



Tonga

**CRIMINAL OFFENCES (AMENDMENT)
ACT 2012**

Act No. 19 of 2012



CRIMINAL OFFENCES (AMENDMENT) ACT 2012

Arrangement of Sections

Section

1	Short Title	5
2	Fines and money amounts increased throughout	5
3	Section 25(3) amended	6
4	Section 25A amended – Community Service Orders	6
5	Section 26 amended	7
6	Section 27 replaced	7
7	Section 53 replaced - Fraudulent conversion by government servant	7
8	Section 54 amended	8
9	Section 70 amended	8
10	Section 107 replaced – Bodily harm	8
11	Section 108 replaced - Attempt to intimidate	9
12	Section 111 replaced - Threatening documents	9
13	Section 116 replaced - Enticing or taking away children	10
14	Sections 121, 122, 123 and 124 replaced	10
15	Section 137 replaced - Assault with intent to commit sodomy	11
16	Sections 138 and 139 repealed	12
17	Section 155 replaced - Assault with intent to rob	12
18	Section 157 replaced - Demanding property with menaces	12
19	Section 162 replaced - Fraudulent conversion of property	13
20	Sections 173 and 174 replaced - House-breaking, Unlawful entry into buildings by night	14
21	Sections 176 and 177 replaced - Possession of house-breaking instruments, Arson	15
22	Section 178 replaced - Wilful damage to buildings, vessels, wharves, etc	16
23	Section 179 repealed	16
24	Section 187 replaced - Wilful damage to things not otherwise provided for	17
25	Section 188 amended – Trespass	17
26	Section 196 replaced - In what Courts prosecutions may be brought	17
27	Section 198 repealed and replaced - Recognizance of good behaviour	18

28 Sections 201, 202, 203 and 204 inserted 19



CRIMINAL OFFENCES (AMENDMENT) ACT 2012

Act No. 19 of 2012

**AN ACT TO AMEND THE CRIMINAL OFFENCES ACT TO MAKE
NUMEROUS CHANGES TO REFORM THE ACT AND CREATE
DIFFERENT DEGREES OF OFFENCES THAT REFLECT THEIR
RELATIVE SERIOUSNESS AND FOR RELATED MATTERS**

I assent,
TUPOU VI,
21st November 2012.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1 Short Title

- (1) This Act may be cited as the Criminal Offences (Amendment) Act 2012.
- (2) In this Act “Act” means the Criminal Offences Act.

2 Fines and money amounts increased throughout

The Act is amended by increasing the fines and other money amounts for the provisions set out in the first column of the following Table, from the amount set out in the second column of the Table to the amount set out in the relevant row of the third column of the Table.

Column 1 Section	Column 2 Old amount repealed \$	Column 3 New amount inserted \$
25(2)	500	5,000
25A (6)(b)(i)	100	1,000
55	500	5,000
56	500	5,000
57	500	5,000
58	250	2,500
64	500	5,000
80(7)	500	5,000
81(3)	500	5,000
81(5)	100	1,000
83	100	1,000
84	100	1,000
112	500	5,000
113	500	5,000
114	500	5,000
115(1)	1,000	10,000
115(5)	2,000	20,000
181	500	5,000
184	500	5,000
185	200	2,000
186	200	2,000
188(1)	100	1,000
188(2)	400	4,000
188(3)	200 and 500	2,000 and 5,000
188(4)	1,000	10,000
189	200	2,000
191(2)	250 and 500	2,500 and 5,000

3 Section 25(3) amended

Section 25(3) of the Act is amended by repealing “12 months” and replacing it with “3 months”.

4 Section 25A amended – Community Service Orders

Section 25A of the Act is amended by –

- (a) in subsection (2)(a)(i) repealing 120 and replacing it with 200;
- (b) in subsection (3) by repealing “by a suitable person”;
- (c) in subsection (6)(a) by inserting at the end “and the Court may issue a bench warrant to secure the attendance of the offender”;

(d) by inserting the following subsection –

“(9) A community service order may be made either in addition to or in substitution for any other punishment and, without prejudice to subsection (6), it shall be lawful to order that in default of compliance with a community service order the offender shall be imprisoned for such period as is specified in the order.”.

5 Section 26 amended

Section 26(1) of the Act is amended by repealing “one year” and replacing it with “3 months”.

6 Section 27 replaced

Section 27 of the Act is repealed and replaced with –

“27 Time may be granted for payment

The Court imposing any fine or ordering the payment of compensation may grant time to pay the same provided that no longer period than 6 months shall be granted:

Provided that an offender may apply to the Magistrate’s Court under section 27(2) of the Magistrate’s Court Act for an order extending the time within which any fine or compensation must be paid.”.

7 Section 53 replaced - Fraudulent conversion by government servant

Section 53 of the Act is repealed and replaced with –

“53 Fraudulent conversion by government servant

- (1) Every person who being employed as or acting in the capacity of a Government servant fraudulently converts to his own use or to the use or benefit of any other person or in any manner fraudulently disposes of any money, valuable security or thing of any description whatever or any part thereof which has been entrusted to or received by him by virtue of his employment as a Government servant shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious fraudulent conversion by government servant or the offence of simple fraudulent conversion by government servant.
- (3) The offence of serious fraudulent conversion by government servant –
 - (a) is punishable by a term of imprisonment for any period not exceeding 10 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.

- (4) The offence of simple fraudulent conversion by government servant –
- (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate’s Court.”.

8 Section 54 amended

Section 54 of the Act is amended by repealing 5 years and replacing it with “3 years”.

9 Section 70 amended

Section 70(1) of the Act is amended by repealing “Prime Minister” in both places and substituting “Attorney General”.

10 Section 107 replaced – Bodily harm

Section 107 of the Act is repealed and replaced with –

“107 Bodily harm

- (1) Every person who wilfully and without lawful justification causes harm to any person in any manner or by any means whatsoever shall be guilty of an offence under this section.
- (2) “Harm” for the purposes of this section means —
 - (a) any injury which seriously or permanently injures health or is likely so to injure health; or
 - (b) any injury involving serious damage to any external or internal organ, member or sense short of permanent disablement; or
 - (c) any wound which is not severe; or
 - (d) any permanent disfigurement which is not a serious nature.
- (3) An offence under this section may be the offence of serious causing bodily harm or the offence of simple causing bodily harm.
- (4) The offence of serious causing bodily harm –
 - (a) is punishable by a term of imprisonment for any period not exceeding 5 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.
- (5) The offence of simple causing bodily harm –
 - (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate’s Court.”.

11 Section 108 replaced - Attempt to intimidate

Section 108 of the Act is repealed and replaced with –

“108 Attempt to intimidate

- (1) Every person who with intent to intimidate or annoy any person —
 - (a) breaks or injures in any manner whatsoever or threatens to break or injure any dwelling-house, or
 - (b) alarms or attempts to alarm any person in any dwelling-house by the discharge of firearms,shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious intimidation or the offence of simple intimidation.
- (3) The offence of serious intimidation –
 - (a) is punishable by a term of imprisonment for any period not exceeding 5 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple intimidation –
 - (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate’s Court.”.

12 Section 111 replaced - Threatening documents

Section 111 of the Act is repealed and replaced with –

“111 Threatening documents

- (1) Every person who with knowledge of its contents sends or causes to be received any document containing any threat to kill or containing any threat to kill or do bodily harm to any person or to damage any property shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious sending threatening documents or the offence of simple sending threatening documents.
- (3) The offence of serious sending threatening documents –
 - (a) is punishable by a term of imprisonment for any period not exceeding 5 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple sending threatening documents –.

- (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
- (b) shall be heard and determined by the Magistrate's Court.”.

13 Section 116 replaced - Enticing or taking away children

Section 116 of the Act is repealed and replaced with –

“116 Enticing or taking away children

- (1) Every person who with intent to deprive any parent or other person having the lawful charge of any child under the age of 14 years of the possession of such child unlawfully —
 - (a) takes or entices away or detains such child, or
 - (b) receives such child knowing it to have been so taken or enticed away as aforesaid,shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious enticement of a child or the offence of simple enticement of a child.
- (3) The offence of serious enticement of a child –
 - (a) is punishable by a term of imprisonment for any period not exceeding 5 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple enticement of a child –
 - (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate's Court.
- (5) Nothing in subsection (1) contained shall render liable to prosecution on account of getting possession of any such child as is mentioned therein any person claiming in good faith a right to the possession of such child nor any person being the mother of an illegitimate child.”.

14 Sections 121, 122, 123 and 124 replaced

Sections 121, 122, 123 and 124 of the Act are repealed and replaced with –

“121 Carnal knowledge of child or young person

- (1) Any person who carnally knows any child under the age of 12 years shall be liable on conviction thereof to imprisonment for any period not exceeding life.
- (2) Any person who carnally knows any young person under the age of 15 years shall be liable on conviction thereof to imprisonment for 5 years.

122 Attempt to have carnal knowledge of a child or young person

- (1) Any person who attempts to have carnal knowledge of a child under the age of 12 years shall be liable on conviction thereof to imprisonment for any term not exceeding 10 years.
- (2) Any person who attempts to have carnal knowledge of a young person under the age of 15 years shall be liable on conviction thereof to imprisonment for any term not exceeding 3 years.

123 Consent and belief as to age no defence

It shall be no defence to any charge under section 121 or 122 to prove that the child or young person consented to the act or with respect to section 121(1) and 122(1) that the person reasonably believed that the child was of or above the age of 12 years.

124 Indecent assault

- (1) Any person who shall commit an indecent assault on any person shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious indecent assault or the offence of simple indecent assault.
- (3) The offence of serious indecent assault –
 - (a) is punishable by a term of imprisonment for any period not exceeding 5 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple indecent assault –
 - (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate's Court.
- (5) A young person under the age of 15 years cannot in law give any consent which would prevent an act being an indecent assault for the purposes of this section.
- (6) A person who is feeble minded, insane or an idiot or imbecile cannot in law give any consent which would prevent an act being an indecent assault for the purposes of this section, but a person is only to be treated as guilty of an indecent assault on such woman by reason of that incapacity to consent, if that person knew or had reason to suspect her to be feeble minded, insane or an idiot or imbecile.”.

15 Section 137 replaced - Assault with intent to commit sodomy

Section 137 of the Act is repealed and replaced with –

“137 Assault with intent to commit sodomy

It is an offence for a person to assault another person with intent to commit sodomy and a person found guilty of such offence shall be liable at the discretion of the Court to be imprisoned for any period not exceeding seven years.”.

16 Sections 138 and 139 repealed

Sections 138 and 139 of the Act are repealed.

17 Section 155 replaced - Assault with intent to rob

Section 155 of the Act is repealed and replaced with –

“155 Assault with intent to rob

- (1) Every person who shall assault any person with intent to commit robbery shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious assault with intent to rob or the offence of simple assault with intent to rob.
- (3) The offence of serious assault with intent to rob –
 - (a) is punishable by a term of imprisonment for any period not exceeding 10 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple assault with intent to rob –
 - (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate’s Court.”.

18 Section 157 replaced - Demanding property with menaces

Section 157 of the Act is repealed and replaced with –

“157 Demanding property with menaces

- (1) Every person who with menaces demands from any person either for himself or for any other person anything capable of being stolen, with intent to steal it, shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious demanding property with menaces or the offence of simple demanding property with menaces.
- (3) The offence of serious demanding property with menaces –

- (a) is punishable by a term of imprisonment for any period not exceeding 10 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple demanding property with menaces –
- (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate's Court.”.

19 Section 162 replaced - Fraudulent conversion of property

Section 162 of the Act is repealed and replaced with –

“162 Fraudulent conversion of property

- (1) Every person who —
- (a) having had delivered to him anything capable of being stolen on loan or on hire or in order that he may do any work upon such thing; or
 - (b) being entrusted with anything capable of being stolen in order that he may retain the same in safe custody or apply, pay or deliver for any purpose or to any person such thing or any part thereof or any proceeds thereof; or
 - (c) having received for or on account of any other person anything capable of being stolen,
- fraudulently converts to his own use or benefit or to the use or benefit of any other person such thing or any part thereof or any proceeds thereof, shall be guilty of an offence under this section
- (2) An offence under this section may be the offence of serious fraudulent conversion or the offence of simple fraudulent conversion.
- (3) The offence of serious fraudulent conversion –
- (a) is punishable by a term of imprisonment for any period not exceeding 10 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple fraudulent conversion –
- (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate's Court.”.

20 Sections 173 and 174 replaced - House-breaking, Unlawful entry into buildings by night

Sections 173 and 174 of the Act are repealed and replaced with –

“173 House-breaking

- (1) A person is guilty of an offence under this section if —
 - (a) he enters any building or part of a building as a trespasser and with intent to commit any crime; or
 - (b) having entered any building or part of a building as a trespasser he committed or attempted to commit any crime in the building or that part of it.
- (2) Reference in subsection (1) to a building shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.
- (3) For the purposes of this section the word “enters” in subsection (1) means the putting of any part of the body of the person making the entrance, or any part of any instrument used by him, inside the building.
- (4) An offence under this section may be the offence of serious housebreaking or the offence of simple housebreaking.
- (5) The offence of serious housebreaking –
 - (a) is punishable by a term of imprisonment for any period not exceeding 10 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.
- (6) The offence of simple housebreaking –
 - (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate’s Court.

174 Unlawful entry into buildings by night

- (1) Every person who enters or is found by night in any dwelling house, shop or other building of any kind whatsoever without lawful justification shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious unlawful entry by night or the offence of simple unlawful entry by night.
- (3) The offence of serious unlawful entry by night –
 - (a) is punishable by a term of imprisonment for any period not exceeding 5 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.

- (4) The offence of simple unlawful entry by night –
 - (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate’s Court.”.

21 Sections 176 and 177 replaced - Possession of house-breaking instruments, Arson

Sections 176 and 177 of the Act are repealed and replaced with –

“176 Possession of house-breaking instruments

- (1) Every person who is found by day or night armed with any offensive instrument with intent to break and enter any building whatsoever shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious possession of house-breaking instruments or the offence of simple possession of house-breaking instruments.
- (3) The offence of serious possession of house-breaking instruments –
 - (a) is punishable by a term of imprisonment for any period not exceeding 5 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple possession of house-breaking instruments –
 - (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate’s Court.

177 Arson

- (1) A person is guilty of an offence if he wilfully and without lawful justification sets fire to any building of any kind belonging to another person or to any vessel, crop, property or other thing whatsoever belonging to another person whether attached to the soil or not.
- (2) An offence under this section may be the offence of serious arson or the offence of simple arson.
- (3) The offence of serious arson –
 - (a) is punishable by a term of imprisonment for any period not exceeding 7 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple arson –

- (a) is punishable by a term of imprisonment for any period not exceeding 3 years;
 - (b) shall be heard and determined by the Magistrate's Court.
- (5) Where the person accused has an interest in the thing to which he sets fire, the existence of such interest if partial shall not prevent his act from amounting to an offence of arson, nor shall the existence of such interest if total prevent his act from amounting to arson if such act was done with intent to defraud.
- (6) Every person who commits the offence of serious arson knowing or being reckless that human life is endangered thereby shall upon conviction be liable to imprisonment for any period not exceeding 15 years.”.

22 Section 178 replaced - Wilful damage to buildings, vessels, wharves, etc.

Section 178 of the Act is repealed and replaced with –

“178 Wilful damage to buildings, vessels, wharves, etc.

- (1) Every person who in any manner intentionally and unlawfully causes damage to any building or vessel or to any wharf or to any machinery or tools or to any building, structure, machinery, apparatus or vessel constructed or used for the purposes of any harbour or wharf or for the purpose of regulating the action of the sea or protecting any land from erosion or inundation by the sea, or to any lighthouse, light beacon, buoy or other apparatus whatsoever which is used or maintained for the safety of navigation shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious wilful damage to buildings or the offence of simple wilful damage to buildings.
- (3) The offence of serious wilful damage to buildings –
 - (a) is punishable by a term of imprisonment for any period not exceeding 10 years;
 - (b) shall, subject to sections 35 and 36 of the Magistrate's Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple wilful damage to buildings –
 - (a) is punishable by a term of imprisonment for any period not exceeding 6 months;
 - (b) shall be heard and determined by the Magistrate's Court.”.

23 Section 179 repealed

Section 179 of the Act is repealed.

24 Section 187 replaced - Wilful damage to things not otherwise provided for

Section 187 of the Act is repealed and replaced with –

“187 Wilful damage to things not otherwise provided for

- (1) Every person who shall intentionally and unlawfully cause damage to any land, animal or thing not specially provided for in this Act shall be guilty of an offence under this section.
- (2) An offence under this section may be the offence of serious wilful damage or the offence of simple wilful damage.
- (3) The offence of serious wilful damage –
 - (a) is punishable by a fine of \$20,000 or a term of imprisonment for any period not exceeding 7 years or to both such fine and such imprisonment;
 - (b) shall, subject to sections 35 and 36 of the Magistrate’s Court Act, be heard and determined by the Supreme Court.
- (4) The offence of simple wilful damage –
 - (a) is punishable by a fine of \$5,000 or a term of imprisonment for any period not exceeding 2 years or to both such fine and such imprisonment;
 - (b) shall be heard and determined by the Magistrate’s Court.”.

25 Section 188 amended – Trespass

Section 188 of the Act is amended –

- (a) in subsection (2) by adding after “damage to crops” the words “or land”;
- (b) in subsection (2) by deleting “Treasury” and replacing it with “Government”.

26 Section 196 replaced - In what Courts prosecutions may be brought

Section 196 of the Act is repealed and replaced with –

“196 In what Courts prosecutions may be brought

- (1) Prosecutions for offences against this Act or any other Act shall be heard and determined as follows —
 - (a) offences within the jurisdiction of a Magistrate as defined in the Magistrates’ Courts Act: In a Magistrate’s Court;
 - (b) all other offences: In the Supreme Court with or without a jury according to the accused’s election.
- (2) If a person may be charged with alternate offences under the sections set out in subsection (3) or under any other Act, the choice of which

offence shall be charged and prosecuted shall be decided by the Attorney General: Provided that the Attorney General may delegate to the Solicitor General or to the Police Prosecutors the authority to make that decision in such cases or classes of cases as he may specify.

- (3) The alternative offence sections in this Act, referred to in subsection (2) are –

Section 53 – fraudulent conversion by government servant;

Section 107 – causing bodily harm;

Section 108 – intimidation;

Section 111 – sending threatening documents;

Section 116 – enticing children;

Section 122 – attempted carnal knowledge of girl under 16;

Section 124 – indecent assault;

Section 155 – assault with intent to rob;

Section 157 – demanding property with menaces;

Section 162 – fraudulent conversion;

Section 173 – housebreaking;

Section 174 – unlawful entry by night;

Section 176 – possession of house-breaking instruments;

Section 177 – arson;

Section 178 – wilful damage to buildings etc;

Section 187 – wilful damage.”.

27 Section 198 repealed and replaced - Recognizance of good behaviour

Section 198 of the Act is repealed and replaced with –

“198 Recognizance of good behaviour

- (1) Where any person has been convicted of any offence and the Court is of opinion having regard to the character, antecedents, age, health or mental condition of the person charged or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, it is expedient to release the offender on probation, the Court may make an order discharging the offender conditionally on his entering into a recognizance with or without sureties to be of good behaviour and to appear for sentence when called upon at any time during such period not exceeding 3 years as may be specified in the order.

- (2) An Order under this section and including a probation order may be made either in addition to or in substitution for any other punishment.”.

28 Sections 201, 202, 203 and 204 inserted

The Act is amended by inserting the following sections –

“201 Release on adjournment

- (1) In any case where the Court –
- (a) is satisfied that a person is guilty of an offence;
 - (b) is of opinion having regard to the character, antecedents, age, health or mental condition of the person charged or to the trivial nature of the offence or to the extenuating circumstances under which the offence was committed, that it should make an order under this section,
- the Court may, instead of convicting the person adjourn the proceedings for a period of up to 3 years and release the offender upon the offender giving an undertaking to comply with the conditions applying under subsection (2), and any further conditions imposed by the court.
- (2) An undertaking under subsection (1) shall have conditions that—
- (a) that the offender shall appear before the court if called on to do so during the period of the adjournment, and if the court so specifies, at the time to which the further hearing is adjourned;
 - (b) that the offender is of good behaviour during the period of the adjournment; and
 - (c) that the offender observes any special conditions imposed by the court.
- (4) A court may make an order for restitution or compensation in addition to making an order under this section.
- (5) An offender who has given an undertaking under subsection (1) may be called upon to appear before the court—
- (a) by order of the court;
 - (b) by notice issued by a court officer on the authority of the court.
- (6) If at the time to which the further hearing of a proceeding is adjourned the court is satisfied that the offender has observed the conditions of the undertaking, it shall discharge the offender without any further hearing of the proceeding.

202 Variation of order for release on adjournment

- (1) A court which has made an order for the release of an offender on an adjournment under this Part may vary the order or cancel it and deal with the offender for the offence or offences with respect to which it was made if it is satisfied that—

- (a) circumstances have arisen which make it impossible for the offender to comply with the conditions; or
 - (b) the circumstances of the offender were wrongly stated or not accurately presented to the court before the order was made; or
 - (c) the offender is no longer willing to comply with the conditions of the undertaking.
- (2) In dealing with an offender under subsection (1) the court must take account of the extent to which the offender had complied with the conditions of the undertaking.
- (3) An application to the court to exercise its powers under subsection (1) may be made by—
- (a) the offender; or
 - (b) the Attorney General.
- (4) A court may order that a warrant of arrest be issued against an offender who does not attend before the court on the hearing of an application under this section.

203 Breach of order for release on adjournment

- (1) An offender who fails to comply with a condition applying to an undertaking given under this Part during the period in which the undertaking is in force is guilty of an offence.
- (2) Upon charging an offender with an offence under subsection (1) a warrant to arrest the offender may be issued.
- (3) If on the hearing of a charge under subsection (1) the court finds the offender guilty of an offence under subsection (1) it may—
- (a) vary the original order;
 - (b) confirm the original order; or
 - (c) deal with the offender for the offence or offences with respect to which the original order was made, which may involve the substitution of the original order with a new sentence for the original offence.

204 Discharge without conviction

- (1) Where a court is of the opinion, having regard to the circumstances including the nature of the offence and character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, it may make an order discharging him absolutely or alternatively discharging him subject to the condition that he commits no offence during such period, not exceeding 3 years from the date of the order, as may be specified therein.
- (2) A discharge under this section is deemed to be an acquittal.
- (3) A court discharging an offender under this section may—

- (a) make an order for payment of costs or the restitution of any property; or
- (b) make any order for the payment of any sum that the court thinks fair and reasonable to compensate any person who, through, or by means of, the offence, has suffered—
 - (i) loss of, or damage to, property;
 - (ii) emotional harm; or
 - (iii) loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.”.

Passed by the Legislative Assembly on this 12th day of October 2012.