

JAMAICA

No. 12 – 2014

I assent,

[L.S.]

(sgd.) P. L. Allen

Governor-General.

1st day of October, 2014

AN ACT to Amend the Criminal Records (Rehabilitation of Offenders) Act.

[2nd day of October, 2014]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Criminal Records (Rehabilitation of Offenders) (Amendment) Act, 2014, and shall be read and construed as one with the Criminal Records (Rehabilitation of Offenders) Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title and construction.

Amendment of section 2 of principal Act.

2. Section 2 of the principal Act is amended by—

- (a) deleting the definition of “specified offence” and substituting therefor the following-

“ “specified offence” means-

Third Schedule.

- (a) any offence specified in the Third Schedule; and

- (b) any offence to which, having regard to the sentence imposed, section 3 does not apply;”;

- (b) deleting the full stop appearing at the end of the definition of “spent conviction” and substituting therefor a semi-colon; and

- (c) inserting next after the definition of “spent conviction” the following definitio-

“ “suspended sentence” has the meaning assigned to it in section 2 of the Criminal Justice (Reform) Act.”.

Amendment of section 3 of principal Act.

3. Section 3 of the principal Act is amended—

- (a) by deleting subsection (3) and substituting therefor, the following-

“ (3) Subject to sections 6 and 9, this section—

- (a) shall apply in relation to any offence for which a person is convicted where the sentence imposed by the court-

- (i) does not include a term of imprisonment; or

- (ii) if it includes a term of imprisonment, that term does not exceed five years; and

- (b) shall not apply to any offence specified in the Third Schedule.”; and

Third Schedule.

- (b) in subsection (8), by deleting from paragraph (a) the words “three years” and substituting therefor the words “five years”.

4. Section 5 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 5 of principal Act.

5. Where a person is convicted of an offence to which section 3 applies and the person was eighteen or more years of age at the time that the offence was committed, the applicable rehabilitation period with respect to that conviction shall be determined as follows—

“Rehabilitation periods for persons of eighteen or more years of age.”

- (a) where the sentence imposed is a sentence described in section 3(3)(a)(i), the rehabilitation period shall be three years;
- (b) where the sentence imposed is a sentence described in section 3(3)(a)(ii), the rehabilitation period shall be—
- (i) five years, if the term of imprisonment is for a period not exceeding six months;
 - (ii) seven years, if the term of imprisonment is for a period exceeding six months but not exceeding thirty-six months; and
 - (iii) ten years, if the term of imprisonment is for a period exceeding thirty-six months but not exceeding five years.”.

Insertion of new section 5A into principal Act.

5. The principal Act is amended by inserting next after section 5, the following—

“Rehabilitation periods for persons under the age of eighteen years.

5A. Where a person is convicted of an offence to which section 3 applies, and the person was under eighteen years of age at the time that the offence was committed, the applicable rehabilitation period with respect to that conviction shall be determined as follows—

- (a) where the sentence imposed is a sentence described in section 3(3)(a)(i), the rehabilitation period shall be eighteen months;
- (b) where the sentence imposed is a sentence described in section 3(3)(a)(ii), the rehabilitation period shall be—
 - (i) thirty months, if the term of imprisonment is for a period not exceeding six months;
 - (ii) forty-two months, if the term of imprisonment is for a period exceeding six months but not exceeding thirty-six months; and
 - (iii) five years, if the term of imprisonment is for a period exceeding thirty-six months but not exceeding five years.”.

Amendment of section 7 of principal Act.

6. Section 7 of the principal Act is amended by inserting next after subsection (2), the following—

“ (3) Where the sentence imposed on any person for an offence that is not a specified offence is a suspended

sentence, the rehabilitation period shall commence on the earlier of the following dates, that is to say—

- (a) the date on which the sentence of imprisonment would have terminated had the court not granted a suspended sentence; or
- (b) the date of termination of the operational period (as defined in section 6 of the Criminal Justice (Reform) Act) of the suspended sentence, unless the person is convicted of another offence during the operational period of the suspended sentence, in which case the provisions of section 9 (1) shall apply.”.

7. Section 16 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 16 of principal Act.

“ Inter-pretation.

16. In this Part, “records” means the records kept and maintained in the Criminal Records Office in relation to the conviction of any person for a criminal offence or such other records as may be prescribed.”.

8. Section 17 of the principal Act is repealed.

Repeal of section 17 of principal Act.

9. Section 20 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 20 of principal Act.

“ Eligibility of rehabilitated person to apply to the Board for expungement.

20. Subject to section 20A, a rehabilitated person may, upon the expiration of the rehabilitation period, make an application to the Board for the expungement from the records of a spent conviction.”.

10. The principal Act is amended by inserting next after section 20, the following—

Insertion of new section 20A into principal Act.

“ Restrictions on eligibility.

20A.—(1) Where a person has been convicted of three or more—

- (a) indictable offences arising out of more than one incident; or

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Offenders) (Amendment) Act, 2014*

- (b) summary offences, all of which involved an offence under the Dangerous Drugs Act (other than an offence under section 7C (possession of ganja) where the sentence imposed on conviction of the offence was a fine not exceeding one thousand dollars or such other amount as the Minister may by order prescribe, or an offence under section 7D(c) (possession of pipes or other utensils) or 7D(d) (smoking or other use of ganja)),

the person shall as of the third such conviction, notwithstanding that the applicable rehabilitation period may have elapsed in relation to any of those convictions, be dealt with in accordance with subsection (2).

(2) A person described in subsection (1) shall not be eligible—

- (a) to be treated as a rehabilitated person in respect of any of the convictions referred to in subsection (1), neither shall any of those convictions be capable of being treated as spent;
- (b) to apply for the expungement from the records of any other conviction that has already become spent; or
- (c) to be treated as a rehabilitated person in relation to any subsequent conviction, neither shall any subsequent conviction be capable of being treated as spent.

(3) Notwithstanding the provisions of the Third Schedule, where a person has been convicted under section 10 of the Sexual Offences Act (sexual

intercourse with person under sixteen years of age) and that conviction is one to which section 3 of this Act applies-

- (a) the person shall after the applicable rehabilitation period, be eligible to apply to the Board for the expungement from the records of that conviction; and
- (b) pursuant to section 23, the person shall, in the course of the application, be required to tender to the Board such evidence as the Board may require so as to satisfy itself, with regard to the offence, that the person-
 - (i) was not in a position of trust or authority towards the other party, and the other party was not in a relationship of dependency with the applicant;
 - (ii) did not use, threaten to use or attempt to use violence, intimidation or coercion in relation to the other party; and
 - (iii) was less than four years older than the other party,

and the Board shall not approve the application for expungement unless it is satisfied that the requirements of sub-paragraphs (i) to (iii) have been met.

(4) Where the conviction of a person is expunged consequent upon the Board being satisfied in the manner specified in subsection (3), then with effect from the date of the Board's

direction for expungement, the person's registration, reporting, notification or other obligations arising in relation to that conviction under Part VII of the Sexual Offences Act and any regulations made thereunder shall cease, and the Board shall, in writing, notify the Registrar of the Sex Offender Registry accordingly.

(5) In this section, "other party" means the person with whom the convicted person engaged or attempted to engage in sexual intercourse."

Insertion of
new section
28A into
principal Act.

11. The principal Act is amended by inserting next after section 28 the following—

" Automatic
expunge-
ment.

28A.—(1) Subsection (2) applies to a person (in this section referred to as a "specified person") convicted of an offence under a prescribed enactment or prescribed provision of an enactment, any of the following provisions of the Dangerous Drugs Act (whether the conviction was before or after the coming into operation of the Criminal Records (Rehabilitation of Offenders) (Amendment) Act, 2014—

- (a) an offence under section 7C (possession of ganja), where the sentence imposed on conviction of the offence is a fine not exceeding one thousand dollars or such other amount as the Minister may by order prescribe; or
- (b) an offence under section 7D(c) (possession of pipes or other utensils) or 7D(d) (smoking or other use of ganja).

(2) Subject to subsection (3), a specified person shall be entitled to the expungement from the records of any conviction referred to in

subsection (1) whether or not the rehabilitation period with respect to the conviction has expired.

(3) On receiving an application for expungement of any conviction referred to in subsection (1), the Board shall, unless it is satisfied that the conviction was not for an offence falling within subsection (1), issue a direction that the conviction be expunged from the records which direction shall be treated as one made in accordance with section 23.

(4) The Minister may prescribe the procedure and any other details necessary for automatic expungement under this section.

(5) For the purposes of subsection (1) “prescribed” means prescribed by the Minister, by order subject to affirmative resolution.”.

12. Section 30 of the principal Act is amended—

Amendment of
section 30 of
principal Act.

(a) by inserting, next after subsection (1), the following—

“ (1A) A credit bureau within the meaning of section 2 of the Credit Reporting Act commits an offence if it knowingly discloses any specified information in any credit report or credit information it provides under that Act.”;

(b) in subsections (2) and (3), by inserting, immediately after the words “subsection (1)” wherever they appear, the words “or (1A)” in each case.

13. Section 32 of the principal Act is amended—

Amendment of
section 32 of
principal Act.

(a) in subsection (1), by deleting the words “ten thousand” and substituting therefor the words “one million”;

(b) in subsection (2), by deleting the words “one thousand” and substituting therefor the words “one hundred thousand”.

Insertion of new section 35 into principal Act.

14. The principal Act is amended by inserting next after section 34 the following as section 35—

“ Power of Minister to amend Third Schedule and monetary penalties. 35. The Minister may, by order subject to affirmative resolution, amend—

- (a) the Third Schedule; or
- (b) any monetary penalty imposed by this Act.”.

Insertion of new Third Schedule into principal Act.

15. The principal Act is amended by inserting next after the Second Schedule the following—

“ THIRD SCHEDULE (Section 3)

Offences for which Convictions may not be Expunged

1. Murder.
2. Any offence under section 2, 3 or 4 of the *Treason Felony Act*.
3. Any offence under section 3 or 10 of the *Malicious Injuries to Property Act*.
4. Any offence under section 37, 39, 40, or 42A of the *Larceny Act*.
5. Any offence under the *Firearms Act*, other than an offence under section 11, 12 or 14.
6. Any offence under section 8, 13, 14, 15, 16, 17, 20, 33, 69 or 70 of the *Offences Against the Person Act*.
7. Any offence under section 3, 5, 6, 7, 7A, 8, 8A, 9, 11, or 21A of the *Dangerous Drugs Act*.
8. Any offence under section 4 of the *Trafficking in Persons (Prevention, Suppression and Punishment) Act*.
9. Any offence under section 10 of the *Child Care and Protection Act*.

10. Any offence under section 3, 4, 5, 7, 9, 10 (subject to section 20A of this Act), 11, 13, 15, 16, 17, 18, 19, 20 and 21 of the *Sexual Offences Act*.
11. Treason.
12. Any offence under section 3, 4, 5, 6, 7, 8, 9, 10, 11 or 12 of the *Law Reform (Fraudulent Transactions) (Special Provisions) Act*.
13. Any offence under section 3, 4, 5, 6, 7, 8, 9, 10, 11 or 12 of the *Terrorism Prevention Act*.
14. Any offence under section 3, 4, 5 or 7 of the *Child Pornography (Prevention) Act*.
15. Any offence under the *Criminal Justice (Suppression of Criminal Organizations) Act*.”.
16. The Dangerous Drugs Act is amended—
 - (a) in section 7C, by—
 - (i) renumbering the existing provision as subsection (1) of section 7C; and
 - (ii) inserting immediately after subsection (1) as renumbered, the following—

“ (2) Notwithstanding subsection (1), no conviction for the offence of possession of two ounces (0.057kg) or less of ganja, or such other amount as the Minister may by order prescribe, shall be recorded on the criminal record of the offender.”;
 - (b) in section 7D, by—
 - (i) renumbering the existing provision as subsection (1) of section 7D; and

Consequential amendments.

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Offenders) (Amendment) Act, 2014*

(ii) inserting immediately thereafter the following as subsection (2)—

“ (2) Notwithstanding subsection (1), no conviction for an offence under subsection (1)(c) or (d) shall be recorded on the criminal record of the offender.”.

Transitional.

17. The provisions of the principal Act as amended by this Act shall apply in respect of any conviction to which section 3 of the principal Act applies notwithstanding that the conviction may have occurred before the date of commencement of this Act.

Passed in the Honourable Senate this 4th day of July 2014 with nine (9) amendments.

A. BROWN-BURKE

Deputy President.

Passed in the House of Representatives this 30th day of September 2014.

MICHAEL A. PEART

Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

H. E. Cooke (Mrs.)
(sgd.) *Clerk to the Houses of Parliament.*