

**ANTIGUA AND BARBUDA**



**THE CRIMINAL RECORDS (REHABILITATION OF OFFENDERS) ACT, 2013**

**No. 19 of 2013**

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**THE CRIMINAL RECORDS (REHABILITATION OF OFFENDERS) ACT, 2013**

**ARRANGEMENT**

**Sections**

**PART I**

**PRELIMINARY**

1. Short title
2. Interpretation

**PART II**

**SPENT CONVICTIONS**

3. Spent convictions
4. Rehabilitation periods
5. Effect of rehabilitation
6. Limitation on rehabilitation under this Act
7. Disclosure of spent convictions
8. Defamation actions

**PART III**

**ESTABLISHMENT OF COMMITTEE AND EXPUNGEMENT OF SPENT  
CONVICTIONS**

9. Application for expungement of spent convictions
10. Establishment of Criminal Records (Rehabilitation of Offenders) Committee and functions
11. Composition and procedure of Committee
12. Spent convictions to be expunged from the record
13. Committee to make enquiries
14. Directions for expungement of spent conviction by the Committee from the records
15. Effect of direction by the Committee
16. Legal status of person whose conviction has been expunged from the records
17. Committee to inform applicant in writing
18. Applicant may reapply where application rejected

**PART IV**

**MISCELLANEOUS**

19. Act not to affect Governor-General's right
20. Unauthorised disclosure
21. Exclusion from employment
22. Register and custody of records
23. Regulations and orders

**Schedule**

[ L.S.]



I Assent,

**Louise Lake-Tack,**  
*Governor-General.*

16th January, 2014.

**ANTIGUA AND BARBUDA**

**THE CRIMINAL RECORDS (REHABILITATION OF OFFENDERS) ACT, 2013**

**No. 19 of 2013**

**AN ACT** to make provision for certain criminal convictions of offenders to become spent, to be expunged from the records and for matters related thereto.

**ENACTED** by the Parliament of Antigua and Barbuda as follows—

**PART I**

**PRELIMINARY**

**1. Short title**

This Act may be cited as the Criminal Records (Rehabilitation of Offenders) Act 2013.

**2. Interpretation**

In this Act—

“Committee” means the Criminal Records (Rehabilitation of Offenders) Committee established pursuant to section 10;

“conviction” includes any finding in any criminal proceeding, that an offence was committed by a person in Antigua and Barbuda;

“Minister” means the Minister responsible for Legal Affairs;

“Police Force” means the Royal Police Force of Antigua and Barbuda;

“records” means the records kept and maintained by the Criminal Records Office of the Police Force in relation to the criminal convictions of offenders;

“Register” means a Register containing the record of all spent convictions as referred to in section 24;

“rehabilitation period” has the meaning assigned in section 4;

“sentence” includes any order made by a court dealing with a person in respect of his conviction of any offence other than an order for committal or any other order made in default of payment of any fine or other sum adjudged to be paid by or imposed on a conviction or for want of sufficient distress to satisfy any such fine or other sum; and

“spent conviction” has the meaning assigned in section 3.

## **PART II**

### **SPENT CONVICTIONS**

#### **3. Spent convictions**

(1) Subject to the provisions of this Act, where a person—

(a) has been convicted of a criminal offence either before or after the date of the commencement of this Act; and

(b) has not, since the conviction referred to in paragraph (a), been convicted of any other offence during the relevant rehabilitation period,

that person shall be treated as a rehabilitated person in respect of the offence of which he was convicted and the conviction shall be treated as spent.

(2) Notwithstanding subsection (1), a person referred to in that subsection shall not be treated as a rehabilitated person within the meaning of this Act unless the—

(a) conviction is the first conviction of that person; and

(b) person has served or otherwise undergone or complied with any sentence imposed on him in respect of that conviction.

(3) Where a person was convicted of a criminal offence either before or after the date of the commencement of this Act, the provisions of this Act shall be deemed to have been in force at the time of the conviction and continued in force.

(4) Notwithstanding subsection (2), where a person was under the age of 18 years at the time of conviction of—

- (a) a summary offence and has not been convicted of any other offence between the time of his eighteenth and twenty-first year; or
- (b) an indictable offence and has not been convicted of any other offence between the time of his eighteenth and twenty-third year, then, for the purposes of this Act,

the person shall be treated as a rehabilitated person and the conviction or convictions shall in either case, be treated as spent.

(5) Notwithstanding subsection (2), where a person has been convicted of one or more offences—

- (a) for which the sentence imposed was imprisonment for a term not exceeding 3 years or for terms that together do not exceed 3 years; or
- (b) for which no custodial sentence was imposed, and has not since the last conviction been convicted of any other offence during the relevant rehabilitation period referred to in section 4, that person,

shall be treated as a rehabilitated person in respect of those offences and the convictions shall be treated as spent.

(6) Notwithstanding the provisions of the Probation of Offenders Act, Cap. 345, a conviction in respect of which an order is made placing the person convicted on probation or discharging him absolutely or conditionally shall, for the purposes of this Act, be treated as a conviction and the person may become a rehabilitated person in respect of the conviction within the meaning of this Act.

#### **4. Rehabilitation periods**

(1) For the purposes of this Act, the rehabilitation period applicable to a sentence specified in column 1 of Part I of the Schedule is the period specified in column 2 of Part I of that Schedule in relation to that sentence.

(2) Subject to subsection (3), a rehabilitation period referred to in subsection (1) shall commence in the case of a—

- (a) custodial sentence, from the date of the release from custody; and
- (b) non-custodial sentence, from the date of the conviction.

(3) Notwithstanding subsection (2), where in respect of a conviction an order was made imposing on the person convicted any disqualification, disability, prohibition or other penalty, the rehabilitation period applicable to such sentence shall be a period beginning on the date on which the disqualification, disability, prohibition or penalty as the case may be, ceases or ceased to have effect.

(4) Where more than one sentence is imposed in respect of a conviction in separate proceedings and the person convicted is not excluded from rehabilitation under this Act, then, if the periods applicable to those sentences in accordance with the Schedule differ, the rehabilitation

period applicable to the conviction shall be the longer or the longest, as the case may be, of those periods.

(5) The Minister may by Order subject to affirmative resolution substitute different periods or terms for any of the periods mentioned in the Schedule.

## **5. Effect of rehabilitation**

(1) Subject to the provisions of this Act, a person who is a rehabilitated person within the meaning of this Act shall be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or been sentenced for an offence which was the subject of a conviction.

(2) Notwithstanding the provisions of any other enactment to the contrary—

(a) no evidence shall be admissible in any proceedings before a judicial authority to prove that any such person has committed, been charged with, prosecuted for, convicted of or sentenced for any offence which was the subject of a spent conviction; and

(b) a person shall not, in any such proceedings, be asked, and, if asked, shall not be required to answer, any questions relating to his past which cannot be answered without acknowledging or referring to a spent conviction or spent convictions or any circumstances ancillary thereto.

(3) Subject to the provisions of this Act, where a question seeking information with respect to a person's previous convictions, offences, conduct or circumstances is put to him or to any other person otherwise than in proceedings before a court—

(a) the question shall be treated as not relating to spent convictions or to any circumstances ancillary to spent convictions, and the answer thereto may be framed accordingly; and

(b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose a spent conviction in his answer to the question.

(4) Subject to the provisions of this Act—

(a) any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose a spent conviction whether or not the conviction is his own; and

(b) a conviction which has become spent, or any failure to disclose a spent conviction, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment.

(4) The Minister may by Order subject to affirmative resolution make such provisions as seem to him appropriate for excluding or modifying the application of any of the provisions of this section as may be specified in the Order.

(5) For the purposes of this section any of the following are circumstances ancillary to a conviction, any—

- (a) offence which was the subject of that conviction;
- (b) conduct constituting the offence;
- (c) process or proceedings preliminary to that conviction;
- (d) sentence imposed in respect of that conviction and anything done in pursuance of or undergone in compliance with any such sentence; and
- (e) proceedings, whether by way of appeal or otherwise for reviewing that conviction;

#### **6. Limitation on rehabilitation under this Act**

(1) Nothing in section 5(1) shall affect—

- (a) the enforcement by any process or proceedings of any fine or other sum adjudged to be paid by or imposed on a spent conviction;
- (b) the issue of any process for the purpose of proceedings in respect of any breach of a condition or requirement applicable to a sentence imposed in respect of a spent conviction;
- (c) the operation of any enactment by virtue of which, in consequence of any conviction, a person is subject otherwise than by way of sentence, to any disqualification, disability, prohibition or other penalty the period of which extends beyond the rehabilitation period applicable in accordance with section 5 to the conviction;
- (d) any civil or criminal proceedings where justice cannot be done without admitting or requiring evidence relating to a person's spent convictions; and
- (e) the disclosure of previous convictions where the person is informed by a person duly authorised to do so that spent convictions are to be disclosed for the purpose of safeguarding national security.

(2) Nothing in section 6 shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's previous convictions or to circumstances ancillary thereto in any—

- (a) criminal proceedings before a court including any appeal or reference in a criminal matter;
- (b) service disciplinary proceedings or in any proceedings on appeal from any service disciplinary proceedings;

- (c) proceedings or enquiries relating to adoption or to the guardianship, wardship, marriage, custody, care and control of, access to, any minor, or to the provision by any person of accommodation, care or schooling for minors;
- (d) proceedings in which he is a party or witness, if, on the occasion when the issue or the admission or requirement of the evidence falls to be determined, he consents to the determination of the issue or, as the case may be, the admission or requirement of the evidence notwithstanding the provisions of section 6.

## **7. Disclosure of spent convictions**

(1) A person who is duly authorised by a professional body, office of employment or business listed in the Schedule to make inquiries about a potential employee, may apply to the Minister for the disclosure of a spent conviction of the potential employee.

(2) The Minister, upon receiving an application made under subsection (1) may grant or refuse such disclosure, after considering all relevant factors regarding the person who is a potential employee and the nature of the position of employment.

(3) The Minister may, by Order, subject to negative resolution, amend the Schedule.

(4) For the purposes of this section, a “potential employee” is a person who is being considered for a position of employment by a professional body, office of employment or business as listed in the Schedule.

## **8. Defamation actions**

(1) This section applies to any action for defamation begun after the date of the commencement of this Act by a rehabilitated person and founded upon the publication of any matter imputing that the rehabilitated person has committed or has been charged with or prosecuted for or convicted of or sentenced for an offence which was the subject of a spent conviction.

(2) A defendant shall not be entitled to rely on any defence of justification or fair comment or of absolute or qualified privilege if it is proved that the publication was made with malice.

(3) This section shall not apply to any action where the publication complained of took place before the conviction in question became spent.

### **PART III**

#### **ESTABLISHMENT OF COMMITTEE AND EXPUNGEMENT OF SPENT CONVICTIONS**

##### **9. Application for expungement of spent convictions**

A person who does not qualify to have his conviction deemed as spent pursuant to section 3 and expunged under the provisions of this Act, may apply to the Attorney General to have his application considered by the Committee, for such expungement.

##### **10. Establishment of Criminal Records (Rehabilitation of Offenders) Committee and functions**

(1) For the purposes specified in this Part there is established a Committee to be called the Criminal Records (Rehabilitation of Offenders) Committee.

(2) Subject to the provisions of this Act, the functions of the Committee are to—

- (a) receive applications from the Attorney General pursuant to section 9;
- (b) consider applications for the expungement from the records of spent convictions;
- (c) grant or reject such applications; and
- (d) consider any representation made to it by or on behalf of a person who has applied to the Committee for the expungement from the records of a spent conviction.

##### **11. Composition and procedure of the Committee**

(1) The Committee shall consist of—

- (a) an attorney-at-law with at least 10 years of experience or who has held judicial office as a Judge or Magistrate;
- (b) the Commissioner of Police or his nominee who may act in his absence;
- (c) the Labour Commissioner or his nominee who may act in his absence;
- (d) the Chief Welfare Officer or his nominee who may act in his absence; and
- (e) the Chief Probation Officer or his nominee who may act in his absence.

(2) The Committee shall elect its own chairperson, and regulate its own procedures subject to the provisions of this Act.

(3) The Committee shall be convened by the Attorney General for meetings when deemed necessary.

(4) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Committee in respect of any action done in good faith in pursuance or execution or intended execution of the functions of the Committee.

## **12. Spent convictions to be expunged from the record**

(1) Subject to the provisions of this Part, a spent conviction of a rehabilitated person referred to in section 3 of this Act shall be expunged from the records.

(2) Before a spent conviction may be expunged from the records pursuant to section 9, a rehabilitated person shall be required, upon the expiration of the relevant rehabilitation period, to make application to the Committee for the expungement from the records of the conviction.

(3) Every application made under subsection (2) shall be in writing and shall state—

- (a) the full name and age of the applicant;
- (b) the offence of which the applicant was convicted and the sentence imposed by the court in respect of that conviction;
- (c) the date and place of conviction;
- (d) the court before which the applicant was convicted;
- (e) the date on which, where applicable, the applicant completed the serving of his sentence, and shall include the date on which any period of disqualification, disability or prohibition ceased and the extent to which any condition attaching to such sentence has been complied with;
- (f) the date from which the conviction was treated as a spent conviction and the date from which, by virtue of the expiry of the additional rehabilitation period, he became eligible to make the aforesaid application;
- (g) any other written representation on which the applicant relies in support of his application; and
- (h) any other relevant information as may be prescribed under the provisions of this Act.

## **13. Committee to make enquiries**

The Committee shall, in such manner as may be prescribed by regulations made under this Act—

- (a) cause proper investigations to be made to ascertain the facts stated in every application made pursuant to section 9; and

- (b) cause proper investigations to be made to ascertain the behaviour of the applicant since the date of his conviction.

#### **14. Directions for expungement of spent conviction by the Committee from the records**

Where the Committee, upon completion of its investigations, is satisfied, having regard to the—

- (a) facts and representations on which the applicant relies in support of his application;
- (b) behaviour of the applicant since his conviction; and
- (c) results of any enquiries made by the Committee into any matter relating to the application,

that the applicant has been rehabilitated, then, if the Committee is also satisfied that no interest of justice or of national security would be prejudiced by expunging the spent conviction in respect of which the application was made from the records, the Committee shall issue a direction that the spent conviction be expunged.

#### **15. Effect of direction by the Committee**

A direction issued pursuant to section 14, in respect of a spent conviction, shall be in writing addressed to any person having custody or control of the records and on such direction being delivered to that person he shall forthwith expunge the spent conviction from the records.

#### **16. Legal status of person whose conviction has been expunged from the records**

A rehabilitated person shall, in relation to any expunged conviction, for all purposes in law, be deemed to be a person who has never been charged with, prosecuted for, convicted of or sentenced for, the offence to which that conviction relates.

#### **17. Committee to inform applicant in writing**

The Committee shall in writing inform every person making an application under section 9 or section 18, as the case may be, of the outcome of the application.

#### **18. Applicant may reapply where application rejected**

A person whose application for the expungement of a spent conviction has been rejected may reapply to the Committee after the expiration of two years from the date of such rejection or such lesser period as may be determined by the Committee.

### **PART IV**

#### **MISCELLANEOUS**

#### **19. Act not to affect Governor-General's right**

Nothing contained in this Act shall be construed as affecting any right vested in the Governor-General by virtue of section 84 of the Antigua and Barbuda Constitution Order Cap. 23 or by prerogative or otherwise.

## **20. Unauthorised disclosure**

(1) Subject to the provisions of this Act, any person who, in the course of his duties, has or had at any time custody of or access to any official record or the information contained therein, commits an offence if he—

- (a) knows or has reasonable cause to suspect that any information he obtained in the course of his duties, is specified information; and
- (b) discloses the information, otherwise than in the course of those duties, to another person.

(2) In any proceedings for an offence under subsection (1) it shall be a defence for the defendant to show that the disclosure was made to—

- (a) a rehabilitated person to whom the information relates or to another person at the express request of the rehabilitated person;
- (b) a person whom he reasonably believed to be the rehabilitated person or to another person at the express request of a person whom he reasonably believed to be the rehabilitated person.

(3) No proceedings for an offence brought under subsection (1) shall be instituted except by or with the consent of the Director of Public Prosecutions.

(4) Nothing in subsection (3) shall prevent the arrest, the issue of a warrant for the arrest of any person in respect of an offence against subsection (1) or the remand in custody or bail of any person charged with such offence.

(5) A person who—

- (a) obtains any specified information from any official record by fraud, dishonesty, bribery or by any other unlawful means; or
- (b) falsifies any specified information on any official record,

commits an offence is liable on summary conviction to a fine not exceeding \$5,000.00 dollars or to imprisonment for a term not exceeding 1 year or to both.

(6) For the purposes of this section—

“official record” means any record kept for the purposes of its functions by a Court, the Police Force, department of Government, local or public authority or any record kept for the purposes of the Defence Force, being in either case a record containing information about persons convicted of offences; and

“specified information” means information to the effect that a named or otherwise identifiable rehabilitated living person committed or has been charged with, prosecuted for, convicted of or sentenced for, an offence which is the subject of a spent or expunged conviction.

## **21. Exclusion from employment**

(1) Subject to the provisions of this Act, a person commits an offence where he—

(a) dismisses or excludes another person from any office, profession, occupation or employment because of a spent or expunged conviction which he knows or has reasonable cause to suspect is a spent or expunged conviction and which is not required to be disclosed under any law; or

(b) with malice, discloses any spent or expunged conviction or the existence of a record or fact of the conviction commits an offence.

(2) Any person who offers a bribe to a member of the Police Force or to another person having custody or control of the criminal records to falsify a criminal record so as to show a conviction as a spent or expunged conviction commits an offence.

(3) Any insurance company registered in Antigua and Barbuda which knowingly attempts to avoid a policy of insurance made by a person with the company because of non-disclosure of a spent or expunged conviction of that person commits an offence.

(4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$5,000.00 dollars or to imprisonment for a term not exceeding 1 year or to both.

## **22. Register and custody of records**

The Criminal Records Office shall be responsible for maintaining a Register containing record of all spent convictions, keeping such convictions separate and apart from other criminal records and ensuring that there is a clear indication on the criminal record of any person, that a conviction has become a spent conviction for the purposes of this Act.

## **23. Regulations and orders**

(1) The Minister may make Regulations prescribing anything required by this Act to be prescribed and for the better carrying out of the provisions of this Act.

(2) The Minister may, by Order, subject to affirmative resolution—

(a) vary the circumstances in which spent convictions may be disclosed; and

(b) amend the Schedules.

## **SCHEDULE**

### **PART I**

*(Section 4)*

#### **REHABILITATION PERIODS**

Column 1 Sentence	Column 2 Rehabilitation Period
non-custodial sentence	3 years
A sentence of imprisonment not exceeding 6 months	5 years
A sentence of imprisonment exceeding 6 months but not exceeding	

18 months

8 years

A sentence of imprisonment exceeding 18 months but  
not exceeding 3 years

10 years

**PART II**

*(Section 7)*

**PROFESSIONS**

1. Attorney-at-Law
2. Certified or Chartered Accountant
3. Dentist
4. Medical Practitioner
5. Midwife
6. Optician
7. Pharmacist
8. State Registered Nurse
9. Teacher
10. Veterinary Surgeon

**PART III**

*(Section 7)*

**OFFICES OF EMPLOYMENT**

*Office of Employment*

*Categories of Employment*

Banks (Commercial)

All

Civil Service

All

Education Institutions (including independent schools)

All

Healthcare Institutions

All

Hotels

All

Insurance Companies

Director, Manager  
Secretary, Salesman

Judicial Service

All

Juvenile Correctional Centres

All

Military Service

All

Probation Department

All

Security Service Organisations

Director, Manager  
Security Guards

Police Force

All

Unit Trust Schemes

Manager, Trustee

#### **PART IV**

*(Section 7)*

#### **BUSINESSES**

1. Dealers in Bonds and other Securities
2. Firearms Dealers
3. Stockbrokers
4. Real Estate Agents

Passed the House of Representatives on  
the 29th November, 2013.

Passed the Senate on the 11th December, 2013.

**D. Gisele Isaac-Arrindell,**  
*Speaker.*

**Hazlyn M. Francis,**  
*President.*

**Ramona Small,**  
*Clerk to the House of Representatives.*

**Ramona Small,**  
*Clerk to the Senate.*