

Protective Custody Bill 2000

EXPLANATORY MEMORANDUM

(Clause Notes)

MINISTER FOR POLICE

Part 1 Preliminary

CLAUSE 1.

EXISTING

N/A

PROPOSED

1. Short title

This Act may be cited as the *Protective Custody Act 2000*.

EXPLANATION

The Act is formally named.

CLAUSE 2.

EXISTING

N/A

PROPOSED

2. Commencement

This Act comes into operation on such day as is fixed by proclamation.

EXPLANATION

It is intended that the Act will come into operation by proclamation, to enable the Police Service to complete any training needs and to enable Departments in control of appropriate facilities, to declare the types of intoxicated persons that each facility is suitable for.

CLAUSE 3.

EXISTING

Interpretation

53. *In this Part unless the contrary intention appears —*

“approved hospital” means a public hospital or private hospital to which the *Hospitals and Health Services Act 1927* applies;

“intoxicated” means seriously affected apparently by alcohol;

“police officer” means a person appointed —

- (a) under Part 1 to be a member of the Police Force of Western Australia;
- (b) under Part III to be a special constable; or
- (c) under Part IIIA to be an aboriginal aide,

and includes a person who is authorized to exercise a power set out in clause 16 of Schedule 2 to the Court Security and Custodial Services Act 1999 but the references to a police officer in section 53A and 53I (a), (b), (c) and (d)(ii) (except Item (A)) are not to be regarded as including the authorized person;

“register” means the record maintained by a police officer of —

- (a) the dates and times a person is taken into and released from detention under this Part; and
- (b) the inventory of property taken from and returned to the detained person or to a person into whose care the detained person is released.

PROPOSED

3. Interpretation

In this Act, unless the contrary intention appears —

“adult” means a person who is at least 18 years old;

“apprehended” means apprehended under section 6(1);

“appropriate facility”, in relation to an apprehended person, means an approved place to which the person may be taken in accordance with a notice published under section 26(1);

“approved place” means a place approved under section 26(1);

“authorized officer” means a community officer or a police officer;

“child” means a person who is under 18;

“community officer” means a person appointed under section 27;

“intoxicant” means –

- (a) alcohol; or
- (b) a drug, or a volatile or other substance, capable of intoxicating a person;

“intoxicated” means affected by, or apparently by, an intoxicant to such an extent that there is a significant impairment of judgement or behaviour;

“JP” means Justice of the Peace;

“police officer” means a person appointed under the *Police Act 1892* to be –

- (a) a member of the Police Force;
- (b) a special constable; or
- (c) an aboriginal aide;

“public place” includes –

- (a) a place to which the public are admitted on the payment of money or other consideration, the test of admittance being only the payment of money or other consideration;
- (b) a school, university or other place of education, other than a part of such a place to which students or the public do not usually have access; and
- (c) a privately owned place –
 - (i) that is not occupied by, or with the authority of, the owner; or
 - (ii) to which the public has access with the express or implied approval of the owner, occupier or person who has the control or management of the place;

“volatile substance” means a substance that produces a vapour at room temperature.

EXPLANATION

These definitions are required to ensure the correct interpretation of provisions of the Act.

CLAUSE 4.

EXISTING

N/A

PROPOSED

4. Relationship with other Acts

- (1) This Act is in addition to and does not affect section 138B of the *Child Welfare Act 1947*.
- (2) This Act is in addition to and does not affect the operation of section 195 of the *Mental Health Act 1996*.

EXPLANATION

This clause will ensure that the existing provisions of section 138B of the *Child Welfare Act 1947*¹ and section 195 of the *Mental Health Act 1996*² will be preserved.

¹ Provides powers to apprehend children in immediate need of care and return them to their normal place of residence or school or have the child declared to be in need of care and protection.

² Provides police with powers to apprehend a person who needs to be apprehended to protect the health or safety of the person or any other person; or prevent serious damage to property.

Part 2 – Seizing intoxicants from children

CLAUSE 5.

EXISTING

N/A

PROPOSED

5. Intoxicants may be seized from children using them

- (1) An authorized officer may seize an intoxicant from a child who is in a public place if –
 - (a) the child is consuming or inhaling the intoxicant; or

(b) the officer reasonably suspects that the child is about to consume or inhale the intoxicant,

and the officer reasonably suspects that the child is likely to become intoxicated if the intoxicant is not seized.

- (2) The intoxicant may be seized even if the child is not intoxicated.
- (3) The officer may destroy the intoxicant.
- (4) This section does not prevent an intoxicant that has been seized from being seized under another written law or under a legal process.

EXPLANATION

This clause empowers authorized officers to seize intoxicants from children, where they have reasonable grounds for suspecting that the child has, or is about to, use the intoxicant to become intoxicated.

This provision will allow the removal of intoxicants from children openly abusing them, and enable police to deal with the child not yet intoxicated but who may be in need of care and protection under the provisions of the *Child Welfare Act 1947*.

Where the seized intoxicant is of some value the Police Service will develop procedures for disposal, similar to those used with graffiti implements, in that they will be held for 48 hours and made available for collection by an appropriate person in relation to the child.

Intoxicants will be disposed of in an environmentally friendly manner.

Part 3– Apprehending and detaining intoxicated people

CLAUSE 6.

EXISTING

Circumstances in which a person may be apprehended

53A.

- (1) *Subject to section 18 of the Young Offenders Act 1994, where a police officer has reasonable grounds for believing that a person is intoxicated and the person is in a public place or trespassing on private property, the police officer may, without warrant, apprehend and detain the person.*

- (2) *For the purposes of subsection (1) a police officer may, without warrant, enter upon private property.*

PROPOSED

6. Intoxicated people may be apprehended

- (1) If an authorized officer reasonably suspects that a person who is in a public place or who is trespassing on private property –
- (a) is intoxicated; and
 - ((b) needs to be apprehended
 - (i) to protect the health or safety of the person or any other person; or
 - (ii) to prevent the person causing serious damage to property,
- the officer may apprehend the person.
- (2) The authorized officer may use reasonable force and assistance to apprehend the person.
- (3) An authorized officer who apprehends a person must record the date and time when the person is apprehended.

EXPLANATION

This clause replaces section 53A *Police Act 1892 (PA)*, with modern and simplified wording, enabling authorized officers to apprehend intoxicated persons. (similar to section 53A (PA), which enables police to apprehend persons intoxicated by alcohol).

The person apprehended must be in a public place, or trespassing on private property, and be found in circumstances where the officer has reasonable grounds for suspecting that the person is intoxicated to such a degree that they need to be apprehended –

- for their own safety and/or the safety of others; or
- to prevent them causing serious damage to property.

CLAUSE 7.

EXISTING

When release or review of detained person may be deferred

- 53J.** (1) *Except as provided in subsection (2), a police officer shall not defer —*
- (a) *releasing the detained person under this Part; or*
 - (b) *bringing the detained person before a Justice except for the minimum time necessary to meet reasonable organisational requirements of the police station concerned*
- (2) *Notwithstanding subsection (1) (a), a police officer may defer releasing a detained person under this Part between the hours of midnight and 7.30 am if release during those hours is not in the best interests of the detained person.*
- (3) *Where a police officer exercises a power in subsection (1) (b) or (2) the reason for the deferral shall be recorded in the register.*

PROPOSED

7. Apprehended person may be detained, but for no longer than necessary

- (1) An authorized officer may detain an apprehended person but any detention of the person must be in accordance with subsections (2), (3) and (4).
- (2) An authorized officer must not detain an apprehended person who is not, or who is no longer, intoxicated.
- (3) An authorized officer must not detain an apprehended person who is intoxicated for any longer than is necessary –
 - (a) to protect the health or safety of the person or any other person; or
 - (b) to prevent the person causing serious damage to property.
- (4) If an apprehended person is detained in a police station or lock-up, then, despite subsections (2) and (3), a police officer may decide not to release the person between the hours of midnight and 7.30 a.m. if release during those hours is not in the best interests of the person.
- (5) If a police officer makes a decision under subsection (4), he or she must record the reasons for the decision.

- (6) The power to detain an apprehended person does not affect the duty under section 11(1) and 12(1) to release a person as soon as practicable after he or she is apprehended.

EXPLANATION

Once apprehended, this enables authorized officers to detain intoxicated persons, but only as long as is necessary, and requires that they be released when:—

- they are no longer intoxicated; or
- they are no longer of danger to themselves or others; or
- detention is no longer required to prevent them from causing serious damage to property.

Where an apprehended person is detained in a police lock-up, sub clause (4) allows police to keep the person overnight when it is not in the person's best interest to be released earlier. This provision replaces section 53J (2) (PA), which has worked well in relation to drunken detainees. It will enable police to keep persons, some of whom may be homeless, in the lock-up on a cold wet night where they would otherwise have been required to wake them to release them into the prevailing conditions.

Part 4– Dealing with apprehended people

CLAUSE 8.

EXISTING

Power to search the person and remove personal property

53B. (1) *Where a person is detained under section 53A a police officer may, subject to this section —*

- (a) *search the person or cause the person to be searched; and*
 - (b) *remove or cause to be removed from the person for safe keeping, until the person is released from detention, any personal property found on or about the person including any item that is likely to cause harm to the person or any other person or that could be used by the person or any other person to cause harm to himself or herself or to another*
- (2) *Where a female person is detained under section 53A and there is no female police officer available to exercise the powers conferred by subsection (1) a police officer who wishes to exercise those powers shall for that purpose authorize another female person to do so.*

- (3) *A police officer, or other person authorized under subsection (2), may use such force as is reasonably necessary for the purposes of subsection (1).*

PROPOSED

8. Apprehended person may be searched

- (1) An authorized officer may search an apprehended person, and any thing found on or with the person, for any thing that can be seized under section 9.
- (2) The search of an apprehended person must be made by an authorized officer of the same sex as the person unless that is impracticable.
- (3) An authorized officer may use reasonable force to make the search.

EXPLANATION

This clause replaces section 53B (PA), enabling authorized officers to search apprehended persons, using such force as is reasonable, and preferably by an authorized officer of the same gender. This is for the safety of the apprehended person, the safety of others and the security of property. It will assist the Police Service in maintaining their duty of care.

CLAUSE 9.

EXISTING

Power to search the person and remove personal property

- 53B.** (1) *Where a person is detained under section 53A a police officer may, subject to this section —*
- (a) *search the person or cause the person to be searched; and*
- (b) *remove or cause to be removed from the person for safe keeping, until the person is released from detention, any personal property found on or about the person including any item that is likely to cause harm to the person or any other person or that could be used by the person or any other person to cause harm to himself or herself or to another.*
- (2) *Where a female person is detained under section 53A and there is no female police officer available to exercise the powers conferred by subsection (1) a police officer who wishes to exercise those powers shall for that purpose authorize another female person to do so.*

- (3) *A police officer, or other person authorized under subsection (2), may use such force as is reasonably necessary for the purposes of subsection (1).*

PROPOSED

9. Intoxicants and dangerous articles may be seized

- (1) An authorized officer may seize from an apprehended person –
- (a) any intoxicant;
 - (b) any article (including any drug prescribed for the person) that could endanger the health or safety of the person or any other person.
- (2) If alcohol or any substance containing alcohol, is seized from an apprehended person, an authorized officer may destroy it.
- (3) If an intoxicant other than alcohol is seized from an apprehended person, an authorized officer may destroy it if the officer reasonably suspects that if it were returned to the person, that person is likely to use it to become intoxicated.
- (4) Anything seized under subsection (1) that is not destroyed under subsection (2) or (3), must be dealt with under section 14.
- (5) An authorized officer who seizes any thing under this section must record the fact and must record how the thing is dealt with.

EXPLANATION

This clause replaces section 53B (PA), and enables authorized officers to seize things found when an apprehended person is searched, if the thing is an intoxicant or may endanger the health or safety of anyone.

Additionally, the clause enables authorized officers to destroy substances found that contain alcohol and also destroy any other intoxicant if it is reasonably suspected that the person will use it to become intoxicated.

Provision is made for the return of property that is not destroyed and the necessary recording of all dealings with property.

Substances that are seized and destroyed will be of little or no value. The Police Service will institute procedures to ensure that intoxicants are destroyed in a manner that takes into account the full impact of the substances on the environment.

CLAUSE 10.

EXISTING

Release of detained person into the care of an approved hospital

53H. *Subject to section 53E (1) (d) a police officer by whom a person is detained under this Part may, at any time release the person or cause the person to be released without the person entering into a recognizance or bail, into the care of an approved hospital.*

PROPOSED

10. Apprehended person may be taken for medical examination

- (1) If an apprehended person needs a medical examination, an authorized officer, as soon as practicable, is to arrange for the person to be medically examined by a suitably qualified person.
- (2) The authorized officer is to continue detaining the apprehended person subject to section 7 unless –
 - (a) under section 29 of the *Mental Health Act 1996* the apprehended person is referred the person for examination by a psychiatrist; or
 - (b) the person who medically examines the apprehended person directs that the person left in his or her charge,
- (3) If an authorized officer arranges for a person to be medically examined the officer must record the fact and the date and time when the person was examined.

EXPLANATION

This clause ensures that medical attention is sought whenever necessary and that all such incidents are recorded. This is an expansion and clarification of section 53H (PA).

Part 5– Releasing apprehended people

CLAUSE 11.

EXISTING

N/A

PROPOSED

11. Releasing apprehended children

- (1) As soon as practicable after a child is apprehended, an authorized officer must release the child –
 - (a) into the care of a person who is the child's parent or legal guardian;
 - (b) into the care of a person –
 - (i) whom the officer reasonably believes is a responsible person capable of taking care of the child; and
 - (ii) who consents to taking charge of the childor
 - (c) if the officer is unable to comply with paragraph (a) or (b), into the care of the person in charge of an appropriate facility.
- (2) In deciding which option in subsection (1) to use an authorized officer must give paramount consideration to the safety and welfare of the child.
- (3) Subsection (1) does not prevent an authorized officer from taking action under section 10 and, if directed to do so, from releasing a child into the care of another person under that section.
- (4) If a child is apprehended by a community officer and it is not reasonably practicable to comply with subsection (1), a community officer may deliver the child to a police officer to be detained in accordance with section 7(1).
- (5) If it is not reasonably practicable, or until it is practicable, to comply with subsection (1), any detention under section 7(1) of a child by a police officer may be in a police station or lock-up; but only if there are exceptional circumstances that justify detaining the child in a police station or lock-up.
- (6) Section 138B(2), (4) and (5) of the *Child Welfare Act 1947* apply in respect of an apprehended child as if the child had been apprehended under section 138B(1) of that Act.

EXPLANATION

The current provisions of the Police Act 1892 make no reference to children. This provision remedies that situation. It requires that apprehended children are dealt with promptly by releasing them to the custody of a parent, guardian or other responsible person in relation to the child, giving paramount

consideration to the safety and welfare of the child. These options must be considered before utilizing a police station or lockup.

If a community officer is unable to comply with the above the child is to be delivered to a police officer. Children are only to be detained in a police station or lock-up as a last resort and then only if exceptional circumstances exist to justify such a detention.

The clause also ensures the ongoing welfare considerations of the child by requiring the child to be considered, as if apprehended under section 138B(1) of the *Child Welfare Act 1947*, under the provisions of 138B(2)³, (4)⁴ and (5)⁵ of that Act.

³ Relates to situations where the child is considered to be in need of care and protection.

⁴ Provides an ability to recover the costs of apprehending and detaining the child (to a maximum of \$20).

⁵ Enables the issue of an order, that such costs may be enforced by warrant in like manner to a fine.

CLAUSE 12.

EXISTING

Release from detention

53E. (1) *A person who is being detained under this Part shall not be released unless —*

- (a) *the person signs or otherwise marks the register acknowledging his or her release and the receipt of the property (if any) taken from him or her under section 53B;*
- (b) *the person refuses or fails to sign or mark the register under paragraph (a) and a police officer records that refusal or failure in the register and signs the register;*
- (c) *the person into whose care the detained person is to be released under section 53G signs or otherwise marks the register acknowledging the release of the person into his or her care and the receipt of the property (if any) taken from the detained person under section 53B; or*
- (d) *a responsible person at an approved hospital to which the detained person is to be admitted under section 53H signs the register acknowledging the admission of the detained person*

and the receipt of the property (if any) taken from the detained person under section 53B.

- (2) *Subsection (1) has effect notwithstanding any order made by a Justice under section 53I.*
- (3) *A person apprehended under section 53A shall be deemed to be released from detention at the time and on the date recorded in the register as the time at which and the date on which the register was signed or marked under subsection (1) (a), (b), (c) or (d) as the case may be.*

PROPOSED

12. Releasing apprehended adults

- (1) As soon as practicable after an adult is apprehended, an authorized officer must release the adult –
 - (a) into the care of another person under section 13; or
 - (b) into the care of the person in charge of an appropriate facility.
- (2) Subsection (1) does not prevent an authorized officer from taking action under section 10 and, if directed to do so, from releasing an adult into the care of another person under that section.
- (3) If an adult is apprehended by a community officer and it is not reasonably practicable to comply with subsection (1), a community officer may deliver the adult to a police officer to be detained in accordance with section 7(1)
- (4) If it is not reasonably practicable, or until it is practicable, to comply with subsection (1), any detention under section 7(1) of an adult by a police officer may be in a police station or lock-up.

EXPLANATION

This clause replaces section 53E (PA), modernizing and simplifying them. The clause requires that, where practicable, apprehended adults are dealt with promptly by releasing them to the care of another person. This person may be a friend or relative, or a person in charge of an appropriate facility. These options must be considered before utilising a police station or lockup.

If a community officer is unable to comply with the above, the person is to be delivered to a police officer who may detain the apprehended adult in a police station or lock-up.

CLAUSE 13.

EXISTING

Release of detained person into care of another person

- 53G.** (1) *Subject to subsection (2) and to the applicant signing the register under section 53E (1) © a police officer by whom a person is detained under this Part may, at any time release the person or cause the person to be released without the person entering into a recognizance or bail, into the care of a person who applies for his or her release, where the police officer reasonably believes the applicant is capable of taking adequate care of the person who has been detained.*
- (2) *A person shall not be released under subsection (1) if he or she objects to being released into the care of the applicant.*
- (3) *Where a police officer refuses an application under subsection (1) on the grounds that the applicant is not capable of taking adequate care of the detained person the applicant may apply to a Justice to review the police officer's decision.*
- (4) *Subject to section 53J where an application is made to a Justice under subsection (3), the police officer and the applicant may, unless the detained person is sooner released under this Part, as soon as practicable, appear before a Justice who may —*
- (a) *order the release of the person into the care of the applicant;*
 - (b) *where it appears to the Justice that the applicant is not capable of taking adequate care of the person, order the person to be detained for as long as it appears to a police officer that the person remains intoxicated; or*
 - (c) *give any other order or direction for the safety and welfare of the detained person which the Justice thinks fit.*

PROPOSED

13. Release of adult into care of another person

- (1) An authorized officer may at any time release an apprehended adult into the care of another person who applies for the adult's release if-
- (a) the adult does not object to being released into the care of the applicant; and
 - (b) the officer reasonably believes that the applicant is capable of taking care of the adult.

- (2) If an officer refuses to release an adult under subsection (1) because the officer does not believe that the applicant is capable of taking care of the adult, the applicant may apply to a JP to review the officer's decision.
- (3) If an application is made to a JP and if it is reasonably practicable to do so –
 - (a) an authorized officer, subject to section 21 must take the adult, or arrange for the adult to be taken, before the JP and
 - (b) the applicant and the officer are to appear before the JP, unless the adult is released before that can be done.
- (4) On an application the JP may –
 - (a) if the adult does not object, direct that the adult be released into the care of the applicant;
 - (b) if the JP is satisfied that the applicant is not capable of taking care of the adult, direct that the adult continue to be detained in accordance with section 7; or
 - (c) give any direction the JP thinks fit for the health and safety of the adult.

EXPLANATION

This clause replaces section 53G (PA), modernising and simplifying it. The clause provides a person, who may be a friend or relative, with the ability to apply to have an apprehended adult released into their care. This is conditional upon the apprehended adult agreeing and the authorized officer is of the belief that the applicant is capable of caring for the apprehended adult.

Should an authorized officer refuse to release an apprehended adult, there is provision for a person to apply to a JP for release. The JP will then arbitrate on the matter and make such directions as prescribed, or such directions the JP thinks fit for the health and safety of the adult.

CLAUSE 14.

EXISTING

The Police Act did not specifically cover the return of property, it only indicated it by the passage "remove or cause to be removed from the person for safe keeping, until the person is released from detention," at section 53B.

PROPOSED

14. Seized things to be returned

- (1) A thing that is seized from an apprehended person under section 9 and not destroyed under that section must be kept in safe keeping and –
 - (a) if the apprehended person is released into the care of another person, given to that person at that time on behalf of the apprehended person; or
 - (b) in any other case, returned to the apprehended person when he or she is released.
- (2) Subsection (1) does not prevent the thing that has been seized from being seized under another written law or under a legal process.

EXPLANATION

This clause provides for the lawful seizure, correct care, safekeeping and return of property unless the property is to be held under another written law or process. This will allow police to retain illicit drugs such as heroin or cannabis, or an offensive weapon such as a flick knife.

CLAUSE 15

EXISTING

Release from detention

- 53E.** (1) *A person who is being detained under this Part shall not be released unless —*
- (a) *the person signs or otherwise marks the register acknowledging his or her release and the receipt of the property (if any) taken from him or her under section 53B;*
 - (b) *the person refuses or fails to sign or mark the register under paragraph (a) and a police officer records that refusal or failure in the register and signs the register;*
 - (c) *the person into whose care the detained person is to be released under section 53G signs or otherwise marks the register acknowledging the release of the person into his or her care and the receipt of the property (if any) taken from the detained person under section 53B; or*
 - (d) *a responsible person at an approved hospital to which the detained person is to be admitted under section 53H signs the register acknowledging the admission of the detained person and the receipt of the property (if any) taken from the detained person under section 53B.*

- (2) *Subsection (1) has effect notwithstanding any order made by a Justice under section 53I.*
- (3) *A person apprehended under section 53A shall be deemed to be released from detention at the time and on the date recorded in the register as the time at which and the date on which the register was signed or marked under subsection (1) (a), (b), (c) or (d) as the case may be.*

PROPOSED

15. Release procedure

- (1) When an apprehended person is released by an authorized officer -
 - (a) the apprehended person must acknowledge in writing -
 - (i) his or her release on the date and at the time recorded; and
 - (ii) receipt of any thing returned to the person under section 14;
 - (b) if the apprehended person is released into the care of another person, that other person must acknowledge in writing -
 - (i) the release of the apprehended person on the date and at the time recorded; and
 - (ii) receipt of any thing given to that other person under section 14;

or

 - (c) if the apprehended person refuses or fails to comply with paragraph (a) or that other person refuses or fails to comply with paragraph (b), the authorized officer who releases the person must record
 - (i) the fact of the refusal or failure;
 - (ii) the date and time when the person was released; and
 - (iii) any thing given to another person, or returned to the apprehended person, under section 14.

- (2) Subsection (1) applies even if the apprehended person is released pursuant to an order made under section 19.

- (3) An apprehended person is to be taken to have been released on the date and at the time recorded under this section, in the absence of evidence to the contrary.

EXPLANATION

This clause replaces section 53E (PA), with modern, simplified wording and establishes alternative release procedures.

CLAUSE 16

EXISTING

Period of detention

53D. (1) *Subject to this Part, a person who has been apprehended under section 53A shall be detained by a police officer for as long as it reasonably appears to a police officer that the person remains intoxicated.*

- (2) *Subject to this Part, where a police officer by whom the person is detained considers that the person is no longer intoxicated, the police officer shall release the person or cause the person to be released without the person entering into any recognizance or bail.*

PROPOSED

16. Release to be unconditional

An apprehended person must not be required to enter into a bail undertaking or recognizance of any kind before being released under this Act.

EXPLANATION

This clause replaces section 53D (PA), modernising and simplifying it to ensure that the provisions of the Bail Act are not applied, and the release of a person apprehended under this Act is unconditional.

Part 6 - Judicial review

CLAUSE 17

EXISTING

Review of detention of person

53I. *Subject to section 53J —*

- (a)** *a person detained under this Part may, at any time, request a police officer to take him or her before a Justice, in order that the detained person may make an application to the Justice for his or her release;*
- (b)** *where a request is made to a police officer under paragraph (a), the police officer shall as soon as practicable, bring the person before a Justice, or cause the person to be brought before a Justice unless the person is released under this Part before appearing before a Justice;*
- (c)** *if, 8 hours after a person has been apprehended under section 53A, it reasonably appears to a police officer by whom the person is detained that the person is still intoxicated, the police officer shall bring the person before a Justice as soon as practicable, unless the person is released under this Part before appearing before a Justice;*
- (d)** *where a person is brought before a Justice under paragraph (b) or (c) the Justice —*
 - (i)** *shall order the release of the person where the Justice considers that the person is no longer intoxicated; or*
 - (ii)** *may give directions to the police officer for the safety and welfare of the person including, if the Justice thinks fit —*
 - (A)** *for the detention of the person by a police officer for as long as it appears to a police officer that the person remains intoxicated; or*
 - (B)** *subject to paragraph (e) releasing the detained person into the care of a person capable of taking adequate care of the detained person;*

and

- (e)** *a Justice shall not order the release of a person brought before him under paragraph (b) or (c) into the care of another person if the person in detention objects to being released into the care of that person.*

PROPOSED

17. Apprehended person may request review by JP

- (1) An apprehended person who has not been released may at anytime request an authorized officer to take him or her before a JP so that the person can apply to the JP to be released.
- (2) On such a request being made, the officer, subject to section 21, must take the apprehended person, or arrange for the person to be taken, before a JP, unless the person is released before that can be done.

EXPLANATION

This clause replaces section 53I (a) and (b) (PA), with modern and simplified wording, providing the ability for an apprehended person to apply to a JP to review the person's suitability for release.

CLAUSE 18

EXISTING

Review of detention of person

53I. *Subject to section 53J —*

- (a) *a person detained under this Part may, at any time, request a police officer to take him or her before a Justice, in order that the detained person may make an application to the Justice for his or her release;*
- (b) *where a request is made to a police officer under paragraph (a), the police officer shall as soon as practicable, bring the person before a Justice, or cause the person to be brought before a Justice unless the person is released under this Part before appearing before a Justice;*
- (c) ***if, 8 hours after a person has been apprehended under section 53A, it reasonably appears to a police officer by whom the person is detained that the person is still intoxicated, the police officer shall bring the person before a Justice as soon as practicable, unless the person is released under this Part before appearing before a Justice;***
- (d) *where a person is brought before a Justice under paragraph (b) or (c) the Justice —*
 - (i) *shall order the release of the person where the Justice considers that the person is no longer intoxicated; or*

(ii) *may give directions to the police officer for the safety and welfare of the person including, if the Justice thinks fit —*

(A) *for the detention of the person by a police officer for as long as it appears to a police officer that the person remains intoxicated; or*

(B) *subject to paragraph (e) releasing the detained person into the care of a person capable of taking adequate care of the detained person;*

and

(e) *a Justice shall not order the release of a person brought before him under paragraph (b) or (c) into the care of another person if the person in detention objects to being released into the care of that person.*

PROPOSED

18. Review of detention after 8 hours

If 8 hours after a person is apprehended an authorized officer who is detaining the person reasonably believes it is still not possible to comply with section 7, the officer, subject to section 21, must take the person, or arrange for the person to be taken, before a JP, unless the person is released before that can be done.

EXPLANATION

This clause replaces section 53I (c) (PA), modernising, simplifying and broadening it to all forms of intoxication, retaining the requirement for an apprehended person to be taken before a JP after being detained for 8 hours. This will be where the person's intoxication continues to the degree that they cannot be released when considering the provisions of section 7, particularly in relation to the protection of the person, or any other person or to prevent serious damage to property.

CLAUSE 19

EXISTING

Review of detention of person

53I. *Subject to section 53J —*

(a) *a person detained under this Part may, at any time, request a police officer to take him or her before a Justice, in order that the detained person may make an application to the Justice for his or her release;*

- (b) *where a request is made to a police officer under paragraph (a), the police officer shall as soon as practicable, bring the person before a Justice, or cause the person to be brought before a Justice unless the person is released under this Part before appearing before a Justice;*
- (c) *if, 8 hours after a person has been apprehended under section 53A, it reasonably appears to a police officer by whom the person is detained that the person is still intoxicated, the police officer shall bring the person before a Justice as soon as practicable, unless the person is released under this Part before appearing before a Justice;*
- (d) **where a person is brought before a Justice under paragraph (b) or (c) the Justice —**
 - (i) ***shall order the release of the person where the Justice considers that the person is no longer intoxicated; or***
 - (ii) ***may give directions to the police officer for the safety and welfare of the person including, if the Justice thinks fit —***
 - (A) ***for the detention of the person by a police officer for as long as it appears to a police officer that the person remains intoxicated; or***
 - (B) ***subject to paragraph (e) releasing the detained person into the care of a person capable of taking adequate care of the detained person;***
- and**
- (e) ***a Justice shall not order the release of a person brought before him under paragraph (b) or (c) into the care of another person if the person in detention objects to being released into the care of that person.***

PROPOSED

19. JP to review detention

- (1) When an apprehended person appears before a JP under section 17 or 18, the JP
 - (a) if satisfied that the person should be released under section 7 -- must direct that the person be released; or
 - (b) in any other case -- may give the officer who has custody of the person such directions to ensure the health and safety of the person as the JP thinks fit, including

- (i) if the apprehended person does not object, a direction that the person be released into the care of a person capable of taking care of the apprehended person;
 - (ii) a direction that the person be released into the care of the person in charge of an appropriate facility;
 - (iii) a direction that the person continue to be detained in accordance with section 7.
- (2) If a JP gives a direction under subsection (1)(b)(iii), the JP may give a direction as to when another request under section 17 may be made.
 - (3) A direction that is given under this section must be complied with by any officer who is detaining the apprehended person.

EXPLANATION

This clause replaces section 53l (d) and (e) (PA), with modern and simplified wording, providing a JP with a number of alternatives, enabling directions to be issued in relation to the release or continued detention of the apprehended person.

CLAUSE 20

EXISTING

Application for Declaration

- 53L.** (1) *A person may, before the expiration of 30 days from the date of his discharge from detention or, from an approved hospital, apply to a court of summary jurisdiction for a declaration that at the time he was taken into detention under section 53A, he was not intoxicated.*
- (2) *Where in proceedings under this section the court is satisfied that the applicant was not intoxicated at the time he was taken into detention it shall make a declaration accordingly.*
- (3) *In any proceedings under this section, the person by whom the applicant was taken into detention and the person by whom the applicant was apprehended, shall be entitled to appear.*
- (4) *A declaration made under this section in relation to the detention of the applicant does not establish that the detention was unlawful.*

PROPOSED

20. Declaration by court as to state of intoxication

- (1) A person who has been apprehended may apply to a Local Court for a declaration that at the time he or she was apprehended, he or she was not intoxicated.
- (2) The application must be made within 30 days after the date when the person was released.
- (3) In proceedings under this section the officer who apprehended the applicant and any officer who detained the applicant are entitled to appear.
- (4) If the Local Court is satisfied that the applicant was not intoxicated at the time he or she was apprehended it is to make a declaration accordingly.
- (5) A declaration made under subsection (4) does not establish that the apprehension was unlawful.

EXPLANATION

This clause replaces section 53L (PA), with modern and simplified wording, providing an ability for any apprehended person, who considers they have been wrongfully detained under this Act, to apply to the Local Court for the issue of a declaration that at the time they were not intoxicated.

CLAUSE 21

EXISTING

When release or review of detained person may be deferred

- 53J.** (1) *Except as provided in subsection (2), a police officer shall not defer—*
- (a) *releasing the detained person under this Part; or*
 - (b) *bringing the detained person before a Justice except for the minimum time necessary to meet reasonable organisational requirements of the police station concerned.*
- (2) *Notwithstanding subsection (1) (a), a police officer may defer releasing a detained person under this Part between the hours of midnight and 7.30 am if release during those hours is not in the best interests of the detained person.*

- (3) *Where a police officer exercises a power in subsection (1) (b) or (2) the reason for the deferral shall be recorded in the register.*

PROPOSED

21. Apprehended person to be taken before a JP promptly

- (1) An authorized officer who under section 13(3), 17(2) or 18 is required to take an apprehended person, or arrange for the person to be taken, before a JP must do so as soon as practicable and must not delay doing so except, in the case of a police officer, for the minimum time necessary to meet the reasonable organizational requirements of the police station concerned.
- (2) The reasons for any delay in taking a person, or arranging for a person to be taken, before a JP must be recorded by the officer.

EXPLANATION

This clause replaces section 53J (PA), with modern and simplified wording, placing a requirement on authorized officers not to delay taking an apprehended persons before a JP, when required to by clauses 13, 17 or 18.

Part 7 - Miscellaneous

CLAUSE 22

EXISTING

N/A

PROPOSED

22. Powers may be exercised without a warrant

An authorized officer does not need a warrant to exercise the powers conferred on the officer by this Act.

EXPLANATION

This clause clarifies that the powers conferred on authorized officers may be exercised without warrant.

CLAUSE 23

EXISTING

N/A

PROPOSED

23. Certain functions may be performed by people providing custodial services

If under section 79 or 80 of the *Court Security and Custodial Services Act 1999* an authorized person (as defined in section 78 of that Act) takes charge of or moves a person who is detained under this Act, the functions conferred on an authorized officer by the sections in the Table to this section may be performed in respect of the detained person by the authorized person.

Table		
s. 7	s. 11(1)	s. 17
s. 8	s. 12(1)	s. 18
s. 9	s. 13	s.19(3)
s. 10	s. 14	s. 21
	s. 15	

EXPLANATION

This provision enables an authorized person employed by a contractor under the *Court Security and Custodial Services Act 1999* to carry out the requirements of the listed sections of this Act.

CLAUSE 24

EXISTING

Protection of detained person

53F. (1) *A person detained under this Part —*

- (a) shall not be charged with an offence;*
- (b) shall not be questioned in relation to an offence; and*
- (c) shall not be photographed or have his or her measurements, palm prints or fingerprints taken,*

while he or she is detained under this Part.

- (2) *Where a person is questioned in contravention of subsection (1) (b) any answer that the person may give to any question shall be inadmissible in evidence against the person in any proceedings.*

PROPOSED

24. Apprehended person not to be charged etc.

- (1) An apprehended person who has not been released
- (a) is not to be questioned in relation to any offence that he or she is suspected of committing;
 - (b) is not to be subject to any procedure the purpose of which is to obtain information that can be used for forensic purposes; and
 - (c) is not to be charged with an offence.
- (2) If subsection (1)(a) is contravened, any answer that the person gives is not admissible in evidence against the person in any proceedings for an offence.
- (3) If subsection (1)(b) is contravened
- (a) the Commissioner of Police must ensure that any information obtained is destroyed; and
 - (b) any information obtained is not admissible in evidence against the person in any proceedings for an offence.

EXPLANATION

This clause replaces section 53F (PA), with modern and simplified wording, ensuring that no person detained under this Act can be questioned or charged with any offence whilst still detained under this Act.

If information is obtained from a detained person it will be inadmissible in evidence against the person. (It is envisaged that a detained person would only be questioned if a life-threatening situation existed, such as a drug overdose of another party, where the intoxicated person may be able to supply information as to the type of substance used, thus assisting medical personnel).

CLAUSE 25

EXISTING

Escape of detained person

53M. *A person who is detained under this Part shall not be regarded as being in legal custody for the purposes of any law relating to escape from legal custody.*

PROPOSED

25. Escape of an apprehended person

For the purposes of any law relating to escape from lawful custody, an apprehended person who has not been released is not to be taken as being in lawful custody.

EXPLANATION

This clause replaces section 53M (PA), with no substantive changes. The clause provides for an apprehended person who escapes from detention under this Act, not to be charged with escaping from lawful custody.

CLAUSE 26

EXISTING

N/A

PROPOSED

26. Approved places

- (1) The Minister, by notice published in the Gazette
 - (a) may approve a place as a place to which an apprehended person may be taken for the purposes of this Act; and
 - (b) in relation to the place, may specify that only certain apprehended people or certain classes of apprehended people may be taken to the place.
- (2) The Minister, by notice published in the Gazette, may amend or cancel a notice made under subsection (1).
- (3) Nothing in this Act permits the detention of an adult or a child in an approved place.

EXPLANATION

This clause provides the necessary authority to allow the Minister to approve places for persons apprehended under the Act to be taken. All facilities will not be suitable for all types of intoxicated persons. For example persons under the influence of certain types of glue become agitated and violent and may require specially equipped rooms to ensure their safety. These rooms may not be available at all facilities.

CLAUSE 27

EXISTING

N/A

PROPOSED

27. Community officers

- (1) The Commissioner of Police may appoint a person to be a community officer.
- (2) The appointment must be in writing and for a term decided by the Commissioner.
- (3) The appointment may state that the person appointed may exercise the powers of a community officer under this Act only in a place, or only in circumstances, specified in the appointment.
- (4) The Commissioner is to issue a community officer with a certificate of appointment.
- (5) The Commissioner, at any time, may amend or cancel such an appointment.
- (6) The Commissioner, in writing, may delegate the functions in this section other than this power or delegation.
- (7) A person who is appointed to be a community officer is not by virtue of the appointment a public service officer under the *Public Sector Management Act 1994*.
- (8) The performance of any function under this Act by a community officer is to be voluntary and for no pay.
- (9) For the purposes of the *Workers' Compensation and Rehabilitation Act 1981*
 - (a) a community officer, while performing functions under this Act, is to be regarded as an employee of the Crown; and

- (b) his or her weekly earnings are to be taken to be the amount that the Minister considers is reasonable in the circumstances.

EXPLANATION

This clause provides the necessary authority for the Commissioner of Police (or his delegate) to appoint community officers, specify the place and circumstances that the appointment covers and withdraw or modify the appointment at any time.

Further, the clause also requires that the community officer is a volunteer. However they are deemed to be employees for the purposes of the Worker's Compensation and Rehabilitation Act at a rate of pay considered reasonable by the Minister. This is to ensure they receive reasonable protection in case of injury.

CLAUSE 28

EXISTING

Indemnity

53K. (1) *A Justice, police officer or any person who performs any function under this Part is not civilly liable for any thing done or omitted to be done by him or her in good faith or in connection with the performance or purported performance of his or her functions under this Part.*

(2) *Subsection (1) does not limit the operation of section 138.*

28. Protection from personal liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the Crown is not relieved from any liability that it may have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- (5) This section does not affect the operation of sections 137 and 138 of the *Police Act 1892*.

EXPLANATION

This clause replaces section 53K (PA), with modern and simplified wording, providing protection from liability for persons carrying out functions under the Act.

CLAUSE 29

EXISTING

N/A

PROPOSED

29. Regulations

- (1) The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for the giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may provide for the manner and form of recording any information that is required to be recorded under this Act.

EXPLANATION

This clause provides an ability to make Regulations under the Act, should they be needed. There may be a future need to regulate appropriate facilities or provide for forms.

CLAUSE 30

EXISTING

N/A

PROPOSED

30. Consequential amendments

The Acts listed in Schedule 1 are amended as set out in that Schedule.

Schedule 1 - Consequential amendments

1. *Court Security and Custodial Services Act 1999*

- (1) The amendments in this clause are to the *Court Security and Custodial Services Act 1999*.

- (2) Section 3 is amended by deleting the definition of “intoxicated detainee” and inserting instead

“**intoxicated detainee**” means a person detained under the *Protective Custody Act 2000*;

- (3) Section 80(a)(iii) is deleted and the following subparagraph is inserted instead -

(iii) an appropriate facility as defined in section 3 of the *Protective Custody Act 2000*;

- (4) Schedule 3 clause 1 (1)(d) is amended by deleting “Part VA of the Police Act 1892.” and inserting instead -

“ the *Protective Custody Act 2000*. “

2. Police Act 1892

Part VA of the *Police Act 1892* is repealed.

3. Young Offenders Act 1994

Section 18 of the *Young Offenders Act 1994* is repealed.

EXPLANATION

This clause provides for -

- (a) a consequential amendment to the *Court Security and Custodial Services Act 1999*, so as to include a definition of “intoxicated detainee” and introduce other requirements of the Bill (see clause 23); and
- (b) repeals section 18 of the *Young Offenders Act 1994*⁶ and Part VA of the *Police Act 1892* which are replaced by this Act.

⁶ Requires police where practicable to attempt to deal with children apprehended under section 53A (PA), similarly to how they will be required to deal with them under clause 11 of this Bill.