

2014-09-01

OBJECTS AND REASONS

This Bill would amend the *Prisons Act*, Cap. 168 to make provision for

- (a) the abolition of the use of corporal punishment in prisons;
- (b) the establishment of a Prisoners Release Board;
- (c) the conditional release of prisoners; and
- (d) matters related to (b) and (c).

Arrangement of Sections

1. Short title
2. Amendment of section 2 of Cap. 168
3. Repeal of section 40 of Cap. 168
4. Insertion of new Part IIIA into Cap. 168
5. Repeal and replacement of Part VIII of Cap. 168
6. Amendment of the Schedule to Cap. 168
7. Amendment of Cap. 168
8. Commencement

FIRST SCHEDULE

BARBADOS

A Bill entitled

An Act to amend the *Prisons Act, Cap. 168*.

ENACTED by the Parliament of Barbados as follows:

Short title

- 1.** This Act may be cited as the *Prisons (Amendment) Act, 2014*.

Amendment of section 2 of Cap. 168

2. *Section 2 of the Prisons Act, in this Act referred to as the principal Act, is amended by inserting in alphabetical order, the following definition:*

“ “Prisoners Release Board” or “Release Board” means the Board appointed by the Minister under section 9A;

“release order” means an order granted by the Prisoners Release Board under Part VIII authorising the release of a prisoner;”.

Repeal of section 40 of Cap. 168

3. *Section 40 of the principal Act, is repealed.*

Insertion of new Part IIIA into Cap. 168

4. *The principal Act is amended by inserting immediately after Part III the following:*

“PART IIIA

PRISONERS RELEASE BOARD

Establishment of Prisoners Release Board

9A.(1) There shall be a Board to be known as the "Prisoners Release Board".

(2) The *Second Schedule* has effect with respect to the constitution of the Prisoners Release Board and otherwise in relation thereto.

Functions of the Prisoners Release Board

9B. The functions of the Prisoners Release Board are to

(a) hear and consider applications for release orders;

- (b) grant, revoke or suspend release orders;
- (c) assign conditions to release orders;
- (d) maintain a register of its decisions;
- (e) keep statistical and other records in relation to its work; and
- (f) make annual reports to the Minister concerning its work.

Remuneration of the members of Release Board

9C. The members of the Release Board shall be paid such remuneration as the Minister of Finance determines.

Secretarial services

9D. A public officer authorised for the purpose by the Minister shall perform the secretarial services of the Release Board.

Confidentiality

9E.(1) All documents, information or matters disclosed in the discharge of the functions of the Board shall be regarded as secret and confidential and shall not be disclosed by a member of the Release Board or any person concerned with the Release Board except where those disclosures are made in compliance with

- (a) an Order of the High Court; or
- (b) the laws of Barbados.

(2) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for 2 years or to both.

Protection of members of the Release Board

9F. No action, suit prosecution or other proceeding shall be brought or instituted personally against any member of the Release

Board in respect of any act done *bona fide* in pursuance or execution or intended execution, of the provisions of this Act.”.

Repeal and replacement of Part VIII of Cap. 168

5. *Part VIII of the principal Act is deleted and the following is substituted:*

“PART VIII

REMISSION, CONDITIONAL RELEASE AND DISCHARGE

Calculation of term of sentence

51.(1) In any sentence of imprisonment the word "month" shall, unless the contrary is expressed, be construed as meaning a calendar month.

(2) A prisoner who, but for this subsection, would be discharged on a Sunday, Christmas Day or Good Friday, shall be discharged on the day next preceding.

(3) For the purposes of this Part, a person committed to prison in default of payment of a sum adjudged to be paid by a conviction shall be treated as undergoing a sentence of imprisonment for the term for which he is committed; and consecutive terms of imprisonment shall be treated as one term.

Remission

52.(1) Rules made under section 66 may make provision whereby, in such circumstances as may be prescribed by such rules, a person serving a sentence of imprisonment for such a term as may be so prescribed may be granted remission of such part of that sentence as may be prescribed on the ground of his industry and good conduct, and

on the discharge of a person from prison in pursuance of any such remission his sentence shall expire.

(2) Where it appears to the Minister that a person serving a sentence of imprisonment was under the age of 21 years at the commencement of his sentence he may direct that instead of being granted remission of his sentence under such rules he shall, at any time on or after the day on which he could have been discharged if the remission had been granted, be released on a supervision order under this section.

(3) A person released on a supervision order under this section shall, until the expiration of his sentence, be under the supervision of such society or person as may be specified in the order and shall comply with such other requirements as may be so specified: but the Minister may at any time modify or cancel any such requirements.

(4) Where before the expiration of his sentence the Minister is satisfied that a person released on a supervision order has failed to comply with any requirement for the time being specified in the order, he may by order recall him to prison; and thereupon that person shall be liable to be detained in prison until the expiration of his sentence and, if at large, shall be deemed to be unlawfully at large.

(5) The Minister may release on a supervision order a person detained in a prison under subsection (4) at any time before the expiration of his sentence; and subsections (3) and (4) shall apply in the case of a person released under this subsection as they apply in the case of a person released under subsection (2).

(6) Where the unexpired part of the sentence of a person released under subsection (2) is less than 6 months, subsections (3) to (5) shall apply to him subject to the following modifications

- (a) the period for which he is under supervision under subsection (3) and is liable to recall under subsection (4) shall be a period of 6 months from the date of his release under subsection (2);

(b) if he is recalled under subsection (4) the period for which he may be detained thereunder shall be whichever is the shorter of the following, that is to say

- (i) the remainder of the said period of 6 months; or
- (ii) the part of his sentence which was unexpired on the date of his release under subsection (2), reduced by any time during which he had been so detained since that date,

and he may be released on a supervision order under subsection (5) at any time before the expiration of that period.

(7) For the purposes of this section, a person committed to prison in default of payment of a sum adjudged to be paid by a conviction shall be treated as undergoing a sentence of imprisonment for the term for which he is committed, and consecutive terms of imprisonment shall be treated as one term.

Eligibility for the grant of a release order

53.(1) A prisoner serving a term of imprisonment of 4 years or more, who has completed two-thirds of that sentence and has been of good behaviour, shall be eligible for the grant of a release order.

(2) A prisoner who is serving a term of imprisonment for life shall be eligible for grant of a release order where that prisoner has completed two-thirds of that sentence and has been of good behaviour except where that prisoner has been sentenced to life imprisonment without the possibility of a grant of a release order under section 2 of the *Offences Against The Persons Act , Cap. 141*

(3) The Superintendent shall, at the end of each month or within such period as the Release Board shall determine, submit to the Release Board, a list of all prisoners who will be eligible for the grant of a release order.

(4) The Superintendent shall not later than 6 months before the date that a prisoner becomes eligible for the grant of a release order give written notice of that date to the prisoner.

Application for a release order

54.(1) A prisoner who is eligible for the grant of a release order under section 53, may apply in the prescribed manner to the Release Board for the grant of that order.

(2) An application under subsection (1) shall contain the following particulars:

- (a) the full name and age of the applicant;
 - (b) the nature of the offence of which the applicant was convicted and sentenced;
 - (c) any other information on which the applicant relies in support of his application; and
 - (d) any other information which may be requested by the Prisoners Release Board.
- (3) The Superintendent shall furnish to the Release Board
- (a) a report prepared by him in respect of the conduct of the applicant while in prison; and
 - (b) a copy of a report containing an opinion by a psychiatrist or psychologist or any other person as may be designated by the Release Board stating whether the applicant is fit to be released.

Grant of release order

55.(1) The Release Board shall, in determining whether to grant a release order to an applicant, take into account the following:

- (a) the nature and circumstances of the offence for which the applicant was convicted and sentenced; and
- (b) the remarks made by the Judge at the time of sentencing; and
- (c) the information contained in the reports referred to in section 54.

(2) The Release Board shall grant a release order to an applicant if

- (a) the applicant has derived maximum benefit from imprisonment and the applicant is, at the time of his application for a release order, fit to be released from the prison on release order;
- (b) the reform and rehabilitation of the applicant will be aided by conditional release;
- (c) the release order to the applicant will not, in the opinion of the Release Board, constitute a danger to society; and
- (d) any other information which the Release Board may deem necessary.

(3) Where the Release Board decides to grant a release order in favour of an applicant the Release Board shall, within 10 days of the date of that decision

- (a) give written notice of the decision to the applicant and the Superintendent; and
- (b) make a release order in respect of the applicant and the release order shall be sent to the Superintendent.

Release order

56.(1) A release order shall have effect for the period specified therein and shall require the holder of the release order to submit during that period to the supervision of a probation officer appointed by the Chief Probation Officer and shall contain such requirements as the Release Board considers necessary for securing the supervision and facilitating the rehabilitation of the holder of the release order.

(2) Notwithstanding the generality of subsection (1), release orders shall be granted subject to the following conditions:

- (a) the finger-prints of the holder of the order shall be impressed thereon and a photograph of his front and side face shall be affixed thereto;
- (b) the holder of the order shall possess the order and shall at all times produce it on demand when called upon to do so by a magistrate or police or person under whose supervision he has been placed;
- (c) the holder of the order shall abstain from any violation of the law;
- (d) the holder of the order shall not habitually associate with notoriously bad characters such as reputed thieves, housebreakers, receivers of stolen property and the like;
- (e) the holder of the order shall notify the Chief Probation Officer of any change of address; and
- (f) any other conditions which the Release Board may impose.

Suspension or revocation of a release order

57.(1) The Release Board shall suspend or revoke a release order where the holder of the release order

- (a) commits an offence during the period specified in the release order; or
- (b) is in breach of any of the conditions set out in the release order.

(2) Where the Release Board intends to suspend a release order, the Release Board shall, within a reasonable time, give written notice of that intention to

- (a) the Superintendent; and
- (b) the holder of the release order.

(3) Where the release order has been suspended or revoked, the release order shall cease to have effect and the holder of that release order shall upon being notified of that revocation or suspension, as the case may be, return to the prison and if the holder of release order fails to do so, the Chairman of the Release Board shall issue a warrant for the arrest of the holder of the release order who shall, upon arrest, be returned to the prison.

(4) Where a holder of a release order is returned to prison in accordance with subsection (3), the period spent by that holder in prison while his release order is suspended or revoked, as the case may be, shall be counted as a part of the sentence in respect of which the release was granted and shall be taken into account together with any remission earned by the holder of the release order for the purpose of determining the date of the expiration of that sentence.

Reapplication for a release order

58.(1) A prisoner whose application for a release order has been refused by the Prisoners Release Board, may again apply for a release order after the expiration of 12 months from the date of the refusal.

(2) A prisoner in respect of whom a release order has been suspended or revoked may apply for a release order after the expiration of 12 months from the date of such suspension or revocation, as the case may be.

(3) Where a prisoner in respect of whom a release order has been suspended or revoked has one fourth of his sentence to complete he shall not be permitted to apply to the Prisoners Release Board for a new release order.

Release of prisoner on payment of portion of fine

59. Where a person is committed to prison for non-payment of any sum adjudged to be paid by the conviction or order of any Judge or on payment of a magistrate or for want of sufficient distress to satisfy the sum, then, on payment to the Officer-in-Charge of part of the sum, the period of detention shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid bears to so much of the said sum and the costs and charges of any distress levied to satisfy that sum, as was due at the time the period of detention was imposed.

Time for receiving fines or part-payments

60. There shall be no obligation on the part of the Officer-in-Charge to receive upon a Sunday, Christmas Day, or Good Friday any penalty, fine or payment tendered to obtain the release or reduction of the terms of imprisonment of any prisoner and fines or part-payment

thereof will only be received between the hours of 10.00 a.m. and 4.00 p.m.

Power of the Minister to discharge prisoners temporarily

61.(1) Where the Minister is satisfied that by reason of the condition of a prisoner's health it is undesirable to detain him in prison but that, such condition of health being due in whole or in part to the prisoner's own conduct in prison, it is desirable that his release should be temporary and conditional only, the Minister may, if he thinks fit, having regard to all the circumstances of the case, by order authorise the temporary discharge of the prisoner for such period and subject to such conditions as may be stated in the order.

(2) Where an order of temporary discharge is made in the case of a prisoner not under sentence, the order shall contain conditions requiring the attendance of the prisoner at any further proceedings on his case at which his presence may be required.

(3) Any prisoner discharged under this section shall comply with any conditions stated in the order of temporary discharge and shall return to prison at the expiration of the period stated in the order or of such extended period as may be fixed by any subsequent order of the Minister and a prisoner who fails so to comply or return may be arrested without warrant and taken back to prison.

(4) Where a prisoner under sentence is discharged in pursuance of an order of temporary discharge, the currency of the sentence shall be suspended from the day on which he is discharged from prison under the order to the day on which he is received back into prison, so that the former day shall be reckoned and the latter shall not be reckoned as part of the sentence.

(5) Nothing in this section shall affect the duties of the medical officer in respect of a prisoner whom the Minister does not think fit to discharge under this section.

Supervision order granted by the Superintendent

62.(1) The Superintendent may subject to such conditions as he may impose, grant to a prisoner a supervision order where the prisoner is required to leave the confines of the prison to perform a particular task or to attend an event.

(2) A prisoner who fails to comply with conditions imposed by the Superintendent under subsection (1), may be arrested without warrant and returned to prison.

Expenses of return from prison of discharged prisoner

63. When a prisoner is discharged from prison, the Officer-in-Charge may provide him with the means of returning to his home either by paying his fare or in any other convenient manner.

Exercise of the Minister's functions

64. The Minister in the exercise of any function conferred upon him by sections 52, 61 or 68 shall act in accordance with the advice of the Board.”.

Amendment of the Schedule to Cap. 168

6. *The principal Act is amended by*

- (a) *renumbering the Schedule as the "First Schedule";*
- (b) *inserting the Schedule to this Act as the "Second Schedule".*

Amendment of Cap. 168

7. *The principal Act is amended by deleting the word "Schedule" wherever it appears and substituting the words "First Schedule".*

Commencement

8. *This Act shall come into operation on a date to be fixed by Proclamation.*

FIRST SCHEDULE

(Section 6)

“SECOND SCHEDULE

(Section 9A)

Constitution, Functions and Procedure of the Prisoners Release Board

Constitution of Prisoners Release Board

1.(1) The Governor-General, by instrument under the Public Seal acting on the recommendation of the Minister shall appoint the members of the Prisoners Release Board.

(2) The Prisoners Release Board shall comprise the following persons:

- (a)* a present or former member of the Judiciary;
- (b)* a psychiatrist;
- (c)* a psychologist;
- (d)* a criminologist or penologist;
- (e)* the Chief Probation Officer or his nominee;
- (f)* the Commissioner of Police or his nominee;
- (g)* a representative from a religious institution;
- (h)* a representative from Civil Society;
- (i)* a representative from the business community; and
- (j)* any other person the Minister considers appropriate.

(3) The member of the Judiciary referred to in paragraph 2(a) shall be the Chairman and the Deputy chairman shall be elected from among the members of the Prisoners Release Board.

Tenure

2.(1) A member of the Prisoners Release Board shall hold office for a period of 3 years and shall be eligible for reappointment.

(2) Where a vacancy is created by the death, resignation or removal from office of a member, a person may be appointed in accordance with paragraph (1) to fill that vacancy.

Resignation

3.(1) The Chairman or Deputy Chairman may at any time resign his office by instrument in writing addressed to the Minister; and upon the date of receipt by the Minister of the instrument, the Chairman or Deputy Chairman ceases to be Chairman or Deputy Chairman and a member of the Prisoners Release Board.

(2) A member may at any time resign his office by instrument in writing addressed to the Chairman, who shall forthwith cause the instrument to be forwarded to the Minister; and upon the date of the receipt by the Minister of the instrument, that member ceases to be a member of the Prisoners Release Board.

Publication in *Official Gazette*

4. The names of all members of the Prisoners Release Board as first constituted and every change in the membership thereafter shall be published in the *Official Gazette*.

Meetings

5. The Prisoners Release Board shall regulate its own procedure and shall meet at least once every quarter and at such other

times as may be necessary or expedient for the transaction of the business of the Prisoners Release Board.

Quorum

6. The Chairman and 5 other members of the Prisoners Release Board shall constitute a quorum.

Minutes

7. The Prisoners Release Board shall submit the minutes of the meetings of the Release Board to the Minister as soon as possible after they have been approved by the Release Board.”.

Read three times and passed the House of Assembly this
day of _____, 2014.

Speaker

Read three times and passed the Senate this _____ day of
, 2014.

President