



## ANALYSIS

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1999, No. 9

**An Act to amend the Criminal Justice Act 1985**

[9 March 1999]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Criminal Justice Amendment Act 1999, and is part of the Criminal Justice Act 1985 (“the principal Act”).

(2) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

**2. Interpretation**—(1) Section 2(1) of the principal Act is amended by repealing the definition of the term “home detention”, and substituting the following definition:

“‘Home detention’ means the detention under a sentence of imprisonment, in an approved residence (including a marae), of an offender who is released to home detention under section 103B; and ‘release to home detention’ and ‘serving a sentence by way of home detention’ have corresponding meanings.”.

(2) Section 2(1) of the principal Act is amended by repealing the definition of the term “residential conditions”, and substituting the following definition:

“‘Residential conditions’ means the conditions prescribed in section 107D and imposed on an offender who is released under Part VI to an habilitation centre or to home detention.”.

**3. New heading and sections inserted**—The principal Act is amended by inserting, after section 21C, the following heading and sections:

*“Home Detention*

**“21D. Court to consider granting offender leave to apply for release to home detention in certain cases—**

(1) This section applies if a court sentences an offender to—

“(a) A term of imprisonment of not more than 2 years; or

“(b) Two or more terms of imprisonment to be served concurrently, each term of which is not more than 2 years; or

“(c) Two or more terms of imprisonment that are cumulative, the aggregate term of which is not more than 2 years.

“(2) The court must consider whether to grant the offender leave to apply under section 103 to a District Prisons Board for release to home detention.

“(3) In considering whether to grant leave under this section, the court must consider—

“(a) The nature and seriousness of the offence; and

“(b) Any relevant matters in the victim impact statement in that case.

“(4) The court must make an order either granting leave or declining to grant leave.

“(5) For the purposes of this section, a sentence of imprisonment referred to in subsection (1) includes a suspended sentence of imprisonment and the court that orders

that the suspended sentence take effect for the term specified in the order suspending the sentence, or that a lesser period of imprisonment be substituted, is the court that must consider whether to grant the offender leave to apply under section 103 to a District Prisons Board for release to home detention.

**“21E. Effect of subsequent conviction on home detention—**(1) Despite section 13(7), if an offender is convicted of an offence while serving a sentence by way of home detention and the court sentences the offender to periodic detention, and that offence was committed before the commission of the offence for which home detention is being served or is an offence against section 107H, the court may order that the sentence of periodic detention be served concurrently with the sentence that is being served by way of home detention.

“(2) The court may not sentence to periodic detention an offender to whom subsection (1) applies unless the court is satisfied that, in the special circumstances of the offence or of the offender, it is in the interests of justice to do so.

“(3) If an offender is convicted of an offence while serving a sentence by way of home detention and the court imposes a sentence of imprisonment, and that offence was committed before the commission of the offence to which the home detention relates, the court may order that the sentence of imprisonment also be served by way of home detention concurrently with the other sentence that is being served by way of home detention, unless the aggregate term is more than 2 years.

“(4) Except where subsection (1) or subsection (3) applies, if an offender is convicted of an offence while the offender is serving a sentence by way of home detention, the court,—

“(a) If the offence is punishable by imprisonment, must order that the offender be returned to a penal institution to serve the remainder of his or her sentences, unless the court considers there are special reasons for ordering otherwise:

“(b) If the offence is not punishable by imprisonment, may, but is not required to, order that the offender be returned to a penal institution to serve the remainder of his or her sentences.

**“21F. Persons serving sentence by way of home detention not to be treated as being in custody—**An offender is not to be treated as being in the custody of any

person merely because the offender is serving a sentence of imprisonment by way of home detention.

**“21G. Right of appeal against order granting or declining leave to apply for release to home detention—**For the purposes of Part IV of the Summary Proceedings Act 1957 and Part XIII of the Crimes Act 1961, an order under section 21D (4) (either granting or declining to grant leave to apply under section 103 to a District Prisons Board for release to home detention) is a sentence.”

**4. Commencement of period of non-association—**Section 28E (2) of the principal Act is amended by adding the words “or from home detention (as the case may be)”.

**5. Effect of subsequent sentences—**Section 28G (1) (c) (i) of the principal Act is amended by inserting, after the words “released from a penal institution”, the words “or from home detention (as the case may be)”.

**6. Conditions of sentence—**Section 49 (a) (i) of the principal Act is amended by inserting, after the words “after release from the penal institution”, the words “or release from home detention (as the case may be)”.

**7. Cumulative sentences—**Section 55 (4) of the principal Act is amended by inserting, after the words “after release from the penal institution”, the words “or release from home detention (as the case may be)”.

**8. Commencement of sentences—**Section 59 (1) of the principal Act is amended by inserting in paragraph (a) (i), and also in paragraph (b) (i), after the words “the penal institution”, the words “or released from home detention (as the case may be)”.

**9. Effect of subsequent sentences—**Section 63 (2) (d) of the principal Act is amended by inserting, after the words “section 94 of this Act”, the words “or from home detention (as the case may be)”.

**10. Commencement of sentence or term of committal—**(1) Section 78 (2) of the principal Act is amended by inserting, after the words “on humanitarian grounds”, the words “or if he or she has granted leave for the offender to apply to a District Prisons Board for release to home detention

and is satisfied there are special reasons why the sentence should not commence immediately”.

(2) Section 78 (9) of the principal Act is amended by inserting, after the words “a penal institution”, the words “or release from home detention (as the case may be)”.

**11. Secretary to determine offender’s final release dates**—Section 91 of the principal Act is amended by inserting, after the words “corrective training,”, the words “or who is serving a sentence of imprisonment by way of home detention,”.

**12. Jurisdiction of Parole Board to release offenders on parole**—Section 97 (2) of the principal Act is amended by omitting the words “once in every 12 months thereafter”, and substituting the words “once in every 12 months after the offender becomes so eligible or (if the offender is serving a sentence by way of home detention) once in every 3 months after the offender becomes so eligible”.

**13. Jurisdiction of District Prisons Board to release offenders on parole**—Section 100 (2) of the principal Act is amended by omitting the words “once in every 12 months thereafter”, and substituting the words “once in every 12 months after the offender becomes so eligible or (if the offender is serving a sentence by way of home detention) once in every 3 months after the offender becomes so eligible”.

**14. New sections substituted**—The principal Act is amended by repealing section 103, and substituting the following sections:

**“103. Release to home detention where offender has leave granted by court**—(1) An offender who has leave under section 21D to do so may apply to a District Prisons Board for release to home detention in an area where a home detention scheme is operated by the Secretary.

“(2) The Board must consider the application as soon as practicable in accordance with section 103B.

**“103A. Pre-parole home detention for offenders serving determinate sentence of more than 2 years**—

(1) This section applies to offenders who are—

“(a) Subject to a determinate sentence of imprisonment of more than 2 years; and

“(b) Eligible to be released on parole under section 89 (3) after the expiry of one-third of their sentence.

“(2) At any time during the period commencing on the date that is 3 months before the date an offender is eligible for release on parole and ending with the offender’s final release date, a District Prisons Board or the Parole Board (as the case may be) may direct that the offender be released under this section to home detention.

“(3) An offender to whom this section applies may apply to a District Prisons Board or the Parole Board (as the case may be) for release to home detention in an area where a home detention scheme is operated by the Secretary.

“(4) An application under this section may be lodged before the start of the period referred to in subsection (2) but not more than 2 months before that period.

“(5) The Board must consider the application as soon as practicable in accordance with section 103B.

“(6) For the purposes of this section and sections 103B and 103C, terms of imprisonment under cumulative sentences are to be treated as 1 term.

“103B. **Determination of application for release to home detention**—(1) The Board must request that a Probation Officer prepare for the Board a report on the offender’s suitability for release to home detention.

“(2) The Board may direct that an offender be released to serve his or her sentence by way of home detention if the Board—

- “(a) Has considered the Probation Officer’s report; and
- “(b) Has considered the matters set out in subsection (3); and
- “(c) Is satisfied about the matters set out in subsection (4).

“(3) The Board must consider—

- “(a) Generally, the likelihood of the offender committing further offences upon his or her release; and
- “(b) The nature of the offence; and
- “(c) The welfare of the offender and the likelihood that his or her rehabilitation will be assisted by home detention; and
- “(d) The safety and welfare of the occupants of the residence; and
- “(e) Any submissions made by victims of the offender.

“(4) The Board must be satisfied that—

- “(a) The offender is suitable for release to home detention; and
- “(b) The occupants of the residence to which the offender will be released understand the conditions of the offender’s release to home detention and consent to

the offender's detention in that residence in accordance with those conditions; and

“(c) The offender has been made aware of and understands the conditions that would apply on release to home detention and he or she agrees to comply with them.

“(5) If the Board directs that an offender be released to serve his or her sentence by way of home detention, the Board must consider requiring the offender to undergo a programme under section 107C (2).

“(6) If the Board declines to direct that an offender be released to home detention, it may (on application or of its own motion) from time to time reconsider its original decision on the offender's application for release to home detention.

“(7) Nothing in this section affects or limits the matters that the Board must consider under section 104 in relation to release on parole.

“103C. **Other provisions applying to home detention**—(1) Sections 106, 107, 107A (5), (8), and (11), 107D (2) and (3), 107F, 107G, and 107I to 107N, with any necessary modifications, apply to applications for and releases to home detention.

“(2) An offender who is serving a sentence by way of home detention is subject to recall under this Act as if he or she had been released on parole.

“(3) An offender who is serving a sentence by way of home detention may at any time apply to the District Prisons Board or Parole Board that directed his or her release for a direction returning the offender to a penal institution.”

**15. Right of victims to be heard at parole hearings and hearing to consider release to home detention**—The principal Act is amended by inserting, after section 106, the following section:

“106A. (1) In determining any application or considering any matter to which section 103B or section 104 applies, the Parole Board or a District Prisons Board (as the case may be) must have regard to any written submissions made by the victim of the offender.

“(2) In addition to or instead of making written submissions, the victim may, with leave of the Board, make oral submissions to the Board.

“(3) Despite anything in section 107 (5), the offender may be shown a copy of any of the victim's submissions but is not

entitled to be given the victim's address or to retain a copy of any of the victim's submissions.

“(4) In this section, ‘victim’ has the same meaning as it has in section 2 of the Victims of Offences Act 1987.”

**16. Residential conditions**—Section 107D of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsections:

“(2) Where an offender is released to home detention, the following conditions apply in addition to any special conditions imposed under section 107C:

“(a) The offender must not at any time leave the place where he or she is serving home detention, except—

“(i) To seek or engage in employment approved by a probation officer; or

“(ii) To seek urgent medical or dental treatment; or

“(iii) To avoid or minimise a serious risk of death or injury to the offender or any other person; or

“(iv) To attend training or other rehabilitative activities or programmes approved by a probation officer; or

“(v) For such other purpose as a probation officer may from time to time approve:

“(b) The offender must co-operate with, and comply with any lawful direction given by, the probation officer assigned to him or her.

“(3) An offender who is subject to residential conditions must—

“(a) Keep in his or her possession the copy of the licence issued under section 107F; and

“(b) If requested to do so by a member of the Police, or by a probation officer, produce the copy of the licence for inspection.”

**17. Application for recall**—(1) Section 107i (6) (e) of the principal Act is amended by adding the expression “; or”.

(2) Section 107i (6) of the principal Act is amended by adding the following paragraph:

“(f) In the case of an offender serving a sentence by way of home detention, a suitable residence in an area where a home detention scheme is operated by the Secretary is no longer available because of changed circumstances.”

**18. Interim order for recall**—(1) Section 107J (1) of the principal Act is amended by inserting, after the expression “paragraph (e)”, the expression “or paragraph (f)”.

(2) Section 107J of the principal Act is amended by adding the following subsection:

“(6) Where the Chairperson of a District Prisons Board is unavailable to deal with an application under this section in respect of an offender who is serving a sentence by way of home detention, a District Court Judge may exercise the powers conferred on the Chairperson of that Board by this section.”

**19. Repeal of section 125A**—(1) Section 125A of the principal Act is repealed.

(2) The Department of Justice (Restructuring) Act 1995 is consequentially amended by repealing so much of the Second Schedule as relates to section 125A of the principal Act.

**20. Warrant of commitment for full-time custodial sentence**—Section 143 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) Every warrant issued under this section must include a statement as to whether the offender is a person to whom section 21D applies; and, if that section applies to the offender, the warrant must state the way in which the requirements of that section have been satisfied.”

**21. Victims of Offences Act 1987 amended**—(1) The Victims of Offences Act 1987 is amended by repealing section 11, and substituting the following section:

“11. (1) The victim of an offence of sexual violation or other serious assault or injury should be given the opportunity to request notification of any of the following:

“(a) The offender’s impending release from penal custody or release to or from home detention:

“(b) The offender’s escape from penal custody or home detention:

“(c) The time and date of the offender’s parole hearing or hearing for release to home detention.

“(2) Where the victim makes such a request, then so long as the victim has supplied a current address and telephone number to the chief executive of the Department of Corrections, the victim should be—

“(a) Promptly notified of the offender’s impending release, or escape, from penal custody or home detention; and

“(b) Given reasonable prior notice of the time and date of the offender’s parole hearing or hearing for release to home detention.”

(2) The Department of Justice (Restructuring) Act 1995 is consequentially amended by repealing so much of the Second Schedule as relates to section 11 of the Victims of Offences Act 1987.

**22. Transitional provisions relating to home detention**—(1) An order under the principal Act granting or declining to grant an offender leave to apply for release to home detention may be made in respect of a person who is convicted on or after the date this Act comes into force of an offence to which section 21D of the principal Act applies, whether the offence was committed before or on or after that date.

(2) A direction releasing an offender to home detention may be made under section 103B of the principal Act if the offender’s sentence was imposed before the date this Act comes into force and the offender is a person referred to in section 103A (1).

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This Act is administered in the Ministry of Justice and the Department for Courts.

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