and sections 16B, 16C and 16D, "court" means any court of Barbados of competent jurisdiction, but does not include a court of summary jurisdiction.

The  
means of  
the  
offender.

**16B.** (1) In determining whether to make a compensation order and the amount to be paid in respect of the order, the court shall have regard to the means of the offender as far as his means can be ascertained or are made known to the court.

(2) Where the court considers that it would be appropriate to impose a fine and to make a compensation order but considers that the offender has insufficient means to pay both, the court shall give preference to the compensation order.

Circumstances where no compensation should be made.  
Cap. 155.

**16C.** (1) In the case of an offence under the *Theft Act* where the property in question is recovered, any damage to the property occurring while it was out of the owner's possession, however and by whomsoever the damage was caused, shall be treated as having resulted from the offence for the purpose of this section, and for the purposes of sections 16A, 16B, and 16D.

(2) No award of compensation shall be made in respect of any

(a) loss suffered by the dependants of a person in consequence of his death in a motor vehicle accident on a road; or

(b) personal injury, loss or damage due to a motor vehicle accident on a road unless

(i) the damage is to be treated by subsection (1) as resulting from an offence under the *Theft Act*; or

(ii) the offender is uninsured in relation to the use of the vehicle.

Cap. 155.

Appeals and compensation orders.

Cap. 113A.  
Cap. 117.

**16D.** (1) A person in whose favour a compensation order is made shall not be entitled to receive the amount due to him, notwithstanding any power of an appellate court to grant leave to appeal out of time, until the time stated for an appeal has expired either under the *Criminal Appeal Act* or the *Caribbean Court of Justice Act* as the case may be and

(a) no application for an appeal has been made; or

(b) where the appeal is heard, the compensation order has not been set aside.

(2) Where a court makes a compensation order against an offender in respect of an offence taken into consideration in determining his sentence, the

- (a) offender may appeal against the compensation order, as if it were a part of the sentence imposed in respect of the offence for which he was convicted; and
- (b) compensation order shall cease to have effect if he successfully appeals against the conviction in respect of the offence for which he was convicted and for which the compensation order was made.

(3) When hearing an appeal the Court of Appeal may by order confirm, vary, annul or set aside a compensation order and, where appropriate, make a compensation order if the Court of Appeal considers it just and reasonable to do so in the circumstances.

Cap. 117. (4) The Caribbean Court of Justice, in exercising the appellate powers conferred by the *Caribbean Court of Justice Act*, may by Order confirm, vary, annul or set aside a compensation order and, where appropriate, make a compensation order if the Caribbean Court of Justice considers that it is just and reasonable to do so in the circumstances.

(5) Where a conviction, order or sentence is varied, the conviction, order or sentence shall take effect as varied by the appellate court; and if annulled or set aside, the conviction, order or sentence shall not take effect."

4. Section 17 of the principal Act is amended by inserting after subsection (3) the following subsection:

Amend-  
ment of  
section 17  
of  
Cap. 139.

Cap. 116A. "(4) Where a court makes a combination order under subsection (1) it may also make a compensation order, either under this Act or under the *Magistrate's Courts Act*, where it is of the opinion that the compensation order would be just and reasonable in the circumstances."

5. The Second Schedule to the principal Act is amended in Part I by deleting paragraph 1 and substituting the following:

Amend-  
ment of the  
Second  
Schedule to  
Cap. 139.

Schedule. "1. (1) In this *Schedule* "relevant order" means any of the following orders, namely, a probation order, a community service order, a curfew order and, where applicable, a compensation order.

Schedule. (2) This *Schedule* applies in relation to combination orders

(a) in so far as they impose such a requirement as is mentioned in paragraph (a)(i) or (b)(i) of subsection (2) of section 17 of this Act, as if they were probation orders;

(b) in so far as they impose such a requirement as is mentioned in paragraph (a)(ii) of that subsection, as if they were community service orders;

(c) in so far as they impose such a requirement as is mentioned in paragraph (b)(ii) of that subsection, as if they were curfew orders; and

(d) in so far as they impose such a requirement as is mentioned in subsection (4) of section 17 and make a compensation order."