

REHABILITATION OF OFFENDERS BILL, 2017

EXPLANATORY NOTES

The Rehabilitation of Offenders Bill, 2017 seeks to redress certain impediments which are experienced by many offenders, especially those who committed criminal offences whilst they were juveniles. These offenders later discover that their criminal records significantly impede their abilities to secure certain employment opportunities; to obtain certain visas in order to travel abroad either to reside or to access educational opportunities and to ensure their own self-satisfaction.

Many countries have already resolved this issue by enacting the relevant legislation. These include the USA, UK, Canada, Jamaica, Barbados and St. Vincent and the Grenadines. The Bill is divided into four parts and incorporates a number of provisions from Jamaica's 1988 legislation, which was amended in 2014 and the 2011 legislation of St. Vincent and the Grenadines.

Part I (Preliminary) contains the first two sections and deals with preliminary matters establishing the short title to the Bill, how the Bill will commence and an interpretation section.

Part II (Spent Convictions) contains sections 3 to 11. This Part provides that offenders who complete their sentences and thereafter do not reoffend for a specified period are to be regarded as "rehabilitated" at the end of that period ("the rehabilitation period") and their convictions would be considered to be "spent".

When the convictions of offenders are considered to be spent then for most purposes offenders would not be required to disclose their spent convictions and cannot be prejudiced by them.

Section 6 makes reference to **Schedule I** which identifies certain convictions and sentences which exclude certain offenders from being considered for being rehabilitated.

Section 7 establishes the lengths of particular rehabilitation periods for particular offences. The applicable rehabilitation periods vary depending upon the lengths of the sentences.

Part III (Expungement of Spent Convictions) contains sections 12 to 20 and deals with the establishment of a Rehabilitation of Offenders Board which is responsible for deciding whether to allow expungements or not after the appropriate applications are made.

It is to be noted that section 71 of the Juvenile Justice Act, 2012 of the Laws of Grenada also makes provision for the expungement of certain offences on the part of children but there is no provision for an application to be made for this redress by way of a Rehabilitation of Offenders Board or by way of any other board in that Act.

Part IV (Miscellaneous) contains sections 20 to 22 and deals with miscellaneous matters.

There are five Schedules to the Bill.

- i. **Schedule I:** Matters which are to be excluded from the rehabilitation process;
- ii. **Schedule II:** Periods of Rehabilitation for Particular Offences;
- iii. **Schedule III:** Constitution of the Rehabilitation of Offenders Board;
- iv. **Schedule IV:** Functions of the Rehabilitation of Offenders Board; and
- v. **Schedule V:** Requirements for making Applications to the Rehabilitation of Offenders Board.

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Cajeton A.K. Hood
ATTORNEY-GENERAL

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SCHEDULE I - Matters which are to be excluded from the rehabilitation process;

- SCHEDULE II** - Periods of Rehabilitation for Particular Offences;
- SCHEDULE III** - Constitution of the Rehabilitation of Offenders Board;
- SCHEDULE IV** - Functions of the Rehabilitation of Offenders Board;
and
- SCHEDULE V** - Requirements for making Applications to the
Rehabilitation of Offenders Board.

GRENADA

ACT NO OF 2017

AN ACT to make provisions for certain criminal convictions of offenders to become spent, to be expunged from the records and for matters connected therewith.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Grenada and by the authority of the same as follows—

**PART I
PRELIMINARY**

Short title and commencement

1. (1) This Act may be cited as the

REHABILITATION OF OFFENDERS ACT, 2017.

(2) This Act shall come into force on such date as may be appointed by Proclamation by the Governor-General published in the *Gazette*.

Interpretation

2. In this Act—

“**adult**” refers to an individual who has attained the age of 18 years;

“**Board**” means the Rehabilitation of Offenders Board established in accordance with section 12;

“**child**” refers to an individual under the age of 18 years;

“**conviction**” means a finding of guilt by a court in Grenada, and includes—

(a) a conviction by or before a court outside Grenada;

(b) a finding, other than a finding linked with a finding of insanity, in any criminal proceedings or in proceedings under the Juvenile Justice Act, 2012 that a person has committed an offence or done the act or made the omission charged, notwithstanding that the court did not proceed to formally convict the person but dealt with him or her in any other manner; and

- (c) a conviction in respect of which an order is made placing the person convicted on probation, or discharging him or her absolutely or conditionally;

“Minister” means the Minister charged with responsibility for national security;

“non-custodial sentence” means any sentence imposed on a convicted person other than imprisonment;

“proceedings before a judicial authority” includes, in addition to proceedings before any court of law, a tribunal, body or person having power—

- (a) by virtue of any law, custom or practice;
- (b) under the rules governing any association, institution, profession, occupation or employment; or
- (c) under any provision of an agreement providing for arbitration with respect to questions arising thereunder, to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question;

“rehabilitation period” means any period specified under section 8 as a rehabilitation period for the conviction to which it relates, commencing and terminating on such dates as are provided under this Act;

“rehabilitated person” means an individual whose application under section 14 has been approved by the Board;

“sentence” includes any order not being an order dismissing the case, made by a court with respect to a conviction and directing anything to be done or not to be done by the offender;

“spent conviction” means any conviction treated as spent under section 3; and

“the record” means a record kept for the purposes of its functions by any court, police force, Government department, local or other public authority in Grenada, being a record containing information about persons convicted of offences.

PART II SPENT CONVICTIONS

Convictions to be treated as spent

3. Subject to section 6, where an individual has been convicted of an offence, and has served or undergone or complied with the sentence imposed with respect to the conviction, the individual is, after the expiration of the rehabilitation period, eligible to make an application under section 14 for the conviction to be treated as spent.

Commencement of rehabilitation periods

4. Subject to subsections (2), (3), (4) and (5) of section 7, the rehabilitation period applicable to an offence shall commence from the date of release from custody or the payment of a fine or the compliance with any condition of sentence imposed, in respect of that offence.

Effect of rehabilitation

5. (1) Subject to sections 8 and 9, a rehabilitated person shall be treated for all purposes in law as a person who has not been convicted of or sentenced for the offence to which the spent conviction relates.

(2) Notwithstanding any other enactment to the contrary—

- (a) no evidence shall be admissible in any proceedings before a judicial authority to prove that any rehabilitated person has been convicted of or sentenced for the offence to which the spent conviction relates; and
- (b) no person shall be compelled to answer a question relating to his or her past which cannot be answered without acknowledging or referring to his or her spent conviction or any circumstance ancillary thereto.

(3) Subject to an order under subsection (5), where a question seeking information with respect to previous convictions, offences, conduct or circumstances is put to a rehabilitated person or to any other person in respect of the rehabilitated person, otherwise than in proceedings before a judicial authority exercising its jurisdiction or functions in Grenada—

- (a) that question shall be treated as not relating to the spent conviction or any circumstance ancillary to the spent conviction, and the answer to the question may be framed accordingly; and
- (b) the person to whom the question is put shall not be subjected to any liability or otherwise prejudiced in law by reason of a failure to acknowledge or disclose the spent conviction or

circumstances ancillary to the spent conviction in his or her answer to the question.

- (4) Subject to an order under subsection (5)—
- (a) an obligation imposed on any person by a rule of law, or by the provisions of an international agreement or arrangement, to disclose any matter shall not extend to compelling him or her to disclose a spent conviction or circumstances ancillary thereto, whether or not he or she is the rehabilitated person to which the spent conviction relates; and
 - (b) a spent conviction or a circumstance ancillary thereto, or a failure to disclose a spent conviction or a circumstance ancillary thereto, shall not be a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing him or her in any occupation or employment.
- (5) The Minister may, by order subject to negative resolution of the House of Representatives—
- (a) make provisions as appears to him or her to be appropriate for excluding or modifying the application of any provision of subsection (2) in relation to questions put in the circumstances as may be specified in the order;
 - (b) provide for exemptions from the application of subsection (3) as appears to him or her to be appropriate, in the cases or class of cases, and in relation to convictions of such description, as may be specified in the order.

Eligibility for rehabilitation

6. A convicted person is eligible for rehabilitation under this Act unless he or she has been convicted for an offence, or imposed upon him or her is a sentence, specified in Schedule I.

Rehabilitation periods for particular sentences

7. (1) The rehabilitation period applicable to a sentence specified in the first column of Schedule II shall be—

- (a) in the case of a sentence imposed on an adult, the period specified in the corresponding entry in the second column of Schedule II;

- (b) in the case of a sentence imposed on a person who was a child at the date of the commission of the offence, the period specified in the third column of Schedule II.

(2) The rehabilitation period applicable to an order discharging a person absolutely for an offence shall be one year from the date of conviction.

(3) Where in respect of a conviction a person was conditionally discharged, ordered to enter into a recognisance to keep the peace or be of good behaviour, or placed on probation, the rehabilitation period applicable to the sentence shall be—

- (a) two years from the date of conviction; or
- (b) a period beginning with the date of conviction and ending with the date on which the order for conditional discharge, the recognisance for keeping the peace or being of good behaviour, or the probation order, ceases or ceased to have effect,

whichever is the longer.

(4) Where in respect of a conviction an order was made imposing on a person any disqualification, disability, prohibition or other similar penalty, the rehabilitation period shall be a period beginning on the date of the conviction and ending on the date on which the disqualification, disability, prohibition or penalty, as the case may be, ceases to have effect.

(5) Where in respect of any person who has been convicted of an offence as a child and a non-custodial order has been made by the Court in accordance with the Juvenile Justice Act, 2012, the rehabilitation period shall be—

- (a) two years from the date of the order; or
- (b) a period beginning with that date and ending with the date on which the order ceases or ceased to have effect,

whichever is the longer.

(6) For the purposes of this section—

- (a) consecutive terms of imprisonment or of detention under the Juvenile Justice Act, 2012 imposed in respect of offences for

which a person was convicted in the same proceedings shall be treated as a single term;

- (b) terms which are wholly or partly concurrent, being terms of imprisonment or detention under the Juvenile Justice Act, 2012 imposed in respect of offences for which a person was convicted in the same proceedings shall be treated as a single term;
- (c) no account shall be taken of any subsequent variation, made by a court in dealing with a person in respect of a suspended sentence of imprisonment;
- (d) a sentence imposed by a court outside of Grenada shall be treated as a sentence described in this section that most closely corresponds with the sentence imposed.

(7) The Minister may by Order subject to negative resolution of the House of Representatives amend Schedule I and Schedule II.

Adjustment of rehabilitation period

8. (1) Subject to subsections (2) to (5), where—

- (a) in the same or separate proceedings a person is convicted of more than one offence;
- (b) the person is not excluded from rehabilitation under this Act by virtue of section 6; and
- (c) the rehabilitation periods applicable in accordance with Schedule II in respect of any resulting sentences for the offences differ,

the rehabilitation period applicable to the convictions shall be the longest of those periods.

(2) Where during the rehabilitation period applicable to a conviction—

- (a) the person is convicted of a further offence which is not triable on indictment;
- (b) the sentence imposed on him or her in respect of the later conviction is subject to section 8; and

- (c) the rehabilitation period applicable in respect of either conviction would end earlier than the period applicable to the other,

the rehabilitation period that would end earlier shall stand extended so as to end at the same time as the other rehabilitation period.

(3) Notwithstanding subsection (2), where during a rehabilitation period applicable in accordance with section 7 (4) the person is convicted of a further offence for which the rehabilitation period applicable is shorter than the rehabilitation period applicable to the first, the rehabilitation period under section 7 (4) shall apply.

(4) Without prejudice to subsection (1), where in respect of a conviction—

- (a) a person was conditionally discharged or placed on probation; and
- (b) after the end of the rehabilitation period applicable in accordance with subsection (1), he or she is dealt with in consequence of a breach of the conditional discharge or probation order; and
- (c) the rehabilitation period applicable to the conviction in accordance with subsection (1), taking into account any sentence imposed when he or she is so dealt with, ends later than the rehabilitation period previously applicable to the conviction,

he or she shall not be a rehabilitated person in respect of that conviction, and the conviction shall not be treated as spent, until the end of the new rehabilitation period in accordance with subsection (1).

General limitations in respect of rehabilitation

9. (1) Nothing in section 5 (1) shall affect the determination of any issue, or prevent the admission or requirement of any evidence, relating to a person's conviction or circumstances ancillary thereto—

- (a) in any criminal proceedings before a court including any appeal or reference in a criminal matter;
- (b) in any proceedings or enquiries relating to adoption, guardianship, wardship, marriage, custody, care or control of, access to, any child or to the provision by any person of accommodation, care or schooling for minors; or

- (c) in any proceedings in which he or she 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 or she 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 5 (1).

(2) Without prejudice to section 11 and subsection (3) and notwithstanding section 5 (1), a judicial authority in Grenada may, in any proceedings before it, admit or require evidence relating to a person's spent conviction or circumstances ancillary thereto and determine any issue accordingly, if in the light of any considerations which appear to be relevant including any evidence which has been or may thereafter be put before it, the judicial authority is satisfied that justice cannot be done in the case except by admitting or requiring the evidence.

(3) The Minister may by Order exclude the application of section 5 (1) in relation to any proceedings specified in the order, other than proceedings to which section 11 applies, to such extent and for such purposes as may be so specified.

(4) No Order made by a court with respect to any person otherwise than on a conviction shall be included in any list or statement of the person's previous convictions given or made to any court which is considering how to deal with him or her in respect of any offence.

Specific limitations relating to defamation proceedings

10. (1) This section applies to any proceedings for libel, slander or defamation instituted after the commencement of this Act and founded upon the publication of any matter imputing that a rehabilitated person has been convicted of or sentenced for an offence, if as at the date of the publication the conviction to which the offence relates is a spent conviction.

(2) Nothing in section 5 (1) shall prevent the defendant in proceedings to which this section applies from relying on any defence of justification or fair comment or of absolute or qualified privilege which is available to him, her or it, or restrict the matters the defendant may establish in support of any such defence.

(3) Without prejudice to the generality of subsection (2), where in any such proceedings malice is alleged against a defendant who is relying on a defence of qualified privilege, nothing in section 5 (1) shall restrict the matters the defendant may establish in rebuttal of the allegation.

(4) Notwithstanding subsection (2), no defendant in any such proceedings shall rely upon the defence of justification, if the publication is proved to have been made with malice.

(5) Notwithstanding subsection (2), no defendant in any such proceedings shall rely on any matter or adduce or require any evidence for the purpose of establishing the defence that the matters published constituted a fair and accurate report of judicial proceedings, if it is proved that the matter published contained reference to evidence that was ruled to be inadmissible in the proceedings by virtue of section 5 (1).

(6) Notwithstanding subsection (5), subsection (2) shall apply in relation to—

- (a) any report of judicial proceedings contained in any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law; and
- (b) any report or account of judicial proceedings published for *bona fide* educational, scientific or professional purposes, or given in the course of any lecture, class or discussion given or held for any of those purposes.

Unauthorised disclosure of spent convictions

11. (1) Subject to the provisions of an order made under subsection (4), any person who, in the course of his or her official duties—

- (a) has, or at any time had, custody of or access to any official record or the information contained therein; and
- (b) knowing or having reasonable cause to suspect that the official record or information contained therein includes information imputing that a named or otherwise identifiable rehabilitated person has been convicted of or sentenced for any offence which is the subject of a spent conviction,

discloses the official record or information contained therein, otherwise than in the course of those duties, to another person, commits an offence and is liable on summary conviction to a fine of two thousand dollars.

(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—

- (a) to the rehabilitated person or to another person at the written request of the rehabilitated person; or

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

(3) Any person who obtained, from any official record by means of any fraud, dishonesty or bribe, information imputing that a named or otherwise identifiable rehabilitated person has been convicted of or sentenced for any offence which is the subject of a spent conviction commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term not exceeding six months or to both.

(4) Notwithstanding subsection (1), the Minister may by Order exempt from the application of subsection (1) any case or class of cases as appears to him or her to be appropriate.

(5) Proceedings for an offence under subsection (1) shall not be instituted except by or with the consent of the Director of Public Prosecutions.

PART III EXPUNGEMENT OF SPENT CONVICTIONS

Establishment of Rehabilitation of Offenders Board

12. (1) There is established the Rehabilitation of Offenders Board.

(2) The constitution of the Rehabilitation of Offenders Board and other related matters shall be in accordance with Schedule III.

Functions of the Board

13. The functions of the Board are contained in Schedule IV.

Application to the Board

14. An individual who wishes to have his or her conviction treated as spent in accordance with section 3 may, upon the expiration of the rehabilitation period, make an application, in writing in accordance with Schedule V, to the Board for the record of a spent conviction to be expunged.

Board to make determination

15. (1) No later than 30 days after receipt of an application under section 14, the Board shall make a determination, having regard to the following—

- (a) the facts and representations in support of the application;
- (b) the behaviour of the applicant during the period subsequent to the conviction;

- (c) information received as a result of any enquiry made by the Board into any matter appertaining to the application; and
 - (d) whether the interest of justice or national security may be prejudiced by expungement of the records of the conviction.
- (2) The Board shall in such manner as may be prescribed by Regulations-
- (a) cause proper investigations to be conducted to ascertain the veracity of facts stated in an application under section 14; and
 - (b) cause proper investigations to be made to assess the behaviour of the applicant during the period subsequent to the conviction.
- (3) The Board may approve or reject an application made under section 14.

Applicant to be notified of determination

16. Upon the Board making a determination on an application, the Board shall forthwith in writing notify the applicant of its determination.

Eligibility to re-apply where application rejected

17. A person whose application under section 14 has been rejected by the Board may make a subsequent application under section 14 after the expiration of a period not less than—

- (a) one year from the date of the determination by the Board; or
- (b) such period as may be determined by the Board and set out in the notification under section 16, which shall in no case exceed one year.

Board to issue direction where application approved

18. Where the Board approves an application under section 14, the Board shall issue a direction in writing addressed to any person having custody or control of the records of the spent conviction to which the application relates.

Effect of direction from the Board

19. Upon receipt of such direction from the Board in accordance with section 18, any person having custody or control of any record of the spent conviction to which the application relates shall forthwith expunge the record.

**PART IV
MISCELLANEOUS MATTERS**

Prerogative of Mercy by the Governor-General not affected

20. Nothing contained in this Act shall be construed as affecting the right vested in the Governor-General by virtue of section 72 of the Constitution of Grenada in relation to the Prerogative of Mercy of the Governor-General.

Regulations

21. (1) The Minister may make regulations for carrying out the purposes of this Act.

(2) The Minister may by Order subject to negative resolution amend the Schedules.

Transitional provisions

22. The provisions of this Act shall apply in respect of offences committed, and sentences imposed, before or after the commencement of this Act.

Matters which are to be excluded from the Rehabilitation Process

This Act excludes the following from the rehabilitation process:

- (1) sentences following convictions for the following offences:
 - (a) murder;
 - (b) voluntary manslaughter;
 - (c) rape;
 - (d) robbery with violence;
 - (e) arson;
 - (f) any indictable offence carrying a penalty including imprisonment for a term of fifteen years or more of imprisonment,
- (2) convictions where the following sentences have been imposed:
 - (a) a sentence of imprisonment for life;
 - (b) a sentence of imprisonment for a term exceeding five years.

SCHEDULE II

(Section 7 (1))

Periods of Rehabilitation for Particular Offences

SENTENCE	PERIOD OF REHABILITATION FOR AN ADULT	PERIOD OF REHABILITATION FOR A CHILD
A fine or other non-custodial sentence subject to rehabilitation under this Act	4 years	2 years
A sentence of imprisonment for a term not exceeding 6 months	6 years	3 years
A sentence of imprisonment for a term of 6 months or more but not exceeding 5 years	10 years	5 years

SCHEDULE III

(Section 12(2))

Constitution of the Rehabilitation of Offenders Board

Composition

1. (1) The Board shall consist of seven members of which number there shall be appointed persons from the following categories—

- (a) an attorney-at-law with not less than 10 years standing;
- (b) a social worker or Minister of Religion;
- (c) a Criminal Records Officer of the Royal Grenada Police Force,

who shall be appointed by the Minister.

(2) The Minister shall appoint a member of the Board as the Chairperson of the Board.

(3) The members shall appoint a Secretary from among its number.

Tenure

2. Subject to the provisions of this Schedule, the appointment of members of the Board shall be for a period not exceeding three years and each member shall be eligible for reappointment.

Temporary Appointments

3. (1) Where the Chairperson is absent or unable to discharge his or her functions, the Minister may appoint on a temporary basis any other member to act as the Chairperson and perform the functions of Chairperson.

(2) The Minister may appoint any person on temporary basis in the place of any member who is absent or unable to act as a person and perform the functions as a member.

Revocation of Appointments

4. The minister may at any time revoke the appointment of any member of the Board.

Publication of Membership

5. The names of all members of the Board as first constituted and every change in membership shall be published in the *Gazette*.

Seal

6. (1) The Board shall have a Seal which shall be kept in the custody of the Chairperson or the Secretary and shall be affixed to instruments pursuant to a resolution of the Board in the presence of at least two members of the Board.

(2) The Seal shall be authenticated by the signature of the Chairperson or another member authorised to act in that behalf and such Seal shall be officially judicially recognised.

(3) All documents other than those required by law to be under seal, made by, and all decisions of, the Board may be signified under the hand of the Chairperson or any other member authorised to act in that behalf.

Procedure and Meetings

7. (1) The Board shall meet at such times as may be necessary or expedient for the transaction of its business and such meetings shall be held at such places and times and on such days as the Board shall determine.

(2) The Board shall regulate its own proceedings.

(3) Minutes in proper form of each meeting of the Board shall be kept.

(4) The decision of the Board shall be by a majority of the Board and shall be evidenced in writing.

(5) The quorum of a meeting of the Board shall be four.

(6) Each member of the Board shall have one vote but in the case of an equality of votes the Chairperson shall have a casting vote.

Emoluments for Members of the Board

8. There shall be paid to the Chairperson and members such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

SCHEDULE IV

(Section 13)

Functions of the Rehabilitation of Offenders Board

1. Subject to the provisions of this Act, the functions of the Board shall be as follows—
 - (a) to receive and consider applications for the expungement of the records of spent convictions and to approve or reject such applications;
 - (b) to consider any representations made to it by or on behalf of the person who has made an application to the Board for the expungement of the records of a spent conviction;
 - (c) to review, from time to time, the cases of applicants who have made application to the Board for the expungement of the records of convictions;
 - (d) to issue appropriate directions to the Criminal Records Office and any person having custody of the records that the spent conviction be expunged;
 - (e) to make reports to the Minister, at such intervals as the Minister may require, upon the discharge by the Board of its functions;
 - (f) to carry out such other functions as the Minister may direct as being, in his or her opinion, necessary for the purposes of this Act.
2. Hearings of the Board shall be held in camera and, if the Board sees fit, each applicant may be given permission to appear at the hearing.

SCHEDULE V

(Section 14)

Requirements for making Application to the Rehabilitation of Offenders Board

Every application, made under section 14, shall be in writing and shall state the following:

- (a) the full name, address, date of birth and age of the applicant;
- (b) the offence for 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) where applicable, the date on which the applicant completed the serving of his or her sentence, including 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 of the expiry of the rehabilitation period;
- (g) any other written representation on which the applicant relies to support his or her application;
- (h) such other information as may be prescribed.

Passed by the House of Representatives this day of , 2017.

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Clerk to the House of Representatives

Passed by the Senate this day of , 2017.

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Clerk to the Senate