



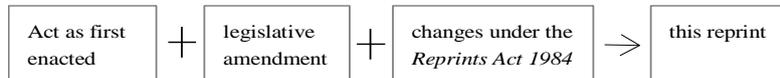
Western Australia

# **Criminal Law (Mentally Impaired Defendants) Act 1996**

**Reprinted as at 21 June 2002**

## Guide for using this reprint

### *What the reprint includes*



### ***Endnotes, Compilation table, and Table of provisions that have not come into operation***

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### ***Notes amongst text (italicised and within square brackets)***

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Western Australia

## **Criminal Law (Mentally Impaired Defendants) Act 1996**

---

### CONTENTS

---

|  |   |   |
|--|---|---|
| <b>Part 1 — Preliminary</b>                                      |   |   |
| 1.   | Short title   | 2 |
| 2.   | Commencement  | 2 |
| 3.   | Interpretation  | 2 |
| 4.   | Application to all courts exercising criminal jurisdiction                    | 3 |
| <b>Part 2 — General provisions about mentally ill defendants</b> |   |   |
| 5.   | Defendant refused bail may be detained in authorised hospital                 | 4 |
| 6.   | Relationship to <i>Mental Health Act 1996</i>                                 | 5 |
| 7.   | Reports to include report of treatment given                                  | 5 |
| <b>Part 3 — Mental unfitness to stand trial</b>                  |   |   |
| <b>Division 1 — General</b>                                      |   |   |
| 8.   | Interpretation  | 6 |
| 9.   | Mental unfitness to stand trial, definition                                   | 6 |
| 10.  | Presumptions as to mental fitness to stand trial                              | 7 |
| 11.  | When the question of mental fitness may be raised                             | 7 |
| 12.  | Deciding the question of mental fitness                                       | 7 |
| 13.  | Raising and deciding the question whether a defendant has become mentally fit | 8 |
| 14.  | Adjournments, courts' powers on   | 8 |

|     |  |    |
|-----|--|----|
|     | <b>Division 2 — Proceedings in courts of summary jurisdiction</b>      |    |
| 15. | Application  | 8  |
| 16. | Procedure for offences triable summarily                               | 9  |
| 17. | Procedure for indictable offences                                      | 10 |
|     | <b>Division 3 — Proceedings in superior courts</b>                     |    |
| 18. | Application  | 11 |
| 19. | Procedure  | 11 |
|     | <b>Part 4 — Defendants acquitted on account of unsoundness of mind</b> |    |
| 20. | Powers of courts of summary jurisdiction                               | 13 |
| 21. | Powers of superior courts  | 13 |
| 22. | Orders that may be made by courts                                      | 13 |
|     | <b>Part 5 — Mentally impaired defendants</b>                           |    |
|     | <b>Division 1 — Preliminary</b>  |    |
| 23. | Interpretation   | 15 |
|     | <b>Division 2 — Place of custody</b>                                   |    |
| 24. | General effect of custody order  | 15 |
| 25. | Place of custody to be determined within 5 days of order               | 16 |
| 26. | Place of custody may be changed  | 17 |
|     | <b>Division 3 — Leave of absence</b>                                   |    |
| 27. | Governor may permit Board to allow leave of absence                    | 17 |
| 28. | If allowed, Board may grant leave of absence                           | 17 |
| 29. | Board may cancel leave of absence                                      | 18 |
| 30. | Status of mentally impaired defendant on leave of absence              | 18 |
| 31. | Absence without leave  | 18 |
| 32. | Other Acts do not apply  | 19 |
|     | <b>Division 4 — Reports about mentally impaired defendants</b>         |    |
| 33. | Reports to Minister  | 20 |
| 34. | Reports to be given to defendant, Police and DPP                       | 21 |
|     | <b>Division 5 — Releasing mentally impaired defendants</b>             |    |
| 35. | Governor may release mentally impaired defendant                       | 21 |

|     |  |    |
|-----|--|----|
| 36. | Order to be given to defendant, Police and DPP                       | 22 |
| 37. | Breach of conditions of release                                      | 22 |
|     | <b>Division 6 — Miscellaneous</b>                                    |    |
| 38. | When discharge occurs  | 23 |
| 39. | Released mentally impaired defendant may be made involuntary patient | 23 |
| 40. | Board may require examination etc.                                   | 24 |
|     | <b>Part 6 — Mentally Impaired Defendants Review Board</b>            |    |
| 41. | Board established  | 25 |
| 42. | Members  | 25 |
| 43. | Secretary  | 26 |
| 44. | Functions  | 26 |
| 45. | Supervising officers   | 26 |
| 46. | Decisions, orders and warrants                                       | 27 |
| 47. | Judicial notice of appointment and signature                         | 27 |
| 48. | Annual report to Minister  | 28 |
|     | <b>Part 7 — Miscellaneous</b>  |    |
| 49. | Issue and execution of warrants                                      | 29 |
| 50. | Regulations  | 29 |
|     | <b>Schedule 1 — Offences for which a custody order must be made</b>  | 30 |
|     | <b>Notes</b>   |    |
|     | Compilation table  | 32 |
|     | Provisions that have not come into operation                         | 32 |
|     | <b>Defined Terms</b>   |    |





Western Australia

**Reprinted under the  
*Reprints Act 1984* as  
at 21 June 2002**

## **Criminal Law (Mentally Impaired Defendants) Act 1996**

**An Act relating to criminal proceedings involving mentally impaired  
people who are charged with offences.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Criminal Law (Mentally Impaired Defendants) Act 1996*<sup>1</sup>.

### **2. Commencement**

This Act comes into operation on the same day as the *Mental Health Act 1996* comes into operation<sup>1</sup>.

### **3. Interpretation**

In this Act, unless the contrary intention appears —

“**Board**” means the Mentally Impaired Defendants Review Board established under Part 6;

“**custody order**” means an order that a defendant be kept in custody in accordance with Part 5;

“**defendant**” means a person charged with an offence, whether a simple offence or an indictable offence;

“**involuntary patient**” has the same definition as in the *Mental Health Act 1996*;

“**magistrate**” includes one or 2 justices exercising jurisdiction under the *Justices Act 1902*;

“**psychiatrist**” has the same definition as in the *Mental Health Act 1996*;

“**psychologist**” has the same definition as in the *Mental Health Act 1996*;

“**Schedule 1 offence**” means an offence that is committed against an enactment referred to in column 1 of Schedule 1;

“**statutory penalty**”, in relation to an offence, means the penalty specified by a written law for the offence;

**“superior court”** means the Supreme Court or the District Court or the Children’s Court when constituted by or so as to include a judge.

**4. Application to all courts exercising criminal jurisdiction**

This Act applies in respect of any defendant before any court exercising criminal jurisdiction.

## **Part 2 — General provisions about mentally ill defendants**

### **5. Defendant refused bail may be detained in authorised hospital**

- (1) This section applies if under the *Bail Act 1982* a judicial officer refuses to grant bail to a defendant.
- (2) If the judicial officer suspects on reasonable grounds that —
  - (a) the defendant has a mental illness (as defined in the *Mental Health Act 1996*) requiring treatment;
  - (b) the treatment is required in order —
    - (i) to protect the health or safety of the defendant or any other person; or
    - (ii) to prevent the defendant doing serious damage to any property;and
  - (c) the defendant has refused or, due to the nature of the mental illness, is unable to consent to the treatment,the officer may make a hospital order.
- (3) A hospital order is an order that the defendant is to be taken to and detained in an authorised hospital and examined by a psychiatrist and —
  - (a) if he or she is made an involuntary patient, detained in an authorised hospital; or
  - (b) in any other case kept in custody,until a date set by the judicial officer that is not more than 7 days after the date on which the order was made at which time the defendant is to be brought before the court stated in the order.

- (4) Subject to this section, a hospital order has effect as if, under section 29 of the *Mental Health Act 1996*, the defendant had been referred for examination by a psychiatrist and that Act applies accordingly.
- (5) A hospital order is not to be made if the defendant is an involuntary patient.

**6. Relationship to *Mental Health Act 1996***

- (1) Unless the contrary intention appears, the fact that under the *Mental Health Act 1996* a person is made an involuntary patient or is detained as an involuntary patient does not affect the operation of this Act or the operation of the criminal law in respect of the person.
- (2) If at any time while a defendant is remanded in custody the defendant under the *Mental Health Act 1996* —
  - (a) becomes an involuntary patient; and
  - (b) is detained in an authorised hospital,

the defendant is to be detained in the hospital subject to that Act; but if the defendant is released from that detention while remanded in custody under this Act, the person is to be kept in custody in accordance with the remand warrant.

**7. Reports to include report of treatment given**

Whenever under this Act a person is required to make an assessment of or report on the mental state of a defendant the person is to include a report of —

- (a) the nature of any treatment given to the person;
- (b) the reasons for the treatment; and
- (c) the person's response to it.

## **Part 3 — Mental unfitness to stand trial**

### **Division 1 — General**

#### **8. Interpretation**

In this Part, unless the contrary intention appears —

“**mental illness**” means an underlying pathological infirmity of the mind, whether of short or long duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli;

“**mental impairment**” means intellectual disability, mental illness, brain damage or senility;

“**trial**” means all court proceedings for an offence other than —

- (a) proceedings in relation to bail; and
- (b) sentencing proceedings.

#### **9. Mental unfitness to stand trial, definition**

A defendant is not mentally fit to stand trial for an offence if the defendant, because of mental impairment, is —

- (a) unable to understand the nature of the charge;
- (b) unable to understand the requirement to plead to the charge or the effect of a plea;
- (c) unable to understand the purpose of a trial;
- (d) unable to understand or exercise the right to challenge jurors;
- (e) unable to follow the course of the trial;
- (f) unable to understand the substantial effect of evidence presented by the prosecution in the trial; or
- (g) unable to properly defend the charge.

**10. Presumptions as to mental fitness to stand trial**

- (1) A defendant is presumed to be mentally fit to stand trial until the contrary is found under this Part.
- (2) A defendant found under this Part to be not mentally fit to stand trial is presumed to remain not mentally fit until the contrary is found under this Part.

**11. When the question of mental fitness may be raised**

- (1) The question of whether a defendant is not mentally fit to stand trial may be raised —
  - (a) in a court of summary jurisdiction, at any time before or during the trial of the defendant;
  - (b) in a superior court, at any time —
    - (i) before an indictment is presented to the court against a defendant committed to the court for trial;
    - (ii) after an indictment (including an *ex officio* indictment) is presented to the court against a defendant and before a jury is sworn; or
    - (iii) at any time after a jury is sworn and during the trial of the defendant.
- (2) The question of whether a defendant is not mentally fit to stand trial may be raised by the prosecution or the defence or the presiding judicial officer on his or her own initiative.
- (3) This Part does not prevent the question of whether a defendant is not mentally fit to stand trial being raised more than once in a trial.

**12. Deciding the question of mental fitness**

- (1) The question of whether a defendant is not mentally fit to stand trial is to be decided by the presiding judicial officer on the balance of probabilities after inquiring into the question and

informing himself or herself in any way the judicial officer thinks fit.

- (2) For the purpose of the inquiry the judicial officer may —
  - (a) order the defendant to be examined by a psychiatrist or other appropriate expert;
  - (b) order a report by a psychiatrist or other appropriate expert about the defendant to be submitted to the court;
  - (c) adjourn the proceedings and, if there is a jury, discharge it;
  - (d) make any other order the judicial officer thinks fit.
- (3) The judicial officer may make a report about the defendant available to the prosecutor and to the defendant, on such conditions as the officer thinks fit.
- (4) The prosecution or a defendant may appeal against a judicial officer's decision that the defendant is not mentally fit to stand trial.

**13. Raising and deciding the question whether a defendant has become mentally fit**

Sections 11 and 12, with any necessary changes, apply to the question of whether a defendant found to be not mentally fit to stand trial has become mentally fit to stand trial.

**14. Adjournments, courts' powers on**

If any proceedings are adjourned under this Part, the judicial officer may grant the defendant bail, or remand the defendant in custody, or make a hospital order under section 5.

**Division 2 — Proceedings in courts of summary jurisdiction**

**15. Application**

This Division applies if a defendant before a court of summary jurisdiction is found to be not mentally fit to stand trial.

**16. Procedure for offences triable summarily**

- (1) This section applies if the defendant is charged with —
  - (a) a simple offence; or
  - (b) an indictable offence that is to be tried summarily.
- (2) If the magistrate who decides that the defendant is not mentally fit to stand trial —
  - (a) is satisfied that the defendant will not become mentally fit to stand trial within 6 months after the finding that the defendant is not mentally fit, the magistrate must make an order under subsection (5); or
  - (b) is not so satisfied, the magistrate must adjourn the proceedings in order to see whether the defendant will become mentally fit to stand trial.
- (3) Proceedings may be adjourned under subsection (2)(b) for any period or periods a magistrate thinks fit but the proceedings must not be adjourned for longer than a total period of 6 months after the finding that the defendant is not mentally fit to stand trial.
- (4) If proceedings are adjourned under subsection (2)(b), a magistrate must make an order under subsection (5) —
  - (a) if at any time the magistrate is satisfied that the defendant will not become mentally fit to stand trial within 6 months after the finding that the defendant is not mentally fit; or
  - (b) if at the end of 6 months after the finding that the defendant is not mentally fit to stand trial the defendant has not become mentally fit.
- (5) An order under this subsection is an order dismissing the complaint without deciding the guilt or otherwise of the defendant and either —
  - (a) releasing the defendant; or

- (b) subject to subsection (6), making a custody order in respect of the defendant.
- (6) A custody order must not be made in respect of a defendant unless the statutory penalty for the alleged offence is or includes imprisonment and the magistrate is satisfied that a custody order is appropriate having regard to —
  - (a) the strength of the evidence against the defendant;
  - (b) the nature of the alleged offence and the alleged circumstances of its commission;
  - (c) the defendant's character, antecedents, age, health and mental condition; and
  - (d) the public interest.
- (7) A magistrate may require a prosecutor to provide copies of documents relevant to the factors to be considered under subsection (6).
- (8) If an order is made under subsection (5), the defendant cannot again be charged with or tried for the offence.

**17. Procedure for indictable offences**

- (1) This section applies if the defendant is charged with an indictable offence that —
  - (a) cannot be tried summarily;
  - (b) can be tried summarily but the defendant has elected not to have the charge dealt with summarily or has not made an election; or
  - (c) can be tried summarily but the court has decided that the charge cannot be adequately dealt with summarily.
- (2) Despite the fact that the defendant is mentally unfit to stand trial, the procedure in Part V of the *Justices Act 1902* is to be followed and the defendant, while not mentally fit, is presumed to —
  - (a) elect not to have the charge dealt with summarily;

- (b) plead not guilty to the charge; and
- (c) elect to have a preliminary hearing of the charge.

### **Division 3 — Proceedings in superior courts**

#### **18. Application**

This Division applies if a defendant before a superior court is found to be not mentally fit to stand trial.

#### **19. Procedure**

- (1) If the judge who decides that the defendant is not mentally fit to stand trial —
  - (a) is satisfied that the defendant will not become mentally fit to stand trial within 6 months after the finding that the defendant is not mentally fit, the judge must make an order under subsection (4); or
  - (b) is not so satisfied, the judge must adjourn the proceedings in order to see whether the defendant will become mentally fit to stand trial.
- (2) Proceedings may be adjourned under subsection (1)(b) for any period or periods a judge thinks fit but the proceedings must not be adjourned for longer than a total period of 6 months after the finding that the defendant is not mentally fit to stand trial.
- (3) If proceedings are adjourned under subsection (1)(b), a judge must make an order under subsection (4) —
  - (a) if at any time the judge is satisfied that the defendant will not become mentally fit to stand trial within 6 months after the finding that the defendant is not mentally fit; or
  - (b) if at the end of 6 months after the finding that the defendant is not mentally fit to stand trial the defendant has not become mentally fit.

***Criminal Law (Mentally Impaired Defendants) Act 1996***

**Part 3** Mental unfitness to stand trial

**Division 3** Proceedings in superior courts

**s. 19**

---

- (4) An order under this subsection is an order quashing the indictment or, if there is no indictment, dismissing the complaint and quashing the committal, without deciding the guilt or otherwise of the defendant and either —
  - (a) releasing the defendant; or
  - (b) subject to subsection (5), making a custody order in respect of the defendant.
- (5) A custody order must not be made in respect of a defendant unless the statutory penalty for the alleged offence is or includes imprisonment and the judge is satisfied that a custody order is appropriate having regard to —
  - (a) the strength of the evidence against the defendant;
  - (b) the nature of the alleged offence and the alleged circumstances of its commission;
  - (c) the defendant's character, antecedents, age, health and mental condition; and
  - (d) the public interest.
- (6) A judge may require a prosecutor to provide copies of documents relevant to the factors to be considered under subsection (5).
- (7) If an order is made under subsection (4), the defendant may be indicted or again indicted and tried for the offence.

## **Part 4 — Defendants acquitted on account of unsoundness of mind**

### **20. Powers of courts of summary jurisdiction**

If under section 143 of the *Justices Act 1902* a court finds a defendant not guilty of an offence on account of unsoundness of mind the court may make an order under section 22 in respect of the defendant.

### **21. Powers of superior courts**

If under section 653 or 693(4) of *The Criminal Code* a defendant is found not guilty of an offence on account of unsoundness of mind, the court —

- (a) if the offence is a Schedule 1 offence — must make a custody order in respect of the defendant;
- (b) if the offence is not a Schedule 1 offence — may make an order under section 22 in respect of the defendant.

### **22. Orders that may be made by courts**

- (1) If a court may make an order under this section in respect of a defendant, it may —
  - (a) release the defendant unconditionally if it considers that it is just to do so having regard to —
    - (i) the nature of the offence and the circumstances of its commission;
    - (ii) the defendant's character, antecedents, age, health and mental condition; and
    - (iii) the public interest;
  - (b) despite the fact that the defendant is not an offender under the *Sentencing Act 1995*, make a conditional release order (CRO), a community based order (CBO), or an intensive supervision order (ISO) under that Act in respect of the defendant; or

- (c) make a custody order in respect of the defendant.
- (2) If a defendant is found not guilty of an offence on account of unsoundness of mind, a court must not make a CRO, CBO or ISO in respect of the defendant unless, under the *Sentencing Act 1995*, such an order could have been made in respect of the defendant had he or she been found guilty of the offence.
- (3) If a court makes a CRO, CBO or ISO in respect of a defendant —
  - (a) Part 7, 9 or 10 of the *Sentencing Act 1995*, as the case requires, applies in respect of the order; and
  - (b) Part 18 of the *Sentencing Act 1995* applies in respect of the order, but for the purposes of —
    - (i) sections 127(2)(b) of that Act;
    - (ii) section 130(1)(a)(iii) and (b) of that Act; and
    - (iii) section 133(1)(a)(iii) and (b) of that Act,if the court cancels the CRO, CBO or ISO the court must make a custody order in respect of the defendant.

## Part 5 — Mentally impaired defendants

### Division 1 — Preliminary

#### 23. Interpretation

In this Part, unless the contrary intention appears —

“**authorised hospital**” has the same definition as in the *Mental Health Act 1996*;

“**declared place**” means a place declared to be a place for the detention of mentally impaired defendants by the Governor by an order published in the *Gazette*;

“**detention centre**” has the same definition as in the *Young Offenders Act 1994*;

“**mental illness**” has the same definition as in the *Mental Health Act 1996*;

“**mentally impaired defendant**” means a defendant in respect of whom a custody order has been made and who has not been discharged from the order;

“**prison**” has the same definition as in the *Prisons Act 1981*.

### Division 2 — Place of custody

#### 24. General effect of custody order

- (1) A mentally impaired defendant is to be detained in an authorised hospital, a declared place, a detention centre or a prison, as determined by the Board, until released by an order of the Governor.
- (2) A mentally impaired defendant is not to be detained in an authorised hospital unless the defendant has a mental illness that is capable of being treated.

- (3) A mentally impaired defendant should be detained in an authorised hospital only if the Board is satisfied —
- (a) the defendant has a mental illness requiring treatment;
  - (b) the treatment is required in order —
    - (i) to protect the health or safety of the defendant or any other person; or
    - (ii) to prevent the defendant doing serious damage to any property;
  - (c) the defendant has refused or, due to the nature of the mental illness, is unable to consent to the treatment; and
  - (d) the treatment can only be provided satisfactorily in an authorised hospital.
- (4) Subsection (3) is a directory provision.
- (5) A mentally impaired defendant is not to be detained in a detention centre unless the defendant is under 18.

**25. Place of custody to be determined within 5 days of order**

- (1) Within 5 working days after the custody order in respect of a mentally impaired defendant is made, the Board is to —
- (a) review the case of the defendant; and
  - (b) subject to section 24, determine the place where the defendant is to be detained.
- (2) Until the Board determines the place where the defendant is to be detained, the defendant is to be detained —
- (a) if when the custody order is made the defendant is in an authorised hospital having been admitted, whether as an involuntary patient or otherwise — in an authorised hospital;
  - (b) in any other case — in a prison or a detention centre.

- (3) Where subsection (2)(a) applies the defendant —
- (a) if admitted to the authorised hospital as an involuntary patient — is not entitled to be released from the hospital or granted leave of absence under Part 3 of the *Mental Health Act 1996*;
  - (b) if admitted to the authorised hospital in any other circumstances — is not entitled to be released from the hospital.

**26. Place of custody may be changed**

The Board may at any time amend its determination as to the place where a mentally impaired defendant is to be detained.

**Division 3 — Leave of absence**

**27. Governor may permit Board to allow leave of absence**

- (1) The Board may at any time recommend to the Minister that the Governor be advised to make an order allowing the Board to grant leave of absence to a mentally impaired defendant.
- (2) The Governor may at any time —
  - (a) make an order allowing the Board to grant leave of absence to a mentally impaired defendant;
  - (b) cancel an order made under paragraph (a).

**28. If allowed, Board may grant leave of absence**

- (1) If an order under section 27(2) is in effect, the Board may at any time make a leave of absence order in respect of a mentally impaired defendant.
- (2) A leave of absence order is an order that the defendant be given leave of absence for a period, not exceeding 14 days at any one time, determined by the Board —
  - (a) unconditionally; or
  - (b) on conditions determined by the Board.

- (3) Before making a leave of absence order, the Board is to have regard to —
  - (a) the degree of risk that the release of the defendant appears to present to the personal safety of people in the community or of any individual in the community; and
  - (b) the likelihood that, if given leave of absence on conditions, the defendant would comply with the conditions.
- (4) Without limiting the kinds of conditions that may be included in a leave of absence order, the order may include a condition that the mentally impaired defendant —
  - (a) undergoes specified treatment or training or other measures that alleviate or prevent the deterioration of the defendant's condition;
  - (b) resides at a specified place;
  - (c) complies with the lawful directions of a supervising officer designated under section 45.

**29. Board may cancel leave of absence**

The Board may at any time cancel a leave of absence order.

**30. Status of mentally impaired defendant on leave of absence**

A mentally impaired defendant who is away from a place of detention on leave of absence is considered to continue to be detained at the place during the time while on leave, but this section does not limit the freedom of movement given by the leave of absence.

**31. Absence without leave**

- (1) A mentally impaired defendant is absent without leave if the defendant —
  - (a) is away from a place of detention without having being given leave of absence; or

- (b) having been away from a place of detention on leave of absence, fails to return to the place, or another place to which the person has been transferred, when the leave expires or is cancelled.
- (2) A mentally impaired defendant who is absent without leave commits an offence.  
Penalty: 12 months imprisonment or a fine of \$12 000.
- (3) A mentally impaired defendant who is absent without leave may be apprehended by —
  - (a) a person qualified as prescribed by the regulations who is employed at the place from which the person is absent;
  - (b) a person qualified as prescribed by the regulations who, although not employed at the place, is authorised by a person qualified as prescribed who is employed at the place; or
  - (c) a police officer.
- (4) A person apprehending a mentally impaired defendant under subsection (3) shall as soon as practicable take the defendant to the place from which the defendant is absent.

**32. Other Acts do not apply**

- (1) Part 3 of the *Mental Health Act 1996* does not apply in relation to lawful or unlawful absences from an authorised hospital of a mentally impaired defendant.
- (2) Part VIII of the *Prisons Act 1981* does not apply in relation to absence from a prison of a mentally impaired defendant.

**Division 4 — Reports about mentally impaired defendants**

**33. Reports to Minister**

- (1) At any time the Minister, in writing, may request the Board to report about a mentally impaired defendant.
- (2) The Board must give the Minister a written report about a mentally impaired defendant —
  - (a) within 8 weeks after the custody order was made in respect of the defendant;
  - (b) whenever it gets a written request to do so from the Minister;
  - (c) whenever it thinks there are special circumstances which justify doing so; and
  - (d) in any event at least once in every year.
- (3) A report made under subsection (2) must recommend whether or not the Governor should be advised to release the mentally impaired defendant.
- (4) If the release of a mentally impaired defendant is recommended, the report must —
  - (a) report on the factors in subsection (5); and
  - (b) recommend any conditions that should apply to the defendant's release.
- (5) In deciding whether to recommend the release of a mentally impaired defendant, the Board is to have regard to these factors —
  - (a) the degree of risk that the release of the defendant appears to present to the personal safety of people in the community or of any individual in the community;
  - (b) the likelihood that, if released on conditions, the defendant would comply with the conditions;

- (c) the extent to which the defendant's mental impairment, if any, might benefit from treatment, training or any other measure;
- (d) the likelihood that, if released, the defendant would be able to take care of his or her day to day needs, obtain any appropriate treatment and resist serious exploitation;
- (e) the objective of imposing the least restriction of the freedom of choice and movement of the defendant that is consistent with the need to protect the health or safety of the defendant or any other person.

**34. Reports to be given to defendant, Police and DPP**

- (1) As soon as practicable the Board is to give a copy of any report made under section 33 to the mentally impaired defendant concerned and on request to the defendant's lawyer or guardian.
- (2) If in a report made under section 33 the Board recommends that the Governor should be advised to release a mentally impaired defendant, the Board, as soon as practicable, is to give a copy of the report to —
  - (a) the Commissioner of Police; and
  - (b) the Director of Public Prosecutions.

**Division 5 — Releasing mentally impaired defendants**

**35. Governor may release mentally impaired defendant**

- (1) The Governor may at any time order that a mentally impaired defendant be released by making a release order.
- (2) A release order is an order that on a release date specified in the order the defendant is to be released —
  - (a) unconditionally; or
  - (b) on conditions determined by the Governor.

**Criminal Law (Mentally Impaired Defendants) Act 1996**

**Part 5** Mentally impaired defendants

**Division 5** Releasing mentally impaired defendants

**s. 36**

---

- (3) If a mentally impaired defendant is released on conditions —
  - (a) the conditions may be ordered to apply indefinitely or for a set period determined by the Governor; and
  - (b) the Governor may by a subsequent order amend or cancel any or all of the conditions.
- (4) Without limiting the kinds of conditions that may be included in a release order, the order may include a condition that the mentally impaired defendant —
  - (a) undergoes specified treatment or training or other measures that alleviate or prevent the deterioration of the defendant's condition;
  - (b) resides at a specified place;
  - (c) complies with the lawful directions of a supervising officer designated under section 45.
- (5) A defendant is to be released in accordance with a release order unless at the release date he or she is by law required to be kept in custody in respect of another matter.

**36. Order to be given to defendant, Police and DPP**

As soon as practicable, the Board is to give a copy of a release order to —

- (a) the defendant and on request the defendant's lawyer or guardian;
- (b) the Commissioner of Police; and
- (c) the Director of Public Prosecutions.

**37. Breach of conditions of release**

- (1) If a mentally impaired defendant breaches a condition in the release order made in respect of the defendant, the Board may cancel the order.

- (2) If a release order is cancelled —
  - (a) the custody order that applied to the defendant when the defendant was released is again in force and the defendant may be arrested and detained under the custody order; and
  - (b) despite paragraph (a) the Board may issue a warrant for the arrest of the defendant.
- (3) On the arrest of a mentally impaired defendant who has breached a condition of the defendant's release, this Part has effect as if the custody order in respect of the defendant had been made at the time of the arrest.

### **Division 6 — Miscellaneous**

#### **38. When discharge occurs**

- (1) A mentally impaired defendant remains subject to the custody order until discharged from it.
- (2) A mentally impaired defendant is discharged from the custody order —
  - (a) if released unconditionally under a release order — when released;
  - (b) if released on conditions under a release order — when the conditions cease to apply if they cease to apply.

#### **39. Released mentally impaired defendant may be made involuntary patient**

This Part does not prevent a mentally impaired defendant who has been released on conditions from being made an involuntary patient at any time or being detained as an involuntary patient at any time.

**40. Board may require examination etc.**

- (1) For the purpose of performing its functions the Board may —
  - (a) require a mentally impaired defendant to be examined by a psychiatrist or other appropriate expert;
  - (b) require a psychiatrist or other appropriate expert to prepare and submit a report to the Board;
  - (c) require a mentally impaired defendant to appear before the Board.
- (2) For the purposes of subsection (1)(c), the Board may issue a warrant to have the defendant arrested and brought before the Board.

## **Part 6 — Mentally Impaired Defendants Review Board**

### **41. Board established**

A board called the Mentally Impaired Defendants Review Board is established.

### **42. Members**

- (1) There are to be 6 members on the Board —
  - (a) the judicial member appointed to the Parole Board under section 103(1)(a) of the *Sentence Administration Act 1995*;
  - (b) the 3 persons appointed to the Parole Board under section 103(1)(b) of the *Sentence Administration Act 1995*;
  - (c) a psychiatrist appointed by the Governor; and
  - (d) a psychologist appointed by the Governor.
- (2) The judicial member is the chairperson of the Board.
- (3) Those members of the Review Board who are also members of the Parole Board are members of the Review Board only while they are members of the Parole Board.
- (4) If a member of the Parole Board who is also a member of the Review Board has a deputy, the deputy may attend a meeting of the Review Board when the member is absent and may perform the member's functions.
- (5) The Governor may appoint a psychiatrist to be the deputy of the psychiatrist appointed to the Board and a psychologist to be the deputy of the psychologist.
- (6) Schedule 1 to the *Sentence Administration Act 1995*, other than clause 4, applies —
  - (a) in respect of the psychiatrist and the psychologist appointed as members of the Review Board as if they

**s. 43**

---

were members of the Parole Board appointed by the Governor;

- (b) in respect of meetings of the Review Board as if it were the Parole Board.

**43. Secretary**

The person appointed under section 104 of the *Sentence Administration Act 1995* to be the secretary of the Parole Board is also the secretary of the Review Board.

**44. Functions**

- (1) The functions of the Board are set out in Part 5 and this Part.
- (2) The Board may do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.

**45. Supervising officers**

- (1) The Board may designate a person to be a supervising officer.
- (2) The functions of a supervising officer are —
  - (a) at the direction of the Board to supervise mentally impaired defendants —
    - (i) who are given leave of absence on conditions; or
    - (ii) who are released on conditions;
  - and
  - (b) to report to the Board about such defendants in accordance with the Board's directions.
- (3) The Board may make arrangements with any person or a department of the Public Service or any statutory authority for the purpose of or in connection with designating a person to be a supervising officer.

- (4) A person may be designated to be a supervising officer for a fixed or indefinite period.
- (5) The Board may at any time cancel the designation of a person as a supervising officer.

**46. Decisions, orders and warrants**

- (1) A decision by the Board to —
  - (a) cancel a leave of absence order or a release order; or
  - (b) issue a warrant under this Act,may be made —
  - (c) by the judicial member and —
    - (i) the psychiatrist; or
    - (ii) if the psychiatrist is absent, the psychiatrist's deputy;
  - or
  - (d) by the judicial member, the psychiatrist or the psychiatrist's deputy and another member.
- (2) An order giving effect to a decision of the Board is to be signed by 2 members of the Board.
- (3) A warrant issued by the Board to have a person arrested must be signed by —
  - (a) 2 members of the Board; or
  - (b) the judicial member of the Board if he or she is a judge of the Supreme Court or the District Court.

*[Section 46 amended by No. 10 of 1998 s. 26.]*

**47. Judicial notice of appointment and signature**

- (1) Judicial notice must be taken of —
  - (a) the fact that a person is or was a member or the secretary of the Board; and

**s. 48**

---

- (b) the official signature of such a person.
- (2) Evidence of a decision or order of the Board may be given by producing a copy of the decision or order certified by the secretary of the Board as a true copy.

**48. Annual report to Minister**

Before 1 October in each year, the Board is to give a written report to the Minister on —

- (a) the performance of the Board's functions during the previous financial year;
- (b) statistics and matters relating to mentally impaired defendants; and
- (c) the operation of this Act so far as it relates to mentally impaired defendants.

## **Part 7 — Miscellaneous**

### **49. Issue and execution of warrants**

- (1) If this Act empowers a person to issue a warrant to have a person arrested, the warrant must be in the prescribed form and such a warrant has effect according to its wording.
- (2) In the absence of evidence to the contrary, it is to be presumed that —
  - (a) the person who issued the warrant is empowered to do so; and
  - (b) the signature on the warrant is that of the person who issued it.
- (3) A person to whom the warrant is directed must give effect to it as soon as practicable.
- (4) The warrant itself is sufficient authority to the person to whom it is directed to arrest the person concerned and to hold the person in custody for the purposes of taking him or her, as soon as practicable, to the place specified in the warrant.
- (5) For the purposes of arresting a person under the warrant, the person to whom it is directed —
  - (a) may stop any aircraft, train, vehicle or vessel in which the person is or is reasonably suspected to be by the person to whom the warrant is directed; and
  - (b) may enter any place where the person is or is reasonably suspected to be by the person to whom the warrant is directed.

### **50. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to this Act.

**Schedule 1 — Offences for which a custody order must be made**

[Section 3]

---

| <b>Enactment</b>                   | <b>Description of offence</b>  |
|------------------------------------|--|
| <b>1. <i>The Criminal Code</i></b> |  |
| s. 278 (as read with s. 282)       | Wilful murder  |
| s. 279 (as read with s. 287)       | Murder   |
| s. 280 (as read with s. 287)       | Manslaughter   |
| s. 283                             | Attempt to murder  |
| s. 292                             | Disabling in order to commit indictable offence etc.                       |
| s. 294                             | Acts intended to cause grievous bodily harm or to resist or prevent arrest |
| s. 296                             | Intentionally endangering safety of persons travelling by railway          |
| s. 296A                            | Intentionally endangering safety of persons travelling by aircraft         |
| s. 297                             | Grievous bodily harm   |
| s. 298                             | Causing explosion likely to endanger life                                  |
| s. 299                             | Attempting to cause explosion likely to endanger life                      |
| s. 301                             | Wounding and similar acts  |
| s. 317                             | Assaults occasioning bodily harm   |
| s. 317A                            | Assaults with intent   |
| s. 318                             | Serious assaults   |
| s. 323                             | Indecent assault   |
| s. 324                             | Aggravated indecent assault  |
| s. 325                             | Sexual penetration without consent   |
| s. 326                             | Aggravated sexual penetration without consent                              |

**Offences for which a custody order must be made      Schedule 1**

---

| <b>Enactment</b>                | <b>Description of offence</b>   |
|---------------------------------|---|
| s. 327                          | Sexual coercion   |
| s. 328                          | Aggravated sexual coercion  |
| s. 330                          | Incapable person: sexual offences against   |
| s. 332                          | Kidnapping  |
| s. 333                          | Deprivation of liberty  |
| s. 388E(1)(a)                   | Stalking committed in circumstances of<br>aggravation   |
| s. 378(2)                       | Stealing a motor vehicle, aggravated by<br>reckless or dangerous driving  |
| s. 392                          | Robbery   |
| s. 393                          | Assault with intent to rob  |
| s. 444                          | Criminal damage   |
| <b>2. Bush Fires Act 1954</b>   |   |
| s. 32                           | Wilfully lighting a fire or causing a fire to<br>be lit under such circumstances as to be<br>likely to injure or damage a person or<br>property |
| <b>3. Road Traffic Act 1974</b> |   |
| s. 59                           | Dangerous driving causing death, injury<br>etc.   |

---

*[Schedule 1 amended by No. 38 of 1998 s. 4(3); No. 23 of 2001 s. 10(2).]*



**Notes**

<sup>1</sup> This reprint is a compilation as at 21 June 2002 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>.

**Compilation table**

---

| <b>Short title</b>  | <b>Number and year</b> | <b>Assent</b> | <b>Commencement</b>       |
|---|------------------------|---------------|---------------------------|
| <i>Criminal Law (Mentally Impaired Defendants) Act 1996</i>           | 70 of 1996             | 13 Nov 1996   | 13 Nov 1997 (see s. 2)    |
| <i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 26</i> | 10 of 1998             | 30 Apr 1998   | 30 Apr 1998 (see s. 2(1)) |
| <i>Criminal Law Amendment Act (No. 1) 1998 s. 4(3)</i>                | 38 of 1998             | 25 Sep 1998   | 23 Oct 1998               |
| <i>Criminal Law Amendment Act 2001 s. 10(2)</i>                       | 23 of 2001             | 26 Nov 2001   | 24 Dec 2001               |

---

<sup>1a</sup> On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

---

| <b>Short title</b>   | <b>Number and year</b> | <b>Assent</b> | <b>Commencement</b>         |
|--|------------------------|---------------|-----------------------------|
| <i>Sentencing Legislation Amendment and Repeal Act 1999 s. 26</i> <sup>2</sup> | 57 of 1999             | 16 Dec 1999   | To be proclaimed (see s. 2) |

---

<sup>2</sup> The *Sentencing Legislation Amendment and Repeal Act 1999* s. 26, which gives effect to Sch. 1, had not come into operation. It reads as follows:

“

**26. Consequential amendments**

Each Act referred to in Schedule 0 is amended as set out in that Schedule immediately below the short title of that Act.

”

Schedule 1 relevantly reads as follows:

“

**Schedule 1 — Consequential amendments**

[s. 26]

.....

***Criminal Law (Mentally Impaired Defendants) Act 1996***

|             |   |
|-------------|---|
| s. 42(1)(a) | Delete “section 103(1)(a) of the <i>Sentence Administration Act 1995</i> ” and insert instead —<br>section 116(1)(a) of the <i>Sentence Administration Act 1999</i> |
| s. 42(1)(b) | Delete “section 103(1)(b) of the <i>Sentence Administration Act 1995</i> ” and insert instead —<br>section 116(1)(b) of the <i>Sentence Administration Act 1999</i> |
| s. 42(6)    | Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead —<br><i>Sentence Administration Act 1999</i>  |
| s. 43       | Delete “section 104 of the <i>Sentence Administration Act 1995</i> ” and insert instead —<br>section 117 of the <i>Sentence Administration Act 1999</i>             |

.....

”

**Defined Terms**

---

**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

| <b>Defined Term</b>              | <b>Provision(s)</b> |
|----------------------------------|---------------------|
| authorised hospital .....        | 23                  |
| Board.....                       | 3                   |
| custody order.....               | 3                   |
| declared place .....             | 23                  |
| defendant.....                   | 3                   |
| detention centre.....            | 23                  |
| involuntary patient .....        | 3                   |
| magistrate.....                  | 3                   |
| mental illness .....             | 8, 23               |
| mental impairment .....          | 8                   |
| mentally impaired defendant..... | 23                  |
| prison .....                     | 23                  |
| psychiatrist.....                | 3                   |
| psychologist .....               | 3                   |
| Schedule 1 offence.....          | 3                   |
| statutory penalty.....           | 3                   |
| superior court .....             | 3                   |
| trial.....                       | 8                   |