

Three Strikes Legislation Repeal Bill

Government Bill

Explanatory note

General policy statement

The Three Strikes Legislation Repeal Bill (the **Bill**) is an omnibus Bill introduced in accordance with Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The policy implemented by the Bill is the repeal of the elements of the Sentencing and Parole Reform Act 2010 that collectively create what is commonly known as the three strikes law.

The three strikes law was intended to deter those who commit specified offences with the threat of progressively longer mandatory prison terms, and to incapacitate those who continue to re-offend despite the additional penalties.

However, the mandatory sentencing regime created by the three strikes law has resulted in unjust outcomes that affect Māori disproportionately and have raised concerns regarding inconsistencies with the New Zealand Bill of Rights Act 1990.

The Government's objectives in repealing the law are to remove the mandatory sentencing requirements that result in excessive and disproportionate sentence outcomes by preventing Judges from taking the individual circumstances of the offender and the offending into account.

The courts already have the power to impose sentences equivalent to those imposed under three strikes on a targeted basis to protect public safety without being required to apply mandatory sentences to all offenders convicted of strike offences. Individual cases have varying factors that will be considered by the Judge to determine a proportionate outcome with regard to the background and current circumstances of the offender, the nature of the offence, and the maintenance of public and community safety.

Repealing the three strikes law will revert the sentencing process for strike offences to standard sentencing practices by allowing the Judge to reach an appropriate outcome on a case-by-case basis. This Bill expressly excludes any entitlement to compensation relating to the impacts of the three strikes law, and no transitional arrangements for those currently serving sentences of imprisonment for a strike offence are included.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=79>

Regulatory impact assessment

The Ministry of Justice produced a regulatory impact assessment on 4 March 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <http://www.justice.govt.nz/justice-sector-policy/publications>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on **1 July 2022**.

Part 1

Amendments to Sentencing Act 2002

Clause 3 provides that *Part 1* of the Bill amends the Sentencing Act 2002.

Clause 4 adjusts section 4(1) to change cross-references in the definition of minimum period of imprisonment to account for the repeal of sections 86D and 86E by *clause 5*.

Clause 5 repeals sections 86A to 86I, which set out the main provisions of the three strikes regime.

Clause 6 repeals section 89(2A).

Clause 7 repeals section 102(3).

Clause 8 replaces section 103(1) to account for the repeal of section 86E by *clause 5*.

Clause 9 adjusts cross-references in section 104(2) to account for the repeal of section 86E by *clause 5*.

Clause 10 inserts *new Part 4* into Schedule 1AA of the principal Act. *New Part 4* in the *Schedule* to the Bill sets out the relevant transitional provisions. *New clause 13* provides that a person who was convicted and sentenced before 1 July 2022 for a stage-2 or stage-3 offence is not eligible for release or re-sentencing as a consequence of any provision brought into force under this Bill, the person's non-parole period for a long-term notional single sentence is the full length of that sentence, and, in the case of a short-term sentence, the person's release date is the expiry date of that sentence. *New clause 14*, which applies to certain persons who are sentenced or convicted after this Bill comes in force, provides that in the case of a conflict between section 19 of the Interpretation Act 1999 and section 6 of the Sentencing Act 2002 or section 25(g) of the New Zealand Bill of Rights Act 1990, section 6 or section 25(g), as the case may be, prevails. *New clause 15* provides that the Crown is not liable to pay compensation or damages for any alteration of sentencing rules as a consequence of any provision brought into force under this Bill.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Acts

Amendment to Arms Act 1983

Clause 11 provides that *clause 12* amends the Arms Act 1983.

Clause 12 amends section 22H(a)(ii) to refer to the definition of specified serious offender that *clause 22(4)* is to insert into the Victims' Orders Against Violent Offenders Act 2014 rather than the definition of serious violent offender in section 86A of the Sentencing Act 2002, which *clause 5* is to repeal.

Amendment to Criminal Procedure Act 2011

Clause 13 provides that *clause 14* amends the Criminal Procedure Act 2011.

Clause 14 repeals section 180(4)(b).

Amendment to Evidence Act 2006

Clause 15 provides that *clause 16* amends the Evidence Act 2006.

Clause 16 repeals section 139(1)(ba).

Amendment to Parole Act 2002

Clause 17 provides that *clauses 18 to 20* amend the Parole Act 2002.

Clause 18 repeals section 20(5) to (8).

Clause 19 adjusts a cross-reference in section 84(2), replaces section 84(3), and repeals sections 84(3A) and 84(5)(ab).

Clause 20 repeals section 86(1A).

Amendments to Victims' Orders Against Violent Offenders Act 2014

Clause 21 provides that *clauses 22 to 25* amend the Victims' Orders Against Violent Offenders Act 2014.

Clause 22 repeals the definition of violent offence, inserts a definition of specified violent offence, and adjusts the definitions of immediate family and victim accordingly.

Clauses 23 to 25 change the term "violent offence" to "specified violent offence" in each place where it appears.

Subpart 2—Amendments to secondary legislation

*Amendments to Criminal Procedure (Transfer of Information) Regulations
2013*

Clause 26 provides that *clauses 27 and 28* amend the Criminal Procedure (Transfer of Information) Regulations 2013.

Clause 27 replaces the definition of violent offence with a definition of specified violent offence in regulation 3(1).

Clause 28 changes the term "violent offence" to "specified violent offence" in each place where it appears in regulation 8A(3).

Amendment to Legal Services (Quality Assurance) Regulations 2011

Clause 29 provides that *clause 30* amends the Legal Services (Quality Assurance) Regulations 2011.

Clause 30 revokes paragraph (c) of the definition of approval level 4 criminal proceedings in clause 1 of the Schedule.

Amendments to Sentencing Regulations 2002

Clause 31 provides that *clause 32* amends the Sentencing Regulations 2002.

Clause 32 amends the Schedule by adjusting forms 7, 8, and 12F, and revoking forms 12B to 12E, to account for the repeal of sections 86A to 86I of the Sentencing Act 2002 by *clause 5* of the Bill.

Hon Kris Faafoi

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Three Strikes Legislation Repeal Act **2021**.

2 Commencement

This Act comes into force on **1 July 2022**.

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Part 1**Amendments to Sentencing Act 2002****3 Principal Act**

This Part amends the Sentencing Act 2002.

4 Section 4 amended (Interpretation)

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In section 4(1), definition of **minimum period of imprisonment**, replace “section 86, 86D(4), 86E(4)(a), 89, or 103” with “section 86, 89, or 103”.

5 Sections 86A to 86I and cross-heading repealed

Repeal sections 86A to 86I and the cross-heading above section 86A.

6 Section 89 amended (Imposition of minimum period of imprisonment)

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Repeal section 89(2A).

7 Section 102 amended (Presumption in favour of life imprisonment for murder)

Repeal section 102(3).

8 Section 103 amended (Imposition of minimum period of imprisonment or imprisonment without parole if life imprisonment imposed for murder)

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Replace section 103(1) with:

(1) If a court sentences an offender convicted of murder to imprisonment for life, it must—

(a) order that the offender serve a minimum period of imprisonment under that sentence; or

25

(a) if subsection (2A) applies, make an order under that subsection.

9 Section 104 amended (Imposition of minimum period of imprisonment of 17 years or more)

In section 104(2), replace “section 86E(2)(b) or (4)(a) or 103(2A)” with “section 103(2A)”.

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10 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in the Schedule of this Act as the last Part; and
- (b) make all necessary consequential amendments.

Part 2

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Amendments to other legislation

Subpart 1—Amendments to Acts

*Amendment to Arms Act 1983***11 Principal Act**

Section 12 amends the Arms Act 1983.

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12 Section 22H amended (Persons disqualified from holding firearms licence)

Replace section 22H(a)(ii) with:

- (ii) a specified violent offence as defined in section 4 of the Victims' Orders Against Violent Offenders Act 2014:

Amendment to Criminal Procedure Act 2011

15

13 Principal Act

Section 14 amends the Criminal Procedure Act 2011.

14 Section 180 amended (Court may correct erroneous sentence)

Repeal section 180(4)(b).

Amendment to Evidence Act 2006

20

15 Principal Act

Section 16 amends the Evidence Act 2006.

16 Section 139 amended (Evidence of convictions, acquittals, and other judicial proceedings)

Repeal section 139(1)(ba).

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*Amendments to Parole Act 2002***17 Principal Act**

Sections 18 to 20 amend the Parole Act 2002.

- 18 Section 20 amended (Parole eligibility date)**
Repeal section 20(5) to (8).
- 19 Section 84 amended (Non-parole periods)**
- (1) In section 84(2), replace “section 86, section 86D(4), section 86E(4), section 89, or section 103” with “section 86, 89, or 103”. 5
- (2) Replace section 84(3) with:
- (3) The non-parole period of a sentence of imprisonment for life (other than one in respect of which the court has imposed a minimum term of imprisonment) is 10 years. 10
- (3) Repeal sections 84(3A) and 84(5)(ab). 10
- 20 Section 86 amended (Release date of sentence)**
Repeal section 86(1A).
- Amendments to Victims’ Orders Against Violent Offenders Act 2014*
- 21 Principal Act**
Sections 22 to 25 amend the Victims’ Orders Against Violent Offenders Act 2014. 15
- 22 Section 4 amended (Interpretation)**
- (1) In section 4, definition of **immediate family**, paragraph (a), replace “violent offence” with “specified violent offence”.
- (2) In section 4, definition of **victim**, replace “violent offence” with “specified violent offence” in each place. 20
- (3) In section 4, repeal the definition of **violent offence**.
- (4) In section 4, insert in its appropriate alphabetical order:
specified violent offence means an offence against any of the following provisions of the Crimes Act 1961: 25
- (1) section 128B (sexual violation):
- (2) section 129 (attempted sexual violation and assault with intent to commit sexual violation):
- (3) section 129A(1) (sexual connection with consent induced by threat):
- (4) section 131(1) (sexual connection with dependent family member under 18 years): 30
- (5) section 131(2) (attempted sexual connection with dependent family member under 18 years):
- (6) section 132(1) (sexual connection with child):
- (7) section 132(2) (attempted sexual connection with child): 35

(8)	section 132(3) (indecent act on child):	
(9)	section 134(1) (sexual connection with young person):	
(10)	section 134(2) (attempted sexual connection with young person):	
(11)	section 134(3) (indecent act on young person):	
(12)	section 135 (indecent assault):	5
(13)	section 138(1) (exploitative sexual connection with person with significant impairment):	
(14)	section 138(2) (attempted exploitative sexual connection with person with significant impairment):	
(15)	section 142A (compelling indecent act with animal):	10
(16)	section 144A (sexual conduct with children and young people outside New Zealand):	
(17)	section 172 (murder):	
(18)	section 173 (attempted murder):	
(19)	section 174 (counselling or attempting to procure murder):	15
(20)	section 175 (conspiracy to murder):	
(21)	section 177 (manslaughter):	
(22)	section 188(1) (wounding with intent to cause grievous bodily harm):	
(23)	section 188(2) (wounding with intent to injure):	
(24)	section 189(1) (injuring with intent to cause grievous bodily harm):	20
(25)	section 191(1) (aggravated wounding):	
(26)	section 191(2) (aggravated injury):	
(27)	section 198(1) (discharging firearm or doing dangerous act with intent to do grievous bodily harm):	
(28)	section 198(2) (discharging firearm or doing dangerous act with intent to injure):	25
(29)	section 198A(1) (using firearm against law enforcement officer, etc):	
(30)	section 198A(2) (using firearm with intent to resist arrest or detention):	
(31)	section 198B (commission of crime with firearm):	
(32)	section 200(1) (poisoning with intent to cause grievous bodily harm):	30
(33)	section 201 (infecting with disease):	
(34)	section 208 (abduction for purposes of marriage or civil union or sexual connection):	
(35)	section 209 (kidnapping):	
(36)	section 232(1) (aggravated burglary):	35
(37)	section 234 (robbery):	

- (38) section 235 (aggravated robbery):
- (39) section 236(1) (causing grievous bodily harm with intent to rob, or assault with intent to rob in specified circumstances):
- (40) section 236(2) (assault with intent to rob)
- 23 Section 5 amended (Meaning of violent offender or offender)** 5
In section 5(1), replace “violent offence” with “specified violent offence”.
- 24 Section 7 amended (Application for non-contact order)**
In section 7(1), replace “violent offence” with “specified violent offence”.
- 25 Section 18 amended (Discharge of non-contact order by operation of law)** 10
In section 18(1)(a) and (b), replace “violent offence” with “specified violent offence”.

Subpart 2—Amendments to secondary legislation

Amendments to Criminal Procedure (Transfer of Information) Regulations 2013

- 26 Principal regulations** 15
Sections 27 and 28 amend the Criminal Procedure (Transfer of Information) Regulations 2013.
- 27 Regulation 3 amended (Interpretation)**
In regulation 3(1), replace the definition of **violent offence** with:
specified violent offence has the same meaning as in section 4 of the Victims’ Orders Against Violent Offenders Act 2014 20
- 28 Regulation 8A amended (Information about criminal proceedings in VOAVOA proceedings)**
In regulation 8A(3)(a) and (c), replace “violent offence” with “specified violent offence”. 25

Amendment to Legal Services (Quality Assurance) Regulations 2011

- 29 Principal regulations**
Section 30 amends the Legal Services (Quality Assurance) Regulations 2011.
- 30 Schedule amended** 30
In the Schedule, clause 1(1), definition of **approval level 4 criminal proceedings**, revoke paragraph (c).

*Amendments to Sentencing Regulations 2002***31 Principal regulations**

Section 32 amends the Sentencing Regulations 2002.

32 Schedule amended

- (1) In the Schedule, form 7,— 5
- (a) heading, replace “*Sections 86, 86D(4), 86E(4)(a), and 103*” with “*Sections 86 and 103*”; and
 - (b) paragraph 2, delete “*or I am satisfied that section 86D(4)/86E(4)(a)* of the Sentencing Act 2002 applies to the offender. *Select one.*”; and
 - (c) paragraph 3, replace “*section 86/86D(4)/86E(4)(a)/103**” with “*section 86/103**”. 10
- (2) In the Schedule, form 8, paragraph 2, delete “*or I am satisfied that section 86D(7) of the Sentencing Act 2002 applies to the offender, and consider that a minimum period of imprisonment of [specify period] is appropriate*”.
- (3) In the Schedule, revoke forms 12B to 12E. 15
- (4) In the Schedule, form 12F,—
- (a) paragraph 2, delete “*I am satisfied that section 86C(4) of the Sentencing Act 2002 applies to the offender. or I am satisfied that section 86D(3) of the Sentencing Act 2002 applies to the offender. or I am satisfied that section 86E(2) of the Sentencing Act 2002 applies to the offender. or*”; 20
and
 - (b) paragraph 3, replace “*section 86C(4)/86D(3)/86E(2)/103(2A)**” with “*section 86C(4)/103(2A)**”.

Schedule
Schedule 1AA amended

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Part 4		
Provisions relating to Three Strikes Legislation Repeal Act 2021		5
13	Treatment of persons convicted and sentenced before enactment of Three Strikes Legislation Repeal Act 2021	
(1)	This clause applies to a person who, before 1 July 2022, was convicted of and sentenced for a stage-2 or stage-3 offence.	
(2)	If this clause applies,—	10
(a)	the person is not eligible for release or re-sentencing as a consequence of any provision brought into force under the Three Strikes Legislation Repeal Act 2021; and	
(b)	in the case of calculating the non-parole period of a long-term notional single sentence, a sentence for which an order was made under section 86C(4) or 86D(3) of the Sentencing Act 2002 (as it read immediately before 1 July 2022) must be treated as if the full term of that sentence were the non-parole period of that sentence; and	15
(c)	in the case of a short-term sentence for which an order was made under section 86C(4)(b) of the Sentencing Act 2002 (as it read immediately before 1 July 2022), the release date of that sentence is the expiry date of that sentence (whether or not that sentence was part of a short-term notional single sentence).	20
14	Treatment of persons convicted or sentenced after enactment of Three Strikes Legislation Repeal Act 2021	25
(1)	This clause applies to a person who, on or after 1 July 2022, is convicted of or sentenced for an offence that would have been a stage-2 or stage-3 offence if the Three Strikes Legislation Repeal Act 2021 had not been brought into force.	
(2)	If this clause applies, in the case of a conflict between section 19 of the Interpretation Act 1999 and—	30
(a)	section 6 of the Sentencing Act 2002, section 6 prevails; or	
(b)	section 25(g) of the New Zealand Bill of Rights Act 1990, section 25(g) prevails.	
15	No entitlement to compensation	
(1)	A person is not entitled to compensation of any kind, on account of any alteration of sentencing rules as a consequence of any provision brought into force	35

- under the Sentencing and Parole Reform Act 2010, in respect of the fact that the person—
- (a) was charged with, or prosecuted for, the offence; or
 - (b) admitted committing or pleaded guilty to, or was found to have committed, was convicted of, was sentenced for, or had an order or a direction made against the person for, the offence; or 5
 - (c) served a sentence for, or complied with an order or a direction made against the person because of committing, the offence; or
 - (d) was required to pay a fine or other money (including costs or any amount by way of restitution or compensation) on account of committing, or being convicted of, or sentenced for, the offence; or 10
 - (e) incurred any loss, or suffered any consequence (including being sentenced, or otherwise dealt with, as an offender, or as a repeat offender, of any kind), as a result of any circumstance referred to in **paragraph (a), (b), (c), or (d)**. 15
- (2) Nothing in **subclause (1)** prevents a person from being entitled to compensation in respect of anything that occurred while the person was serving a sentence or complying with an order or a direction.
- Compare: 2018 No 7 s 23