

COMMUNITY-BASED CORRECTIONS BILL 2016
(BILL NO. 33 OF 2016)

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BILL NO. 33 OF 2016**A BILL**

FOR AN ACT TO PROVIDE FOR A COMMUNITY-BASED CORRECTIONS SYSTEM THAT FOSTERS COMMUNITY-BASED SENTENCING OPTIONS AND THE REHABILITATION AND REINTEGRATION OF OFFENDERS **AND FOR RELATED MATTERS**

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

- 1.—(1) This Act may be cited as the Community-Based Corrections Act **2016 2018**.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“community-based corrections officer” means a community-based corrections officer appointed under section 6;

“community-based corrections order” means an order **issued made** by the court in accordance with section 10;

“community volunteer supervisor” means a community volunteer supervisor appointed under section 8;

“court” means any court exercising jurisdiction in criminal cases;

“Minister” means the Minister responsible for social welfare;

“Ministry” means the Ministry responsible for social welfare;

“Permanent Secretary” means the permanent secretary responsible for social welfare;

“pre-sentence report” means a report on the personal and family history and present environment of an offender prepared at the request of a court; and

“supervising officer” means the community-based corrections officer or community volunteer supervisor who is supervising an offender subject to a community-based corrections order; and

“victim impact statement” means a statement prepared by a victim of a crime containing particulars of the impact of the offence on the victim and of any injury, loss or harm suffered by the victim as a direct result of the offence.

Objectives

3. The principal objective of this Act is to provide for the administration of a community-based corrections system that contributes to the maintenance of a just society by—

- (a) providing the courts with a range of sentencing options and the means for dealing with offenders, other than by imprisonment;
- (b) establishing conditions so that the rehabilitation of offenders may be promoted or facilitated;
- (c) reducing reoffending by managing the rehabilitation of offenders and their reintegration into society;
- (d) providing useful and timely information to courts to assist them in making decisions relating to the rehabilitation and reintegration of offenders;
- (e) ensuring that community-based corrections sentences are administered in a fair and effective manner; and
- (f) promoting community participation and volunteerism in the rehabilitation and reintegration of offenders.

PART 2—ADMINISTRATION OF COMMUNITY-BASED
CORRECTIONS SERVICES

Duties of the Permanent Secretary

4. The Permanent Secretary is responsible for promoting the development of policies, procedures and services that are necessary under this Act, including to—

- (a) encourage a collaborative approach between **gGovernment authorities agencies**, non-government organisations, faith-based organisations and communities in the development of community-based corrections **programmes and services**;
- (b) formulate policies, guidelines, plans and standards for community-based corrections programmes and services;
- (c) promote the development of programmes and services for the rehabilitation, education and vocational training of offenders, in partnership with **gGovernment agencies**, non-government organisations, faith-based organisations and community leaders;
- (d) ensure the development and administration of national training programmes for the training of community-based corrections officers and community volunteer supervisors to ensure the highest degree of professionalism amongst staff;
- (e) promote research on effective models for **the** rehabilitation and reintegration of offenders;
- (f) ensure the supervision and fair treatment of offenders undergoing sentences of community-based corrections; and
- (g) monitor and assess the services provided under this Act by the Ministry and other **organisations, groups and individuals, agencies or organisations.**

Delegation of powers

5. The Permanent Secretary may, from time to time, in writing either generally or specifically, delegate to any staff member as he or she thinks fit, all or any of the powers exercisable by the Permanent Secretary under this Act, and may revoke the delegation in writing at any time.

Appointment of community-based corrections officers

6.—(1) The Permanent Secretary may appoint public officials or such other suitably trained persons as community-based corrections officers for the effective and efficient administration of **the** community-based corrections services.

(2) A community-based corrections officer appointed under subsection (1) must be remunerated at a rate and in a manner determined by the Permanent Secretary with the approval of the Minister.

Duties of community-based corrections officers

7. A person appointed as a community-based corrections officer under section 6 must perform the following duties in accordance with this Act—

- (a) oversee the administration of community-based corrections orders;
- (b) supervise ~~persons~~ offenders placed under his or her supervision;
- (c) ensure that any condition placed on a person under a community-based corrections order is complied with;
- (d) assess and determine for each offender under his or her supervision an individual management plan in accordance with any condition imposed by ~~the~~ a court;
- (e) arrange, provide and monitor rehabilitative and reintegrative programmes or related services for offenders, as required;
- (f) coordinate and arrange community involvement in the administration of any community-based corrections sentence;
- (g) manage, oversee and give directions and training to community volunteer supervisors;
- (h) maintain records as prescribed, in relation to each offender under his or her supervision;
- (i) provide all reports and information that a court may require pursuant to this Act or any other written law; and
- (j) any other function or duty conferred under this Act or any other written law.

Appointment of community volunteer supervisors

8.—(1) The Permanent Secretary may in writing appoint suitably trained persons as community volunteer supervisors.

(2) Pursuant to an appointment made under subsection (1), the Permanent Secretary must, in accordance with section 7(g), assign a community-based corrections officer who is responsible for the supervision and training of that particular community volunteer supervisor in accordance with national training programmes administered under section 4(d).

(3) A community volunteer supervisor—

- (a) may supervise and direct offenders subject to a community-based corrections order;
- (b) may supervise more than one offender at any time; and
- (c) must comply with the direction of a community-based corrections officer in the performance of any function or duty conferred on him or her under this Act or any other written law.

(4) A community volunteer supervisor appointed under subsection (1) is entitled to such allowances as determined by the Permanent Secretary ~~from time to time with the approval of the Minister.~~

Community-based corrections programmes

9.—(1) The Permanent Secretary may; ~~by written approval in writing; authorise approve~~ an individual, agency or organisation to provide community-based corrections programmes or services under this Act.

(2) Community-based corrections programmes provided by individuals, agencies or organisations authorised in accordance with subsection (1) may include, but are not to be limited to; any of the following—

- (a) counselling;
- (b) mentoring;
- (c) programmes for the treatment of alcohol or drug abuse;
- (d) personal development programmes;
- (e) educational and vocational training programmes; and
- (f) job placement or income generation programmes.

(3) The Permanent Secretary must establish procedures and criteria for the approval of individuals, ~~agencies~~ and organisations pursuant to subsection (1), and must cause to be kept a register of approved ~~agencies, organisations and~~ individuals, ~~agencies and organisations.~~

PART 3—COMMUNITY-BASED CORRECTIONS ORDERS

Community-based corrections and intensive community-based corrections

10.—(1) Where a person is found guilty of an offence punishable by imprisonment, a court may, taking into account the severity and circumstances of the offence, with or without recording a conviction, ~~sentence make an order for~~ the offender to ~~undertake~~—

- (a) community-based corrections in accordance with section 13; or
- (b) intensive community-based corrections in accordance with section 15,

for a specified period being not less than 6 months and not more than 3 years, including such other terms and conditions the court deems necessary under this Part.

(2) An order under subsection (1) must—

- (a) name the area in which the offender resides or is to reside; ~~and~~
- (b) designate a community-based corrections officer to whom the offender is to report; ~~and.~~

~~(c) specify as the supervising court, a court of a resident or second class magistrate within the district in which the offender resides or is to reside.~~

(3) An offender ~~who has been issued with for whom~~ a community-based corrections order ~~or intensive community-based corrections order has been made~~ must, during the duration of the order, be under the supervision of a community-based corrections officer in whose district the offender resides.

(4) Prior to making an order under this section, the court must provide the victim of the offence in question an opportunity to submit a victim impact statement, and the court must take into consideration any such statement in deciding whether an order under this Act is appropriate and the conditions to attach to the order.

(5) Any variation or cancellation to an order must be issued by the court that made the order.

Court may request pre-sentence report

11. Prior to ~~issuing making~~ an order under section 10, a court may request that a pre-sentence report be prepared, orally or in writing, by ~~the Permanent Secretary a community-based corrections officer~~ so that the court may—

- (a) establish the person's suitability for the order being considered;
- (b) establish that appropriate supervision and any necessary programmes and services are available; and
- (c) obtain advice concerning the most appropriate condition ~~or conditions~~ to be attached to the order.

Imposition of conditions on sentence of supervision

12. An offender who has been sentenced to community-based corrections or intensive community-based corrections is subject to—

- (a) the conditions under section 13;
- (b) any special conditions imposed by the court under section 14; and
- (c) such other terms or conditions as the court deems necessary taking into account the circumstances of the case for which the offender is sentenced and the characteristics or nature of the offender.

Community-based corrections order

13.—(1) A community-based corrections order ~~issued made~~ under section 10 must include the following conditions—

- (a) the offender must not commit another offence during the period of the order;
- (b) the offender must report in person to a community-based corrections officer as soon as reasonably practicable and not later than 48 hours after the ~~sentence order~~ is imposed;
- (c) the offender must report to, and receive visits from, a ~~community-based corrections officer or designated volunteer~~ supervising officer as and when required to do so;

- (d) the offender must attend any programme approved by the Permanent Secretary under section 9;
- (e) the offender must notify the supervising officer of any change of residence or employment within 48 hours of any such change; and
- (f) the offender must comply with every reasonable direction of the ~~community-based corrections officer and the volunteer~~ supervising officer.

(2) Where an offender is unable to comply with ~~an order issued a direction made~~ by a ~~volunteer~~ supervising officer ~~or community-based corrections officer~~ based on the grounds that the ~~order direction~~ is unreasonable, that offender may apply to the court for the order to be varied or cancelled in accordance with section 17.

Special conditions of a community-based corrections order

14.—(1) Where an order is ~~issued made~~ in accordance with section 10, the court may impose special conditions if the court is satisfied that—

- (a) there is a significant risk of reoffending;
- (b) standard conditions alone would not adequately reduce the risk in paragraph (a); and
- (c) special conditions are required to reduce the likelihood of the offender reoffending and to promote his or her rehabilitation and reintegration.

(2) The special conditions referred to in subsection (1) may include—

- (a) any conditions that the court thinks fit relating to the offender's place of residence, including an order that the offender must live at a place specified in the order, or not live at a place specified in the order;
- (b) that the offender undergoes an assessment and treatment for alcohol or drug abuse;
- (c) that the offender satisfactorily participate in any counselling, social, therapeutic, educational, employment-related, rehabilitative; or reintegration programme specified in the order or as directed by the community-based corrections officer;
- (d) that the offender not contact or associate with a person specified in the order, or with a class of persons specified in the order;
- (e) that the offender abide by a curfew directing that the offender remain at the place specified in the order between specified hours of each day for the period specified in the order; or
- (f) any other condition that the court thinks fit to reduce the likelihood of further offending by the offender.

Intensive community-based corrections order

15. An offender who is sentenced to intensive community-based corrections—

- (a) must report to a community-based corrections officer—
 - (i) at least once in each week during the first 3 months of the sentence; and
 - (ii) at least once in each month during the remainder of the sentence; or as directed by the community-based corrections officer;
- (b) is subject to the conditions in section 13; and
- (c) may be subject to any special conditions imposed under section 14.

Order to be explained and a copy given to the offender

16.—(1) Where a court imposes a community-based corrections order or intensive community-based corrections order, the court must explain or cause to be explained to the offender in a language likely to be readily understood by the offender—

- (a) the purpose and effect of the order;
- (b) any conditions imposed as part of the order;
- (c) the consequences that may follow if the offender fails to comply with the order or any condition of the order; and
- (d) that the order may be varied or cancelled on application by the offender or a community-based corrections officer.

(2) The court must cause the particulars of the order to be drawn up, and, wherever practicable, a copy of the order must be given to the offender before he or she leaves the court.

(3) Where it is not practicable to give a copy of the order to the offender before he or she leaves the court, a copy must be given by the community-based corrections officer to the offender, in person, as soon as practicable thereafter.

~~(4) The court must give a copy of the order to the community-based corrections officer responsible for the supervision of the offender, and the court must, except where it is itself the supervising court, send to the clerk of the supervising court a copy of the order, together with such documents and information relating to the case as it considers likely to be of assistance to the supervising court.~~

Variation or cancellation of an order

17.—(1) A community-based corrections order or intensive community-based corrections order may at any time, on the application of the offender or of the community-based corrections officer, be varied or cancelled by the ~~supervising~~ court that made the order on any of the following grounds—

- (a) the offender is unable to comply with any of the conditions of the ~~sentence~~ order;

- (b) any programme to which the offender is subject ~~to~~, is no longer available or suitable for the offender; or
- (c) having regard to any change in circumstances since the ~~sentence order~~ was imposed and to the manner in which the offender has responded to the ~~sentence order~~—
 - (i) the rehabilitation and reintegration of the offender would be advanced by the remission, suspension; or variation of conditions, or the imposition of additional conditions; or
 - (ii) the continuation of the ~~sentence order~~ is no longer necessary in the interest of the community or the offender.

(2) On application under subsection (1), the court may, if it is satisfied that the grounds on which the application is based have been established—

- (a) suspend or vary conditions imposed by the court or impose additional conditions;
- (b) revoke the order; or
- (c) revoke the order and substitute any other order that could have been imposed on the offender at the time when the offender was convicted of the offence for which the ~~sentence order~~ was imposed.

(3) When determining a substitute ~~sentence order~~ under ~~paragraph subsection~~ (2)(c), the court must take into account the portion of the original ~~sentence order~~ that remains unserved ~~at the time of the order~~.

(4) Where, after an offender is ~~sentenced to supervision ordered to undertake community-based corrections and~~; the offender is subsequently sentenced on another charge to a term of imprisonment, the ~~sentence of supervision community-based corrections order~~ must be cancelled from the date that the offender commences his or her ~~sentence of~~ imprisonment ~~sentence~~.

(5) Until such time that an order ~~has been~~ is varied or cancelled by the court in accordance with this section, the order previously ~~issued made~~ by the ~~C~~ court and currently in force ~~must~~ remains valid and enforceable.

Breach of a community-based corrections order

18.—(1) If at any time during the community-based corrections period it appears on information to the ~~supervising~~ court that the offender has failed to comply with any of the requirements of the ~~community-based corrections~~ order, the ~~supervising~~ court may issue a summons requiring the offender to appear before it at the place and time specified therein or may, if the information is in writing and on oath, issue a warrant for his or her arrest.

(2) Where the offender is brought or appears before the court and it is proved to the satisfaction of that court that he or she has failed, without reasonable excuse, to comply with any of the requirements of the community-based corrections order, that court may—

- (a) extend the period of the community-based corrections order;
- (b) vary any condition of the order;
- (c) impose additional conditions;
- (d) impose a fine not exceeding \$5,000; **or**
- (e) sentence the offender to community work under the Community Work Act 1994; **or**.
- ~~(f) deal with the offender for the offence in respect of which the community-based corrections order was issued, in a manner which the court would deal with an offender if he or she had just been convicted before that court of that offence.~~

PART 4—MISCELLANEOUS

Regulations

19. The Minister may make **R**regulations for any purpose related to—

- (a) the implementation of this Act;
- (b) the general management of community-based corrections services;
- (c) the fees, charges and penalties to be prescribed in relation to this Act;**
- ~~(ed)~~ the powers and functions of the Permanent Secretary, community-based corrections officers and community volunteer supervisors;
- ~~(de)~~ the records to be kept and reports to be made to a court by a community-based corrections officer; and
- ~~(ef)~~ the standards and procedures for approval of an ~~agency, organisation or~~ individual, **agency or organisation** to provide community-based corrections programmes and services.

Rules

20. The Chief Justice may make rules for the purpose of this Act with respect to the practice and procedure of the court.

Repeals and consequential amendments

210.—(1) The Probation of Offenders Act ~~(Cap. 22)~~ 1952 is **hereby** repealed.

~~(2) All State documents of any nature whatsoever and all written laws, including any Act, Proclamation, Promulgation, Decree and subsidiary legislation, including the titles of any written law, are consequently amended by deleting “probation order” and substituting “community-based corrections order” wherever it appears, unless the context otherwise requires.~~

(2) The Bail Act 2002 is amended in section 2 in the definition of “conviction” by deleting “an order is made placing the offender on probation or discharging him or her” and substituting “a community-based corrections order is made or an order discharging the offender”.

(3) The Community Work Act 1994 is amended by—

(a) in section 2—

(i) inserting the following new definition—

““community-based corrections officer” has the same meaning as defined under the Community-Based Corrections Act 2018;”;

(ii) deleting the definition of “probation officer”; and

(iii) in the definition of “supervising officer”, deleting “probation officer” and substituting “community-based corrections officer”;

(b) in section 7(1), deleting “probation officer” and substituting “community-based corrections officer”;

(c) in section 18, deleting “probation officer” wherever it appears and substituting “community-based corrections officer”; and

(d) in section 19(3), deleting “probation officer” and substituting “community-based corrections officer”.

(4) The Community Work Regulations 1998 is amended by—

(a) in regulation 5(2), deleting “probation officer” and substituting “community-based corrections officer”; and

(b) in regulation 7, deleting “probation officer” and substituting “community-based corrections officer”.

(5) The Corrections Service Regulations 2011 is amended in regulation 12 in the heading by deleting “probation officers etc” and substituting “officers”.

(6) The Juveniles Act 1973 is amended by—

(a) in section 2—

(i) inserting the following new definitions—

““community-based corrections officer” has the same meaning as defined under the Community-Based Corrections Act 2018;”;
and

““community-based corrections order” has the same meaning as defined under the Community-Based Corrections Act 2018;”;

(ii) deleting the definition of “probation officer”; and

(iii) deleting the definition of “probation order”;

- (b) in section 17(2)(b), deleting “probation officers” and substituting “community-based corrections officers”;
 - (c) in section 23(2), deleting “probationer” and substituting “person under the supervision of the community-based corrections officer”;
 - (d) in section 32(1)(f), deleting “probation order” and substituting “community-based corrections order”;
 - (e) in section 33, deleting “probation order” wherever it appears and substituting “community-based corrections order”;
 - (f) in section 41(4)(d), deleting “probation officer” and substituting “community-based corrections officer”;
 - (g) in section 44(2), deleting “probation officer” and substituting “community-based corrections officer”; and
 - (h) in section 55, deleting “probation officer” and substituting “community-based corrections officer”.
- (7) The Sentencing and Penalties Act 2009 is amended by—
- (a) in section 2—
 - (i) inserting the following new definition—
 - ““community-based corrections order” has the same meaning as defined under the Community-Based Corrections Act 2018;”;
 - and
 - (ii) deleting the definition of “probation order”;
 - (b) in section 3(3), deleting “Probation of Offenders Act 1952” and substituting “Community-Based Corrections Act 2018”;
 - (c) in section 15(1)(e), deleting “probation order under the Probation of Offenders Act 1952” and substituting “community-based corrections order under the Community-Based Corrections Act 2018”; and
 - (d) in section 15(4), deleting “Probation of Offenders Act 1952” and substituting “Community-Based Corrections Act 2018”.

Orders and appointments to continue

221.—(1) Any order ~~issued~~ **made** under the repealed provisions and in force immediately before the commencement of this Act continues in force until its expiry or termination according to its terms or otherwise according to law, and where, after the commencement of this Act, any variation to such order is sought, the procedure relating to such variation must be administered in accordance with this Act with such modifications as may be necessary.

(2) Any person appointed as a probation officer employed in the Ministry immediately before the commencement of this Act ~~is to~~ continues in employment by the Ministry as a **community-based corrections officer**, as if appointed under and subject to the provisions of this Act.

COMMUNITY-BASED CORRECTIONS BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Community-Based Corrections Bill 2016 (**‘Bill’**) is the result of the review of the Probation of Offenders Act ~~(Cap. 22)~~ 1952 (**‘Act’**) by the Ministry of Women, Children and Poverty Alleviation with the assistance of the United Nations Children’s Emergency Fund, commonly known as UNICEF.
- 1.2 The Bill is the culmination of the review of the outdated Act which was enacted in 1952 and has never been amended to date.
- 1.3 The Bill seeks to reflect in law the reforms by the Department of Social Welfare with regard to the administration of community-based corrections orders, commonly known as probation orders.
- 1.4 The Bill caters for the administration of community-based corrections which offers the courts in Fiji a community-based sentencing option for the rehabilitation and reintegration of offenders.
- 1.5 Taking into account the severity and the circumstances of the crime committed, the Bill allows the court to sentence an offender to undertake community-based corrections programmes, where the offender may undergo any of the following—
- (a) counselling;
 - (b) mentoring;
 - (c) programmes for the treatment of alcohol or drug abuse;
 - (d) personal development programmes;
 - (e) educational and vocational training programmes; and
 - (f) job placement or income generation programmes.

- 1.6 However, throughout the duration of a community-based corrections order, the offender will be obligated to adhere to strict reporting requirements and conditions such as the following—
- (a) the offender must not commit another offence during the period of the order;
 - (b) the offender must report in person to a community-based corrections officer as soon as practicable and not later than 48 hours after the sentence is imposed;
 - (c) the offender must report to, and receive visits from, a community-based corrections officer or designated volunteer supervising officer as and when required to do so;
 - (d) the offender must attend any community-based corrections programmes approved under his or her community-based corrections order;
 - (e) the offender must notify the supervising officer of any change of residence or employment within 48 hours of any such change; and
 - (f) the offender must comply with every reasonable direction of the community-based corrections officer and the volunteer supervising officer.
- 1.7 Additionally, the court may sentence an offender to an intensive community-based corrections order which imposes more strict reporting requirements and special conditions on the offender.
- 1.8 Under the Bill, where an offender breaches a community-based corrections order the court may—
- (a) extend the period of the community-based corrections order;
 - (b) vary any condition of the order;
 - (c) impose additional conditions;
 - (d) impose a fine not exceeding \$5,000;
 - (e) sentence the offender to community work under the Community Work Act 1994; or
 - (f) deal with the offender in a manner which the court would deal with an offender if he or she had just been convicted before that court of that offence.

2.0 CLAUSES

2.1 The Bill contains the following Parts—

- (a) Part 1 of the Bill provides for the preliminary provisions which includes the short title and commencement provisions, the interpretation provisions and the objectives of the Bill;

- (b) Part 2 of the Bill provides for the administration of community-based corrections services. As opposed to the Act, the newly introduced provisions under this part of the Bill provides for—
- (i) the introduction of community-based programmes which allows for the counselling, development and mentoring of offenders;
 - (ii) the appointment of suitably trained community-based corrections officers and volunteer supervisors from within the community to supervise and monitor the activities of the offenders; and
 - (iii) the continuous training of these officers and supervisors to ensure they are adequately equipped to deal with offenders;
- (c) Part 3 of the Bill provides for community-based corrections orders. The newly introduced provisions under this part of the Bill provide for—
- (i) the court to ask for a pre-sentencing report from the Permanent Secretary before sentencing an offender to community-based corrections, in order to assess whether the programmes available and whether community-based corrections in general will be suitable for the offender in light of the offence committed;
 - (ii) the ability of the court to issue community-based corrections orders or intensive community-based corrections orders and impose special conditions on the offenders under these orders;
 - (iii) the procedures for the variation or cancellation of a community-based corrections order by the court; and
 - (iv) the recourse available to the court where an offender breaches any of the conditions of his or her community-based corrections order; and
- (d) Part 4 of the Bill provides for the miscellaneous provisions of the Bill. This Part provides for the repeal of the Probation of Offenders Act (~~Cap. 22~~) 1952, the powers of the Minister to issue regulations and allows the orders made under the Act to continue in force until its expiry or until it is amended under this Bill.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for social welfare.

A. SAYED-KHAIYUM
Attorney-General