

New South Wales

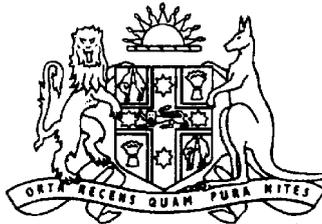
# Compulsory Drug Treatment Correctional Centre Act 2004 No 42

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New South Wales

# **Compulsory Drug Treatment Correctional Centre Act 2004 No 42**

Act No 42, 2004

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An Act to amend the *Drug Court Act 1998*, the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999* to provide for the compulsory treatment and rehabilitation of recidivist drug offenders; and for related purposes. [Assented to 6 July 2004]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Compulsory Drug Treatment Correctional Centre Act 2004*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Drug Court Act 1998 No 150**

The *Drug Court Act 1998* is amended as set out in Schedule 1.

**4 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92**

The *Crimes (Sentencing Procedure) Act 1999* is amended as set out in Schedule 2.

**5 Amendment of Crimes (Administration of Sentences) Act 1999 No 93**

The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 3.

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## Schedule 1 Amendment of Drug Court Act 1998

(Section 3)

### [1] Section 3 Objects

Insert “and eligible convicted offenders” after “eligible persons” in section 3 (1) (a).

### [2] Section 3 (2)

Insert “in relation to eligible persons” after “objects”.

### [3] Section 3 (2A)

Insert after section 3 (2):

- (2A) This Act achieves its objects in relation to eligible convicted offenders by establishing a scheme for compulsory drug treatment and rehabilitation for certain drug dependent persons.

### [4] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

*Compulsory Drug Treatment Correctional Centre* has the same meaning as in Part 4A of the *Crimes (Administration of Sentences) Act 1999*.

*compulsory drug treatment detention* means detention in accordance with Part 4A of the *Crimes (Administration of Sentences) Act 1999*.

*compulsory drug treatment order* means an order made under section 18C.

*eligible convicted offender* is defined in section 5A.

### [5] Section 5A

Insert after section 5:

#### 5A Definition of “eligible convicted offender”

- (1) A person is an eligible convicted offender if:
- (a) the person is convicted of an offence, other than an offence referred to in subsection (2), and

- (b) the person has been sentenced to a term of imprisonment for the offence to be served by way of full-time detention and the unexpired non-parole period in relation to that sentence is a period of at least 18 months but not more than 3 years, and
  - (c) the person has, in the 5-year period immediately before the person was sentenced, been convicted, under a law of this State or under a law of the Commonwealth or another State or Territory or of another country, of at least 3 other offences, not being offences arising out of the same circumstances, that resulted in any one or more of the following:
    - (i) a sentence of imprisonment (including a sentence of imprisonment that was suspended),
    - (ii) the making of a community service order (however described),
    - (iii) the entry into a good behaviour bond or recognizance (however described), and
  - (d) in the opinion of the Drug Court, the person has a long-term dependency on the use of prohibited drugs (within the meaning of the *Drug Misuse and Trafficking Act 1985*) or other drugs prescribed by the regulations, and
  - (e) in the opinion of the Drug Court, the facts in connection with the offence for which the person has been sentenced, together with the person's antecedents and any other information available, indicate that the offence was related to the person's long-term drug dependency and associated lifestyle, and
  - (f) the person satisfies such other criteria as are prescribed by the regulations.
- (2) A person is not an eligible convicted offender if the person has been convicted at any time of the following:
- (a) murder, attempted murder or manslaughter,
  - (b) sexual assault of an adult or child or a sexual offence involving a child,
  - (c) any offence involving the use of a firearm,

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- (d) any offence that, in the opinion of the Drug Court, involves serious violence (such as malicious wounding or assault with intent to do grievous bodily harm, but not including common assault),
  - (e) an offence under section 23 (2), 24 (2), 25 (2), 26, 27 or 28 of the *Drug Misuse and Trafficking Act 1985* involving a commercial quantity or large commercial quantity of a prohibited plant or prohibited drug within the meaning of that Act,
  - (f) any offence prescribed by the regulations for the purposes of this section.
- (3) A person is not an eligible convicted offender if, in the opinion of the Drug Court:
- (a) the person suffers from a mental condition, illness or disorder that:
    - (i) is serious, or
    - (ii) leads to the person being violent, and
  - (b) the mental condition, illness or disorder could prevent or restrict the person's active participation in a drug treatment program.

**[6] Part 2A**

Insert after Part 2:

**Part 2A Compulsory drug treatment detention**

**Division 1 Preliminary**

**18A Definitions**

In this Part:

***assessment report*** means a report prepared under Division 3.

***multi-disciplinary team*** means a team comprised of:

- (a) the Director of the Compulsory Drug Treatment Correctional Centre (or a person nominated by the Director), who is to be the team leader, and
- (b) a probation and parole officer appointed by the Commissioner of Corrective Services, and

- (c) a person appointed by the Chief Executive Officer, Corrections Health Service, and
- (d) such other persons as are prescribed by the regulations.

*offender's obligations* under a compulsory drug treatment order means the obligations that the offender has under section 106C of the *Crimes (Administration of Sentences) Act 1999* as a consequence of the making of the order.

*probation and parole officer* has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

## **Division 2 Referral of eligible convicted offenders to Drug Court**

### **18B Courts to refer eligible convicted offenders to Drug Court**

- (1) This section applies to such courts as are prescribed by the regulations.
- (2) It is the duty of a court to which this section applies that sentences a person to imprisonment or which, on determining an appeal, confirms a sentence of imprisonment imposed on the person by some other court (whether or not on the same terms as the other court):
  - (a) to ascertain whether there are grounds on which the Drug Court might find the person to be an eligible convicted offender, and
  - (b) if so, to refer the person to the Drug Court to determine whether the person should be the subject of a compulsory drug treatment order.
- (3) The duty imposed on a court by this section is to be exercised as soon as practicable after the person is sentenced to imprisonment or the appeal is dealt with.
- (4) The registrar or clerk of a court that refers a person to the Drug Court under this section must give to the registrar of the Drug Court such documents and materials prescribed by the regulations relating to the person as are requested by that registrar.

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### **Division 3      Making compulsory drug treatment orders**

#### **18C      Compulsory drug treatment detention**

The Drug Court may make an order directing that an eligible convicted offender serve the offender's sentence of imprisonment by way of compulsory drug treatment detention.

#### **18D      Restriction on power of Drug Court to make compulsory drug treatment orders**

- (1) The Drug Court must not make a compulsory drug treatment order with respect to an offender's sentence of imprisonment unless:
  - (a) the Drug Court has referred the offender to the multi-disciplinary team for assessment as to the eligibility and suitability of the offender for compulsory drug treatment detention and has had regard to the contents of the assessment report made by the team under section 18E, and
  - (b) the Drug Court is satisfied:
    - (i) that the offender is of or above the age of 18 years, and
    - (ii) that the offender is an eligible convicted offender, and
    - (iii) that the offender is a suitable person to serve the sentence by way of compulsory drug treatment detention, and
    - (iv) that it is appropriate in all of the circumstances that the sentence be served by way of compulsory drug treatment detention, and
    - (v) that there is accommodation available (or is likely to be available within 14 days) at the Compulsory Drug Treatment Correctional Centre for the offender to serve the sentence by way of compulsory drug treatment detention, and
    - (vi) that the offender's participation in the program will not damage the program or any other person's participation in it.

- (2) If the Drug Court declines to make a compulsory drug treatment order in relation to an eligible convicted offender's sentence on the ground that the offender's participation in the program will damage the program or any other person's participation in it (as referred to in subsection (1) (b) (vi)), the Drug Court may:
  - (a) revoke any parole order made under section 50 of the *Crimes (Sentencing Procedure) Act 1999* in relation to the offender, and
  - (b) notify the Parole Board of the decision to decline to make the order and the circumstances in which it was made.
- (3) The Drug Court may, for any reason it considers sufficient, decline to make a compulsory drug treatment order despite the contents of an assessment report.
- (4) No appeal lies against the Drug Court's decision to make or not to make a compulsory drug treatment order.

**18E Assessment of eligibility and suitability by the multi-disciplinary team**

- (1) When an offender is referred to the multi-disciplinary team for assessment, the multi-disciplinary team is to investigate and report to the Drug Court on the matters referred to in sections 5A and 18D (1) (b) (i)–(vi).
- (2) When assessing whether an offender is a suitable person to serve a sentence by way of compulsory drug treatment detention (being the ground referred to in section 18D (1) (b) (iii)), the multi-disciplinary team is to have regard to the following matters:
  - (a) the offender's level of motivation and attitude to the compulsory drug treatment program,
  - (b) the offender's drug treatment history,
  - (c) the likelihood that the offender will commit a domestic violence offence (within the meaning of the *Crimes Act 1900*) during community custody (Stage 3) (within the meaning of Part 4A of the *Crimes (Administration of Sentences) Act 1999*),
  - (d) any other matter prescribed by the regulations.

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- (3) The regulations may make provision for or with respect to the conduct of investigations and the preparation of reports for the purposes of this Part.

**18F Concurrent and consecutive sentences**

- (1) A compulsory drug treatment order may be made in respect of two or more sentences of imprisonment that are being served concurrently or consecutively (or partly concurrently and partly consecutively).
- (2) A reference in this Part to a sentence of imprisonment includes a reference to two or more sentences of imprisonment that are being served concurrently or consecutively (or partly concurrently and partly consecutively).
- (3) A reference in section 5A (1) (b) to an unexpired non-parole period in relation to a sentence includes a reference to a cumulative unexpired non-parole period in relation to two or more sentences of imprisonment that are being served concurrently or consecutively (or partly concurrently and partly consecutively).

**Division 4 Miscellaneous**

**18G Effect of compulsory drug treatment order**

A compulsory drug treatment order has the effect of:

- (a) cancelling the warrant of commitment issued under section 62 of the *Crimes (Sentencing Procedure) Act 1999* in relation to the offender, and
- (b) revoking any parole order made under section 50 of the *Crimes (Sentencing Procedure) Act 1999* in relation to the offender, and
- (c) requiring the eligible convicted offender to comply with the compulsory drug treatment personal plan to be set for the person under section 106F of the *Crimes (Administration of Sentences) Act 1999*.

**18H Explanation of compulsory drug treatment order to offender**

- (1) Before making a compulsory drug treatment order in relation to an eligible convicted offender's sentence of imprisonment, the Drug Court must ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand):
  - (a) the offender's obligations under the compulsory drug treatment order, and
  - (b) the consequences that may follow if the offender fails to comply with those obligations.
- (2) A compulsory drug treatment order is not invalidated by a failure to comply with this section.

**18I Preparation and service of written notice of compulsory drug treatment order**

- (1) As soon as practicable after making a compulsory drug treatment order, the Drug Court must cause written notice of the order to be given to the eligible convicted offender and to the Commissioner of Corrective Services.
- (2) A compulsory drug treatment order is not invalidated by a failure to comply with this section.

**18J Warrant of commitment**

As soon as practicable after making a compulsory drug treatment order, the Drug Court must issue a warrant for the committal of the eligible convicted offender to the Compulsory Drug Treatment Correctional Centre.

**[7] Section 26 Court proceedings**

Insert "or the *Crimes (Administration of Sentences) Act 1999*" after "this Act" in section 26 (1).

**[8] Section 26 (2) (b)**

Omit "this Act and the regulations".

Insert "this Act, the *Crimes (Administration of Sentences) Act 1999* and any regulations made under those Acts".

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**[9] Schedule 2 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Compulsory Drug Treatment Correctional Centre Act 2004*  
(but only to the extent that it amends this Act)

**[10] Schedule 2**

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provision consequent on enactment of  
Compulsory Drug Treatment  
Correctional Centre Act 2004**

**Compulsory drug treatment order may be made in relation to  
certain existing inmates**

- (1) Subject to subclause (2), Part 2A does not apply to a person who was sentenced before the commencement of this clause.
- (2) The Drug Court may make a compulsory drug treatment order in relation to a person who:
  - (a) was convicted of an offence, other than an offence referred to in section 5A (2), and was sentenced to serve a term of imprisonment by way of full-time detention for that offence within the period of 12 months before the commencement of this clause, and
  - (b) would be an eligible convicted offender if section 5A (1) (a) and (b) were disregarded,

but only if:

- (c) the unexpired non-parole period in relation to that sentence is a period of at least 18 months but not more than 3 years at the time the Drug Court makes the order, and
- (d) the person would, but for the sentence of imprisonment, be ordinarily a resident of a local government area prescribed by the regulations.

## **Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999**

(Section 4)

### **[1] Section 3 Interpretation**

Insert in alphabetical order in section 3 (1):

*compulsory drug treatment detention* means detention in accordance with Part 4A of the *Crimes (Administration of Sentences) Act 1999*.

*Drug Court* means the Drug Court of New South Wales constituted under the *Drug Court Act 1998*.

### **[2] Part 2, Division 2, heading**

Insert after section 4:

#### **Division 2 Custodial sentences**

### **[3] Section 5A**

Insert after section 5:

#### **5A Compulsory drug treatment detention**

The Drug Court may make an order under Part 2A of the *Drug Court Act 1998* directing that an offender, who is an eligible convicted offender within the meaning of that Act, serve a sentence of imprisonment by way of compulsory drug treatment detention.

### **[4] Part 2, Division 2, heading**

Omit the heading occurring before section 6.

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## Schedule 3 Amendment of Crimes (Administration of Sentences) Act 1999

(Section 5)

### [1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

*compulsory drug treatment detention* means detention in accordance with Part 4A.

*compulsory drug treatment order* means an order in force under section 18C of the *Drug Court Act 1998*.

*Drug Court* means the Drug Court of New South Wales constituted under the *Drug Court Act 1998*.

### [2] Section 3 (1), definition of “offender”

Insert “, 4A” after “Part 3, 4”.

### [3] Section 3 (1), definition of “offender”

Omit “Part 3 or 4”. Insert instead “Part 3, 4 or 4A”.

### [4] Part 4A

Insert after Part 4:

## Part 4A Imprisonment by way of compulsory drug treatment detention

### Division 1 Preliminary

#### 106A Definitions

In this Part:

*community supervision order* means an order by the Drug Court that imposes conditions on the offender in relation to the periods of time when the offender is not in the Compulsory Drug Treatment Correctional Centre.

**Note.** See section 106O.

*Compulsory Drug Treatment Correctional Centre* means the correctional centre given that name by a proclamation under section 225.

***Director*** or ***Director of the Compulsory Drug Treatment Correctional Centre*** means the governor of that correctional centre.

***offender*** means a person in respect of whom a compulsory drug treatment order is in force.

***progression order*** means an order by the Drug Court that an offender progress from one stage of compulsory drug treatment detention to a higher stage.

**Note.** See sections 106D and 106M.

***regression order*** means an order by the Drug Court that an offender regress from one stage of compulsory drug treatment detention to a lower stage.

**Note.** See sections 106D and 106M.

***revocation order*** means an order by the Drug Court that revokes an offender's compulsory drug treatment order.

**Note.** See section 106Q.

#### **106B Objects of compulsory drug treatment**

The objects of compulsory drug treatment are:

- (a) to provide a comprehensive program of compulsory treatment and rehabilitation under judicial supervision for drug dependent persons who repeatedly resort to criminal activity to support that dependency, and
- (b) to effectively treat those persons for drug dependency, eliminating their illicit drug use while in the program and reducing the likelihood of relapse on release, and
- (c) to promote the re-integration of those persons into the community, and
- (d) to prevent and reduce crime by reducing those persons' need to resort to criminal activity to support their dependency.

#### **106C Obligations of offender**

The obligations of an offender while serving a sentence by way of compulsory drug treatment detention are:

- (a) to comply with such requirements of this Part and the regulations as apply to the offender, and

- (b) to comply with the requirements of any compulsory drug treatment personal plan applying to the offender under this Part, and
- (c) to comply with the provisions of any other Part of this Act or the regulations applying to the offender under section 106V.

**106D Stages of compulsory drug treatment detention**

- (1) There are 3 stages of compulsory drug treatment detention:
  - (a) closed detention (Stage 1), and
  - (b) semi-open detention (Stage 2), and
  - (c) community custody (Stage 3).
- (2) Under closed detention (Stage 1), the offender is to be kept in full-time custody at the Compulsory Drug Treatment Correctional Centre.
- (3) Under semi-open detention (Stage 2), the offender is to be kept in the Compulsory Drug Treatment Correctional Centre and may be allowed to attend employment, training or social programs outside the Centre (as specified in the offender's compulsory drug treatment personal plan).
- (4) Under community custody (Stage 3), the offender may reside outside the Compulsory Drug Treatment Correctional Centre at accommodation approved by the Drug Court under intensive supervision.
- (5) An offender allocated to, or by order progressed or regressed to, a stage of detention is in that stage of detention.

**106E Duration of compulsory drug treatment order**

Unless sooner revoked, an offender's compulsory drug treatment order expires:

- (a) at the end of the term of the sentence to which it relates,  
or
- (b) when the offender is released on parole,  
whichever occurs first.

**Division 2 Administration of compulsory drug treatment orders**

**Subdivision 1 Compulsory drug treatment personal plans**

**106F Compulsory drug treatment personal plans**

- (1) The Commissioner must, as soon as practicable after the making of a compulsory drug treatment order in relation to an offender, prepare a plan that imposes conditions on the offender regarding the offender's drug treatment and rehabilitation during the period of operation of that order (the offender's *compulsory drug treatment personal plan*).
- (2) An offender's compulsory drug treatment personal plan comes into operation when it is approved by the Drug Court.
- (3) The Commissioner, when preparing a compulsory drug treatment personal plan, must consult the Chief Executive Officer, Corrections Health Service or the Chief Executive Officer's delegate.
- (4) The Drug Court may make recommendations to the Commissioner regarding the conditions to be included in an offender's compulsory drug treatment personal plan.
- (5) A compulsory drug treatment personal plan may be approved by the Drug Court in the absence of the offender in respect of whom it is made.
- (6) The kinds of conditions that may be imposed on an offender in a compulsory drug treatment personal plan are as follows:
  - (a) conditions relating to conduct and good behaviour,
  - (b) conditions relating to attendance for counselling or other treatment,
  - (c) conditions relating to the management of the offender in the Compulsory Drug Treatment Correctional Centre,
  - (d) conditions relating to periodic drug testing that the offender must undergo,

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- (e) conditions relating to involvement in activities, courses, training or employment for the purpose of promoting the re-integration of the offender into the community,
  - (f) any other kinds of conditions that may be prescribed by the regulations,
  - (g) such other conditions as the Commissioner considers appropriate in the circumstances,
  - (h) such other conditions as the Drug Court considers appropriate in the circumstances.
- (7) The regulations referred to in subsection (6) (f) may deal with the following:
- (a) the form of compulsory drug treatment,
  - (b) the provision of integrated case management services to the offender,
  - (c) the key elements of non-pharmacotherapy drug treatment programs.
- (8) The regulations may make provision for or with respect to the following:
- (a) the preparation and implementation of compulsory drug treatment personal plans (including comprehensive individual assessments of offenders before the making of any such plans),
  - (b) the role and responsibilities of an offender under the offender's compulsory drug treatment personal plan,
  - (c) the role and responsibilities of persons responsible for the offender's care and treatment,
  - (d) ongoing review and regular updating of compulsory drug treatment personal plans,
  - (e) informing the Drug Court of the contents of offenders' compulsory drug treatment personal plans.
- (9) The conditions of an offender's compulsory drug treatment personal plan relating to periodic drug testing do not prevent any random drug testing of the offender.

**106G Variation of conditions of personal plan**

- (1) The Commissioner may from time to time prepare a variation to an offender's compulsory drug treatment personal plan that adds new conditions to, or varies or revokes existing conditions of, the plan.
- (2) A variation of an offender's compulsory drug treatment personal plan comes into effect when it is approved by the Drug Court.
- (3) The Commissioner, when preparing a variation to a compulsory drug treatment personal plan, must consult the Chief Executive Officer, Corrections Health Service or the Chief Executive Officer's delegate.
- (4) A variation to a compulsory drug treatment personal plan may be approved by the Drug Court in the absence of the offender in respect of whom it relates.

**106H Mandatory conditions of all personal plans**

It is a condition of each compulsory drug treatment personal plan that the offender:

- (a) must not use any drug other than a drug prescribed by a registered medical practitioner or registered dentist, and
- (b) must not resort to violence or make any threat of violence, and
- (c) must comply with any community supervision order made in relation to the offender, and
- (d) must not commit any further offences.

**Note.** The term **drug** is defined in section 3 of this Act to mean:

- (a) a prohibited drug or prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985*, or
- (b) any other substance declared by the regulations to be a drug for the purposes of this Act.

**106I Sanctions for non-compliance with personal plan**

- (1) If the Commissioner is satisfied that an offender has failed to comply with any condition of the offender's compulsory drug treatment personal plan, the Commissioner may impose any one or more of the sanctions specified in subsection (2).

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- (2) The following kinds of sanctions may be imposed on an offender under this section:
- (a) withdrawal of privileges granted to the offender under section 106J (2) (a),
  - (b) an increase in the level of the management of the offender in the Compulsory Drug Treatment Correctional Centre,
  - (c) an application to the Drug Court to vary any community supervision order applying to the offender to increase the level of supervision to which the offender is subject,
  - (d) an application to the Drug Court to vary the offender's compulsory drug treatment personal plan to increase the frequency with which the offender must undergo periodic testing for drugs.
- (3) The Commissioner must refer an offender to the Drug Court if the Commissioner is of the opinion that the offender's failure to comply with any condition of the offender's compulsory drug treatment personal plan is of such a serious nature that it might warrant the Drug Court making any of the following:
- (a) a regression order,
  - (b) a revocation order,
  - (c) a variation of any community supervision order applying to the offender to increase the level of supervision to which the offender is subject.
- (4) Without affecting the other circumstances in which an offender is taken to have failed to comply with his or her compulsory drug treatment personal plan, if an offender is charged before a court with an offence referred to in section 5A (2) of the *Drug Court Act 1998*:
- (a) the offender is taken to have failed to comply with his or her compulsory drug treatment personal plan and that failure is taken to be of a serious nature, and
  - (b) the Commissioner must refer the offender to the Drug Court.
- (5) Nothing in this section prevents:
- (a) the Commissioner from referring an offender to the Drug Court for any other reason, or

- (b) the Drug Court from dealing with an offender as it sees fit, including making any order under this Part.

**106J Rewards for compliance with personal plan**

- (1) If the Commissioner is satisfied that an offender has maintained a satisfactory level of compliance with the offender's compulsory drug treatment personal plan, the Commissioner may grant any one or more of the rewards specified in this section.
- (2) The following kinds of rewards may be granted to an offender under this section:
  - (a) conferral of privileges,
  - (b) a decrease in the level of the management of the offender in the Compulsory Drug Treatment Correctional Centre,
  - (c) an application to the Drug Court to vary any community supervision order applying to the offender to decrease the level of supervision to which the offender is subject,
  - (d) an application to the Drug Court to vary the offender's compulsory drug treatment personal plan to decrease the frequency with which the offender must undergo periodic testing for drugs.

**106K No appeal from decisions of Drug Court or Commissioner**

No appeal lies against the Drug Court or the Commissioner in relation to any decision made by the Drug Court or the Commissioner under this Subdivision.

**Subdivision 2 Initial allocation and movement between stages of compulsory drug treatment detention**

**106L New offenders in compulsory drug treatment detention allocated to Stage 1**

On the making of a compulsory drug treatment order in relation to the offender's sentence of imprisonment, the offender is automatically allocated to closed detention (Stage 1).

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**106M Progression and regression between stages of detention**

- (1) After an offender has served his or her sentence in closed detention (Stage 1) for a period of at least 6 months, the Drug Court may order that the offender progress to semi-open detention (Stage 2).
- (2) After an offender has served his or her sentence in semi-open detention (Stage 2) for a period of at least 6 months, the Drug Court may order that the offender progress to community custody (Stage 3).
- (3) If the Drug Court is satisfied, on the balance of probabilities, that an offender has failed to comply in a serious respect with any condition of the offender's compulsory drug treatment personal plan, the Drug Court may order that an offender:
  - (a) serving a sentence in semi-open detention (Stage 2) regress to closed detention (Stage 1), or
  - (b) serving a sentence in community custody (Stage 3) regress to closed detention (Stage 1) or semi-open detention (Stage 2), as the Drug Court sees fit.
- (4) The regulations may make provision for or with respect to the criteria to be used by the Drug Court in determining whether to make a progression or regression order under this section.
- (5) No appeal lies against the Drug Court's decision to make a progression or regression order under this section.

**106N Assessment reports**

- (1) Before the Drug Court makes a progression order in relation to an offender, the Court is to have regard to the following reports prepared in relation to the offender:
  - (a) an assessment report prepared by the Director of the Compulsory Drug Treatment Correctional Centre,
  - (b) in relation to a progression order that would progress an offender to community custody (Stage 3), an assessment report prepared by a probation and parole officer,
  - (c) any other report that the Drug Court considers relevant.
- (2) The Drug Court may, at any time, order that an assessment report on an offender be prepared.

- (3) The regulations may make provision for or with respect to the conduct of investigations and the preparation of reports for the purposes of this Part.

**1060 Community supervision orders**

- (1) On the making of a progression order in relation to an offender, the Drug Court must make an order (a *community supervision order*) that:
- (a) allows the offender to be absent from the Compulsory Drug Treatment Correctional Centre, and
  - (b) imposes conditions on the offender in relation to the periods of time when the offender is not in the Compulsory Drug Treatment Correctional Centre.
- (2) The kinds of conditions that the Drug Court may impose on the offender under this section are as follows:
- (a) conditions relating to conduct and good behaviour,
  - (b) conditions relating to the supervision of the offender outside the Compulsory Drug Treatment Correctional Centre,
  - (c) conditions relating to drug testing that the offender must undergo,
  - (d) conditions relating to residence, association with other persons or attendance at specified locations,
  - (e) any other kinds of conditions that may be prescribed by the regulations,
  - (f) such other conditions as the Drug Court considers appropriate in the circumstances.
- (3) The Drug Court when imposing any condition on an offender under this section is to have regard to and give substantial weight to any recommendations of the Commissioner.
- (4) The Drug Court may from time to time vary an offender's community supervision order by adding new conditions to, or varying or revoking existing conditions of, the order.
- (5) No appeal lies against the Drug Court in relation to a decision regarding an order under this section.

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**106P Commissioner of Corrective Services may make regression and removal orders in special circumstances**

- (1) The Commissioner may order that an offender serving his or her sentence:
  - (a) in semi-open detention (Stage 2) regress to closed detention (Stage 1), or
  - (b) in community custody (Stage 3) regress to closed detention (Stage 1), or
  - (c) in community custody (Stage 3) regress to semi-open detention (Stage 2).
- (2) The Commissioner may order that an offender serving his or her sentence in closed detention (Stage 1) or semi-open detention (Stage 2) be removed from the Compulsory Drug Treatment Correctional Centre and taken to another correctional centre and held in separate custody.
- (3) The Commissioner may make an order referred to in subsection (1) or (2) only if the Commissioner believes, on reasonable grounds, that:
  - (a) the security of the community is threatened, or
  - (b) the good order and discipline of a correctional centre may be jeopardised if the offender is not regressed or removed, or
  - (c) the offender may be about to commit an offence, or
  - (d) another reason exists to regress or remove the offender.
- (4) The Commissioner must immediately notify the Drug Court if the Commissioner makes an order under this section and must give the Drug Court his or her reasons for making the order.
- (5) Within 21 days (or such other period determined by the Drug Court) after receiving the notification of the Commissioner, the Drug Court must review the Commissioner's order and make an order:
  - (a) revoking the Commissioner's order, or
  - (b) confirming the Commissioner's order, or
  - (c) confirming the Commissioner's order, but amending its terms, or

- (d) revoking, in accordance with section 106Q, the offender's compulsory drug treatment order.
- (6) The Drug Court when reviewing a Commissioner's order under subsection (5) is to have regard to and give substantial weight to any recommendations of the Commissioner.
- (7) No appeal lies against the Drug Court in relation to a decision regarding an order under subsection (5).

### **Division 3      Revocation of compulsory drug treatment order**

#### **106Q    Revocation of compulsory drug treatment order**

- (1) The Drug Court may by order revoke an offender's compulsory drug treatment order:
  - (a) if:
    - (i) the offender has failed to comply with a condition of the offender's compulsory drug treatment personal plan, and
    - (ii) that failure is of a serious nature, and
    - (iii) in the opinion of the Drug Court, the offender:
      - (A) is unlikely to make any further progress in the offender's compulsory drug treatment program, or
      - (B) poses an unacceptable risk to the community of re-offending, or
      - (C) poses a significant risk of harming others or himself or herself, or
  - (b) if the non-parole period for the offender's sentence has expired or is about to expire and the offender is serving his or her sentence in closed detention (Stage 1) or semi-open detention (Stage 2), or
  - (c) if the offender ceases to be an eligible convicted offender (within the meaning of the *Drug Court Act 1998*), or
  - (d) for any other reason the Drug Court sees fit.

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- (2) In making a decision under Part 6 as to whether to make a parole order for an offender whose compulsory drug treatment order has been revoked under this section, the Parole Board is to have regard to the circumstances that led to the revocation.
  - (3) No appeal lies against the Drug Court's revocation of a compulsory drug treatment order.

**106R Effect of revocation order**

- (1) A revocation order takes effect, or is taken to have taken effect, on the day on which it is made or on such earlier day as the Drug Court thinks fit.
- (2) If an offender is not taken into custody until after the day on which the revocation order takes effect:
  - (a) the term of the offender's sentence, and
  - (b) if the order takes effect during a non-parole period of the sentence, the non-parole period of the sentence,are, by this subsection, extended by the number of days the offender was at large after the order took effect.

**106S Warrants committing offenders to correctional centres**

- (1) If the Drug Court revokes a compulsory drug treatment order, it is to issue a warrant committing the offender to a correctional centre to serve the remainder of the sentence to which the order relates by way of full-time detention.
- (2) A warrant under this section is sufficient authority:
  - (a) for any police officer to arrest, or to have custody of, the offender named in the warrant, to convey the offender to the correctional centre specified in the warrant and to deliver the offender into the custody of the governor of that correctional centre, and
  - (b) for the governor of the correctional centre specified in the warrant to have custody of the offender named in the warrant for the remainder of the sentence to which the warrant relates.
- (3) The regulations may make provision for or with respect to the form of any warrants issued for the purposes of this section.

#### **Division 4 Parole for offenders in compulsory drug treatment detention**

##### **106T Drug Court is parole authority for offenders in compulsory drug treatment detention**

- (1) Part 6 applies to an offender who is serving a sentence by way of compulsory drug treatment detention, subject to the following:
  - (a) references to the Parole Board are taken to be references to the Drug Court,
  - (b) references to the Chairperson of the Parole Board are taken to be references to the Senior Judge of the Drug Court,
  - (c) references to the Secretary of the Parole Board are taken to be references to the registrar of the Drug Court,
  - (d) any modifications of those provisions prescribed by the regulations.
- (2) On the release of an offender on parole under a parole order made by the Drug Court under Part 6 as applied in accordance with this section (and the consequent expiry of the offender's compulsory drug treatment order under section 106E (b)), Part 7 applies to the offender in the same way as it applies to other offenders released on parole.

**Note.** This section provides that the Drug Court is the authority that will determine whether an offender serving a sentence by way of compulsory drug treatment detention is to be released on parole. Subsection (2) makes it clear that after release on parole (and the consequent expiry of the offender's compulsory drug treatment order), the Parole Board is responsible for the supervision and revocation of any parole order made in relation to the offender.

#### **Division 5 Miscellaneous**

##### **106U Formal assessment by Director**

- (1) The Director is to cause regular assessment reports to be prepared setting out the progress of each offender's drug treatment and rehabilitation and the offender's compliance with his or her compulsory drug treatment personal plan.
- (2) An assessment report under this section is to be prepared in consultation with the Chief Executive Officer, Corrections Health Service and the Drug Court.

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- (3) The regulations may make provision for or with respect to assessment reports under this section, including but not limited to:
- (a) the frequency of such reports, and
  - (b) the procedures that must be followed with respect to assessment of offenders.

**106V Application of Part 2 to Stages 1 and 2 compulsory drug treatment detention**

- (1) Part 2 and the provisions of any regulations made under that Part, subject to any modifications prescribed by the regulations under this section, apply to and in respect of an offender who is in closed detention (Stage 1) or semi-open detention (Stage 2).
- (2) Any provision of Part 2 or of the regulations under that Part that is so applied has effect as if it formed part of this Part.

**106W Conviction and sentencing of offenders for old offences while compulsory drug treatment order is in force**

- (1) If an offender is convicted and sentenced to a term of imprisonment (a *new sentence*) for an offence that occurred before the offender's compulsory drug treatment order was made, the court that sentenced that offender is to refer the offender to the Drug Court to determine whether the offender's compulsory drug treatment order should:
- (a) be varied so as to apply also in relation to the new sentence, or
  - (b) be revoked.
- (2) The Drug Court may vary a compulsory drug treatment order so as to direct an offender to serve a new sentence of imprisonment by way of compulsory drug treatment detention.
- (3) Subject to subsection (4), the Drug Court must not vary a compulsory drug treatment order under this section unless the offender is an eligible convicted offender (within the meaning of the *Drug Court Act 1998*).
- (4) Despite section 5A (1) (b) of the *Drug Court Act 1998*, the Drug Court may vary a compulsory drug treatment order under this section if the cumulative unexpired non-parole

period for the offender's term of imprisonment under all sentences in force is greater than 3 years but not more than 4 years.

**106X Arrest warrants**

- (1) If it suspects that an offender who is not serving the offender's sentence of imprisonment in the Compulsory Drug Treatment Correctional Centre may have failed to comply with his or her compulsory drug treatment personal plan, the Drug Court may issue a warrant for the offender's arrest.
- (2) A warrant under this section authorises any police officer to arrest the offender and to bring the offender before the Drug Court to be dealt with under this Act.
- (3) The *Bail Act 1978* does not apply to an offender who is arrested on the authority of a warrant under this section.
- (4) The Drug Court's functions under this section may be exercised by the registrar of the Drug Court.

**106Y Provision of information relating to offenders**

- (1) This section applies to such persons as are prescribed by the regulations for the purposes of this section, being persons who are involved in the administration of, or who provide services in connection with, an offender's drug treatment under this Part.
- (2) It is the duty of a person to whom this section applies:
  - (a) to promptly notify the registrar of the Drug Court or the Commissioner of any failure by an offender to comply with the offender's compulsory drug treatment personal plan, and
  - (b) to promptly comply with the requirements of the regulations with respect to the giving of information to the registrar.
- (3) The following provisions apply to and in respect of any information (*protected information*) relating to an offender that is provided to the Drug Court or the Commissioner, or to any person to whom this section applies, by a person to whom this section applies:

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- (a) the provision of the information does not constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct,
  - (b) the provision of the information does not constitute a contravention of the *Health Records and Information Privacy Act 2002* or the *Privacy and Personal Information Protection Act 1998*,
  - (c) no liability for defamation is incurred because of the provision of the information,
  - (d) the provision of the information does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy,
  - (e) the information is not admissible in evidence in any proceedings before a court, tribunal or committee,
  - (f) a person is not compellable in any proceedings before a court, tribunal or committee to disclose the information or to produce any document that contains the information.
- (4) The provisions of subsection (3) (e) and (f) do not apply to or in respect of the provision of protected information:
- (a) in proceedings before the Drug Court or any court hearing or determining an appeal from a decision of the Drug Court, or
  - (b) in proceedings before the Parole Board or any court hearing or determining an application in relation to a decision of the Parole Board, or
  - (c) in support of, or in answer to, any charge or allegation made in proceedings against a person in relation to the person's exercise of functions under this Act.
- (5) An offender is taken to have authorised the communication of protected information:
- (a) from any person to whom this section applies to the registrar of the Drug Court, and
  - (b) from the registrar of the Drug Court to any person to whom this section applies, and
  - (c) from any member of staff of the Drug Court to any other member of staff of the Drug Court.

- (6) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information in accordance with this section.

**106Z Review of Compulsory Drug Treatment Correctional Centre**

- (1) The Minister is to arrange for a review to be conducted of:
- (a) the compulsory drug treatment program, established under Part 2A of the *Drug Court Act 1998* and this Part, during the first four years of the program's operation, and
  - (b) the provisions of the *Drug Court Act 1998* and this Act relating to the compulsory drug treatment program and of any regulations made for the purposes of those provisions,
- in order to ascertain whether any of those provisions (or any other provisions of any other Act or regulations) should be amended.
- (2) The review is to commence as soon as practicable after the declaration of the Compulsory Drug Treatment Correctional Centre under section 225.
- (3) The Minister is to cause a report of the outcome of the review to be tabled in each House of Parliament as soon as practicable after its completion.

**106ZA Regulations**

The regulations may make provision for or with respect to the following matters:

- (a) the administration of the compulsory drug treatment program,
- (b) the management, control, administration, supervision and inspection of the Compulsory Drug Treatment Correctional Centre,
- (c) the procedure to be followed when receiving an offender into the Compulsory Drug Treatment Correctional Centre, including the procedure for accepting or refusing custody of property in an offender's possession when the offender is admitted,
- (d) the search and security procedures to be observed in the Compulsory Drug Treatment Correctional Centre,

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- (e) visits to inmates in the Compulsory Drug Treatment Correctional Centre, including the following:
    - (i) the days and times that visits may be allowed,
    - (ii) the maximum number of persons who may visit an inmate at the same time,
    - (iii) the classes of persons who may be prohibited from visiting an inmate,
    - (iv) the conditions that must be observed by persons intending to visit an inmate before such a visit will be allowed,
    - (v) the procedures to be observed by visitors and inmates during visits,
  - (f) the use of electronic monitoring devices in relation to offenders in semi-open detention (Stage 2) or community custody (Stage 3),
  - (g) the circumstances in which an offender may be tested for drugs (including random and periodic testing) and the type and nature of the tests to be used,
  - (h) the circumstances under which an offender may be required to submit to a medical examination by a medical officer,
    - (i) the declaration of offences against discipline,
    - (j) the day-to-day routine of offenders,
    - (k) the service of notices on an offender,
    - (l) the provision of post release case management services and other services to offenders after release.

**[5] Section 135 General duty of Parole Board**

Insert after section 135 (2) (i):

- (ia) if the Drug Court has notified the Parole Board that it has declined to make a compulsory drug treatment order in relation to an offender's sentence on the ground referred to in section 18D (1) (b) (vi) of the *Drug Court Act 1998*, the circumstances of that decision to decline to make the order,

**[6] Schedule 5 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Compulsory Drug Treatment Correctional Centre Act 2004*  
(but only to the extent that it amends this Act)

[Second reading speech made in—

Legislative Council on 12 May 2004

Legislative Assembly on 23 June 2004]

BY AUTHORITY