

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]
House of Representatives, 16 May 1969

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]
House of Representatives, 12 June 1969

Words struck out by the Committee are shown in italics within double bold round brackets; words inserted are shown in roman underlined with a triple rule.

Hon. Mr Hanan

CRIMINAL JUSTICE AMENDMENT

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A BILL INTITULED

An Act to amend the Criminal Justice Act 1954

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, 5 as follows:

No. 57—3

1. Short Title and commencement—(1) This Act may be cited as the Criminal Justice Amendment Act (*1968*) 1969, and shall be read together with and deemed part of the Criminal Justice Act 1954* (hereinafter referred to as the principal Act). 5

(2) Part I and section 10 of this Act shall come into force on the first day of April, nineteen hundred and (*sixty-nine*) seventy.

(3) Part II of this Act (except section 10) shall come into force on the passing of this Act. 10

PART I

MENTALLY DISORDERED PERSONS

2. New Part VA inserted in principal Act—The principal Act is hereby amended by inserting, after Part V, the following new Part: 15

“PART VA

“MENTALLY DISORDERED PERSONS

“**39A. Interpretation**—(1) In this Part of this Act, unless the context otherwise requires,—

‘Committed patient’ means a committed patient under 20 the Mental Health Act 1968 :

‘Hospital’ means a hospital, other than a security institution, within the meaning of the Mental Health Act 1968 :

‘Mentally disordered’ has the same meaning as in the 25 Mental Health Act 1968 :

‘Superintendent’, in relation to a hospital, has the same meaning as in the Mental Health Act 1968 :

‘Under disability’ means mentally disordered to such an extent as to be unable to plead, or unable to conduct a 30 defence or instruct a solicitor for that purpose, or unable to comprehend the course of proceedings.

“(2) In this Part of this Act, unless the context otherwise requires, references to acquittal on account of insanity include references to the dismissal of an information by a Magistrate’s 35 Court on account of the insanity of the person charged.

*Reprinted with amendments, 1965, Vol. 3, p. 1323
Amendment: 1966, No. 99; 1967, No. 48

“39B. Detention for observation in certain cases—(1) Notwithstanding anything in any enactment, where any person charged with any offence punishable by imprisonment or death is in custody pending a hearing or trial before any Court, and
5 it appears to that Court that he may be under disability, or that at the time of the commission of the alleged offence he may have been insane within the meaning of section 23 of the Crimes Act 1961, the Court may, subject to subsection (3) of
10 this section, make an order that he be removed to a hospital and be detained there under observation pending the hearing or trial.

“(2) Notwithstanding anything in any enactment, where any person convicted of any offence punishable by imprisonment or death appeals to any Court against his conviction
15 and is in custody pending the determination of his appeal, and it appears to that Court that at the time of the hearing or trial he may have been under disability, or that at the time of the commission of the offence he may have been insane within the meaning of section 23 of the Crimes Act 1961,
20 the Court may, subject to subsection (3) of this section, make an order that he be removed to a hospital and be detained there under observation pending the determination of his appeal.

“(3) No Court shall make an order under the foregoing
25 provisions of this section unless it is satisfied that it is necessary or expedient that the person’s mental condition should be under observation in a hospital.

“(4) Every such order shall specify a period, not exceeding one month, during which the person is to be so detained.

30 “(5) The period specified in any such order may from time to time be extended by the Court that made the order, but the total period of detention under the order and under all such extensions shall not exceed two months.

“(6) It shall not be necessary—

35 “(a) For the appellant to be present when an order is made under subsection (2) of this section; or

“(b) For the person charged or the appellant, as the case may be, to be present when an order is extended under subsection (5) of this section—

40 if he is represented by counsel.

“(7) If an order is made under this section, the Court or, in the case of a Magistrate’s Court, any Justice may at any time, and shall on the receipt from the superintendent of the hospital of a report on the person’s mental condition, order

that the person be removed from the hospital and returned to custody for the purposes of the hearing or trial or, as the case may require, for the purposes of the determination of his appeal, notwithstanding that the period for which he has been ordered to be detained in the hospital has not expired. 5

“(8) An order under this section for the detention of a person in a hospital under observation shall be sufficient authority for the administration to him of such medical treatment or procedures as in the opinion of the superintendent are necessary to prevent the deterioration of the person’s mental health. 10

“(9) While any person is detained in a hospital pursuant to an order under this section he shall be deemed to remain in the legal custody of the Superintendent of the penal institution, or of the member of the Police in charge of the police station, in which he was confined before his removal to the hospital pursuant to the order. 15

Cf. 1911, No. 6, s. 37; 1957, No. 35, s. 8

“39c. **Person found under disability**—(1) If at any time after any person has been committed for trial, whether or not he has pleaded to the indictment, a Judge of the Supreme Court is satisfied, on the evidence of two medical practitioners, that the person is under disability, the Judge shall direct a finding to that effect to be recorded. 20 25

“(2) If at the hearing or the preliminary hearing before a Magistrate’s Court of any information in respect of any offence punishable by imprisonment or death the Court is satisfied, on the evidence of two medical practitioners, that the defendant is under disability, the Court shall direct a finding to that effect to be recorded. 30

“(3) The jurisdiction conferred on a Judge or a Magistrate’s Court by the foregoing provisions of this section may be exercised in the absence of the person charged if the Judge or Court is satisfied by the medical evidence that he is too ill to come to Court. 35

“(4) At any trial or hearing the Court, if in its opinion it is to the advantage of the person charged to do so, may postpone consideration of the question whether he is under disability until any time up to the opening of the case for the defence. If before or at that time the person is acquitted, or the information is dismissed, in respect of every offence with which he is charged, that question shall not be determined. 40

“(5) At any preliminary hearing the Court, if in its opinion it is to the advantage of the defendant to do so, may postpone consideration of the question whether he is under disability until any time before it determines whether he is to be committed to the Supreme Court. If before or at that time the defendant is discharged in respect of every offence with which he is charged that question shall not be determined.

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“(6) Where at any preliminary hearing consideration of the question whether the defendant is under disability is postponed until after the conclusion of the evidence and the Court then finds him to be under disability, the Court shall order the proceedings to be adjourned. If when the defendant ceases to be under disability the preliminary hearing is resumed the charge shall be read to the defendant and he shall be given a copy of the depositions and an opportunity to adduce additional evidence or to have the evidence of any witness reheard before he is called on to plead.

Cf. 1911, No. 6, s. 32; 1957, No. 35, s. 5 (1); Criminal Procedure (Insanity) Act 1964, s. 4 (2) (U.K.)

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“39D. When plea of not guilty may be substituted for plea of guilty—(1) If any person indicted for any offence pleads guilty on his arraignment, or if any person is committed to the Supreme Court for sentence on a plea of guilty, or if any person is committed to the Supreme Court for trial and pleads guilty before trial under section 321 of the Crimes Act 1961, and it appears to the Court from the depositions or otherwise that there is evidence that he may have been insane at the time of the alleged offence, the Court, if it thinks fit, may direct that a plea of not guilty shall be recorded instead of a plea of guilty, and thereupon the trial shall proceed as if he had pleaded not guilty.

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“(2) If at the close of the preliminary hearing before a Magistrate’s Court of any information the defendant pleads guilty under section 168 of the Summary Proceedings Act 1957, and the Court has reason to believe that he may have been insane at the time of the commission of the alleged offence, the Court may refuse to accept the plea of guilty and may commit him for trial as if no such plea had been made.

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“(3) If at the hearing before a Magistrate’s Court of any information in respect of any offence the defendant pleads guilty, and the Court has reason to believe that he may have been insane at the time of the commission of the alleged offence, the Court, if it thinks fit, may direct that a plea of not

guilty shall be recorded instead of a plea of guilty, and thereupon the hearing shall proceed as if he had pleaded not guilty.

Cf. 1911, No. 6, s. 33; 1957, No. 35, s. 6

“39E. Finding of insanity—If on the trial on indictment of any person charged with an offence it appears in evidence that he was insane at the time of the commission of the alleged offence, and he is acquitted, the jury shall be required to find specially whether he was insane at that time, and to declare whether he was acquitted on account of his insanity.

Cf. 1911, No. 6, s. 31 (1)

“39F. Appeal against acquittal on account of insanity—
 (1) A person who is acquitted on account of his insanity shall have the same right of appeal against the jury’s verdict or the decision of the Magistrate’s Court, as the case may be, as he would have if the verdict or decision were a conviction; and the provisions of any enactment relating to appeals, so far as they are applicable and subject to any necessary modifications and to the provisions of this section, shall apply accordingly.

“(2) If on any such appeal the finding of insanity is challenged by the appellant, and the Court of Appeal or the Supreme Court, as the case may be (in this section referred to as the appellate Court), is of opinion that the finding ought not to stand, and is satisfied that in the absence of such a finding the proper verdict or decision would have been that the appellant was guilty of an offence (whether that with which he was charged or any other offence of which he could have been found guilty at the trial), the appellate Court shall substitute for the verdict or decision given a verdict of guilty of or a conviction for that offence. Thereupon the appellate Court shall have the same powers of sentencing or otherwise dealing with the appellant, and such other powers, as the Court before or by which he was tried would have had if the substituted verdict or decision had been given at the trial.

“(3) Except as provided in subsection (2) of this section, on any such appeal the appellate Court may—

“(a) Allow the appeal, and direct that a verdict of acquittal or a decision to dismiss the information be substituted for the verdict or decision given at the trial:

“(b) Dismiss the appeal:

“(c) Exercise any power, whether to direct a new trial or a rehearing or otherwise, that it could exercise if the appeal were an appeal against conviction.

“(4) No such appeal shall be allowed by reason only of the fact that the appellant ought to have been acquitted of the offence charged, if the appellate Court is of opinion that, but for his insanity, the proper verdict or decision would have
5 been that he was guilty of some other offence; but the appellate Court may direct that the other offence be substituted, in the record of the verdict or decision, for the offence charged.

“(5) Unless the appellate Court otherwise directs, the term
10 of any sentence passed by it pursuant to subsection (2) of this section shall begin to run from the time when it would have begun to run if passed on the date on which the verdict or decision appealed against was given.

“(6) An appellant under this section in respect of whom an
15 order of detention has been made under section 39G of this Act may be granted bail in the same manner as if he had been convicted and sentenced to a term of imprisonment. If he is not released on bail he shall be detained, pending the determination of his appeal, as required by the order:

20 “Provided that the appellate Court, or the Judge who presided at the trial in the Supreme Court or, as the case may be, the Magistrate or Justices who presided over the Court whose decision is appealed against, may make such other order as may be thought fit for the custody of the appellant if he
25 is not released on bail pending the determination of his appeal.

Cf. Criminal Procedure (Insanity) Act 1964, ss. 2, 3 (U.K.)

“39G. Order to be made if person under disability or insane—(1) Subject to subsection (2) of this section, if any
30 person charged with any offence—

“(a) Is found to be under disability; or

“(b) Is acquitted on account of his insanity—

the Court shall make an order that he be detained in a hospital as a special patient under the Mental Health Act 1968.

35 “(2) If the person so charged is acquitted on account of his insanity, the Court, having regard to all the circumstances of the case, and being satisfied, after hearing medical evidence, that it would be safe in the interests of the public to make an order under this subsection, may in its discretion,
40 instead of making an order under subsection (1) of this section,—

“(a) Make an order that the person be detained in a hospital as a committed patient; or

“(b) Make an order for his immediate release; or

“(c) If the person is subject to a sentence of imprisonment or detention that has not expired, decide not to make any order under this section.

“(3) If an order is made under subsection (1) of this section in respect of a person who is subject to a sentence of imprisonment or detention, the term of that sentence shall, except during any period while he is at large after an escape, continue to run during the currency of the order, and on his discharge from the hospital in which he is detained pursuant to the order he may, unless the term of the sentence has sooner expired, be removed to and received in a penal institution or other appropriate place to undergo the remainder of the sentence. 5 10

Cf. 1911, No. 6, ss. 31 (2), 32; 1957, No. 35, ss. 5 (1), 19 (1) (b) 15

“39H. Duration of order for detention as special patient where person under disability—(1) If an order is made by the Court pursuant to subsection (1) of section 39G of this Act in respect of a person who has been found to be under disability, the order shall, subject to section 74 of the Mental Health Act 1968, continue in force until— 20

“(a) He is brought before a Court pursuant to a direction given by the Minister of Justice under this section; or 25

“(b) A direction is given under this section that he shall thereafter be held as a committed patient.

“(2) If at any time while the order continues in force a certificate is given by two medical practitioners, or by the superintendent of a psychiatric hospital within the meaning of the Mental Health Act 1968, that the person is no longer under disability, the Minister of Justice shall either direct that he be brought before the appropriate Court or direct that he shall thereafter be held as a committed patient. 30

“(3) If at any time while the order continues in force the Governor-General in Council (if the case is one to which subsection (4) of this section applies), or the Minister of Health acting with the concurrence of the Minister of Justice (in any other case), is satisfied, on the recommendation of two medical practitioners, that it is no longer necessary that the person, though still under disability, should be subject to the order, a direction may be given that he shall thereafter be held as a committed patient: 35 40

“Provided that no such direction shall be given in respect of a person who is subject to a sentence of imprisonment or detention that has not expired.

5 “(4) The power to direct under subsection (3) of this section that the person shall thereafter be held as a committed patient shall be exercisable by the Governor-General in Council if the offence with which the person was charged is, at the time of the direction, punishable by death or by imprisonment for life or for a term of fourteen years.

10 “(5) On the giving under this section of any direction that the patient shall be held as a committed patient, the proceedings in which the order for detention was made shall be stayed, and no further proceedings shall be taken against the person in respect of the offence charged in those proceed-
15 ings.

Cf. 1911, No. 6, s. 35; 1957, No. 35, s. 7

“39t. Duration of order for detention as special patient where person acquitted on account of insanity—(1) If an order is made by the Court pursuant to subsection (1) of section 39g of this Act in respect of a person who has been
20 acquitted on account of his insanity, the order shall continue in force until—

“(a) A direction is given under this section that he shall thereafter be held as a committed patient; or

25 “(b) He is discharged pursuant to a direction under this section.

“(2) If at any time while the order continues in force the Governor-General in Council (if the case is one to which subsection (3) of this section applies) or the Minister of
30 Health (in any other case) is satisfied, on the recommendation of two medical practitioners, that the person’s mental condition no longer requires, either in his own interest or for the safety of the public, that he should be subject to the order, a direction may be given that he shall thereafter
35 be held as a committed patient, or that he be discharged by the superintendent of the hospital:

“Provided that no such direction shall be given in respect of a person who is subject to a sentence of imprisonment or detention that has not expired.

40 “(3) The power to give any direction under this section shall be exercisable by the Governor-General in Council if the offence with which the person was charged is, at the time of the direction, punishable by death or by imprisonment for life or for a term of fourteen years.

45 Cf. 1911, No. 6, s. 36 (1), (4)

“39J. Power of Court to commit to institution on conviction—When a person is convicted of any offence the Court, on being satisfied by the production of a certificate by two medical practitioners that he is mentally disordered, and that his mental condition requires that he should be detained in a hospital either in his own interest or for the safety of the public, may instead of passing sentence on him make an order that he be detained in a hospital as a committed patient:

“Provided that no order shall be made under this section in respect of a person who is subject to a sentence of imprisonment or detention that has not expired.

“39K. Notices to be sent to Public Trustee or Maori Trustee of certain orders—Whenever the Court makes an order under section 39G or section 39J of this Act for the detention of any person in a hospital as a special patient or, as the case may be, as a committed patient, the Registrar of the Court shall forthwith send notice of the order to the Public Trustee or, if the person is a Maori within the meaning of the Maori Affairs Act 1953, to the Maori Trustee; and on receipt by the Public Trustee or the Maori Trustee of the notice the provisions of Part VII of the Mental Health Act 1968 or, as the case may require, Part X of the Maori Affairs Act 1953 shall apply to the person as a protected patient within the meaning of the said Part VII or as a person under disability within the meaning of the said Part X.”

Cf. 1911, No. 6, s. 87 (1)

3. Powers of Supreme Court on appeal against conviction—Section 121 of the Summary Proceedings Act 1957 is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) If in the case of an appeal against conviction it appears to the Court that the appellant was insane at the time of the commission of the offence and that the information should have been dismissed on account of the appellant’s insanity, the Court may quash the conviction; and thereupon sections 39G, 39I, and 39K of the Criminal Justice Act 1954 shall apply, as far as they are applicable, as if the information had been so dismissed.”

4. Issue of warrant where person committed for trial—
Section 171 of the Summary Proceedings Act 1957 is hereby amended by adding to subsection (3) the following proviso:

5 “Provided that if the Court is satisfied, on the production
of a certificate or certificates by two medical practitioners,
that a defendant who is committed for trial is mentally dis-
ordered within the meaning of the Mental Health Act 1968,
and that his mental condition requires that in his own interest
he should be detained in a psychiatric hospital within the
10 meaning of that Act instead of in a prison, the Court may,
instead of issuing a warrant under this subsection, make an
order for the person’s detention in a psychiatric hospital
pending his trial.”

15 **5. Consequential amendments—**(1) The Crimes Act 1961
is hereby amended in the manner indicated in the Schedule to
this Act.

(2) The Extradition Act 1965 is hereby amended—

20 (a) By omitting from subsection (3) of section 5 the words
“institution under section 31 of the Mental Health
Act 1911”, and substituting the words “hospital
under Part VA of the Criminal Justice Act 1954”:

25 (b) By omitting from subsection (4) of section 5 the words
“section 38 of the Mental Health Act 1911”, and
substituting the words “Part IV of the Mental
Health Act 1968”:

30 (c) By omitting from subsection (4) of section 8 the words
“sections 32, 34, and 35 of the Mental Health Act
1911”, and substituting the words “Part VA of the
Criminal Justice Act 1954”.

(3) Section 320 of the Niue Act 1966 is hereby amended—

35 (a) By omitting from paragraph (f) of subsection (2)
the words “to sections 31 and 38 of the Mental
Health Act 1911”, and substituting the words “(as
amended by section 5 (2) of the Criminal Justice
Amendment Act 1968) to Part VA of the Criminal
Justice Act 1954 and Part IV of the Mental Health
Act 1968”:

40 (b) By omitting from paragraph (h) of subsection (2)
the words “to sections 32, 34, and 35 of the Mental
Health Act 1911”, and substituting the words “(as
amended by section 5 (2) of the Criminal Justice
Amendment Act 1968) to Part VA of the Criminal
Justice Act 1954”.

6. Transitional provisions—(1) The provisions of Part VA of the principal Act (as inserted by section 2 of this Act) shall apply, so far as they are applicable, to all proceedings commenced or in progress at the commencement of this Part of this Act. 5

(2) Without limiting the generality of subsection (1) of this section—

(a) If at the commencement of this ((Act)) Part any

person is subject to an order made by a Court under section 37 of the Mental Health Act 1911, the provisions of section 39B of the principal Act (as so inserted) and the provisions of the Mental Health Act 1968 shall apply, so far as they are applicable, to that order and to that person as if the order had been made under the said section 39B, and, in the case of an order relating to a person awaiting sentence, as if for the words “the hearing or trial” in subsection (7) of the said section 39B there were substituted the words “his sentence”, and, in any case where the order would otherwise expire on a date later than two months after the commencement of this ((Act)) Part, as if it had been made at the commencement of this ((Act)) Part: 10 15 20

(b) The provisions of the said section 39B shall apply, so far as they are applicable, in respect of any person who before the commencement of this ((Act)) Part has been convicted of any offence punishable by imprisonment or death and has appealed against his conviction or sentence and is in custody pending the determination of his appeal. 25 30

(3) Without limiting the generality of subsection (1) of this section, the provisions of section 39F of the principal Act (as so inserted) shall apply with the necessary modifications in respect of any person who before the commencement of this ((Act)) Part has been acquitted by a jury on account of his insanity, if the time prescribed by the Crimes Act 1961 (as applied by that section) for giving notice of appeal or of application for leave to appeal has not expired before the commencement of this ((Act)) Part. 35

(4) If at the commencement of this ((Act)) Part any person is subject to an order made by a Court under section 31 or section 32 of the Mental Health Act 1911, or by the Minister of Justice under section 34 of that Act, that person shall for 40

the purposes of this Act and of any other enactment be deemed—

- 5 (a) To be subject to an order made under subsection (1) of section 39G of the principal Act (as so inserted) after having been found under disability or, as the case may require, after having been acquitted on account of his insanity; and
- 10 (b) To be detained or, as the case may require, liable to be detained, or absent on leave pursuant to section 47 of the Mental Health Act 1968, accordingly.
- (5) If at the commencement of this Act any person to whom subsection (4) of this section applies is detained in a penal institution, he shall forthwith be removed to such hospital within the meaning of the Mental Health Act 1968 as the Director of the Division of Mental Health of the Department of Health directs; and such direction shall have the same effect as a direction given under section 46 of the Mental Health Act 1968.
- 20 (6) If at the commencement of this Act any person is subject to an order made by a Judge under paragraph (c) of subsection (4) of section 178 of the Crimes Act 1961, that person shall for the purposes of this Act and of any other enactment be deemed to be subject to an order made pursuant to the said paragraph (c) as substituted by
- 25 subsection (1) of section 5 of this Act.
- (7) The amendments made by sections 3 to 5 of this Act shall apply, so far as they are applicable, to all proceedings commenced or in progress at the commencement of this Act.

PART II

30 MISCELLANEOUS AMENDMENTS

7. Breach of conditions of probation—Section 10 of the principal Act is hereby amended by omitting from subsection (1) (as amended by section 7 (1) of the Decimal Currency Act 1964) the words “forty dollars”, and substituting the

35 words “two hundred dollars”.

8. Offences in connection with periodic detention—Section 21 of the Criminal Justice Amendment Act 1962 is hereby amended by omitting from subsection (1) (as amended by section 7 (1) of the Decimal Currency Act 1964) the words

40 “one hundred dollars”, and substituting the words “two hundred dollars”.

9. Power of Court to prohibit publication of names—

(1) The principal Act is hereby amended by repealing section 46, and substituting the following section:

“46. (1) Except as otherwise expressly provided in any enactment, the Court in its discretion may make an order prohibiting the publication, in any report relating to any proceedings in respect of any offence, of the name of the person accused or convicted of the offence, or the name of any other person connected with the proceedings. 5

“(2) Any such order may be made to have effect only for a limited period, whether fixed in the order or to terminate in accordance with the order. If it is not so made it shall have effect permanently. 10

“(3) If any such order is expressed to have effect until the determination of an intended appeal, and no notice of appeal or of application for leave to appeal is filed or given within the time limited or allowed by or under the relevant enactment, the order shall cease to have effect on the expiry of that time; but if such a notice is given within that time the order shall cease to have effect on the determination of the appeal or on the occurrence or non-occurrence of any event as a result of which the proceedings or prospective proceedings are brought to an end. 15 20

“(4) The making under this section of an order having effect only for a limited period shall not prevent any Court from making under this section any further order having effect either for a limited period or permanently. 25

“(5) While any order under this section continues to have effect, it shall not be lawful to publish the name of any person to whom the order relates, or any name or particulars likely to lead to his identification. 30

“(6) Every person who acts in contravention of subsection (5) of this section commits an offence and is liable on summary conviction to a fine not exceeding one hundred dollars.” 35

(2) Section 9 of the Criminal Justice Amendment Act 1967 is hereby consequentially repealed.

10. Power of Court to require psychiatric report—The principal Act is hereby further amended by inserting, after section 47, the following section: 40

“47A. (1) Notwithstanding anything in any enactment, where any person charged with or convicted of any offence punishable by imprisonment or death is in custody—

- 5 “(a) While awaiting or during the course of the hearing or trial before any Court; or
“(b) While awaiting sentence by any Court; or
“(c) Pending the determination of any appeal to any Court against his conviction—

10 and it appears to that Court to be expedient that a psychiatric report on the person’s mental condition should be made available to the Court, the Court may exercise any of the powers conferred by subsection (2) of this section.

“(2) The Court may—

- 15 “(a) Make it a condition of any grant of bail to the person that he shall attend, for psychiatric examination by a medical practitioner, at a psychiatric clinic approved by the Court; or
20 “(b) Make an order committing him to a penal institution for such period, not exceeding fourteen days, as the Court thinks fit, and for his psychiatric examination during that period by a medical practitioner approved by the Court; or
25 “(c) Where a medical practitioner has certified or given evidence to the effect that a psychiatric examination of the person is requisite and it appears to the Court that it would not be practicable for the examination to be carried out if he were committed to a penal institution, or where a psychiatric report (whether obtained pursuant to paragraph (a)
30 or paragraph (b) of this subsection or otherwise) recommending his detention in a psychiatric hospital for further observation is available to the Court, make an order for his detention and examination in a psychiatric hospital for such period, not
35 exceeding one month, as the Court thinks fit.

“(3) Any person who is subject to an order made under paragraph (b) of subsection (2) of this section may from time to time, as the case may require, be removed by or under the direction of the Superintendent of the penal institution
40 to a psychiatric hospital for the purposes of his examination, and may in like manner be taken back to the institution. On any such removal he shall not be detained in the psychiatric hospital overnight; and he shall be deemed to continue to be in the legal custody of the Superintendent of the penal insti-
45 tution while he is absent from the penal institution.

“(4) If an order is made under paragraph (c) of subsection (2) of this section, the Court or, in the case of a Magistrate’s Court, any Justice may at any time, and shall on the receipt from the superintendent of the psychiatric hospital of a report on the person’s mental condition, order that the person be removed from the hospital and returned to custody for the purposes of the hearing or trial, or for the purpose of his being sentenced, or for the purposes of the determination of his appeal, as the case may require, notwithstanding that the period for which he has been ordered to be detained in the hospital has not expired. 5 10

“(5) Nothing in this section shall operate to prevent the treatment of any person, with his consent, during the period of his detention pursuant to an order under paragraph (c) of subsection (2) of this section. 15

“(6) While any person is detained in a psychiatric hospital pursuant to an order under paragraph (c) of subsection (2) of this section he shall be deemed to continue to be in the legal custody of the Superintendent of the penal institution, or of the member of the Police in charge of the police station, in which he was confined before his removal to the hospital pursuant to the order. 20

“(7) This section shall not affect the powers of a Court under section 39B of this Act in any case to which that section applies. 25

“(8) In this section, the expression ‘psychiatric hospital’ has the same meaning as in the Mental Health Act 1968.”

11. Power of Court to disqualify offenders from driving motor vehicles—(1) The principal Act (as amended by section 201 (1) of the Transport Act 1962) is hereby further amended by inserting, after section 44, the following section: 30

“44A. (1) This section applies to the following offences, namely:

Struck Out

“(a) Any offence against section 3A of the Police Offences Act 1927 (which section was enacted by section 3 (1) of the Police Offences Amendment Act 1955 and relates to the throwing or leaving of bottles or glass on or in a public place): 35

“(b) Any offence against subsection (2) of section 3E of the Police Offences Act 1927 (which subsection was enacted by section 3 (1) of the Police Offences Amendment Act 1960 and relates to the drinking of liquor in a public place, or the possession or 40

control in a public place of liquor intended for consumption therein, by persons under the age of twenty-one years) :

5 “(c) Any offence punishable by imprisonment, not being an offence against the Transport Act 1962.

“(2) Where a person is convicted of any offence to which this section applies and—

10 “(a) At the time of the commission of the offence the offender was the driver or person in charge of a motor vehicle; or

“(b) In the opinion of the Court the commission of the offence was facilitated by the use of a motor vehicle by the offender, whether or not he was the driver or person in charge; or

15 “(c) A motor vehicle was used by the offender, whether or not he was the driver or person in charge, for the purpose of facilitating his flight or avoiding his detection or arrest after the commission of the offence; or

20 “(d) The offence was committed in, on, or from a motor vehicle; or

“(e) The offence was committed in respect of a motor vehicle—

25 the Court, in addition to or instead of passing any other sentence, may in its discretion order the offender to be disqualified from holding or obtaining a driver's licence, within the meaning of the Transport Act 1962, for such period as the Court thinks fit, but not exceeding three years.

30 “(3) Unless the Court directs that the period of disqualification shall commence on a later date, that period shall commence on the day of the making of the order; but that fact shall not render the offender liable to prosecution for having driven a motor vehicle during any part of that day before the order was made.

35 “(4) Where by an order made under this section any person is disqualified from holding or obtaining a driver's licence, the provisions of sections 35 to 35B and 37 to 51 of the Transport Act 1962 (which relate to the disqualification of drivers and to disqualification orders) shall apply, so far as
40 they are applicable, and subject to all necessary modifications, as if the order had been made under Part IV of that Act.

“(5) Nothing in this section shall limit or affect any power of the Court under any other enactment to make an order disqualifying any person from holding or obtaining a driver's
45 licence.”

(2) Section 6 of the principal Act is hereby amended by adding to subsection (2) the words “or make an order under section 44A of this Act disqualifying him from holding or obtaining a driver’s licence, or may impose such a fine and make such an order”.

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(3) Section 11 of the principal Act (as amended by section 2 of the Criminal Justice Amendment Act 1960) is hereby further amended—

(a) By inserting in subsection (1), after the words “was also sentenced to pay a fine”, the words “or ordered under section 44A of this Act to be disqualified from holding or obtaining a driver’s licence”:

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(b) By inserting in subsection (4), after the words “other than by sentencing him to pay a further fine”, the words “and, in any case where he was ordered under section 44A of this Act to be disqualified from holding or obtaining a driver’s licence, other than by again ordering him to be so disqualified”.

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(4) The Transport Act 1962 is hereby amended—

(a) By repealing paragraph (b) of section 30, paragraph (b) of subsection (1) of section 33, so much of Part I of the Third Schedule as relates to section 228 of the Crimes Act 1961, and Part II of the Third Schedule:

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(b) By omitting from paragraph (a) of section 30, and also from paragraph (a) of subsection (1) of section 33, the word “or”:

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(c) By omitting from section 45 the words “or Part II”.

(5) Without limiting the provisions of the Acts Interpretation Act 1924, if at the commencement of this section any person is subject to an order, made under Part IV of the Transport Act 1962, that could have been made under section 44A of the principal Act (as enacted by this section), he shall be deemed for the purposes of the said section 44A to be subject to an order made under that section as if that section had been in force when the first-mentioned order was made.

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SCHEDULE

Section 5 (1)

AMENDMENTS OF THE CRIMES ACT 1961

Section Amended	Amendment
Section 122	<p>By omitting from paragraph (a) the words "Part IV of the Mental Health Act 1911, to or from any institution under that Act", and substituting the words "<u>Part IV of the Mental Health Act 1968 or Part VA of the Criminal Justice Act 1954</u> to or from any hospital within the meaning of the <u>Mental Health Act 1968</u>".</p> <p>By omitting from paragraph (b) the words "any institution within the meaning of the said Act", and substituting the words "any hospital within the meaning of the <u>Mental Health Act 1968</u>".</p> <p>By inserting in paragraph (b), after the words "the said Part IV", the words "<u>or the said Part VA</u>".</p>
Section 178	<p>By omitting from subsection (4) the words "notwithstanding anything in subsection (2) of section 31 of the Mental Health Act 1911".</p> <p>By omitting from paragraphs (a) and (b) of subsection (4) the words "institution within the meaning of the Mental Health Act 1911", and substituting in each case the words "hospital within the meaning of the <u>Mental Health Act 1968</u>".</p> <p>By repealing paragraph (c) of subsection (4), and substituting the following paragraph: "(c) Unless each of the medical practitioners certifies as aforesaid, <u>section 39g of the Criminal Justice Act 1954</u> shall apply, so far as it is applicable, as if the references in that section to the Court were references to the Judge."</p> <p>By repealing subsections (5) and (6), and substituting the following subsections: "(5) Where pursuant to paragraph (c) of subsection (4) of this section the Judge makes an order that the woman be detained in a hospital as a special patient under the <u>Mental Health Act 1968</u>, <u>sections 39i and 39k of the Criminal Justice Act 1954</u> shall apply; except that any</p>

SCHEDULE—*continued*AMENDMENTS OF THE CRIMES ACT 1961—*continued*

Section Amended	Amendment
Section 178— <i>continued</i>	<p>direction under the said <u>section 39i</u> shall be given by the Minister of Health and not by the Governor-General in Council.</p> <p>“(6) Where pursuant to this section any woman is detained in a hospital within the meaning of the <u>Mental Health Act 1968</u> as a special patient or as a committed patient the power to grant leave of absence under <u>section 47</u> of that Act shall be exercisable by the Minister of Health and not by the Governor-General in Council.”</p> <p>By omitting from subsection (7) the words “<u>Part IV of the Mental Health Act 1911</u>”, and substituting the words “<u>Part VA of the Criminal Justice Act 1954</u>”.</p>
Section 386	<p>By repealing subsection (4), and substituting the following subsection:</p> <p>“(4) If on any such appeal it appears to the Court of Appeal that the appellant was insane at the time of the commission of the offence and should have been acquitted on account of his insanity, the Court may quash the conviction; and thereupon <u>sections 39g, 39i, and 39k of the Criminal Justice Act 1954</u> shall apply, so far as they are applicable, as if he had been so acquitted and as if references in any of those sections to the Court were references to the Court of Appeal.”</p>