



ANALYSIS

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1962, No. 29

An Act to amend the Criminal Justice Act 1954

[28 November 1962]

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

1. Short Title—This Act may be cited as the Criminal Justice Amendment Act 1962, and shall be read together with and deemed part of the Criminal Justice Act 1954 (hereinafter referred to as the principal Act).

PART I

PERIODIC DETENTION OF YOUNG OFFENDERS

2. Commencement of sections 9 to 15—Sections 9 to 15 of this Act shall come into force on a date appointed by the Governor-General, by Order in Council; and shall apply with respect to such Courts and to such offenders described by reference to their age or sex or both as are from time to time specified by the Governor-General, by Order in Council.

3. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Warden” means the Warden of any work centre appointed under section 6 of this Act:

“Work centre” means any work centre established under section 4 of this Act.

4. Establishment of work centres—(1) The Minister may from time to time, by notice in the *Gazette*, declare any land or building or any part of any land or building to be a work centre.

(2) The Minister may from time to time in like manner declare any land or building or any part of any land or building to be added to or excluded from any work centre.

(3) Any such notice as aforesaid may be in like manner revoked at any time.

(4) Every notice under this section shall take effect from the date thereof or from such other date as may be specified therein.

5. Separation of male and female offenders—In every work centre in which both male and female offenders are detained overnight, separate buildings shall be used for each.

6. Warden and other officers of work centres—(1) To every work centre there shall from time to time be appointed under the Public Service Act 1912 a Warden and such other officers and employees as may be required.

(2) In every work centre in which female offenders are received there shall be a sufficient number of female officers.

7. Warden charged with general administration of work centre—(1) Subject to the provisions of the principal Act (including this Act) and to the control of the Secretary for Justice, every Warden of a work centre shall be charged with the general administration of the work centre.

(2) Any Warden may, subject to any regulations made under this Part of this Act and to any directions given by the Secretary for Justice, delegate to any other officer all or any of his powers under this Part of this Act, except the power to delegate under this section.

8. Protection of officers in discharge of duties—The Warden and every other officer of a work centre, while acting as such, shall have all the powers, authority, protection, and privileges of a constable.

9. Sentence of periodic detention where offender convicted of offence punishable by imprisonment—(1) Subject to the provisions of sections 14 and 15 of this Act, where any person who is not less than fifteen and is under twenty-one years of age is convicted of any offence punishable by imprisonment, the Court may, in its discretion, sentence him to periodic detention for such term as it thinks fit, not exceeding in any case twelve months.

(2) Where the Court sentences any person to periodic detention, it may also sentence him to pay any fine authorised by law, but shall not impose any other sentence.

(3) In this section the term “Court”, in relation to a Magistrate’s Court, means a Magistrate’s Court presided over by a Magistrate.

10. Sentence of periodic detention where offender liable to imprisonment for non-payment of fine—(1) In any case where, pursuant to section 88 of the Summary Proceedings Act 1957, a warrant of commitment may be issued (whether in the first instance or following the issue of a warrant of distress) by reason of the non-payment of a fine imposed on any person who is not less than fifteen and is under twenty-one years of age when the matter comes before a Magistrate for consideration under the said section 88, the Magistrate may issue a summons to that person, in the prescribed form, or, whether or not a summons has been issued or served, may issue a warrant, in the prescribed form, to arrest that person and bring him before a Court.

(2) On the appearance of that person before a Court, the Court may, if it thinks fit, subject to the provisions of sections 14 and 15 of this Act, after considering the reports which a Magistrate would be required to consider if acting under the said section 88 and after taking into account any other fines owing by that person, sentence that person to periodic

detention for such term as it thinks fit, not exceeding in any case twelve months.

(3) If the Court does not sentence that person to periodic detention the matter may be dealt with under the said section 88.

(4) A sentence of periodic detention may be imposed under this section notwithstanding that none of the offences in respect of which the fines were imposed was punishable by imprisonment.

(5) Where any person is sentenced to periodic detention under this section, those parts of the original sentences which dealt with the imposition of the fines that have been taken into account under subsection (2) of this section shall be deemed to be cancelled in respect of any part of those fines unpaid when the sentence of periodic detention was imposed.

(6) In this section the term "Court" means a Magistrate's Court presided over by a Magistrate.

(7) Every person who is required to attend before a Court pursuant to a summons or warrant issued under subsection (1) of this section shall be entitled to be represented before that Court by a barrister or a solicitor of the Supreme Court of New Zealand.

(8) Any member of the Police shall be entitled to appear before the Court and to make submissions as to whether or not the sentence of periodic detention should be imposed.

(9) Where a Court sentences any person to periodic detention under this section that person shall have the same right to appeal to the Supreme Court against the sentence as he would have had if the sentence had been imposed by a Magistrate's Court after his conviction on an information in such a Court:

Provided that where the Supreme Court quashes the sentence of periodic detention on any such appeal it shall at the same time direct that the case shall be remitted to a Magistrate to be dealt with under section 88 of the Summary Proceedings Act 1957.

(10) This section shall apply only in respect of fines imposed after the commencement of this section.

11. Probation may follow periodic detention—(1) Where a Court acting under section 9 or section 10 of this Act sentences any person to periodic detention, it may in its discretion order, as part of the sentence, that on the termination

of his term of periodic detention he shall be on probation for a period not exceeding one year, and may,—

- (a) Where it is acting under section 9 of this Act, impose all or any of the conditions which may be imposed under subsection (1) of section 8 of the principal Act, and the provisions of subsections (2) and (3) of that section shall apply accordingly; or
- (b) Where it is acting under section 10 of this Act, impose all or any of the conditions which may be imposed under paragraphs (d) to (i) of subsection (1) of section 8 of the principal Act.

(2) Where a Court has ordered, under subsection (1) of this section, that any person shall be on probation the Registrar of the Court shall notify the Secretary for Justice and the probation officer in whose district the Court office is situated.

12. Conditions of probation—(1) Where a Court has ordered, under subsection (1) of section 11 of this Act, that any person shall be on probation, the conditions set out in section 7 of the principal Act, except paragraph (a) of that section, shall apply, in addition to any special conditions imposed under subsection (1) of section 11 of this Act.

(2) In addition to the conditions specified in subsection (1) of this section, any person on probation under this Act shall be subject to the condition that he shall report to a probation officer in the district in which he resides within forty-eight hours after the commencement of his term of probation.

(3) Every person on probation under this Act shall be under the supervision of a probation officer in whose district he resides for the time being, or such other probation officer as the Secretary for Justice may direct.

(4) The probation officer shall issue to every person on probation under this Act a probationary licence setting out the conditions which he is required to observe during the term of his probation.

13. Application of provision of the principal Act—Section 10 of the principal Act shall apply to every person on probation under this Part of this Act with all necessary modifications as if he had been released on probation on the day on which the term of his probation began, including the following specific modification, namely, that the term of probation shall not be extended beyond the end of one year from the date on which the term began.

14. Sentence of periodic detention not to be imposed in certain cases—(1) No Court shall sentence any person to periodic detention if it is shown to the Court that at any time previously he has been sentenced—

(a) To detention in a detention centre, or to borstal training; or

(b) To imprisonment for a term of one month or more.

(2) A sentence of periodic detention shall not be cumulative on any other sentence of periodic detention or on any sentence of any other kind.

(3) No sentence of any kind shall be cumulative on a sentence of periodic detention.

15. Court to consider report of probation officer and medical report—(1) No Court shall sentence any person to periodic detention until a report on his character and personal history and on any other relevant circumstances has been made by a probation officer and has been considered by the Court, and until a medical practitioner has examined him and reported to the Court on the result of the examination.

(2) No sentence of periodic detention shall be deemed to be invalid on the ground that a report by a probation officer was not made or was not considered by the Court or that such a report by a medical practitioner was not given.

(3) If any Court sentences any offender to periodic detention before both those reports have been made and considered under this section, the defendant or the prosecutor or any counsel or solicitor on behalf of the Crown may at any time apply to have the sentence reviewed; and for that purpose the provisions of subsections (4) to (6) of section 19 of the principal Act, as far as they are applicable and with the necessary modifications, shall apply as if the application had been made under that section.

16. Sentence of periodic detention—(1) Any person who is sentenced to periodic detention shall, during the term of the sentence, be required to report at a work centre on a specified number of occasions in each week, and on each such occasion to place himself in the custody of the Warden of that centre for a specified period.

(2) The Court imposing any such sentence shall, by order,—

(a) Specify the number of occasions in each week on which the offender is required to report, or direct him to report on such number of occasions in each week as

may from time to time be specified by the Warden;
and

(b) Specify the work centre at which he is required to report on each occasion; and

(c) Specify the day and time at which he is required to report on the first such occasion after the sentence is imposed; and

(d) Specify the duration of each period of custody.

(3) It shall not be necessary for all the periods of custody in any week to be of the same duration, but no such period shall be longer than sixty hours.

(4) The day and time at which a person sentenced to periodic detention is required to report at the work centre on every occasion after the first shall be fixed by the Warden, who shall have regard to any general directions given by the Court in imposing the sentence or, subsequently, by any Magistrate to whom an application is made by the offender.

(5) In special circumstances the Warden may excuse any such person from reporting on any occasion or occasions, or on every occasion, in any week.

(6) The times at which a person sentenced to periodic detention is required to report for that purpose, and the periods during which he is required to remain in custody, shall be such as to avoid interference, so far as practicable, with his attendance at any educational institution or his work or his genuine religious observances.

17. Legal custody of offender—(1) A person sentenced to periodic detention shall be in the legal custody of the Warden of a work centre throughout every period he is detained in that centre and at any time while he is working outside the centre in accordance with a direction given by the Warden pursuant to section 18 of this Act or is travelling between the work centre and any place where he has been so directed to work.

(2) Every such person shall be subject to the control, directions, and supervision of the Warden while he is in the legal custody of the Warden whether he is in the work centre or outside the work centre.

18. Work to be performed by offenders—(1) Every period during which any person sentenced to periodic detention is in custody under this Part of this Act shall be spent in participating in such activities (physical or mental), attending

such classes or groups, or undergoing such instruction as the Warden considers conducive to that person's reformation and training.

(2) Any such person may, at any time during any period in which he is required to be in custody under this Part of this Act, be employed in such suitable work, whether within the work centre at which he is required to report or outside it, as the Warden directs.

(3) The type of work to which any such person may be directed outside the work centre shall be work—

- (a) At any hospital or charitable or educational institution;
or
- (b) At the home of any old, infirm, or handicapped person or at any institution for old, infirm, or handicapped persons; or
- (c) On any land of which the Crown or any public body is the owner or lessee or occupier or which is administered by the Crown or any public body:

Provided that no person shall be directed to any work if in doing that work he would take the place of any person who would otherwise be employed on that work as a regular employee of the institution aforesaid or, as the case may be, of the old, infirm, or handicapped person or of the Crown or public body.

(4) Where any person is directed to work pursuant to this section—

- (a) He shall for the purposes of the Workers' Compensation Act 1956 or of any other Act or of any rule of law be deemed to be a worker employed by the Crown; and
- (b) For the purposes of the first-mentioned Act his weekly earnings shall be deemed to be an amount equivalent to his weekly earnings in any full-time employment in which he is engaged at that time or, if he has no full-time employment, an amount which the Secretary of Labour considers in all the circumstances of the case would be a fair amount.

(5) A person directed to work pursuant to this section shall not be entitled to any remuneration in respect of that work.

19. Variation or cancellation of sentence of periodic detention—(1) Any sentence of periodic detention may at any time, on the application of the offender or of the Warden of the work centre at which he is required to report, be varied or cancelled by the Court.

(2) The Court to which application shall be made shall be—

- (a) The Supreme Court if the sentence was imposed by the Supreme Court or by the Court of Appeal on appeal from the Supreme Court:
- (b) Any Magistrate's Court presided over by a Magistrate if the sentence was imposed by a Magistrate's Court or by the Supreme Court on appeal from a Magistrate's Court.

(3) A sentence may be varied or cancelled under this section on the ground that there has been a change of circumstances since the sentence was imposed or, if the Court considers that a continuation of the sentence is no longer necessary in the interests of the community or of the offender, the sentence may be cancelled on that ground.

20. Report on conduct of offender—Where any person serves a sentence of periodic detention and is later brought before a Court for any other offence any probation officer or any Warden of a work centre or any other officer of the Department of Justice may make a report in writing to the Court on the conduct of that person while he was in legal custody under that sentence, and, where the report is made by a person other than the probation officer, the provisions of section 5 of the principal Act shall apply with the necessary modifications.

21. Offences—(1) Every person sentenced to periodic detention commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both, who—

- (a) Fails without reasonable excuse to report at a work centre as required by the order of the Court imposing the sentence or in accordance with instructions given to him under subsection (4) of section 16 of this Act or to report at any other place at which he is directed to report by the Warden pursuant to subsection (2) of section 18 of this Act:
- (b) Fails without reasonable excuse to obey any rules governing the work centre at which he is required to report or any directions of the Warden regarding the manner in which his time is to be spent while he is in the legal custody of the Warden:

- (c) Leaves the work centre without reasonable excuse at any time when he should be there:
- (d) Leaves without reasonable excuse any premises at which he has been directed to perform work outside the work centre at any time when he should be at those premises:
- (e) Is idle or careless at work, refuses to work, or neglects or wilfully mismanages his work, while he is in the legal custody of the Warden:
- (f) Uses or writes any abusive, insolent, insulting, threatening, profane, indecent, or obscene words while he is in the legal custody of the Warden:
- (g) Behaves in an offensive, threatening, insolent, insulting, disorderly, or indecent manner while he is in the legal custody of the Warden.

(2) Every person commits an offence, and is liable on summary conviction to a fine not exceeding fifty pounds, who without lawful justification or excuse loiters about any work centre or any place where persons sentenced to periodic detention are employed, and refuses or neglects to depart after being warned by any constable or by any officer of the work centre.

22. Effect of subsequent convictions—(1) Where any person who is subject to a sentence of periodic detention is sentenced to imprisonment, corrective training, borstal training, or detention in a detention centre during the term of that sentence of periodic detention, the sentence of periodic detention shall be deemed to be terminated.

(2) In any other case where any such person is convicted of an offence during the term of a sentence of periodic detention, the Court before which that person is convicted may, if it thinks fit, order that the sentence of periodic detention shall be terminated.

23. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing the powers and duties of officers:
- (b) Ensuring the good management and government of work centres:
- (c) Ensuring the discipline of persons received into work centres; and prescribing or regulating the classification, diet, instruction, and hours of work of such persons:

- (d) Generally providing for such matters as are contemplated by or necessary for giving full effect to this Part of this Act and for the due administration thereof:
- (e) Prescribing fines not exceeding fifty pounds for the breach of any regulation made under this Act.

24. Consequential amendment—The principal Act is hereby amended by omitting from subsection (1) of section 43 the words “or preventive detention”, and substituting the words “preventive detention, or periodic detention”.

PART II

MISCELLANEOUS AMENDMENTS

25. Period of borstal training—(1) Section 20 of the principal Act is hereby amended by omitting from the proviso the words “three years”, and substituting the words “two years”.

(2) Section 25 of the Penal Institutions Act 1954 is hereby amended by omitting from the proviso to subsection (5) the words “three years”, and substituting the words “two years”.

(3) The provisions of subsection (1) of this section shall not apply with respect to any person who has been sentenced to borstal training before the date of the passing of this Act, and section 20 of the principal Act shall continue to apply with respect to every such person as if subsection (1) of this section had not been passed.

26. Functions of Prisons Parole Board—(1) Section 33A of the principal Act (as inserted by section 4 of the Criminal Justice Amendment Act 1961) is hereby amended by repealing paragraph (c) of subsection (2), and substituting the following paragraphs:

“(c) In the case of every offender undergoing imprisonment for life consequent upon his conviction for murder, as soon as may be practicable after the expiry of ten years from the date of his reception in the prison, and at least once in every period of twelve months thereafter:

“(d) In the case of every other offender undergoing imprisonment for life, as soon as may be practicable after the expiry of five years from the date of his reception in the prison, and at least once in every period of twelve months thereafter.”

(2) Section 33A of the principal Act (as inserted as aforesaid) is hereby further amended by repealing subsection (4), and substituting the following subsection:

“(4) Every offender who is entitled to have his case considered under subsection (2) of this section shall be given an opportunity of appearing before the Prisons Parole Board and stating his case in person at least once in every year, and for that purpose the Prisons Parole Board shall from time to time visit every institution where there are offenders undergoing corrective training, preventive detention, or imprisonment for life or shall have the offender brought before it.”

This Act is administered in the Department of Justice.
