

CAYMAN ISLANDS



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**A BILL FOR A LAW TO PROVIDE FOR THE CREATION OF A
CONDITIONAL RELEASE BOARD CHARGED WITH THE DUTY OF
MAKING DECISIONS REGARDING CONDITIONAL RELEASE OF
PRISONERS ON LICENCE; PROVIDE FOR THE POST-RELEASE
SUPERVISION OF PRISONERS RELEASED ON LICENCE AND FOR
REVOCATION OF LICENCES; FOR INCIDENTAL AND CONNECTED
PURPOSES**

THE CONDITIONAL RELEASE BILL, 2014

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to introduce a system of conditional release of prisoners to replace the system whereby prisoners are automatically released, without supervision, after serving two-thirds of their sentence. This measure also calls for changes to the Prisons Law, 1975, which are to be dealt with by an amendment to that Law.

Clause 1 sets out the short title and commencement.

Clause 2 contains the main definitions used in the legislation.

Clause 3 states in effect that this legislation applies to all categories of prisoners, including those sentenced to imprisonment for life without the possibility of release from incarceration (also called life terms), as well as to children who are held at the pleasure of the court.

Clause 7 specifies that prisoners who are sentenced to imprisonment for terms exceeding one year may be released on licence after serving sixty per cent of their sentence. This means that if they are released, they will be on licence for the remainder of the sentence.

Specifically in relation to prisoners who are serving whole life terms, it is now considered inhuman and degrading punishment for any person to be incarcerated for the rest of his life without the possibility of ever being released. Thus, all prisoners serving what used to be whole life terms must have a specified term of imprisonment (called a tariff) set, after which they will become eligible to be released on licence. As the offence of murder is in a special category, clause 14 specifies that the period of incarceration shall be thirty years (rather than sixty per cent of the sentence as in other cases) but may be more or less depending on the decision of the court at the time of sentencing.

In order for this system to work, there is established the Conditional Release Board under clause 4. Its functions are set out in clause 6. Significantly, the Board will examine applications for conditional release, grant release on licence, suspend licences and, in some cases revoke licences.

In crafting clause 4 of the legislation, the need for persons with qualifications and experience in law has been recognized in subclause (2). However, the Islands being a small jurisdiction, practical experience has shown repeatedly that it is very difficult to find persons with qualifications in law who are able and willing to be members of such bodies. Even where they are appointed, and the provisions

for a quorum require a person with qualifications in law to be present, as do the provisions of subclauses 4(2) and (9), some bodies have met with gridlock. For these reasons, clause 4 includes subclauses (12) and (13). This is to ensure that the civil liberties of persons who are or may be subject to conditional release are not compromised by the failure of the Board to act due to restrictive requirements for membership and a quorum. The flexibility will also ensure the safety of the public, who may have to be protected, for example, by the emergency recall of a prisoner under clause 18.

Clause 23 provides transitional provisions. This will allow the Grand Court to pronounce tariffs for persons who are, at the coming into force of the legislation, incarcerated without a tariff being set.

The Bill also contains a number of consequential provisions.

THE CONDITIONAL RELEASE BILL, 2014

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Interpretation
3. Application
4. Establishment and procedure of Board
5. Immunity of members of Board
6. Functions of Board
7. Minimum periods of incarceration
8. Procedures for conditional release
9. Factors to be considered by Board
10. Reports and representations
11. Duties of Director of Department of Community Rehabilitation
12. Release of prisoners in general
13. Electronic monitoring
14. Release of life prisoners
15. Revocation of licence for breach of condition
16. Revocation of licence for commission of further offence
17. Variation of licence on grounds of incapacity or medical deterioration
18. Emergency recall procedure
19. Reports on operations of Board
20. Expenses of Board
21. Regulations
22. Judicial review of Board decisions
23. Transitional provisions

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Enacted by the Legislature of the Cayman Islands.

Short title and
commencement

1. (1) This Law may be cited as the Conditional Release Law, 2014.

(2) This Law shall come into force on such date as the Cabinet may by Order appoint and different dates may be appointed for different provisions of this Law.

Interpretation

2. (1) In this Law -

“Board” means the Conditional Release Board established by section 4;

“child” means a person under the age of eighteen years;

“conditional release” means release referred to in section 7;

“electronic monitoring” means surveillance using an electronic device of any description attached to a person allowing -

- (a) the person’s location to be monitored; and
- (b) his position and the electronic device’s current status to be reported back to a central location;

“Governor” means the Governor acting in his discretion;

“licence” means a licence referred to in section 12 or 14;

“Secretary” means the Secretary of the Conditional Release Board, referred to in section 4(1);

“victim”, in relation to an offence, means -

- (a) the person to whom harm is done or who suffers continuing physical, financial or emotional loss as a result of the commission of the offence; and
- (b) where the person described in paragraph (a) is dead, ill or otherwise incapable of making a Victim Impact Statement, includes -
 - (i) the spouse or any relative of that person; or
 - (ii) anyone who has, in law or fact, the custody of that person or is responsible for the care or support of that person; or
 - (iii) a dependant of that person;

“Victim Impact Report” means a report by an expert providing a specialist opinion on the traumatic impact of the crime on the victim and any consequential needs of the victim; and

“Victim Impact Statement” means a written or oral statement in which a victim of a crime makes representations.

3. (1) This Law applies to all prisoners regardless of when they were convicted or sentenced, including prisoners who have no right of abode in the Islands or are liable to be deported. Application

(2) In relation to prisoners who have no right of abode in the Islands or are liable to be deported, the Board shall liaise with the Department of Immigration and other relevant authorities to ensure the timely enforcement of relevant Laws in relation to any such persons.

(3) This Law applies, with necessary modifications, to children held at the court’s pleasure in the same way as it applies to other prisoners.

Establishment and
procedure of Board

4. (1) There is hereby established the Conditional Release Board.

(2) Subject to the other provisions of this section, the Board shall consist of a minimum of five members and a maximum of nine members, none of whom shall be civil servants, appointed by the Governor comprising at least two of the following -

- (a) a retired judge other than a public servant;
- (b) a retired magistrate other than a public servant; or
- (c) an attorney-at-law other than a public servant,

and such of the following as the Governor considers appropriate -

- (d) a person with experience in criminal justice;
- (e) a mental health professional;
- (f) a minister of religion; and
- (g) a person or persons other than a person referred to in paragraphs (a), (b), (c), (d), (e) or (f).

(3) The Governor shall designate two of the persons referred to in paragraph (a), (b) or (c) as Chairperson and Vice Chairperson respectively.

(4) At a meeting of the Board -

- (a) the Chairperson shall preside; and
- (b) if the Chairperson is unable to attend, the Vice Chairperson shall preside,

and in the event of the Board being equally divided on any matter the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Decisions of the Board shall be based on the votes of members present and voting.

(6) The members shall serve for a term of three years and are eligible for re-appointment.

(7) If a vacancy occurs in the membership of the Board, the Governor may appoint a person to fill that vacancy and that person shall be from the same category of persons specified in subsection (2) as the member in relation to whom the vacancy occurs.

(8) The Governor may, in his discretion, revoke the appointment of a member for inability to discharge the functions of this office (whether arising from infirmity of body or mind) or for misbehaviour.

(9) At a meeting of the Board three members, one of whom shall be the Chairperson or Vice Chairperson, shall constitute a quorum.

(10) Subject to the provisions of this Law, the members of the Board may regulate the conduct of the proceedings of the Board in such manner as they think fit and may constitute such committees as it considers necessary to enable it better perform its functions.

(11) There shall be in the office of the Deputy Governor the office of Secretary to the Conditional Release Board who shall -

- (a) be in charge of the day-to-day administration of the affairs of the Board;
- (b) record the minutes of each meeting of the Board including particulars of the members in attendance and the decisions made by the Board; and
- (c) perform such other duties as may be determined under the Public Service Management Law (2013 Revision).

(2013 Revision)

(12) The Governor shall make his best efforts to ensure that he appoints persons who meet the requirements in subsection (2)(a), (b) and (c) but where he is not able to find suitable persons for any or all those positions, he may appoint for any or all those positions any other person who does not meet the legal aspect of those requirements.

(13) Where the Board is considering issues relating to a licence, no decision shall be taken until legal advice has been obtained from -

- (a) a member of the Board who is an attorney; or
- (b) an attorney who is not a member but who would qualify for appointment under this section.

5. No action for damages or other proceedings shall lie against a member of the Board or the Secretary for anything done or omitted in good faith by the member while carrying out his functions or exercising his powers under this Law.

Immunity of members of Board

6. (1) The functions of the Board shall be to make decisions and orders in relation to -

Functions of Board

- (a) the release of prisoners on licence, except for prisoners sentenced to detention at the court's pleasure;
- (b) the conditions of a licence, including the variation and cancellation of conditions;
- (c) the suspension of a licence;
- (d) the revocation of a licence;

- (e) deferral of certain cases for consideration at a later date with specific requirements; and
- (f) any other matter related to the release on licence or revocation of the licence of a prisoner.

(2) The Board may establish such committees as it considers necessary or expedient and consult with such other agencies as it thinks fit.

Minimum periods of incarceration

7. (1) Prisoners shall be eligible for conditional release as follows -
- (a) prisoners sentenced to imprisonment for life shall be eligible to be considered for conditional release on licence after serving the minimum period of incarceration imposed under section 14(1);
 - (b) prisoners serving a term of imprisonment exceeding one year, other than prisoners referred to in paragraph (a), are eligible to be considered for conditional release on licence after serving sixty per cent of the sentence imposed by a court; and
 - (c) prisoners who are sentenced to a term of imprisonment not exceeding one year shall be released by the Director of Prisons after serving sixty per cent of the sentence imposed by a court, but may be held for a longer period in accordance with any remission they may have forfeited under the Prison Law or regulations made thereunder.

(2) Where a prisoner who is serving a sentence is convicted of another offence and a consecutive sentence is imposed for the additional offence, the sentences shall, for purposes of subsection (1), be treated as one sentence and the earliest date of release shall be adjusted accordingly.

(3) The Director of Prisons shall refer terminally ill or incapacitated prisoners to the Advisory Committee on the Prerogative of Mercy but this does not limit any rights relating to conditional release.

Procedures for conditional release

8. (1) The Director of Prisons may, at least six months before a prisoner becomes eligible to be considered for conditional release, inform him in writing of that date and, if the prisoner wishes to be considered for release on licence, he is required to submit an application to the Director of Prisons at least four months before that date.

(2) When a prisoner makes an application for conditional release on licence, the Director of Prisons may refer the application to the Board four months before the prisoner is eligible for consideration for conditional release on licence.

(3) The Director of Prisons shall, at intervals of not more than one year from previous consideration by the Board, again refer each case to the Board for consideration of the prisoner for conditional release on licence if the prisoner to whom the case relates -

- (a) has not been released on licence; or
- (b) has had his licence revoked and is continuing to serve his sentence.

(4) Notwithstanding subsection (3), if the Board so directs, a particular case shall be referred by the Director of Prisons to the Board at such shorter interval, not being less than three months, specified by the Board.

9. In carrying out its functions under this Law, the Board shall consider the following factors -

Factors to be considered
by Board

- (a) whether it is no longer necessary for the protection of the public that a particular prisoner be imprisoned;
- (b) the risk of the prisoner reoffending;
- (c) whether the rehabilitation of the prisoner can be safely carried out in the community; and
- (d) whether the prisoner is capable of complying with the conditions of a licence.

10. (1) Where a case is referred under section 7(2), the Board shall consider the report of the Director of Prisons and the reports of all other relevant agencies and any other relevant evidence that the Board has been provided with.

Reports and
representations

(2) The Board shall be provided with all relevant documents including the following if available -

- (a) the prisoner's application for conditional release on licence, or a referral by the Director of Prisons under section 7(3), or both;
- (b) a copy of the criminal court documents relating to the prisoner in relation to the nature and circumstances of the offence for which the sentence of imprisonment was imposed;
- (c) a report by the Director of Prisons in relation to the conduct and compliance with the re-entry plan of the prisoner while in the prison;
- (d) a record of the criminal convictions of the prisoner;
- (e) an assessment of risk, prepared by such experts as may be approved by the Board;
- (f) a report from the Director of the Department of Community Rehabilitation;

- (g) a copy of all written representations made by the prisoner, and, if a previous application was made to the Board, written representations made previously by the prisoner;
- (h) a Victim Impact Report in relation to the release of the prisoner;
- (i) reports from the Department of Counselling Services; and
- (j) mental health reports.

(3) The Board shall give the prisoner who has applied for a conditional release licence an opportunity to make representations in person, or through a representative, or both.

(4) A prisoner shall be provided with all the documents provided to the Board at least fourteen days prior to the hearing of the application for conditional release on licence unless the Board determines that disclosure would have an adverse effect on -

- (a) national security; or
- (b) the prevention of disorder and crime; or
- (c) the health and welfare of the prisoner or a third party,

and it is necessary and proportionate to withhold it from the prisoner in all the circumstances.

(5) A victim may himself or through a representative make oral representations before the Board.

Duties of the Director of
Department of
Community
Rehabilitation

11. (1) The Director of the Department of Community Rehabilitation, or any person authorised by him -

- (a) shall interview a prisoner who is eligible for conditional release and who has submitted an application if the prisoner consents to an interview, and may interview the victim if a victim consents;
- (b) shall provide the Board with all necessary information to comply with the requirements of sections 9 and 10 and such report shall contain the following -
 - (i) recommendations as to whether the prisoner is a suitable candidate for release on licence;
 - (ii) assessment of the risk of the prisoner re-offending and the risk of the prisoner endangering the community;
 - (iii) recommendations as to the suitability of the prisoner's proposed residence if released on licence and, if necessary, a proposed alternative residence; and
 - (iv) recommendations on conditions of the licence, which may include rehabilitative programmes;

- (c) shall supervise a prisoner released on licence with a view to assisting the prisoner's rehabilitation and reintegration into the community as a law-abiding person;
- (d) shall, if necessary, submit to the Board a request to vary or cancel a condition of the licence along with a report setting out the grounds for such variation or cancellation;
- (e) shall, if necessary, submit to the Board a report of a prisoner's alleged breach of the conditions of a licence; and
- (f) shall perform any other duties required by this Law.

(2) For the purpose of ensuring the effective supervision of prisoners released on licence, the Director of the Department of Community Rehabilitation shall -

- (a) assign officers to serve in such areas and for such matters as he thinks necessary;
- (b) direct and supervise the work of officers;
- (c) formulate and implement methods of -
 - (i) record keeping; and
 - (ii) reporting;
- (d) develop policies and procedures for dealing with prisoners released on licence; and
- (e) prepare and submit to the Board every quarter, a report regarding the prisoners under its supervision during the period covered by the report.

(3) The Director of the Department of Community Rehabilitation or any person specifically or generally authorised in that behalf shall, as soon as practicable, inform any identified victim of crime -

- (a) of an application by the prisoner to the Board for conditional release;
- (b) of the decision of the Board on that application (to grant or not to grant conditional release) and the reasons for granting or not granting conditional release, if the reasons are relevant to the victim;
- (c) of the conditions of any licence that may be granted, if relevant to the victim;
- (d) of any decision to recall the prisoner and the reasons for the recall, if the reasons are relevant to the victim; or
- (e) of any decision not to recall the prisoner and the reasons for that decision, if the reasons are relevant to the victim.

(4) The Cabinet may make regulations relating to the investigation and supervision of prisoners.

Release of prisoners in general

12. (1) The Board may order the conditional release on licence of any prisoner, after the prisoner has served the period specified in section 7(1) and in doing so shall comply with sections 9 and 10.

(2) A licence granted to a prisoner under this section may be made subject to such reasonable conditions, if any, as appear to the Board to be desirable and any such conditions may be varied from time to time or cancelled by the Board, after considering the report of the Director of the Department of Community Rehabilitation, or any person authorised by him, prepared in accordance with section 9.

(3) A prisoner released on licence under this section shall comply with such conditions, if any, as may be specified in the licence.

(4) A licence granted to a prisoner shall remain in force until the expiration of the term of his sentence, unless it is revoked earlier.

Electronic monitoring

13. (1) The Board may release a prisoner on licence subject to electronic monitoring for the whole or a part of the licence period to the extent considered necessary by the Board.

(2) The Board shall cause the prisoner to be informed in writing of the conditions of electronic monitoring and the period during which he shall be subject to monitoring.

(3) The Board shall not impose a condition of electronic monitoring unless -

- (a) it has been notified by the Ministry or Portfolio responsible for electronic monitoring that the necessary arrangements are available in the area in which the monitoring is to take place; and
- (b) it is satisfied that necessary provision can be made under those arrangements.

(4) A prisoner who damages, destroys or tampers with any device used for or to facilitate electronic monitoring commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of one year, or to both.

(5) Any document or information provided by the person responsible for electronic monitoring relating to a prisoner who is under licence and being monitored electronically shall prima facie be admissible in proceedings in a court.

Release of life prisoners

14. (1) Notwithstanding any other Law to the contrary, when sentencing a

prisoner to a term of imprisonment for life, the court shall specify the period of incarceration the prisoner shall serve before the prisoner is eligible to be considered for conditional release on licence, the period being such as the court considers appropriate to satisfy requirements of retribution, deterrence and rehabilitation, but for murder, the period shall be thirty years before the prisoner is eligible for conditional release unless there are -

- (a) extenuating circumstances, exceptional in nature, in which case the court may impose a lower period of incarceration; or
- (b) aggravating circumstances, exceptional in nature, in which case the court may impose a longer period of incarceration.

(2) In making a decision under subsection (1)(a) or (b), the court shall state the extenuating circumstances or the aggravating circumstances, as the case may be.

(3) The Board may, after considering the factors referred to in sections 9 and 10 and in accordance with the procedures set out therein, order conditional release on licence of a prisoner sentenced to a term of imprisonment for life after the prisoner has served the period of imprisonment specified by the court under subsection (1).

(4) Conditional release on licence granted to a prisoner sentenced to a term of imprisonment for life shall remain in force for life, reviewable by the Board every twelve months with a view to assessing whether the conditions need to be varied.

15. (1) If the Department of Community Rehabilitation has reasonable grounds to suspect that a prisoner released on licence has breached a condition of the licence, the Department may submit to the Board a report of the alleged breach.

Revocation of licence for
breach of condition

(2) On receipt of a report submitted in accordance with subsection (1), the Board shall review and determine whether the information presented in the report establishes a prima facie case that there has been a breach of a condition of the licence.

(3) If on review of the information presented in the report under subsection (1), the Board is not satisfied that a prima facie case has been established, the conditional release on licence shall continue.

(4) If after a review of the information presented in the report prepared pursuant to subsection (1) the Board is satisfied that a prima facie case has been established, the Board shall suspend the licence and cause the prisoner to be returned to prison.

(5) The Secretary to the Conditional Release Board shall -

- (a) forward the suspended licence order to the Commissioner of Police; and
- (b) inform the prisoner of the licence conditions he is alleged to have breached.

(6) A prisoner returned to prison under subsection (4) has the status of a prisoner on remand and his conditional release licence is automatically suspended.

(7) On the return of a prisoner on a conditional release licence to prison under subsection (4), the Secretary to the Conditional Release Board shall -

- (a) provide the prisoner with all documentary evidence in relation to the allegations of breach of the licence conditions; and
- (b) inform the prisoner of his right -
 - (i) to have an attorney at law or other representative act on his behalf;
 - (ii) to present evidence; and
 - (iii) make representations in his defence before the Board.

(8) As soon as reasonably practicable but in any case within fourteen working days of the return to prison of a prisoner under subsection (4), the Board shall meet to hear and determine whether or not his licence should be revoked.

(9) At the hearing referred to in subsection (8), the Board shall give the prisoner, his attorney-at-law or other representative an opportunity to make representations in his defence as to why the licence should not be revoked.

(10) If the Board is satisfied that the evidence presented proves on a balance of probabilities that the prisoner has breached one or more of the conditions of the licence, the Board may within five working days -

- (a) revoke the licence; or
- (b) order the release of the prisoner subject to the variation of licence conditions, if necessary.

(11) If a licence is revoked under this section, the prisoner -

- (a) has the status of a convicted prisoner and shall continue to serve the unexpired portion of his sentence but this does not preclude the prisoner from making a subsequent application for conditional release on licence -
 - (i) after twelve months has elapsed from the date of revocation;
- or

- (ii) where the sentence is twelve months or less, at such time as the Board may determine; and
- (b) shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

(12) If the Board is not satisfied that the evidence proves on a balance of probabilities that the prisoner is in breach of the conditions of the licence, the Board shall release the prisoner on licence and the licence shall continue until it has expired or unless it is subsequently revoked or suspended in accordance with this Law, unless some matters of concern arise, in which case the Board may exercise its powers under section 6(1)(b) and 12(2) to vary the terms of the licence.

(13) If a prisoner who is on a conditional release licence leaves the jurisdiction in breach of a condition, he shall be subject to the process outlined in relation to suspension and revocation of the licence.

16. (1) The Board may revoke the licence of a prisoner who is convicted of an offence committed during the period of release on licence.

Revocation of licence for commission of further offence

(2) A prisoner on a conditional release licence who is arrested and charged in relation to another criminal charge and is not released on bail assumes the status of a remand prisoner and his conditional release licence is automatically suspended and the revocation of his licence shall then be considered under section 15(6) to (12).

(3) Where a prisoner on conditional release is arrested and charged in relation to another criminal offence and is released on bail the Board may consider the suspension or revocation of his conditional release licence under the process provided for in section 15(1) to (12).

17. If a prisoner is released on licence and subsequently becomes incapacitated or the prisoner's medical condition has deteriorated, or both, the Board may vary the terms of the licence.

Variation of licence on grounds of incapacity or medical deterioration

18. (1) Where the Board has reasonable grounds to suspect that a prisoner has committed, is about to, or is likely to, commit a serious offence, the Board shall immediately suspend the licence and recall the prisoner to prison.

Emergency recall procedure

(2) Where a prisoner is recalled under subsection (1), the Board shall cause the Commissioner of Police to be informed of the suspension and the Commissioner shall cause that person to be detained in prison to await a hearing at which the need or otherwise of revoking the licence is to be considered.

(3) As soon as reasonably practicable but in any case within three working days of the remand of a prisoner under subsection (2), the Board shall hold a hearing to determine whether or not the prisoner's licence should be revoked.

(4) The hearing by the Board under this section shall be conducted in accordance with section 15(7) to (12).

Reports on operations of Board

19. (1) The Board shall, within three months after the end of each financial year, forward to the Governor an annual report of the operation of the Board during that year.

(2) The Governor shall as soon as possible after receiving the annual report, cause copies of the annual report to be laid before the Legislative Assembly by the Minister responsible for prisons.

Expenses of Board

20. Members of the Board other than full-time public servants shall receive such remuneration or allowance as may be prescribed by the Governor.

Regulations

21. The Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law.

Judicial review of Board decisions

22. A prisoner who is dissatisfied with a decision of the Board may seek leave from the Grand Court to apply for judicial review of the decision and the Grand Court shall in that regard exercise all the powers vested in it in relation to judicial review.

Transitional provisions

(Law 14 of 1975)

23. (1) Within twenty-four months after the entry into force of this Law, the Director of Prisons shall send to the Grand Court the case records of all prisoners serving life sentences, excluding those whose applications for release on licence are pending under section 31A of the Prison Law, 1975, and the Grand Court shall, in exercise of the powers contained in section 14, pronounce in open court a period of incarceration for each prisoner, and in so doing shall exercise the powers specified in section 14 as if it were sentencing an accused who has been convicted.

(2) Where an application under section 31A of the Prison Law, 1975 is refused, the prisoner may at any time apply to the Grand Court for a tariff to be set, in which case the Grand Court shall exercise the powers in subsection (1).

(3) In exercising the powers referred to in subsection (1), the Grand Court may, where practicable, consult any serving Judge who decided the matter concerned, and may exercise such other powers as a Judge sentencing an accused

in a case tried by him may have under any Law and the accused shall have such right to be heard as he would have had at the time of his original sentencing hearing.

(4) At the sentencing hearing referred to in this section, evidence of the prisoner's behaviour in prison after original sentencing is not admissible.

(5) A prisoner who is dissatisfied with a decision made under subsection (1) or (2) shall have a right of appeal in the same manner as a person being sentenced for the first time.

Passed by the Legislative Assembly the day of , 2014.

Speaker.

Clerk of the Legislative Assembly.