

**THE DRUG DEPENDANTS
(TREATMENT AND REHABILITATION)
ACT 1983 (DDTRA)¹**

This Act provides "for the treatment and rehabilitation of drug dependants and for matters connected therewith."² It repeals the whole of Part VA of the *Dangerous Drugs Act 1952* (DDA)³ and various definitions of terms which were relevant only to Part VA.⁴ In doing so, it seeks to provide for a more comprehensive statute dealing only with the treatment and rehabilitation of drug dependants.⁵ Notwithstanding this repeal, Part VA still applies if any person has been taken into custody, or has been or is being dealt with in any manner by any court, Magistrate, Social Welfare Officer, Board of Visitors, or any other officer or authority before the commencement of the DDTRA. The only qualification is that certain references to officers and authorities now refer to corresponding officers and authorities under the DDTRA.⁶

The definition of "dangerous drug" is similar to that in the DDA, that is, "any drug or substance which is for the time being comprised in the First Schedule of the Dangerous Drugs Act 1952". The definition of a "drug dependant" in the DDA has been repealed and now appears in the DDTRA. The new Act has provided definitions for new centres, such as the After-care Centre and the Day Centre. Part 2 of the Act deals with treatment and rehabilitation of drug dependants under court order, but it must be noted that the dependants are not offenders as such. They are not considered or treated as offenders although they may have committed offences. Part 3 of the Act deals with treatment and rehabilitation of drug dependants who volunteer for treatment. Part 4 provides for various matters related to the administration of the centres and the scheme of treatment and rehabilitation at the centres. Part 5 deals with miscellaneous matters.

(i) *Part 2*

Section 3(1) empowers "an officer" to take into custody any person whom he reasonably suspects to be a drug dependant. "An officer" means

¹ Act 283, w.e.f. 15th April 1983.

² Long title of the Act.

³ Act 234, Revised 1980.

⁴ See S. 29.

⁵ See Explanatory Statement to the Bill.

⁶ S. 30.

“any Rehabilitation Officer and includes any Social Welfare Officer or any police officer not below the rank of Sergeant or any officer in charge of a police station”.⁷ “Lawful custody” is defined in section 19 as —

- a) where a person is taken into custody by an officer under this Act (the DDTRA);
- b) while the person is resident at a Rehabilitation Centre or an After-care Centre under this Act;
- c) while the person is being taken from or to any place or while he is engaged in any activity under this Act outside a Rehabilitation Centre or any After-care Centre, during the period that he is under an order made under this Act to reside at a Rehabilitation Centre or an After-care Centre.

This definition, however, does not apply to a person who has submitted voluntarily to treatment and rehabilitation. The significance of this definition is that escape from lawful custody calls for a penalty, on conviction, of a fine or imprisonment for a term not exceeding three years, or to both.⁸ There are now three very clear situations when a person is in lawful custody, and any problems which might have arisen under the old Act are now ironed out.

A person taken into custody may be detained for a period not exceeding 24 hours at any appropriate place for the purpose of undergoing tests.⁹ Unlike under section 25A of the DDA where any tests to be taken must be ordered by a Magistrate, this Act allows any officer to do it. This greatly facilitates speedy processing of dependant suspects because only certified dependants are produced before a Magistrate. No definition has been given for “appropriate place”, however it appears that police stations gazetted as detection centres under the DDA and hospitals come within the definition of that term.¹⁰ “Tests” has been defined to mean “all such acts or procedures as may be carried out for the purpose of determining whether a person is a drug dependant”. It is doubtful if tests carried out by a medical officer can determine whether a person is a drug dependant. In the past, the practice has been for suspects to submit their urine for testing. If the urine tests indicate presence of *opiates metabolites*, the medical officer will certify the suspect to be a drug dependant. A person may have *opiates metabolites* in his urine but he could have ingested a drug which is legal.

In addition, even if the drug he had ingested is an illegal drug, he need not necessarily be a drug dependant. What if that was the first occasion he had taken the drug? The Act has defined a drug dependant as:

⁷S. 2(1).

⁸S. 19(3).

⁹Section 3(2).

¹⁰See P.U.(B) 75/82, w.e.f. 19th Feb. 1982.

"a person who through the use of any dangerous drug undergoes a psychic and sometimes physical state which is characterised by behavioural and other responses including the compulsion to take the drug on a continuous or periodic basis in order to experience its psychic effect and to avoid the discomfort of its absence."

To be satisfied that a suspect falls within the ambit of this definition, a medical officer needs to know more about him, and this is possible through prolonged observation and probe. This is difficult to achieve within 24 hours.

The 24-hour period had been imported from section 25A of the DDA and the rationale for the time restriction in that section applies here, too.¹¹ If the tests cannot be held or completed within 24 hours, few options are available:

- 1) the person may be released on bail, with or without surety, by an officer to attend at the time and place mentioned in the bond; or
- 2) the person may be produced by an officer before a Magistrate, and the Magistrate may —
 - (a) if it appears to him necessary to detain him for the purpose of undergoing tests, order him to be in detained for a period not exceeding 14 days to undergo those tests;
 - (b) release him on bail, with or without surety, to attend at such time and place as may be mentioned in the bond for the purpose of undergoing such tests;
 - (c) where such person has already undergone tests but the result of such tests has not yet been obtained, the Magistrate may release him on bail, with or without surety, to appear at such place and time as may be mentioned in the bond to receive the result of the tests.¹²

The Act allows "any officer" to release a suspect on bail and in section 4(2), the officer will come within the definition of a police officer in sections 390-393 and section 404 of the *Criminal Procedure Code (CPC)*, that is, sections dealing with bail and bailbonds. The Act, however, allows only a Magistrate to detain the suspect, for a period not exceeding 14 days. In other words, the basic concept of individual liberty enshrined in the *Federal Constitution*,¹³ and included in the CPC,¹⁴ is also included in this

¹¹This requirement fulfils the right of an arrested person to be brought before a Magistrate within 24 hours provided under Article 5(4) of the *Federal Constitution* and entrenched in section 28 of the CPC. The repealed version of section 25A did not provide for production of suspected drug dependants before a Magistrate, neither did it provide for speedy appearance before the Magistrate. The then Deputy Minister for Agriculture, Encik Edmund Langgu anak Saga, when tabling the Bill for the amendment before the Dewan Rakyat rightly recognised the need for a Magistrate to issue an order for detention, as deprivation of a citizen's liberty is involved: Second and Third Reading, 27th July 1977, *Laporan Dewan Rakyat*, 2836.

¹²Section 4(1).

¹³Article 5(4).

¹⁴Section 28.

Act. Section 5(2) provides for penalties if a person fails to comply with any requirement or direction to undergo tests, that is, he is liable on conviction to be punished with imprisonment for a period not exceeding 3 months, or with fine, or with both. These tests may be conducted either by a government medical officer or a registered medical practitioner; the latter is defined as "a medical practitioner registered under the Medical Act 1971".¹⁵ Whereas under the DDA only a government medical officer can certify dependance, the scope is wider under this Act to allow other medical practitioners to do so. This may help relieve the burden on government medical officers, and in turn may contribute towards efficient and quick processing of dependants.

Section 6 requires the officer to be satisfied that a person is certified by a government medical practitioner to be a drug dependant. How the officer is going to be satisfied is a matter of speculation. As pointed out earlier, the medical officer will invariably certify that *opiates metabolites* can be traced, but this does not prove dependancy! This section should be amended accordingly, to stipulate only that the person is certified to have used a drug during the previous 24 hours. The officer can act on this certification and hand the case over to the Magistrate. The section merely states that if a Magistrate, after giving such person an opportunity to make representations, is satisfied that such person requires to undergo treatment and rehabilitation or that he is satisfied that such person's treatment and rehabilitation may be carried out otherwise than at a Rehabilitation Centre, he may so order. Subsections (3) and (4) however provide that before the Magistrate decides on any of the above alternatives, he has to consider a report by a Rehabilitation Officer on such person; he has further to consider the circumstances of the case, the character, antecedents, age, health, education, employment, family and other circumstances of the person. Subsection (5) provides that a certificate issued by a government medical practitioner shall be received by a Magistrate without proof of the signature thereon, and the Magistrate shall accept it as proof of its contents, unless the contrary is proved. Clearly, the medical officer's certificate has to be considered by the Magistrate. As mentioned previously, the certificate will merely state that a particular substance is found in the suspect's urine. But here, since the Rehabilitation Officer's report is considered along with other matters, there is no objection regarding the Magistrate relying on the medical report. The objection stays with regard to the certificate submitted to the officer in subsection (1), because here the decision to bring a person before the Magistrate is solely dependant on the medical officer's certificate.

The two options open to a Magistrate after considering all the above matters are:—

¹⁵S. 2(1).

- (1) to order such person to reside in a Rehabilitation Centre for a period of 2 years, to undergo treatment and rehabilitation and thereafter to undergo after-care; or
- (2) to order such person to be placed under supervision of a Rehabilitation Officer for a period of not less than 2 and not more than 3 years, and to execute a bond with or without sureties, to remain under such supervision for such period.

If a supervision order is issued but the person fails to execute the bond, the Magistrate has to order residence in a Rehabilitation Centre. The supervision order shall contain the condition requiring such person to abstain from dangerous drugs and may contain conditions as to residence, employment, associations, abstention from intoxicating liquors, or attendance at a Day Centre. Should a breach occur, the person has to be arrested and produced before a Magistrate within 24 hours. The Magistrate may order residence in a Rehabilitation Centre for 2 years and thereafter undergo after-care. The dependant and his sureties will still be liable for the breach and sections 403-405 of the CPC, regarding "show cause" and forfeiture proceedings, will apply.¹⁶

According to section 22, a Magistrate may when making an order requiring any person to reside at a Rehabilitation Centre order that such person contribute a certain amount towards the cost of the maintenance, treatment and rehabilitation of such person at the Centre. If the person is a minor, the parent or guardian may be ordered to pay. If the order to pay is not made at the time the order to reside is issued, it may be made at any subsequent time during the duration of the residence order. Of course, before a Magistrate makes any such orders, he has to consider the circumstances of the person against whom the order is proposed to be made. This provision does not apply to volunteers because a special provision is reserved for volunteers.¹⁷

Section 26 envisages a situation where employment for a particular resident of a Rehabilitation Centre somewhere in or outside the Centre will assist in his treatment and rehabilitation. In such a case, the resident may undergo employment in those places. Indeed, it will be a shame and a waste if a resident has a job outside the Centre but, when forced to under treatment and rehabilitation at the Centre, is forced to give up that job.

(ii) *Part 3*

Admission into a Rehabilitation Centre by a volunteer has to be via an application to a Rehabilitation Officer. The Officer then has to make arrangements for tests to be conducted. Subsequently, he has to decide either to send the person to a Rehabilitation Centre for 2 years or to order supervision for 2 to 3 years. He does this after a medical officer or a registered

¹⁶Section 7.

¹⁷*Infra.*

medical practitioner has certified the person to be a drug dependant. Here, the decision is based solely on the medical report, unlike the decision made by the Magistrate under Part 2 of the Act. Once the decision is made, the applicant must be informed and his consent to undergo such residence or supervision must be obtained. This requirement is probably to ensure that the applicant is sufficiently motivated to undergo the treatment and rehabilitation programme. Only after this stage is the bond executed. This bond covers either residence at a Rehabilitation Centre or supervision by a Rehabilitation Officer. It may be for an amount to be specified therein and with such surety or sureties as may be determined by the Rehabilitation Officer. It may contain such terms and conditions as may be imposed, including a condition requiring the applicant to pay an amount towards his maintenance, treatment and rehabilitation. Any breach of any condition of the bond will result in forfeiture of the amount due under the bond. It is not known what will happen to the volunteer if there is a breach; whether he will be removed from the Centre or be freed from supervision is not clear.

When a parent or guardian wishes to submit his or her child or ward who is a minor, for treatment, he or she may apply to a Rehabilitation Officer and then produce the minor before such officer. A minor is not defined in the Act. The *Age of Majority Act* 1971 thus applies; a minor here means a person below the age of 18 years.¹⁸ In this event, section 8 as discussed above will apply except that here the parent or guardian concerned has to execute the bond and probably pay the contribution. One point to note however is that the Magistrate is not brought into the picture when submission to treatment and rehabilitation is voluntary.

The period of residence in a Rehabilitation Centre is 2 years. The Board of Visitors may however shorten it in respect of any person for reasons which appear to it to be sufficient, if such person has already completed a period of residence of 12 months in the centre. The person may be discharged even before 12 months' residence is fulfilled, if the Board "is satisfied it is fit and proper to do so for special reasons pertaining to the welfare of such person."¹⁹

It will be remembered that under the DDA, the duration of residence was 6 months but if special reasons appeared it might be reduced to 4 months. It was the practice however to discharge residents after 4 months of residence. A study²⁰ at the Besut Centre revealed that discharge after 4 months' residence was the practice and not the exception. According to the then Pengetua, by the time the resident had fulfilled his 4 months of stay he would feel restless and want to be discharged. Since it would be difficult to control and discipline residents in this state, it was felt that discharge was the better way out. Besides, there are not too many places

¹⁸See sections 2 and 4.

¹⁹Section 12.

²⁰A study conducted by the writer in April 1981.

in the Centres. This restlessness was endorsed by the residents. One reason for this restlessness stems from the knowledge, even prior to admission, that treatment at the Centre will last only 4 months! Whatever the original reason might have been for discharging after 4 months of residence, it certainly has set a precedent.

The same situation or results may arise under the DDTRA. Although section 12 is commendable because it is flexible and allows for three different conditions, the danger that the exceptions will become the norm will surface sooner or later. The period of 2 years has been fixed because the legislators felt that 6 months was too short a period, and no effective measures can actually be undertaken during that time.

What they failed to note is that the 6-month period was seldom adhered to. Should discharge after 12 months' or 6 months' residence be the norm under this Act, then the whole purpose of this section will be defeated. Admittedly, there may be exceptional cases where prolonging the residence will prove wasteful and futile. However, unequal treatment of residents may engender feelings of ill-will and suspicion amongst them. It may be advised that the exceptions here should be real exceptions and applied very sparingly. Better still, adhere to the original six-month period provided in the DDA. It is enlightening to know that discussions are on the way to revert the period of residence back to six months.²¹

The restlessness on the part of residents stems from boredom. With an extension of a further 18 months under section 12, one wonders if the problems faced by the Centre administrators will not be magnified three times. In any case, unless the treatment and rehabilitation programmes improve, in terms of variations and effectiveness, there appears to be no purpose at all in keeping drug dependants in Centres, save to isolate them from their supply links. Programmes must be varied, imaginative, educational, therapeutic, and entertaining as well. From interviews with residents at the Besut Centre, it was discovered that a major grouse amongst them was boredom, either with nothing to do or with doing the same things every-day. Various requests for guitar lessons, art classes, a gymnasium and more elaborate carpentry and carving training had fallen on deaf ears.

The Pengetua, however, explained that funds did not permit these additional facilities and programmes. The government has spent large amounts on half-hearted rehabilitation programmes. It is time more funds were channelled to these centres, lest all the rhetoric and publicity campaigns come to nought. Funds alone will not suffice: sufficient numbers of well-trained, dedicated and qualified personnel cannot be compromised if any hope of effective rehabilitation is to be entertained.

After discharge from a Rehabilitation Centre, the person has to undergo 2 years of after-care by a Rehabilitation Officer or such other person as

²¹ *New Straits Times*, 17th October 1983.

the Director General may designate.²² After-care will be discussed in greater length subsequently.²³

Section 17 is a new provision facilitating transfers of residents from one centre to another. This provision is useful because at times a particular resident may prove troublesome or unsuitable in one centre but will improve in behaviour if transferred to another.

Two significant provisions in the DDTRA are sections 31 and 32, which introduce the new sections 38A and 38B, respectively, of the DDA.

Section 38A reads:—

- (1) Where any person below the age of eighteen years is found guilty of an offence against this Act other than in the case of an offence under section 6B or 39B or other than in a case where a person is found guilty of an offence against this Act for which the punishment shall be under section 39A, the Court shall consider a report of a Rehabilitation Officer as defined in the Drug Dependents (Treatment and Rehabilitation) Act, 1983 and if the Court is satisfied that such person is a drug dependant as certified by a government medical officer and that having regard to the circumstances of the case and the character, antecedents, health or mental condition of the person charged it is inexpedient to inflict the punishment provided, the Court may, with or without recording a conviction —
 - (a) release the offender and order him to reside at a Rehabilitation Centre for a period of two years to undergo treatment and rehabilitation, and immediately thereafter to undergo after-care in accordance with the provisions of the Drug Dependents (Treatment and Rehabilitation) Act 1983; or
 - (b) order the offender to be placed under the supervision of a Rehabilitation Officer for a period of not less than two and not more than three years, and to execute a bond with or without sureties, as the Court may determine, to remain under such supervision for such period:

Provided that where such person fails to execute such bond, an order under paragraph (a) shall be made against him by the Court.

- (1) Where an order under paragraph (a) of subsection (1) is made against an offender, it shall be deemed to be an order made by a Magistrate under paragraph (a) of subsection (1) of section 6 of the Drug Dependents (Treatment and Rehabilitation) Act 1983, and where the order is made under paragraph (b) of subsection (1) of section 6 of that Act, and the provisions of that Act shall apply accordingly in relation to such order.”

whilst Section 38B reads:—

- (1) Where a person is found guilty of an offence under section 15, he shall immediately after having undergone the punishment imposed upon him in respect thereof, undergo supervision by a Rehabilitation Officer as defin-

²²Section 13.

²³*Infra*.

ed under subsection (2) of section 2 of the Drug Dependants (Treatment and Rehabilitation) Act 1983 for a period of not less than two and not more than three years as may be determined by the Rehabilitation Officer.

- (2) A person who is required to undergo supervision by a Rehabilitation Officer under subsection (1), shall be deemed to have been placed under such supervision by virtue of an order made by a Magistrate under paragraph (b) of subsection (1) of section 6 of the Drug Dependants (Treatment and Rehabilitation) Act 1983, and the provisions of that Act shall apply accordingly in relation to such supervision."

Section 38A provides for cases where juveniles are involved.²⁴ The juveniles must be found guilty of an offence against the DDA, in other words, a drug offence. Since a juvenile cannot be convicted according to section 12(3) of the *Juvenile Courts Act 1947* (JCA), the earlier part of this section has stipulated a mere finding of guilt. However, the later part reads: "the Court may, with or without recording a conviction".

There is a rule of interpretation which says that a later statute or provision of law overrides an earlier one because the "latest will of Parliament must always prevail".²⁵ Section 12(3) of the JCA was enacted in 1947²⁶ and amended in 1975.²⁷ The amendments were, however, minor. Section 38A of the DDA was added by the *Drug Dependants (Treatment and Rehabilitation) Act 1983*.²⁸ Applying the above-mentioned rule of interpretation, section 38A overrides section 12(3) and, therefore, a juvenile may be convicted under section 38A. Whilst the rule of interpretation presumes that Parliament was aware of section 12(3) of the JCA, that need not necessarily be the case. Section 38A purports to treat young drug dependant offenders leniently by allowing courts to send them to rehabilitation centres or release them on supervision. It serves no purpose if the courts are now allowed to record convictions. Surely, the offence of robbery committed by a juvenile is more serious than the offence of possession of 0.10 gram of heroin. For the offence of robbery, no conviction can be recorded, unlike that for possession of heroin, just because the offender in the latter case is a drug dependant. Even if the offence in both situations is robbery, it is indeed unfair to discriminate between the offender who is a drug dependant and one who is not a drug dependant. The argument that Parliament had actually intended that juvenile drug dependant offenders be convicted if the court thinks it fit may be more persuasive if

²⁴Juveniles are defined as persons aged 10 years and above but below 18 years: *Juvenile Courts Act 1947*, Act 90 (Reprint No. 5 of 1981), s. 2.

²⁵S.G.G. Edgar, *Craies on Statute Law* (7th. ed.) (1971), 366; P. St. J. Langan, *Maxwell on Interpretation of Statutes* (12th. ed.) (1969), 191.

²⁶*Juvenile Courts Ordinance 1947*, Ordinance No. 38.

²⁷*Juvenile Courts (Amendment) Act 1975*, Act A297.

²⁸Act 283, s. 31.

section 38A itself had used the word "juvenile" somewhere therein. As it is, there is a possibility that Parliament had overlooked this point about offenders aged below 18 years not being liable to be convicted. The mention of a conviction could have been an oversight on its part because section 25B of the DDA, which this section is styled upon did mention a conviction. But, there the age limit was 21 years and therefore for persons aged between 18 to below 21 years, a conviction might be imposed. Here, the discretion to convict or not does not arise because the court cannot convict a person below 18 years of age. The option, however, may be open to courts in Sarawak because the JCA does not apply to Sarawak.

This section seeks to treat certain drug offenders leniently if they happen to be dependants too. The court may order them to reside in a Rehabilitation Centre or order them to be placed under supervision for a period of not less than two and not more than three years. This section reminds us of section 25B of the DDA which is now repealed but, on comparison, section 25B was available to more offenders because the age limit of offenders was 21 years. It appears that the DDTRA, in this respect, has not improved the position of drug dependants who are drug offenders as well.

The search for improvements to the lot of offenders who are not drug offenders but are dependants will have to continue.

Section 38B is a commendable provision for it shows recognition of the drug problem surrounding a drug offender, particularly one who is caught administering drug to himself. There really is no point in punishing a drug dependant if his dependance is not "tackled". This provision may have noble aims, but one wonders how often it will be applied, because of difficulties and doubts circumventing the proof of the offence of self-administration.

Section 15(a) makes it an offence for any person to administer to himself any dangerous drug. The usual and only evidence adduced by the prosecution to prove self-administration is the laboratory report indicating presence of a certain chemical called *opiates metabolites*, commonly found in dangerous drugs, in the urine of the dependant person. In the past, production of this report would invariably lead to a conviction of the person accused of self-administration. Presently, however, doubts have arisen as to whether this report is adequate evidence because the chemical which is usually reported to be found in the urine sample may also derive from drugs which are legally available at the chemist's or at the pharmacist's. The presence of this chemical, therefore, is not sufficient proof of self-administration of illegal dangerous drugs. As it is, the only method to prove self-administration is the presence of that substance in the urine sample. This method being doubtful to prove the offence, there has to be a search for an alternative method, lest section 15(a) be a dead letter.

(c) Administration

The *Drug Dependants (Treatment and Rehabilitation) Act 1983* has repealed the whole of Part VA of the DDA. Until the *Drug Rehabilitation*

Centre Rules, 1983 were gazetted,²⁹ Part VA and its Rules³⁰ continued to apply.³¹

Part 4 of the DDTRA provides for the establishment of Rehabilitation Centres, Day Centres, and After-care Centres. It is safe to say that the Rehabilitation Centres are centres which have all the while received and will in future receive drug dependants for treatment and rehabilitation; the same cannot be said about the other two centres. Not much is revealed in the Act, and according to the Timbalan Pengarah of Bahagian Rawatan dan Pemulihan Dadah, Kementerian Hal Ehwal Dalam Negeri³² no such centres have been set up since April 15, 1983.

Section 11 provides for the appointment of a Board of Visitors,³³ whose functions are:

- a) to exercise all powers, discharge all such duties and perform all such functions as may be provided in this Act or as may be prescribed in any rules; and
- b) to advise and make recommendations to the Director General on all matters which the Director General may refer to it and on other matters pertaining to their duties and functions on which it may deem necessary or expedient to advise and make recommendations.

Rehabilitation Committees are provided for under section 15(1). The Minister may appoint a Rehabilitation Committee in respect of such district, town, area or locality as he may specify, to carry out functions in relation to the rehabilitation and welfare of persons who are or have been undergoing treatment and rehabilitation. The Committee also assists Rehabilitation Officers or other persons responsible for the rehabilitation, after-care or supervision of such persons as the Committee deem necessary or as the Minister may direct such Committee to perform.

Section 16 provides for the approval of the Minister of the establishment of private centres. Application has to be forwarded to the Minister, who may grant permission upon such terms and conditions as he may specify. The terms may be varied and the approval is revocable. The establishment of any private centre without prior approval is an offence punishable on conviction to a fine or to imprisonment not exceeding 5 years or to both.

Section 18 provides for compulsory notification of drug dependants by any registered medical practitioner, including a government medical of-

²⁹P.U. (A)484, w.c.f. 1st. December 1983.

³⁰*Drug Rehabilitation Centre Rules*, 1979: P.U.(A) 68. Revoked by P.U. (A)484, S. 83.

³¹See DDA, sections 29 and 30.

³²Mr. K.A. Vadiveloo.

³³See the 1983 Rules, sections 4-15.

ficer, who is treating a drug dependant person. Failure to notify is an offence punishable on conviction to a fine not exceeding \$500. Forms for the purposes of this section have yet to be gazetted.³⁴ A similar provision existed under the DDA.

Section 20 provides for offences committed by residents in the Rehabilitation Centres, After-care Centres, and under supervision generally. It reads:

"20(1) Where any person —

- (a) contravenes any term or condition lawfully imposed under this Act in relation to residence, treatment or rehabilitation at a Rehabilitation Centre or at an After-care Centre, or in relation to attendance, treatment and rehabilitation at a Day Centre, or in relation to any supervision to which such person is subject under this Act; or
- (b) commits a breach of any rules relating to a Centre, where no specific punishment is provided in such rules for such breach;
- (c) incites any resident of a Rehabilitation Centre or an After-care Centre, or any person attending a Day Centre, to commit a breach of any rules relating to such Centre;
- (d) uses any indecent, threatening, abusive or insulting words or gestures, or otherwise behaves in a threatening or insulting manner, against any person exercising any powers, discharging any duties or performing any functions in relation to the custody, treatment, rehabilitation, residence or supervision of any person under this Act, or against any person under this Act, or against any person resident at a Rehabilitation Centre or an After-care Centre, or attending a Day Centre or against any employee or servant employed or engaged at any Centre, or against any person lawfully visiting a Centre or otherwise lawfully present at a Centre, or assaults any person, employee or servant, as aforesaid,

shall be guilty of an offence and shall on conviction be liable to a fine or to imprisonment for a term not exceeding three years or to both.

This section, however, does not cover volunteers because volunteers have to sign a bond under section 8(4). Any breach of the bond will be followed by "show cause" and forfeiture proceedings.

Section 21 envisages situations where a person has been sentenced to any term of imprisonment, or by a Juvenile Court to a term of detention, or is detained under any law relating to preventive detention, and he is now ordered to undergo treatment in a Rehabilitation Centre, or after-care, or supervision. In the event any of the above orders having been issued, such imprisonment or detention shall take precedence over the residence, after-care or supervision as aforesaid. The period of imprisonment or detention served shall be deemed to be residence at a Rehabilitation Centre, or after-care or supervision. If there still remains unexpired any portion of the period for which he had to reside at a Rehabilitation Centre, or undergo after-care or supervision, he shall be required to reside at a Rehabilitation Cen-

³⁴According to Mr K.A. Vadiveloo.

tre, or undergo after-care or supervision, as the case may be, for such unexpired portion thereof. These provisions, however, do not apply to volunteers.

Section 27 provides that minors have to be treated separately from adults either in custody, when residing at a Rehabilitation Centre, attending a Day Centre, or being conveyed to or from any place while in custody, residence or attendance. The Act is evidently sensitive of the need for minors to be protected from adults. This provision is reminiscent of similar safeguards concerning juveniles.³⁵

(d) *After-care*

After-care means some training in social skills and a sheltered contact with the outside world permitting a gradual rather than a sudden re-adjustment after discharge. Much has been said about after-care and its merits. Mays says "the success of institutionalization depends upon adequate and sustained after-care"³⁶ and according to Bhattacharya, "in the absence of proper after-care and a strict follow-up the best penological practices will be meaningless."³⁷ Bhattacharya goes on further:

"The time of release is the most critical period. Suddenly [the ex-inmates] are called upon to face a new demand for initiative in search of residence and employment at a time when to a large extent they have lost touch with life outside. Normal adjustment in family and society seems difficult. Most inmates on leaving the institutions make some effort to find in society an acceptable place. But many of them give up the struggle quickly when faced with hard realities."³⁸

Indeed, in theory, a prisoner's only punishment is his loss of liberty. However, in practice, he is deprived of far more than his liberty.³⁹

"The fact of his imprisonment almost inevitably loses him his job; the stigma of conviction or physical separation may estrange his friends and family; and that in turn may leave him without a home to which he can go on discharge, and with nowhere to turn for financial help"⁴⁰

The same is very true of detention or residence in any institution for a considerable period of time, including residence in a Drug Rehabilitation Centre. They can be alleviated if provisions for after-care include all efforts to assist the discharged resident in overcoming difficulties, not only from humanitarian motives, but also to prevent him seeking a solution to his

³⁵JCA, section 7 and section 15(3).

³⁶J.B. Mays, *Crime and Its Treatment* (2nd ed.)(1975), 147.

³⁷B.K. Bhattacharya, *Violence Delinquency Rehabilitation* (1977), 88.

³⁸*Ibid.*

³⁹See Mays, 115-116.

⁴⁰J.D. McClean and J.C. Wood, *Criminal Justice and the Treatment of Offenders* (1969), 140.

difficulties by returning to crime or to drug abuse. It may include special provisions within the institution for the preparation of prisoners or residents for release, the supply of money, clothing, other material needs, and guidance and moral support for the period of time immediately after release or discharge.⁴¹

The DDA had recognised and accepted the merits of after-care and had entrenched it in the form of section 25K. The after-care period was two years and the supervision was by a Social Welfare Officer or a person appointed on the advice of the Social Welfare Officer.⁴² The person subject to after-care had to comply with certain conditions specified in the after-care order by the Board of Visitors of the rehabilitation centre.⁴³ The Board of Visitors of the Besut Rehabilitation Centre had laid down six conditions, with the option of adding further conditions. The six conditions were:

- 1) to reside and not to leave the address specified in the after-care order without prior permission of the Supervising Officer;
- 2) to receive instructions and advice from the Supervising Officer concerned relating to daily activities;
- 3) to report and receive visits during a period to be specified by the Supervising Officer;
- 4) to be of good behaviour, determined and hard-working;
- 5) to avoid abusing any dangerous drug and to refrain from socialising with drug dependants;
- 6) to be prepared to undergo tests, and examination related to detoxification as required by the Supervising Officer.

Failure to comply with any requirement of the order would result in a recall of the person. If he failed to return to the centre, he might be arrested by a police officer and returned to the centre and detained for a further period not exceeding six months, as might be ordered by the Board of Visitors.⁴⁴ There might be cases where persons who were recalled need not be further detained in the centre.⁴⁵

The rehabilitation committees mentioned in section 25K(1) were committees which were appointed by the Minister of Welfare Services for a State or district, and such committees should be engaged in the welfare of drug dependants and should assist the Social Welfare Officers in the supervision and after-care of such persons.⁴⁶ These committees also carried out any duties and functions as the Minister of Welfare Service might

⁴¹*Id.*, 142.

⁴²See *Dangerous Drugs (Treatment and Rehabilitation)(Forms) Rules 1979*: P.U.(A) 13, Form No. 13.

⁴³Subsection (2).

⁴⁴Subsection (3).

⁴⁵Subsection (10).

⁴⁶S. 25L.

by rules prescribe. The *Drug Rehabilitation Committees (Constitution and Duties) Rules 1978*⁴⁷ were enacted for this purpose.

With the repeal of Part VA, and with it section 25K of the DDA, the *Drug Dependents (Treatment and Rehabilitation) Act 1983* will apply. Section 13 of the Act provides that when a drug dependant has been discharged from a Rehabilitation Centre, he shall immediately undergo after-care by a Rehabilitation Officer or such other person as the Director-General may designate. The period of after-care is two years.⁴⁸ A person undergoing after-care may be required to comply with such conditions as the Board of Visitors may specify in an after-care order, and such conditions may include a condition that such person shall reside in an After-care Centre for a period not exceeding six months for such hours daily or otherwise as may be specified in the order. Residence in an After-care Centre is a new service provided by statute and residence there need not be for the whole duration of the condition; it may be that a person has to reside in the Centre between 8 a.m. to 6 p.m. each day for four months, or between 8 a.m. to 6 p.m. on weekends but between 6 p.m. and 9 p.m. on weekdays, if the person is employed. This is an improvement on the existing system where the person is released into the community with no opportunities for him to return to a place for re-assurance and temporary security.

Under the DDA, no provision was made for breach of an after-care order. Section 14 of the DDTRA however provides that when an officer reasonably suspects a released person to be a drug dependant, such officer may produce him before a Magistrate, who after considering the appropriate reports will order that he reside in a Rehabilitation Centre for a period not exceeding six months. Soon after this period of residence, he has to continue undergoing after-care for the period remaining unexpired. This period however must not be less than six months. This section does not apply when admission to the Centre was in the first place voluntary, because subsection (1) stipulates application only when an order was made under section 6(1)(a), that is, admission into the Centre via a court order.

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⁴⁷P.U.(A) 255.

⁴⁸See *Drug Dependents (Treatment and Rehabilitation)(Forms) Rules 1983*: P.U.(A)485, Form 25; w.e.f. 1st. January 1984.

