



New South Wales

# Drug Court Amendment Bill 1999

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Drug Court Act 1998* so as:

- (a) to restrict the classes of persons who may be referred to the Drug Court to persons who are “highly likely to be required to serve a sentence of full-time imprisonment” rather than (as is presently the case) merely “likely to be sentenced to imprisonment” for the offences with which they are charged, and
- (b) to extend to courts exercising criminal appellate jurisdiction the duty imposed on a court by the Act to take steps towards the referral of a person to the Drug Court, and
- (c) to allow a person to be referred to the Drug Court at any time up to the time the person is sentenced or committed for trial or sentence, and
- (d) to allow a sentence of imprisonment to be suspended for the purpose of enabling a person to participate in a drug program up to 14 days after the sentence is imposed rather than (as is presently the case) at the same time as the sentence is imposed, and

- (e) to ensure that the Drug Court can accept a person into a drug program and suspend the person's sentence not only in relation to the offence for which the person was referred to the Drug Court but also in relation to any other offence to which the person pleads guilty, and
- (f) to allow the Drug Court, when dealing with a person for two or more offences for which the person has been referred to the Drug Court by two or more courts, to refer the person back to one of those courts for all of the offences for which that court has jurisdiction, and
- (g) to make it a statutory condition of a person's drug program that the Drug Court may commit the person to a correctional centre if such action is necessary to facilitate the person's detoxification or program assessment, and
- (h) to allow the Drug Court's powers to issue arrest warrants to be exercised by the registrar of the Drug Court, and
- (i) to remove any doubt as to the power of the Drug Court to issue a warrant committing a person to a correctional centre in the course of a drug program and as to the authority of a police officer and the governor of a correctional centre to give effect to such a warrant.

The Bill also amends the *Periodic Detention of Prisoners Act 1981* so as:

- (a) to allow leave of absence to be granted under that Act to a person who is participating in a drug program, and
- (b) to provide that, when it sentences a person to imprisonment for more than one month and suspends the sentence so as to allow the person to participate in a drug program, the Drug Court is not required to cancel any periodic detention order to which the person is subject.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Drug Court Act 1998* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendments to the *Periodic Detention of Prisoners Act 1981* set out in Schedule 2.

## **Schedule 1 Amendment of Drug Court Act 1998**

**Schedule 1 [1]** amends section 5 (1) of the Act so as to restrict the definition of *eligible person* prescribed by that section to persons who are “highly likely to be required to serve a sentence of full-time imprisonment” rather than (as is presently the case) merely “likely to be sentenced to imprisonment” for the offences with which they are charged.

**Schedule 1 [2]** extends to courts exercising criminal appellate jurisdiction the duty imposed on a court by section 6 (2) of the Act to take steps towards the referral of a person to the Drug Court. It should be noted that section 6 of the Act applies only to courts prescribed by the regulations and that the current regulations prescribe Local Courts and the District Court only, so that the effect of the amendment will for the time being be to extend the duty to the District Court in its jurisdiction to determine appeals in criminal proceedings under Part 5A of the *Justices Act 1902*.

**Schedule 1 [3]** substitutes section 6 (3) of the Act so as to allow a person to be referred to the Drug Court at any time up to the time the person is sentenced or committed for trial or sentence.

**Schedule 1 [4]** amends section 7 of the Act to require a person entering a drug program to consent not only to the conditions imposed by the Drug Court (as is presently the case) but also the statutory conditions imposed by the Act, as a consequence of the insertion of proposed section 8A referred to in Schedule 1 [12].

**Schedule 1 [5]** amends section 7 of the Act so as to allow a sentence of imprisonment to be suspended for the purpose of enabling a person to participate in a drug program up to 14 days after the sentence is imposed rather than (as is presently the case) at the same time as the sentence is imposed.

**Schedule 1 [6]** amends section 7 of the Act so as to allow an order suspending a person’s sentence, or accepting a person into a drug program, to be made in the person’s absence.

**Schedule 1 [7]** amends section 7 of the Act so as to ensure that the Drug Court can accept a person into a drug program and suspend the person’s sentence not only in relation to the offence for which the person was referred to the Drug Court but also in relation to any other offence to which the person pleads guilty.

**Schedule 1 [8]** amends section 7 of the Act as a consequence of the amendment proposed by Schedule 1 [3].

**Schedule 1 [9]** amends section 8 so as to allow the Drug Court to decline to deal with a person who has been referred to it for any reason the Drug Court considers appropriate.

**Schedule 1 [10]** amends section 8 of the Act so as to allow the Drug Court, when dealing with a person for two or more offences for which the person has been referred to the Drug Court by two or more courts, to refer the person back to one of those courts for all of the offences for which that court has jurisdiction.

**Schedule 1 [11]** amends section 8 of the Act as a consequence of the amendment proposed by Schedule 1 [3].

**Schedule 1 [12]** inserts a new section 8A into the Act so as to make it a statutory condition of a person's drug program that the Drug Court may commit the person to a correctional centre if such action is necessary to facilitate the person's detoxification or program assessment.

**Schedule 1 [13]** amends section 12 of the Act so as to ensure that any time spent by a person in custody is taken into account in imposing the person's final sentence.

**Schedule 1 [14]** amends section 14 of the Act so as to allow the Drug Court's powers to issue arrest warrants to be exercised by the registrar of the Drug Court.

**Schedule 1 [15]** inserts a new section 14A into the Act so as to remove any doubt as to the power of the Drug Court to issue a warrant committing a person to a correctional centre in the course of a drug program and as to the authority of a police officer and the governor of a correctional centre to give effect to such a warrant.

**Schedule 1 [16]** amends section 24 of the Act so as to make it clear that the Drug Court is bound by the *Bail Act 1978* when it exercises the functions of a magistrate or justice in the same way as it is bound by the *Justices Act 1902* when it exercises those functions.

## **Schedule 2   Amendment of Periodic Detention of Prisoners Act 1981**

**Schedule 2 [1]** amends section 20 (1) of the Act so as to allow leave of absence from a periodic detention centre to be granted to a person who is participating in a drug program.

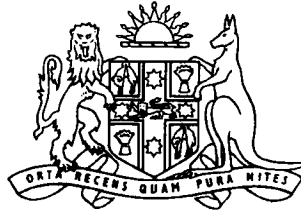
Drug Court Amendment Bill 1999

Explanatory note

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**Schedule 2 [2]** amends section 24 (1) of the Act so as to provide that, when it sentences a person to imprisonment for more than one month and suspends the sentence so as to allow the person to participate in a drug program, the Drug Court is not required to cancel any periodic detention order to which the person is subject.

**Schedule 2 [3]** amends section 24 (1) of the Act so as to provide that, when it sentences a person to imprisonment for more than one month and takes action towards suspending the sentence, the Drug Court is not required to cancel any periodic detention order to which the person is subject.



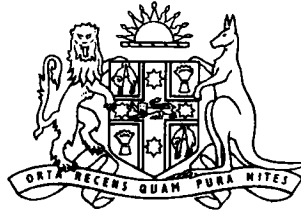
New South Wales

# Drug Court Amendment Bill 1999

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Drug Court Act 1998 No 150	2
4 Amendment of Periodic Detention of Prisoners Act 1981 No 18	2
<b>Schedules</b>	
1 Amendment of Drug Court Act 1998	3
2 Amendment of Periodic Detention of Prisoners Act 1981	7



New South Wales

## Drug Court Amendment Bill 1999

No. , 1999

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### A Bill for

An Act to amend the *Drug Court Act 1998* in relation to the procedures to be adopted by courts in referring persons to the Drug Court and the procedures to be adopted by the Drug Court in dealing with persons so referred; and to make related amendments to the *Periodic Detention of Prisoners Act 1981*.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Drug Court Amendment Act 1999</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of Drug Court Act 1998 No 150</b>	7
The <i>Drug Court Act 1998</i> is amended as set out in Schedule 1.	8
<b>4 Amendment of Periodic Detention of Prisoners Act 1981 No 18</b>	9
The <i>Periodic Detention of Prisoners Act 1981</i> is amended as set out in Schedule 2.	10 11



<b>Schedule 1</b>	<b>Amendment of Drug Court Act 1998</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Section 5 Definition of “eligible person”</b>	3
	Omit “likely that the person will, if convicted, be sentenced to imprisonment” from section 5 (1) (b).	4
		5
	Insert instead “highly likely that the person will, if convicted, be required to serve a sentence of full-time imprisonment”.	6
		7
<b>[2]</b>	<b>Section 6 Courts may refer persons to Drug Court</b>	8
	Insert “or to which a person appeals against a sentence imposed by some other court” after “charged with an offence” in section 6 (2).	9
		10
<b>[3]</b>	<b>Section 6 (3)</b>	11
	Omit the subsection. Insert instead:	12
	(3) The power conferred on a court by this section is to be exercised as soon as practicable after the person first comes before the court in connection with the offence, but may be exercised at any time:	13
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		15
		16
	(a) in the case of a court exercising functions under the <i>Justices Act 1902</i> , before the court has committed the person for trial or sentence in relation to that offence under Division 1 of Part 4 of that Act, and	17
		18
		19
		20
	(b) in any case, before the person is sentenced or re-sentenced for the offence.	21
		22
<b>[4]</b>	<b>Section 7 Persons accepted into program</b>	23
	Insert “the conditions imposed by this Act and” after “accepts” in section 7 (2) (d).	24
		25
<b>[5]</b>	<b>Section 7 (3)</b>	26
	Omit “On sentencing the person”.	27
	Insert instead “On or within 14 days after sentencing the person”.	28

<b>[6] Section 7 (3A)</b>	1
Insert after section 7 (3):	2
(3A) An order referred to in subsection (3) (a) or (b) may be made in the absence of the person in respect of whom it is made.	3 4
<b>[7] Section 7 (4A)</b>	5
Insert after section 7 (4):	6
(4A) Subsection (3) applies to a sentence under subsection (4) in the same way as it applies to a sentence under subsection (2).	7 8
<b>[8] Section 7 (6)</b>	9
Insert after section 7 (5):	10
(6) In this section, a reference to the convicting and sentencing of a person is, in the case of a person who is referred to the Drug Court after having been convicted, a reference to the sentencing of the person only.	11 12 13 14
<b>[9] Section 8 Persons not accepted into program</b>	15
Insert “or in such other circumstances as the Drug Court may determine” after “under this section” in section 8 (3).	16 17
<b>[10] Section 8 (3A) and (3B)</b>	18
Insert after section 8 (3):	19
(3A) In the case of a person who has been referred to the Drug Court for 2 or more offences by 2 or more referring courts, the Drug Court may refer the person back to any one of the referring courts to be dealt with:	20 21 22 23
(a) for the offences for which the person was referred by that court, and	24 25
(b) for such of the other offences as are within the criminal jurisdiction of that court.	26 27
(3B) In dealing with a person for an offence referred to in subsection (3A) (b), the court to which the person is referred back is taken to be the referring court for the purposes of subsection (4).	28 29 30

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<b>[11] Section 8 (6)</b>	1
Insert after section 8 (5):	2
(6) In this section, a reference to the convicting and sentencing of a person is, in the case of a person who is referred to the Drug Court after having been convicted, a reference to the sentencing of the person only.	3 4 5 6
<b>[12] Section 8A</b>	7
Insert before section 9:	8
<b>8A Statutory conditions of program</b>	9
(1) It is a condition of a drug offender's program that the Drug Court may commit the drug offender to a correctional centre for up to 7 days at a time if, in the opinion of the Drug Court, such action is necessary to facilitate:	10 11 12 13
(a) detoxification of the drug offender, or	14
(b) assessment of the drug offender's participation in the program.	15 16
(2) However, a drug offender is not to be committed to a correctional centre for detoxification unless the Drug Court is satisfied that no other suitable facilities are immediately available.	17 18 19 20
<b>[13] Section 12 Imposition of final sentence</b>	21
Insert at the end of section 12 (2):	22
, and	23
(c) any time for which the drug offender has been held in custody in connection with an offence to which his or her program relates, including time during which the person has undergone imprisonment:	24 25 26 27
(i) under the sentence, or	28
(ii) under the condition of the program arising under section 8A.	29 30

<b>[14] Section 14 Arrest warrants</b>	1
Insert after section 14 (3):	2
(4) The Drug Court’s functions under this section may be exercised by the registrar.	3 4
<b>[15] Section 14A</b>	5
Insert after section 14:	6
<b>14A Warrants of committal</b>	7
(1) For the purpose of subjecting a drug offender to imprisonment in a correctional centre as referred to in section 8A or 16 (2) (f), the Drug Court may issue a warrant committing the drug offender to a correctional centre.	8 9 10 11
(2) A warrant under this section:	12
(a) authorises any police officer to have custody of the drug offender named in the warrant, to convey the drug offender to the correctional centre specified in the warrant and to deliver the drug offender into the custody of the governor of that correctional centre, and	13 14 15 16 17
(b) authorises the governor of the correctional centre specified in the warrant to have custody of the drug offender named in the warrant for the period of time specified in the warrant.	18 19 20 21
(3) The Drug Court’s functions under this section may be exercised by the registrar.	22 23
<b>[16] Section 24 Jurisdiction of Drug Court</b>	24
Insert “or the <i>Bail Act 1978</i> ” after “the <i>Justices Act 1902</i> ” in section 24 (2) (b).	25 26

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<b>Schedule 2</b>	<b>Amendment of Periodic Detention of Prisoners Act 1981</b>	1
		2
	(Section 4)	3
<b>[1]</b>	<b>Section 20 Leave of absence at request of periodic detainee</b>	4
	Insert “or is participating in a program under the <i>Drug Court Act 1998</i> ”	5
	after “custody” in section 20 (1) (c).	6
<b>[2]</b>	<b>Section 24 Cancellation of orders for periodic detention on subsequent conviction</b>	7
		8
	Insert “, makes a suspension order under the <i>Drug Court Act 1998</i> in	9
	relation to the periodic detainee” before “or takes action” in section 24 (1).	10
<b>[3]</b>	<b>Section 24 (1)</b>	11
	Insert “or the <i>Drug Court Act 1998</i> ” before “in connection with”.	12