



ANALYSIS

- | | |
|---|--|
| <p>Title</p> <ol style="list-style-type: none"> 1. Short Title and commencement 2. Interpretation 3. Sentence for original offence on breach of probation 4. Court to consider report of probation officer before passing sentence of corrective training 5. Preventive detention 6. Released offender to be on probation 7. Person found under disability 8. When plea of not guilty may be substituted for plea of guilty 9. Appeal against acquittal on account of insanity | <ol style="list-style-type: none"> 10. Sentence not invalidated by mistake in age of offender 11. Discretion of Court as to punishment 12. Court may order confiscation of motor vehicles 13. Disposal of confiscated motor vehicles 14. Variation or cancellation of sentence of periodic detention 15. Court empowered to substitute sentence in place of periodic detention 16. Court empowered to substitute sentence in place of community service 14A. Jurisdiction of Court |
|---|--|

1980, No. 86

An Act to amend the Criminal Justice Act 1954

[13 January 1981]

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 and commencement—(1) This Act may be cited as the Criminal Justice Amendment Act (No. 3) 1980, and shall be read together with and deemed part of the Criminal Justice Act 1954 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of May 1981.

2. Interpretation—Section 2 (1) of the principal Act is hereby amended by adding the following definition:

“‘Trial Judge’, in relation to a District Court, means a Judge who holds a warrant under section 28B of the District Courts Act 1947 to conduct trials on indictment:”.

3. Sentence for original offence on breach of probation—(1) Section 11 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Every application under this section shall be made—

“(a) To the High Court, if the offender was released on probation—

“(i) By the Court of Appeal on appeal from the High Court; or

“(ii) By the High Court otherwise than on appeal from a District Court; or

“(iii) By the High Court on appeal from the District Court and the High Court, on so releasing the offender, directed that any application under this section should be made to that Court; or

“(b) To a District Court presided over by a trial Judge, if the offender was released on probation—

“(i) By the Court of Appeal on appeal from such a District Court; or

“(ii) By a District Court Judge upon conviction on indictment; or

“(c) To a District Court presided over by any Judge, in any other case,—

and where the application is dealt with by a Judge other than the one who released the offender on probation, the Judge shall, before sentencing the offender, make such inquiries as to the circumstances of the case as he considers reasonable, and may if he thinks fit hear such evidence as is relevant to the case.”

(2) Section 2 (1) (a) and (b) of the Criminal Justice Amendment Act 1961 are hereby consequentially repealed.

4. Court to consider report of probation officer before passing sentence of corrective training—Section 14D of the principal Act (as inserted by section 4 of the Criminal Justice Amendment Act 1975) is hereby amended by repealing subsections (3) and (4), and substituting the following subsections:

“(3) Every application under subsection (2) of this section shall be made—

“(a) To the High Court, if the sentence was passed by that Court; or

“(b) To a District Court presided over by a trial Judge, if the sentence was passed by a District Court upon conviction on indictment; or

“(c) To a District Court presided over by any Judge, if the sentence was passed by a District Court upon summary conviction.

“(4) If any such application is filed in a Court registry at a distance from the corrective training institution where the offender is detained, a Judge of that Court may order that the application be dealt with by a Judge at a place nearer to the institution.”

5. Preventive detention—Section 24 (3) of the principal Act (as substituted by section 5 (1) of the Criminal Justice Amendment Act 1967) is hereby amended by inserting, after the words “Summary Proceedings Act 1957”, the words “or (as the case may require) section 28G of the District Courts Act 1947”.

6. Released offender to be on probation—Section 35 (3B) of the principal Act (as inserted by section 8 (1) of the Criminal Justice Amendment Act 1967 and amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by inserting, after the words “High Court,”, the words “or a District Court acting under section 28F (1) of the District Courts Act 1947,”.

7. Person found under disability—Section 39c of the principal Act (as inserted by section 2 of the Criminal Justice Amendment Act 1969) is hereby amended by inserting in subsection (1) (as substituted by section 19 (3) of the Criminal Justice Amendment Act 1980), after the words “High Court”, the words “or a District Court Judge”.

8. When plea of not guilty may be substituted for plea of guilty—(1) Section 39D of the principal Act (as inserted by section 2 of the Criminal Justice Amendment Act 1969 and amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting from subsection (1) the words “to the High Court” where they secondly occur.

(2) Section 39D of the principal Act (as so inserted) is hereby further amended by inserting, after subsection (2), the following subsection:

“(2A) If—

“(a) Before or during the preliminary hearing before a District Court of any information, the defendant pleads guilty under section 153A of the Summary Proceedings Act 1957; or

“(b) At the close of such a hearing before such a Court, the defendant pleads guilty under section 168 of that Act,—

and the Court to which he is remanded for sentence has reason to believe that he may have been insane at the time of the commission of the alleged offence, the Court may direct that a plea of not guilty be recorded instead of a plea of guilty, and commit him for trial as if no plea of guilty had been made.”

9. Appeal against acquittal on account of insanity—

Section 39F of the principal Act (as inserted by section 2 of the Criminal Justice Amendment Act 1969 and amended by section 12 of the Judicature Amendment Act 1979) is hereby amended by omitting from the proviso to subsection (6) the words “in the High Court”.

10. Sentence not invalidated by mistake in age of offender—

Section 43 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Every application under subsection (2) of this section shall be made—

“(a) To the High Court, if the sentence was passed—

“(i) By the Court of Appeal on appeal from the High Court; or

“(ii) By the High Court otherwise than on appeal from a District Court; or

“(b) To a District Court presided over by a trial Judge, if the sentence was passed—

“(i) By the Court of Appeal on appeal from such a District Court; or

“(ii) By a District Court Judge upon conviction on indictment; or

“(c) To a District Court presided over by any Judge, in any other case.”

11. Discretion of Court as to punishment—(1) Section 44 (2) of the principal Act is hereby amended by repealing paragraph (b) of the proviso, and substituting the following paragraph:

“(b) Where no maximum fine is prescribed by the enactment, no person shall, except as provided by section 28F of the District Courts Act 1947, be sentenced by a District Court to pay a fine exceeding \$4,000 if the Court is presided over by a Judge, or \$400 if the Court is presided over by a Justice.”

(2) Section 44 (3) of the principal Act is hereby amended by repealing the proviso, and substituting the following proviso:

“Provided that, where the conviction is by a District Court, the fine shall not, except as provided by section 28F of the District Courts Act 1947, exceed \$4,000 if the Court is presided over by a Judge, or \$400 if it is presided over by a Justice.”

(3) Section 2 (2) of the Summary Proceedings Amendment Act 1969 is hereby repealed.

12. Court may order confiscation of motor vehicles—Section 44B of the principal Act (as inserted by section 3 (1) of the Criminal Justice Amendment Act (No. 2) 1976) is hereby amended—

- (a) By inserting in subsection (5), before the words “a bailiff”, the words “the Sheriff or”:
- (b) By inserting in subsection (6), after the word “authorising”, the words “the Sheriff or”:
- (c) By inserting in subsection (7), before the word “bailiff” in both places where it occurs, the words “Sheriff or”:
- (d) By inserting in subsection (8), after the words “or where”, the words “the Sheriff or”:
- (e) By inserting in subsection (10), before the words “any bailiff”, the words “the Sheriff or”:
- (f) By inserting in subsection (11), after the words “seized by”, the words “the Sheriff or”:
- (g) By inserting in that subsection, after the words “custody of that”, the words “Sheriff or”.

13. Disposal of confiscated motor vehicles—Section 44E of the principal Act (as inserted by section 3 (1) of the Criminal Justice Amendment Act (No. 2) 1976) is hereby amended by

inserting in subsection (4), after the words “the provisions of”, the words “rule 487 of the Code of Civil Procedure or (as the case may require)”.

14. Variation or cancellation of sentence of periodic detention—Section 19 of the Criminal Justice Amendment Act 1962 is hereby amended by repealing subsection (2), and substituting the following subsection:

- “(2) Every application under this section shall be made—
- “(a) To the High Court, if the sentence was passed—
- “(i) By the Court of Appeal on appeal from the High Court; or
- “(ii) By the High Court otherwise than on appeal from a District Court; or
- “(b) To a District Court presided over by a trial Judge, if the sentence was passed—
- “(i) By the Court of Appeal on appeal from such a District Court; or
- “(ii) By a District Court Judge upon conviction on indictment; or
- “(c) To a District Court presided over by any Judge, in any other case.”

15. Court empowered to substitute sentence in place of periodic detention—Section 22B of the Criminal Justice Amendment Act 1962 (as substituted by section 7 of the Criminal Justice Amendment Act 1970) is hereby amended by repealing paragraphs (a) and (b) of subsection (1), and substituting the following paragraphs:

- “(a) The High Court, if the sentence was passed—
- “(i) By the Court of Appeal on appeal from the High Court; or
- “(ii) By the High Court otherwise than on appeal from a District Court; or
- “(b) A District Court presided over by a trial Judge, if the sentence was passed—
- “(i) By the Court of Appeal on appeal from such a District Court; or
- “(ii) By a District Court Judge upon conviction on indictment; or
- “(c) A District Court presided over by any Judge, in any other case.”

16. Court empowered to substitute sentence in place of community service—The Criminal Justice Amendment Act 1980 is hereby amended by repealing section 14, and substituting the following section:

“14. Jurisdiction of Court—Every application under section 10 or section 12 of this Act shall be made—

“(a) To the High Court, if the sentence was passed—

“(i) By the Court of Appeal on appeal from the High Court; or

“(ii) By the High Court otherwise than on appeal from a District Court; or

“(b) To a District Court presided over by a trial Judge, if the sentence was passed—

“(i) By the Court of Appeal on appeal from such a District Court; or

“(ii) By a District Court Judge upon conviction on indictment; or

“(c) A District Court presided over by any Judge, in any other case.”

This Act is administered in the Department of Justice.
