



*I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.*

*Legislative Assembly Chamber,
Brisbane,*

The Clerk of the Parliament.

27 OCTOBER 2017

In the name and on behalf of the Queen, I assent to this Bill.

L. Holmes

Government House,

Brisbane,

27 October 2017



Queensland

No. 41 of 2017

A BILL for

An Act to amend the Criminal Code, the Criminal Law (Rehabilitation of Offenders) Act 1986, the Drugs Misuse Act 1986, the Evidence Act 1977, the Justice and Other Information Disclosure Act 2008, the Penalties and Sentences Act 1992, and the Police Powers and Responsibilities Act 2000 for particular purposes



Queensland

Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Bill 2017

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2017

A Bill

for

An Act to amend the Criminal Code, the *Criminal Law (Rehabilitation of Offenders) Act 1986*, the *Drugs Misuse Act 1986*, the *Evidence Act 1977*, the *Justice and Other Information Disclosure Act 2008*, the *Penalties and Sentences Act 1992*, and the *Police Powers and Responsibilities Act 2000* for particular purposes

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) part 2;
- (b) sections 14 to 16;
- (c) part 6;
- (d) sections 32 and 35.

Part 2 Amendment of Criminal Code

3 Code amended

This part amends the Criminal Code.

4 Amendment of s 227C (Persons who are not criminally responsible for offences against ss 227A and 227B)

Section 227C(3), definition *supervision order*, paragraph (a), after ‘order’—

insert—

, or drug and alcohol treatment order,

5 Amendment of s 552H (Maximum penalty for indictable offences dealt with summarily)

Section 552H(1)(a) and (b)—

omit, insert—

- (a) if the Magistrates Court is a court constituted by a magistrate imposing a drug and alcohol treatment order under the *Penalties and Sentences Act 1992*, part 8A—100 penalty units or 4 years imprisonment; or
- (b) if the Magistrates Court is constituted by a magistrate other than a magistrate mentioned in paragraph (a)—100 penalty units or 3 years imprisonment; or
- (c) if the Magistrates Court is constituted by justices under section 552C(1)(b)—100 penalty units or 6 months imprisonment.

6 Insertion of new pt 9, ch 99

Part 9—

insert—

**Chapter 99 Transitional
provision for
Penalties and
Sentences (Drug and
Alcohol Treatment
Orders) and Other
Legislation
Amendment Act
2017**

741 Application of s 552H

A court may impose the penalty mentioned in section 552H(1)(a) for an offence committed before the commencement.

Part 3 Amendment of Criminal Law (Rehabilitation of Offenders) Act 1986

7 Act amended

This part amends the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

8 Amendment of s 3 (Interpretation)

(1) Section 3(1)—
insert—

term of imprisonment see the *Penalties and Sentences Act 1992*, section 4.

(2) Section 3(2)—
omit, insert—

- (2) A rehabilitation period applies in relation to a conviction of a person for an offence only if—
- (a) no term of imprisonment is imposed on the person for the conviction; or
 - (b) a term of imprisonment of not more than 30 months is imposed on the person for the conviction.

(2A) To remove any doubt, it is declared that, for subsection (2)(b), it is irrelevant whether or not the person is ordered to be imprisoned for any of the term of imprisonment imposed.

9 Insertion of new s 15

After section 14—

insert—

15 Transitional provision for Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017

- (1) Amended section 3 applies in relation to a conviction whether recorded before or after the commencement.
- (2) If, under amended section 3, no rehabilitation period applies in relation to a conviction recorded before the commencement—
 - (a) any rehabilitation period in relation to the conviction that would otherwise have been capable of running under the pre-amended Act before the commencement is taken not to have run; and
 - (b) any rehabilitation period in relation to the conviction that would otherwise have expired under the pre-amended Act before the commencement is taken not to have expired.

- (3) In this section—

amended section 3 means section 3 as amended by the *Penalties and Sentences (Drug and Alcohol Treatment Orders) and Other Legislation Amendment Act 2017*.

pre-amended Act means this Act as in force from time to time before the commencement.

Part 4 Amendment of Drugs Misuse Act 1986

10 Act amended

This part amends the *Drugs Misuse Act 1986*.

11 Amendment of s 4 (Definitions)

(1) Section 4—

insert—

analogue, of a dangerous drug, see section 4A.

treatment order means a drug and alcohol treatment order under the *Penalties and Sentences Act 1992*, part 8A.

(2) Section 4, definition *dangerous drug*—

omit, insert—

dangerous drug means—

- (a) a thing stated in the *Drugs Misuse Regulation 1987*, schedule 1 or 2; or
- (b) any part of a plant that is a thing stated in the *Drugs Misuse Regulation 1987*, schedule 1 or 2; or
- (c) a derivative or stereo-isomer of a thing mentioned in paragraph (a) or (b); or
- (d) a salt of a thing mentioned in any of paragraphs (a) to (c); or
- (e) an analogue of a thing mentioned in any of paragraphs (a) to (d); or
- (f) a thing that has, or is intended to have, a pharmacological effect of a thing mentioned in any of paragraphs (a) to (e); or

Note—

See also section 4BA for when a thing is intended to have a pharmacological effect of a thing mentioned in any of paragraphs (a) to (e).

- (g) a thing mentioned in any of paragraphs (a) to (f) that is contained in—
 - (i) a natural substance; or
 - (ii) a preparation, solution or admixture.

12 Replacement of s 4A (Salts, derivatives and stereo-isomers)

Section 4A—

omit, insert—

4A Meaning of *analogue*

- (1) A thing is an *analogue* of a dangerous drug if it is any of the following in relation to the dangerous drug, regardless of how the thing is made—
 - (a) a structural isomer with the same constituent groups;
 - (b) an alkaloid;
 - (c) a structural modification that is any of the following—
 - (i) the replacement of up to 2 carbocyclic or heterocyclic ring structures with different carbocyclic or heterocyclic ring structures;
 - (ii) the addition of hydrogen atoms to 1 or more unsaturated bonds;
 - (iii) the replacement of 1 or more of the groups or atoms stated in subsection (2) with 1 or more of the other groups or atoms stated in that subsection;
 - (d) any other homologue.

[s 13]

(2) For subsection (1)(c)(iii), the following groups and atoms are stated—

- (a) alkoxy, cyclic diether, acyl, acyloxy, mono-amino or dialkylamino groups with up to 6 carbon atoms in any alkyl residue;
- (b) alkyl, alkenyl or alkynyl groups with up to 6 carbon atoms in the group, where the group is attached to oxygen, nitrogen, sulphur or carbon;

Example—

an ester or ether group attached to oxygen

- (c) halogen, hydroxy, nitro or amino groups;
- (d) hydrogen atoms;
- (e) carbonyl, ester or amide groups.

(3) In this section—

addition has its ordinary meaning.

replacement has its ordinary meaning.

4AASalts, derivatives and stereo-isomers of particular dangerous drugs

A dangerous drug stated in the *Drugs Misuse Regulation 1987*, schedule 3, 4 or 5 includes—

- (a) a salt, derivative or stereo-isomer of the drug; and
- (b) a salt of a derivative or stereo-isomer of the drug.

13 Amendment of s 4BA (Provision about s 4, definition *dangerous drug*, paragraph (c)(iii))

(1) Section 4BA, heading, ‘paragraph (c)(iii)’—

omit, insert—

paragraph (f)

- (2) Section 4BA(1), ‘paragraph (c)(iii)’—

omit, insert—

paragraph (f)

- (3) Section 4BA(2), from ‘that is substantially’—

omit, insert—

of a thing mentioned in section 4, definition
dangerous drug, paragraphs (a), (b), (c), (d) or (e).

14 Amendment of s 13 (Certain offences may be dealt with summarily)

Section 13(4), from ‘conviction’—

omit, insert—

conviction, to not more than—

- (a) if a treatment order is made for the person—4 years imprisonment; or
- (b) otherwise—3 years imprisonment.

15 Insertion of new s 13A

Part 2—

insert—

13A Offences that may be dealt with summarily if treatment order is sought

- (1) If a person is charged with the commission of an offence mentioned in subsection (3), or an attempt to commit the offence, proceedings in relation to the charge may be taken summarily.
- (2) However, the proceedings may be taken summarily only if both the person and prosecution agree to a treatment order being made for the offence.
- (3) For subsection (1), the offences are—

[s 16]

- (a) an offence mentioned in section 6(1), if the person is liable on conviction to not more than the penalty mentioned in paragraph (c) of the maximum penalty for that section; or
- (b) an offence mentioned in section 8(1), if the person is liable on conviction to not more than the penalty mentioned in paragraph (b)(i), (c) or (d) of the maximum penalty for that section; or
- (c) an offence defined in section 9(1), if—
 - (i) the person is liable on conviction to a penalty mentioned in paragraph (b)(i) or (c) of the maximum penalty for that section; and
 - (ii) the offence can not be dealt with summarily under section 14.
- (4) Despite subsection (1), proceedings may not be taken summarily in relation to a charge of an offence mentioned in subsection (3) if the prosecution alleges the offence was committed with the circumstances of aggravation stated in the *Penalties and Sentences Act 1992*, section 161Q.
- (5) A person against whom proceedings are taken summarily under this section is liable, on conviction, to not more than 4 years imprisonment.

16 Amendment of s 14 (Other offences that may be dealt with summarily if no commercial purpose alleged)

Section 14(3), from ‘conviction’—

omit, insert—

conviction, to not more than—

- (a) if a treatment order is made for the person under the *Penalties and Sentences Act 1992*, part 8A—4 years imprisonment; or
- (b) otherwise—3 years imprisonment.

Part 5 Amendment of Evidence Act 1977

17 Act amended

This part amends the *Evidence Act 1977*.

18 Amendment of s 21M (Meaning of *protected witness*)

Section 21M(3), definition *prescribed special offence*, after ‘315,’—

insert—

315A,

Part 6 Amendment of Justice and Other Information Disclosure Act 2008

19 Act amended

This part amends the *Justice and Other Information Disclosure Act 2008*.

20 Amendment of long title

Long title, from ‘or child’—

omit, insert—

, treatment order information or child protection

[s 21]

information between particular public sector
agencies or by particular entities

21 Amendment of s 3 (Purpose of Act)

- (1) Section 3, from ‘justice information’ to ‘public sector agencies’—

omit, insert—

justice information, treatment order information
or child protection information between particular
public sector agencies or by particular entities,

- (2) Section 3(b), ‘or child’—

omit, insert—

, treatment order agencies or child

22 Insertion of new pt 2A

After part 2—

insert—

Part 2A Disclosure of treatment order information

6A What is *treatment order information*

Information, about a person to whom a treatment
order applies, is ***treatment order information*** if it
is—

- (a) either—
- (i) obtained by a treatment order agency in
the performance of the agency’s
functions under an Act or other law or
in the performance by a person
employed or engaged by the agency of
a function under an Act or other law; or

- (ii) obtained by a service provider in the performance of the provider's functions under an agreement entered into by the provider with the State or in the performance by a person employed or engaged by the agency of a function under the agreement; and
- (b) relevant to a purpose mentioned in section 6B.

6B What is a *treatment order purpose*

- (1) Treatment order information, about a person to whom a treatment order applies, is made available by a sending agency or service provider for a *treatment order purpose* if the information is made available for any of the following purposes—
 - (a) to enable the receiving agency to prepare for a meeting of the review team for the person's treatment order;
 - (b) to enable the receiving agency to attend, or arrange the attendance of the person or another person, at a meeting of the review team for the person's treatment order;
 - (c) to enable the receiving agency to record and give effect to a court decision made in a proceeding relating to the person's treatment order;
 - (d) to enable the receiving agency to use the criminal history of the person to the extent the receiving agency is authorised to use the criminal history of the person;
 - (e) to enable the receiving agency to administer, or assist in administering, the treatment order;

- (f) to enable the receiving agency to provide for the effective supervision of the person while the treatment order applies to the person;
 - (g) to enable the receiving agency to provide for the safety and welfare of the person;
 - (h) to enable the receiving agency to provide for, or consider whether it needs to provide for, the safety and welfare of—
 - (i) an individual employed or engaged by the receiving agency who may be in contact with the person; or
 - (ii) an individual whose safety or welfare may be at risk because of an association with the person or another person mentioned in subparagraph (i).
- (2) In this section—
review team, for a treatment order, see the *Penalties and Sentences Act 1992*, section 151B.

6C Making treatment order information available to treatment order agencies for treatment order purpose

- (1) The chief executive of a treatment order agency (the *sending agency*), or a service provider, may make treatment order information about a person available to the chief executive of a treatment order agency (the *receiving agency*) for a treatment order purpose.
- (2) To remove any doubt, it is declared that the sending agency need not give treatment order information if the sending agency reasonably considers it would not be in the public interest to do so because, for example, giving the information could reasonably be expected to—

- (a) prejudice the investigation of a contravention or possible contravention of a law in a particular case; or
- (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of a law, to be ascertained; or
- (c) endanger a person's life or physical safety; or
- (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of a law.

6D Making treatment order information available for research purposes

- (1) The chief executive (justice) may authorise a qualified person to use treatment order information for research.
- (2) If the qualified person is authorised to use treatment order information under subsection (1), the information must be used for the research in a way that could not reasonably be expected to result in the identification of any of the individuals to whom the research relates.
- (3) In this section—

qualified person, in relation to research, means a person who the chief executive (justice) is satisfied has appropriate qualifications or experience to carry out the research.

6E Chief executive may make guidelines

- (1) The chief executive (justice) may make guidelines consistent with this Act, the

Information Privacy Act 2009 and the *Public Records Act 2002* for sharing and dealing with treatment order information under this part.

- (2) The purposes of the guidelines are to ensure—
 - (a) treatment order information is shared under this part for proper purposes; and
 - (b) to the greatest extent possible, the privacy of individuals is respected when sharing information under this part, while ensuring each receiving agency has sufficient information to enable the agency to administer, or assist in administering, a treatment order effectively; and
 - (c) information shared under this part is properly used, stored, kept and disposed of.
- (3) The chief executive (justice) must publish the guidelines on the department's website.

23 **Amendment of s 10 (Sending agency may make information available to information technology service provider)**

- (1) Section 10(1)—

insert—

- (ab) a treatment order agency (also the *sending agency*) that makes treatment order information available to a receiving agency under section 6C; or

- (2) Section 10(1)(ab) and (b)—

renumber as section 10(1)(b) and (c).

- (3) Section 10(2)(a) and (b), 'under arrangements mentioned in section 13'—

omit, insert—

under guidelines mentioned in section 6E, or an

arrangement mentioned in section 13,

24 Replacement of s 11 (Use of information permitted despite other Act)

Section 11—

omit, insert—

11 Use of information permitted despite other Act

Despite any other Act, a person may use information provided to the person—

- (a) under section 6C or 6D; or
- (b) under an arrangement mentioned in section 13.

25 Amendment of s 12 (Information not to be disclosed under this Act)

Section 12, ‘sections 6, 9’—

omit, insert—

sections 6, 6C, 6D, 9

26 Amendment of s 13 (Form of arrangements for giving and receiving information)

Section 13(1), after ‘this Act’—

insert—

, other than part 2A,

27 Amendment of s 14 (Disposal of information by receiving agency)

Section 14(1)(a), ‘section 6 or 9’—

omit, insert—

section 6, 6C or 9

28 Amendment of s 15 (Misuse of information made available under this Act)

Section 15(3), after ‘sending agency’—

insert—

or service provider

29 Amendment of s 16 (Protection from liability)

Section 16(1), from ‘arrangements’—

omit, insert—

section 6C or 6D or an arrangement mentioned in section 13.

30 Amendment of schedule (Dictionary)

(1) Schedule—

insert—

chief executive, of a treatment order agency, means the following—

- (a) the chief executive (corrective services);
- (b) the chief executive (justice);
- (c) the chief executive of the department in which the *Health Act 1937* is administered;
- (d) the chief executive officer of Legal Aid Queensland under the *Legal Aid Queensland Act 1997*;
- (e) the commissioner of the police service.

chief executive (justice) means the chief executive of the department in which the *Penalties and Sentences Act 1992* is administered.

service provider means a non-government entity that provides assistance or support services to a person to whom a treatment order applies.

treatment order means a drug and alcohol treatment order under the *Penalties and Sentences Act 1992*, part 8A.

treatment order agency means the following—

- (a) the department in which the *Corrective Services Act 2006* is administered;
- (b) the department in which the *Penalties and Sentences Act 1992* is administered;
- (c) the department in which the *Health Act 1937* is administered;
- (d) Legal Aid Queensland established under the *Legal Aid Queensland Act 1997*;
- (e) the police service.

treatment order information see section 6A.

treatment order purpose see section 6B.

- (2) Schedule, definition *chief executive*, of a child protection agency, ‘either of’—

omit.

- (3) Schedule, definition *receiving agency*, ‘sections 6’—

omit, insert—

sections 6, 6C

- (4) Schedule, definition *sending agency*, ‘sections 6’—

omit, insert—

sections 6, 6C

Part 7 **Amendment of Penalties and Sentences Act 1992**

31 **Act amended**

This part amends the *Penalties and Sentences Act 1992*.

32 Amendment of s 4 (Definitions)

- (1) Section 4, definition *operational period*—

omit.

- (2) Section 4—

insert—

core conditions, of the rehabilitation part of a treatment order, see section 151R(1).

custodial part, of a treatment order, see section 151N(2).

drug and alcohol treatment order, for part 8A, see section 151B.

eligible offence, for part 8A, see section 151B.

operational period—

- (a) for a term of imprisonment suspended under section 144(1)—means the period stated under section 144(5) in relation to the term;
or

- (b) for the custodial part of a treatment order under part 8A—see section 151B.

rehabilitation part, of a treatment order, see section 151Q(2).

review team, for part 8A, see section 151B.

severe substance use disorder, for part 8A, see section 151B.

suitability assessment report, for part 8A, see section 151B.

treatment order, for part 8A, see section 151B.

treatment order agency, for part 8A, see section 151B.

treatment program, for part 8A, see section 151B.

(3) Section 4, definition *court*, paragraph (b)—

omit, insert—

(b) for part 8A—see section 151B; or

(c) for part 9D, division 3, subdivision 5—see section 161ZV.

33 Amendment of s 15C (Meaning of *eligible drug offender*)

Section 15C(4)(a)(ii), ‘attend’—

omit, insert—

participate in

34 Amendment of s 19 (Order of court)

(1) Section 19(2A), ‘attend’—

omit, insert—

participate in

(2) Section 19(2A)(c), ‘attending’—

omit, insert—

participating in

35 Insertion of new pt 8A

After part 8—

insert—

Part 8A

**Drug and alcohol
treatment orders**

Division 1

Preliminary

151B Definitions for part

In this part—

core conditions, of the rehabilitation part of a treatment order, see section 151R(1).

court means a Magistrates Court prescribed by regulation.

custodial part, of a treatment order, see section 151N(2).

drug and alcohol treatment order means an order made under division 3.

eligible offence means—

- (a) a summary offence; or
- (b) an indictable offence that is, or is to be, dealt with summarily.

Note—

Under the *Drugs Misuse Act 1986*, section 13A, proceedings for particular indictable offences may be taken summarily if a treatment order is sought under this part.

operational period, for the custodial part of a treatment order, see sections 151N(1)(c) and 151O(2)(b)(ii).

rehabilitation part, of a treatment order, see section 151Q(2).

review team, for a treatment order, means—

- (a) the court; and
- (b) a representative of each treatment order agency.

severe substance use disorder means—

- (a) a disorder prescribed by regulation that relates to the use of alcohol or other drugs; or

- (b) if no disorder is prescribed under paragraph (a)—a substance use disorder estimated as being severe under the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association in 2013.

suitability assessment report means a suitability assessment report given to the court under section 151K.

treatment order means a drug and alcohol treatment order.

treatment order agency means the following—

- (a) the department in which the *Corrective Services Act 2006* is administered;
- (b) the department in which the *Penalties and Sentences Act 1992* is administered;
- (c) the department in which the *Health Act 1937* is administered;
- (d) Legal Aid Queensland established under the *Legal Aid Queensland Act 1997*;
- (e) the police service.

treatment program means a treatment program included in the rehabilitation part of a treatment order under section 151Q.

151C Purpose of part and treatment orders

- (1) The purpose of this part is to provide for the making of drug and alcohol treatment orders.
- (2) The purpose of making a drug and alcohol treatment order for an offender is to—
 - (a) facilitate the rehabilitation of the offender by providing a judicially supervised, therapeutically oriented, integrated treatment regime; and

- (b) reduce the offender's severe substance use disorder; and
- (c) reduce the level of criminal activity associated with the offender's severe substance use disorder; and
- (d) reduce the health risks to the offender that are associated with the offender's severe substance use disorder; and
- (e) assist with the offender's integration into the community.

Division 2 When treatment orders may be made

151D Court may make treatment order only if it records conviction

A court may make a treatment order only if it records a conviction.

151E When treatment order may be made

- (1) A court may make a treatment order for an offender only if—
 - (a) the offender—
 - (i) has pleaded guilty to an eligible offence; and
 - (ii) resides within the court district of the court; and
 - (b) the court—
 - (i) considers it would be appropriate to sentence the offender to a term of imprisonment for the eligible offence; and

- (ii) has received a suitability assessment report for the offender; and
 - (iii) is satisfied the offender has a severe substance use disorder; and
 - (iv) considers the offender's severe substance use disorder contributed to the commission of the eligible offence; and
 - (v) considers it is appropriate in the circumstances to make the treatment order for the offender.
- (2) If an order of the Supreme Court or a District Court is in force that imposes a sentence on the offender for another offence, the court must have regard to the order in deciding whether or not it is appropriate to make a treatment order for the offender.
- (3) In this section—

court district, of a court, means the district within which the court is held, as provided for under the *Justices Act 1886*, section 22B.

151F When treatment order can not be made

- (1) Despite section 151E, a court can not make a treatment order for an offender if—
- (a) the offender is serving a term of imprisonment in a corrective services facility; or
 - (b) the offender is subject to a parole order; or
 - (c) the offender is serving, or is required to serve, the unexpired portion of a period of imprisonment for another offence in Queensland or elsewhere because—

- (i) a parole order for the offender has been cancelled under the *Corrective Services Act 2006*, section 205 or 209; or
 - (ii) an order similar to a parole order for the offender has been cancelled under a provision of an Act of the Commonwealth or another State that is similar to a provision mentioned in subparagraph (i); or
 - (d) the offender is charged with a sexual assault offence.
- (2) In this section—
- parole order*** see the *Corrective Services Act 2006*, schedule 4.
- sexual assault offence*** means an offence against the following—
- (a) the Criminal Code, chapter 22, other than an offence against section 224, 225 or 226;
 - (b) the Criminal Code, chapter 32.

151G Particular matters for offences involving violence against another person

- (1) In deciding whether to make a treatment order for an offender who has committed an offence involving violence against another person, the court must have regard to the following—
 - (a) the nature and seriousness of the offence, and any previous offences involving violence, committed by the offender;
 - (b) whether or not the offence resulted in bodily harm, within the meaning of the Criminal Code, section 1, to another person;

- (c) any relevant medical, psychiatric or other information available to the court about the offender;
 - (d) if the offence committed by the offender was a domestic violence offence—the risk of further domestic violence or associated domestic violence, under the *Domestic and Family Violence Protection Act 2012*, being committed by the offender.
- (2) The court must not make a treatment order for the offender if the court is satisfied that, if the order were made, the offender would pose an unacceptable risk to the safety and welfare of—
- (a) a person who is in a domestic relationship with the offender; or
 - (b) a review team member for the treatment order; or
 - (c) a person employed or engaged by a treatment order agency; or
 - (d) a member of the community.
- (3) In this section—
- domestic relationship*** means a relevant relationship under the *Domestic and Family Violence Protection Act 2012*, section 13.

151H Multiple offences

- (1) A court may make more than 1 treatment order for an offender convicted of more than 1 eligible offence.
- (2) However, if the court makes 2 or more treatment orders, the total term of imprisonment imposed on the offender under the custodial part of the order must be 4 years or less.
- (3) The court may include the treatment orders in a

single form of order that states each offence for which a treatment order is made.

- (4) The court must not impose a penalty on the offender under this Act for 1 or more of the offences if the penalty may reduce or otherwise interfere with the offender's ability to comply with a treatment order applying to the offender.

Division 3 Making treatment orders

Subdivision 1 Preliminary steps

151I Explaining treatment order

- (1) Before making a treatment order, the court must explain, or cause to be explained, to the offender the purpose and effect of the order, including—
- (a) the content of the custodial part and rehabilitation part of the treatment order; and
 - (b) the core conditions of the rehabilitation part of the treatment order; and
 - (c) the potential requirements of the treatment program under the rehabilitation part of the treatment order, including the impacts on the offender's right to privacy that may be necessary to comply with the treatment order; and

Examples of impacts on the offender's right to privacy—

- the requirement to consent to the sharing of information about the offender between review team members
- a requirement the offender wear a drug or alcohol monitoring device

- a requirement to install monitoring devices at the offender's place of residence
 - (d) what may happen if the offender does not comply with the rehabilitation part of the treatment order; and
 - (e) when and how the treatment order, and the rehabilitation part of the treatment order, may be amended, revoked, cancelled or terminated.
- (2) The explanation must be made in language, or in a way, likely to be readily understood by the offender.

151J Offender to agree to making of order

The court may consider making the treatment order only if the offender—

- (a) agrees to the order being made; and
- (b) agrees to comply with the order.

151K Adjournment for obtaining suitability assessment report

- (1) If the court is considering making a treatment order for an offender, and the agreement of the offender has been obtained under section 151J, the court must make an order requiring an appropriately qualified review team member to—
- (a) prepare a suitability assessment report that complies with section 151L; and
 - (b) give the report to the court within 28 days after the order is made, or a longer period allowed by the court.
- (2) The court must give a copy of the suitability assessment report to—
- (a) the prosecutor; and

- (b) the offender's legal representative; and
- (c) the review team; and
- (d) if the court orders—the offender.

151L Requirements for suitability assessment report

A suitability assessment report for an offender must include—

- (a) an assessment of whether the offender has a severe substance use disorder; and
- (b) an assessment of the suitability of the offender for release under a treatment order; and
- (c) if the report states the offender is suitable for release under a treatment order—a proposed treatment program for the offender.

Subdivision 2 Content of treatment orders

151M Content

A treatment order for an offender must—

- (a) record the offender's conviction; and
- (b) include—
 - (i) a custodial part; and
 - (ii) a rehabilitation part.

Subdivision 3 Custodial part

151N Custodial part of treatment order

- (1) In making a treatment order, the court must—
 - (a) sentence the offender to imprisonment for 4 years or less; and
 - (b) order that the sentence of imprisonment is suspended; and
 - (c) state the period (the *operational period*) during which the offender must not commit another offence if the offender is to avoid being dealt with under section 151O for the suspended sentence.
- (2) The matters stated in subsection (1) constitute the *custodial part* of the treatment order.
- (3) For subsection (1)(c), the operational period—
 - (a) starts on the day the order is made; and
 - (b) must end on a day at least 2 years but not more than 5 years after the day it starts.
- (4) The operational period must be at least as long as the sentence of imprisonment imposed under the order.
- (5) An offender to whom a treatment order applies has to serve the sentence of imprisonment suspended under the custodial part of the order only if the offender is ordered to do so under section 151O(2)(c) or (d) or 151W(1)(c) or (d).

151O Orders if offender commits offence for which imprisonment may be imposed

- (1) This section applies if—
 - (a) the court—
 - (i) convicts an offender to whom a treatment order applies of an offence

- for which imprisonment may be imposed; and
- (ii) is satisfied the offence was committed during the operational period for the treatment order; or
- (b) an offender to whom a treatment order applies is otherwise before the court and the court is satisfied—
 - (i) the offender was convicted, in or outside Queensland, of an offence for which imprisonment may be imposed; and
 - (ii) the offence was committed during the operational period for the treatment order.
- (2) The court may, having regard to the matters stated in section 151P—
 - (a) extend the operational period for the custodial part of the treatment order by no more than 1 year; or
 - (b) if the operational period has expired when the court is dealing with the offender, make an order—
 - (i) that the offender's term of imprisonment be further suspended; and
 - (ii) stating a period (also an *operational period*) during which the offender must not commit another offence if the offender is to avoid being dealt with again under this section; or
 - (c) if the rehabilitation part of the treatment order is in force, order—
 - (i) that the rehabilitation part of the treatment order is revoked; and

- (ii) that the offender must serve the whole or part of the sentence of imprisonment imposed under the custodial part of the treatment order, reduced by any period served by the offender under the rehabilitation part of the treatment order; or
- (d) order the offender to serve the whole or part of the sentence of imprisonment imposed under the custodial part of the treatment order, reduced by any period served by the offender under the rehabilitation part of the treatment order.

151P Considerations for taking action under s 151O

- (1) In making an order under section 151O, the court must have regard to—
 - (a) the extent to which the offender has otherwise complied with the treatment order; and
 - (b) whether the subsequent offence is trivial having regard to—
 - (i) the nature of the subsequent offence and the circumstances in which it was committed, including any physical or emotional harm done to a victim and any damage, injury or loss caused by the offender; and
 - (ii) the proportionality between the culpability of the offender for the subsequent offence and the consequence of making the order; and
 - (iii) the antecedents and any criminal history of the offender; and

- (iv) the prevalence of the original and subsequent offences; and
- (v) the motivation for the subsequent offence; and
- (c) the seriousness of the original offence, including any physical or emotional harm done to a victim and any damage, injury or loss caused by the offender; and
- (d) any special circumstance arising since the original sentence was imposed that affects whether it would be just to make the order.

(2) In this section—

original offence means the offence for which a term of imprisonment has been suspended under section 151N(1)(b).

original sentence means the sentence imposed for the original offence.

subsequent offence means the offence committed during the operational period of a treatment order.

Subdivision 4 Rehabilitation part

151Q Rehabilitation part of treatment order

- (1) In making a treatment order, the court must—
 - (a) include in the order a treatment program that complies with section 151S; and
 - (b) order the offender to comply with—
 - (i) the core conditions; and
 - (ii) the treatment program.
- (2) The matters stated in subsection (1) constitute the ***rehabilitation part*** of the treatment order.
- (3) The rehabilitation part—

- (a) starts when the treatment order is made; and
- (b) ends on the day that is 2 years after the day it started, unless it is sooner cancelled or extended under division 4.

151R Core conditions

- (1) An offender to whom the rehabilitation part of a treatment order applies must comply with the conditions (the *core conditions*) stated in subsection (2).
- (2) The offender—
 - (a) must not commit another offence; and
 - (b) must report to a review team member for the treatment order at the places and times directed by an authorised corrective services officer or a review team member for the treatment order; and
 - (c) must receive visits from an authorised corrective services officer or a review team member for the treatment order at the times directed by the officer or member; and
 - (d) must notify an authorised corrective services officer of every change of the offender's place of residence or employment within 2 business days after the change happens; and
 - (e) must not leave or stay outside Queensland without the permission of the court; and
 - (f) must appear before the court at the times directed by the court; and
 - (g) must comply with any other reasonable direction of—
 - (i) an authorised corrective services officer; or

- (ii) a review team member for the treatment order given under section 151T(2).

151S Treatment program

- (1) The treatment program for a treatment order—
 - (a) must state the period, of not more than 2 years, within which the program must be completed by the offender; and
 - (b) may include the conditions or other requirements the court considers necessary to achieve the purposes of the treatment order.
- (2) Without limiting subsection (1)(b), the treatment program may include conditions requiring the offender to do the following, as stated in the treatment order or as directed by a review team member for the treatment order—
 - (a) submit to medical, psychiatric or psychological treatment that is relevant to the offender's rehabilitation;
 - (b) submit to detoxification at a stated facility that is not a corrective services facility;
 - (c) participate in counselling or programs relevant to the offender's rehabilitation;
 - (d) attend meetings with a review team member for the treatment order;
 - (e) participate in vocational, educational or employment programs or courses;
 - (f) submit to alcohol or other drug testing;
 - (g) wear a device that detects alcohol or other drug usage by the offender;
 - (h) install a device or equipment at the offender's place of residence;

- (i) reside at a stated place for a stated period.

Division 4 Administering treatment orders

151T Review team obligations and requirement for court to consult

- (1) The review team members for a treatment order who are representatives of treatment order agencies must assist the court in administering the order.
- (2) In administering a treatment order, the review team may give a direction that is reasonably necessary to achieve the purposes of the treatment order.
- (3) In making an order or taking an action under this division in relation to a treatment order, the court must consult with the review team for the order about whether the order or action is appropriate.

151U Court may cancel rehabilitation part of treatment order on early completion of treatment program

The court may cancel the whole or part of the rehabilitation part of the treatment order if the court is satisfied—

- (a) the offender has complied, or substantially complied, with the treatment program; and
- (b) continuation of the rehabilitation part, or a part of the rehabilitation part, is not necessary to achieve the purposes of the treatment order.

151V Court may amend rehabilitation part of treatment order

- (1) The court may, from time to time, amend the rehabilitation part of a treatment order by—
 - (a) adding conditions to or removing conditions from the treatment program; or
 - (b) amending conditions imposed under the treatment program, including, for example, by amending the type or frequency of alcohol or other drug testing; or
 - (c) extending the rehabilitation part of the treatment order.
- (2) The court may make the amendment—
 - (a) on the court's own initiative; or
 - (b) on an application by—
 - (i) the offender; or
 - (ii) the prosecutor; or
 - (iii) a review team member for the treatment order.
- (3) In deciding whether to make the amendment, the court must have regard to the extent to which the offender has complied with the treatment order.
- (4) However, the court may not extend the rehabilitation part of the treatment order beyond the day the custodial part of the treatment order ends.
- (5) The court must give reasons for a decision to amend a treatment order under this section.

151W Failure to comply with rehabilitation part of treatment order

- (1) If a court is satisfied an offender has, without reasonable excuse, failed to comply with the

rehabilitation part of the offender's treatment order, the court may do any of the following—

- (a) impose a condition on the treatment program for the order the court considers necessary to achieve the purposes of the treatment order;
 - (b) at any 1 hearing under this section, order that the offender perform up to 40 hours of community service, but not to the extent the order would increase the total amount of community service imposed on the offender in relation to the treatment order to more than 240 hours;
 - (c) at any 1 hearing under this section, order that the offender must serve up to 7 consecutive days of the sentence of imprisonment suspended under the custodial part of the treatment order;
 - (d) revoke the rehabilitation part of the treatment order and order that the offender must serve the whole or part of the sentence of imprisonment imposed under the custodial part of the treatment order, reduced by the period of imprisonment served by the offender under the treatment order;
 - (e) amend the rehabilitation part of the treatment order under section 151V.
- (2) To remove any doubt, it is declared that—
- (a) an order made under subsection (1)(b) is not a community service order; and
 - (b) the court may impose a condition or make an order mentioned in subsection (1)(a), (b) or (c) for the offender more than once.
- (3) In taking action under subsection (1)(d), the court must have regard to the extent to which the

offender has otherwise complied with the treatment order.

- (4) The court must give reasons for a decision to take action under this section.

Division 5 Ending treatment orders

151X Court may revoke treatment order

- (1) The court may revoke a treatment order—
- (a) on the court's own initiative, if the court is satisfied the purposes of the treatment order can no longer be achieved, including, for example, because—
 - (i) the offender is no longer capable of complying with the treatment order because of a physical or psychiatric disability; or
 - (ii) the offender is sentenced to a term of imprisonment for another offence; or
 - (iii) the offender has failed to comply with the treatment order in a material way; or
 - (iv) the offender is no longer willing to comply with the treatment order, or is unlikely to comply with the treatment order for another reason; or
 - (b) on an application by—
 - (i) the offender; or
 - (ii) a prosecutor; or
 - (iii) a review team member for the treatment order.
- (2) In deciding whether to revoke the treatment order,

the court must—

- (a) consult with the review team for the treatment order about whether the revocation is appropriate; and
- (b) have regard to the extent to which the offender has complied with the treatment order.

151Y Requirements for revocation

(1) If the court revokes a treatment order—

- (a) for a treatment order made for the offender in relation to an offence dealt with summarily under the *Drugs Misuse Act 1986*, section 13A, the court must—
 - (i) order that the record of the conviction for the offence be revoked; and

Note—

For the effect of not recording a conviction, see section 12.

- (ii) vacate the offender's treatment order; and
 - (iii) under the *Justices Act 1886*, section 113, commit the offender to the District Court for sentence, even though section 104(2)(b) of that Act has not been complied with; or
 - (b) otherwise—the court may deal with the offender as if the offender had just been convicted of the eligible offence for which the treatment order was made.
- (2) However, in imposing a term of imprisonment on the offender under subsection (1), the court—
- (a) must reduce the term of imprisonment by any period of imprisonment served by the

offender under the custodial part of the treatment order; and

- (b) can not impose a term of imprisonment that, together with any imprisonment served under the treatment order, exceeds the sentence of imprisonment that was imposed under the custodial part of the treatment order; and
- (c) must have regard to the extent to which the offender has otherwise complied with the treatment order.

151Z Termination of treatment orders

A treatment order made for an offender is terminated if—

- (a) it is revoked under section 151X; or
- (b) the operational period of the custodial part of the treatment order has ended.

Division 6 Miscellaneous

151ZA Immunity from prosecution

- (1) A person is not liable to prosecution for a relevant drug offence resulting from any admission made by the person for the purposes of—
 - (a) preparing a suitability assessment report for the person; or
 - (b) administering a treatment order for the person.
- (2) The admission, and any evidence obtained because of the admission, is not admissible against the person in a prosecution for the relevant drug offence.

- (3) Subsections (1) and (2) do not prevent the person from being prosecuted for the relevant drug offence if evidence of the offence, other than the admission made by the person or evidence obtained because of the admission, exists.
- (4) In this section—
relevant drug offence means the following offences—
 - (a) an offence mentioned in the *Drugs Misuse Act 1986*, section 9, 9A or 10;
 - (b) an offence that may be dealt with summarily under the *Drugs Misuse Act 1986*, section 13 or 14.

151ZB Arrest warrants

- (1) A court may issue a warrant for an offender's arrest if the court—
 - (a) reasonably suspects, after consulting the review team for the offender's treatment order, that the offender has failed to comply with the treatment order; or
 - (b) revokes the offender's treatment order.
- (2) The warrant authorises any police officer to arrest the offender and to bring the offender before the court.

151ZC Court may remand offender in custody

- (1) If a warrant is issued under section 151ZB(1)(a), the court may remand the offender in custody to appear before the court if the court decides to—
 - (a) reserve making a decision about revoking the treatment order or rehabilitation part of the treatment order; or

- (b) revoke the treatment order or rehabilitation part of the treatment order.
- (2) The period for which the offender may be remanded in custody is—
 - (a) an initial period of not more than 30 days; and
 - (b) a further period or periods of not more than 8 days.
- (3) If the court remands the offender in custody, the chief executive (corrective services) must ensure the person appears before the court to be dealt with as required.

151ZD No appeal against particular decisions

- (1) An appeal does not lie against a decision of the court—
 - (a) not to make a treatment order; or
 - (b) that an offender has failed to comply with a treatment order; or
 - (c) to cancel the rehabilitation part of a treatment order; or
 - (d) to amend the rehabilitation part of a treatment order; or
 - (e) to revoke the rehabilitation part of a treatment order; or
 - (f) to revoke a treatment order.
- (2) Subsection (1) applies despite the *Justices Act 1886*, section 222 and the Criminal Code, chapter 67.

Part 8 Amendment of Police Powers and Responsibilities Act 2000

36 Act amended

This part amends the *Police Powers and Responsibilities Act 2000*.

37 Amendment of s 379 (Additional case when arrest for minor drugs offence may be discontinued)

(1) Section 379(1)(f), (2), (3) and (5), ‘attend’—
omit, insert—

participate in

(2) Section 379(6) and (8)(a), ‘attend and complete’—
omit, insert—

participate in, and complete,

(3) Section 379(7)(a), ‘attendance at’—
omit, insert—

participation in

(4) Section 379(7)(b), ‘attend or complete’—
omit, insert—

participate in, or complete,

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