



# Sentencing Amendment Act 2004

Public Act 2004 No 68  
Date of assent 6 July 2004  
Commencement see section 2

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The Parliament of New Zealand enacts as follows:

### 1 Title

(1) This Act is the Sentencing Amendment Act 2004.

- (2) In this Act, the Sentencing Act 2002 is called “the principal Act”.

## **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal Assent.

## **3 Proof of facts**

Section 24(2)(c) of the principal Act is amended by inserting, after the word “negate”, the words “beyond a reasonable doubt”.

## **4 Court may order reparation report**

- (1) Section 33(1) of the principal Act is amended by omitting the words “should be imposed”, and substituting the words “may be appropriate”.
- (2) Section 33(1) of the principal Act is amended by—
- (a) inserting in paragraph (b), after the word “and”, the words “the value of”; and
  - (b) inserting in paragraph (c)(i), after the word “nature”, the words “and value”.

## **5 Conditions of sentence of reparation**

Section 36 of the principal Act is amended by adding, as subsections (2) and (3), the following subsections:

- “(2) The court may not impose a condition that an amount to be paid in 1 lump sum must be paid immediately unless the court is satisfied that the offender has sufficient means to pay it immediately.
- “(3) If the court imposes a condition on a sentence of reparation that it must be paid immediately in 1 lump sum, section 83(2) of the Summary Proceedings Act 1957 applies as if the condition were an order under section 83(1) of that Act.”

## **6 Cumulative and concurrent sentences of imprisonment**

Section 83 of the principal Act is amended by repealing subsection (2) and substituting the following subsection:

- “(2) Despite subsection (1), a court may not impose a sentence of imprisonment cumulatively on another sentence of imprisonment if, at the time of sentencing, the offender is subject to a

sentence of imprisonment but, having commenced serving the sentence, is no longer detained under it.”

**7 Imposition of minimum period of imprisonment in relation to determinate sentence of imprisonment**

Section 86 of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsection:

- “(2) The court may impose a minimum period of imprisonment that is longer than the period otherwise applicable under section 84(1) of the Parole Act 2002 if it is satisfied that that period is insufficient for all or any of the following purposes:
- “(a) holding the offender accountable for the harm done to the victim and the community by the offending;
  - “(b) denouncing the conduct in which the offender was involved;
  - “(c) deterring the offender or other persons from committing the same or a similar offence;
  - “(d) protecting the community from the offender.”

**8 Sentence of preventive detention**

Section 87(5)(b) of the principal Act is amended by omitting the expression “237”, and substituting the expression “236”.

**9 Imposition of conditions on release of offender sentenced to imprisonment for short term**

- (1) Section 93 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

- “(1) A court that sentences an offender to a term of imprisonment of 12 months or less may impose the standard conditions and any special conditions on the offender and, if it does so, must specify when the conditions expire.
- “(2) If a court sentences an offender to a term of imprisonment of more than 12 months but not more than 24 months,—
- “(a) the standard conditions apply to the offender until the sentence expiry date, unless the court specifies otherwise; and sections 94, 95, and 96 apply as if the standard conditions had been imposed by order of the court; and

“(b) the court may at the same time impose any special conditions on the offender and, if it does so, must specify when the conditions expire.

“(2A) The court may specify that conditions imposed under this section expire on—

“(a) the sentence expiry date; or

“(b) the date that is a specified period before the sentence expiry date; or

“(c) the date that is a specified period of up to 6 months after the sentence expiry date.

“(2B) In this section,—

“**sentence expiry date** has the meaning given to it in section 4 of the Parole Act 2002

“**special conditions** includes, without limitation, conditions of a kind described in section 15(3) of the Parole Act 2002, other than an electronic monitoring condition as referred to in section 15(3)(f) of that Act

“**standard conditions** means the conditions set out in section 14(1) of the Parole Act 2002.”

(2) Section 93(7) of the principal Act is repealed.

## **10 Court must consider granting offender leave to apply for home detention in certain cases**

Section 97 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) The court may grant the offender leave to apply to the New Zealand Parole Board under section 33 of the Parole Act 2002 for home detention only if the court is satisfied that it would be appropriate to grant leave, taking into account—

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

“(b) the circumstances and background of the offender; and

“(c) any relevant matters in the victim impact statement in the case.”

## **11 Court may defer start date of sentence of imprisonment**

(1) Section 100(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

- “(b) if the court has given leave for the offender to apply for home detention and it is satisfied that there are exceptional circumstances justifying deferral of the start of the sentence.”
- (2) Section 100 of the principal Act is amended by inserting, after subsection (3), the following subsection:
- “(3A) The Bail Act 2000 provides that an offender whose sentence is deferred under this section must be granted bail.”
- (3) Section 100(4) of the principal Act is amended by adding the word “; or” to paragraph (b), and adding the following paragraphs:
- “(c) an order under this section has already been made in respect of the sentence; or
- “(d) the offender has already commenced serving the sentence or is detained under any other sentence or order.”

## **12 Imposition of minimum period of imprisonment if life imprisonment imposed for murder**

Section 103 of the principal Act is amended by repealing subsections (1) to (6), and substituting the following subsections:

- “(1) If a court sentences an offender convicted of murder to imprisonment for life it must order that the offender serve a minimum period of imprisonment under that sentence.
- “(2) The minimum term of imprisonment ordered may not be less than 10 years, and must be the minimum term of imprisonment that the court considers necessary to satisfy all or any of the following purposes:
- “(a) holding the offender accountable for the harm done to the victim and the community by the offending;
- “(b) denouncing the conduct in which the offender was involved;
- “(c) deterring the offender or other persons from committing the same or a similar offence;
- “(d) protecting the community from the offender.”

## **13 Discharge without conviction**

Section 106 of the principal Act is amended by inserting, after subsection (3), the following subsection:

“(3A) If the court is considering making an order under subsection (3)(b), it may order a report to be prepared under section 33 as if the court were considering imposing a sentence of reparation.”

#### **14 Conviction and discharge**

Section 108 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) If the court is considering making an order under subsection (2)(b), it may order a report to be prepared under section 33 as if the court were considering imposing a sentence of reparation.”

#### **15 Order to come up for sentence if called on**

Section 110 of the principal Act is amended by inserting, after subsection (3), the following subsection:

“(3A) If the court is considering making an order under subsection (3)(b), it may order a report to be prepared under section 33 as if the court were considering imposing a sentence of reparation.”

#### **16 Application for review of non-association order**

Section 121(4) of the principal Act is amended by omitting the expression “section 119”, and substituting the expression “section 120”.

#### **17 Confiscation of motor vehicle after second offence**

Section 129(1)(a) of the principal Act is amended by—

- (a) inserting, after the expression “36A(1)(a) or (c),”, the expression “39(1),”; and
- (b) inserting, after the expression “61(1),”, the expression “61(2),”; and
- (c) inserting, after the words “Land Transport Act 1998 (which relate to driving offences)”, the words “or section 171 of the Crimes Act 1961 (but only where the manslaughter involved the use of a motor vehicle)”.

#### **18 Sentence not invalidated by mistake in age of offender**

Section 143 of the principal Act is amended by omitting subsections (1) and (2), and substituting the following subsections:

- “(1) A sentence imposed on an offender for a particular offence is not invalid by reason only of the fact that the offender was, at the time when the offence was committed, under the age at which he or she was liable to the sentence imposed.
- “(2) If a sentence to which subsection (1) applies has been imposed on an offender, the offender, the prosecutor, or any counsel on behalf of the Crown may, at any time, apply in accordance with this section for the substitution of some other sentence.”

*Amendment to Misuse of Drugs Act 1975*

**19 Amendment to Misuse of Drugs Act 1975**

The Misuse of Drugs Act 1975 is amended by repealing section 32(5) (as inserted by Schedule 1 of the principal Act), and substituting the following subsection:

- “(5) If an order for forfeiture is made under subsection (4), the following provisions of the Sentencing Act 2002 apply, so far as they are applicable and with any necessary or specific modifications:
- “(a) section 127:
  - “(b) section 128, except subsection (2):
  - “(c) sections 130 to 136:
  - “(d) section 137, except that paragraphs (c) and (d) of subsection (3) do not apply and, instead, any proceeds of sale remaining after payment in accordance with subsection (3)(a) and (b) must be paid into the Crown Bank Account:
  - “(e) sections 138 to 142.”

*Amendments to Bail Act 2000 and Corrections Act 2004 consequential on amendment to section 100 of principal Act*

**20 Conditions of bail**

Section 31(1) of the Bail Act 2000 is amended by inserting, after the expression “section 32”, the words “and to sections 39A and 65A”.

**21 Failure to answer bail**

Section 37 of the Bail Act 2000 is amended by adding the word “; or” to paragraph (b) and adding the following paragraph:

“(c) fails without reasonable excuse to comply with any condition imposed under section 39A(3).”

**22 New heading and new section 39A inserted in Bail Act 2000**

The Bail Act 2000 is amended by inserting, after section 39, the following heading and section:

*“Bail on deferment of sentence*

**“39A Bail on deferment of sentence**

- “(1) This section applies if the start date of a sentence imposed on an offender following summary conviction is deferred under section 100 of the Sentencing Act 2002 and the offender is not liable to be detained under any other sentence or order.
- “(2) If this section applies, the court that defers the start date of the offender’s sentence must grant the offender bail.
- “(3) An offender who is granted bail under this section must be released on condition that the offender must,—
- “(a) if he or she has been given leave to apply for home detention,—
- “(i) apply, within 2 weeks of the bail being granted, for home detention in accordance with section 33(1) of the Parole Act 2002; and
- “(ii) appear at any hearing by the New Zealand Parole Board of that application; and
- “(b) surrender himself or herself to the Superintendent of the penal institution concerned at the expiry of the period of the deferral, being the period specified by the court or the period ending with the date on which the New Zealand Parole Board determines the application for home detention, whichever is sooner.
- “(4) The provisions of sections 31 to 38, and 41 to 44, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail.
- “(5) If any decision is made under section 34(1) (as applied by subsection (4)) in respect of an offender, the provisions of section 41(3) to (6) and section 42, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail.”

**23 Failure to answer bail**

Section 62 of the Bail Act 2000 is amended by adding the words “; or” to paragraph (b), and adding the following paragraph:

“(c) fails without reasonable excuse to comply with any condition imposed under section 65A(3).”

**24 New heading and new section 65A inserted in Bail Act 2000**

The Bail Act 2000 is amended by inserting, after section 65, the following heading and section:

*“Bail on deferment of sentence*

**“65A Bail on deferment of sentence**

“(1) This section applies if the start date of a sentence imposed on an offender following conviction on indictment is deferred under section 100 of the Sentencing Act 2002 and the offender is not liable to be detained under any other sentence or order.

“(2) If this section applies, the court that defers the start date of the offender’s sentence must grant the offender bail.

“(3) An offender who is granted bail under this section must be released on condition that the offender must,—

“(a) if he or she has been given leave to apply for home detention,—

“(i) apply, within 2 weeks of the bail being granted, for home detention in accordance with section 33(1) of the Parole Act 2002; and

“(ii) appear at any hearing by the New Zealand Parole Board of that application; and

“(b) surrender himself or herself to the Superintendent of the penal institution concerned at the expiry of the period of the deferral, being the period specified by the court or the period ending with the date on which the New Zealand Parole Board determines the application for home detention, whichever is sooner.

“(4) The following provisions, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail:

“(a) in the case of an offender granted bail by a District Court, sections 31 to 38, and 41 to 44:

- “(b) in the case of an offender granted bail by the High Court or the Court of Appeal, sections 56 to 63 and sections 66 to 69.
- “(5) If any decision is made under section 34(1) (as applied by subsection (4)(a)) in respect of an offender, the provisions of section 41(3) to (6) and section 42, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail.
- “(6) If any decision is made under section 57(1) (as applied by subsection (4)(b)), in respect of an offender, the provisions of sections 66 and 67, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail.”

## **25 Consequential amendments to Corrections Act 2004**

The item relating to the Bail Act 2000 in Schedule 2 of the Corrections Act 2004 is amended by—

- (a) omitting from the first item the words “and 33(1)”, and substituting the words “33(1), 39A(3)(b), and 65A(3)(b)”;
- (b) inserting in the second item, after the expression “33(1),”, the expression “39A(3)(b),”; and
- (c) inserting in the second item, after the expression “64,”, the expression “65A(3)(b),”.

### *Amendments to Sentencing Regulations 2002*

## **26 Consequential amendments to Sentencing Regulations 2002 in Schedule**

The Sentencing Regulations 2002 (SR 2002/178) are consequentially amended by revoking forms 4 and 6, and substituting the forms 4 and 6 set out in the Schedule.

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**Schedule**  
**New forms substituted in Schedule of Sentencing**  
**Regulations 2002**

Form 4

Order for minimum period of imprisonment within determinate sentence or sentence of imprisonment for life

*Sections 86 and 103, Sentencing Act 2002*

*[to be attached to warrant of commitment (form 6)]*

To every member of the police and to the Superintendent of the prison at *[place]*

*[Full name]* of *[address]*, *[occupation]* (the **offender**), was, on *[date]*, convicted of *[specify offence]* by the *[specify]* Court at *[place]* and was this day (or on *[date]*) sentenced to—

\*imprisonment for a term of *[specify period]*.

\*imprisonment for life.

\*Delete if inapplicable.

\* I am satisfied that the period of imprisonment otherwise applicable to the offender's determinate sentence under section 84(1) of the Parole Act 2002 is insufficient for all or any of the following purposes:

\* I consider that the minimum term of imprisonment specified below is necessary to satisfy all or any of the following purposes:

\*Delete if inapplicable.

- holding the offender accountable for the harm done to the victim and the community by the offending:
- denouncing the conduct in which the offender was involved:
- deterring the offender or other persons from committing the same or a similar offence:
- protecting the community from the offender.

Form 4—*continued*

The Court therefore orders, under section 86 (*or* section 103) of the Sentencing Act 2002, that the offender must serve a minimum period of imprisonment of [*specify period*].

Dated at the [*specify*] Court at [*place*] on [*date*].

.....  
Judge

## Form 6

## Warrant of commitment for imprisonment

*Section 91, Sentencing Act 2002*

To every member of the police and to the Superintendent of the prison at [place]

[Full name] of [address], [occupation] [the offender], was, on [date], convicted of [specify offence] by the [specify] Court at [place] and was sentenced to—

\*imprisonment for a term of [specify period].

\*imprisonment for life.

\*preventive detention.

\*Delete if inapplicable.

**Start date of sentence**

\*The start date of the sentence is that set out in section 76 of the Parole Act 2002.

\*The start date of the sentence is deferred, under section 100(1) of the Sentencing Act 2002, for [specify period] or the period ending with the date on which the Parole Board determines the application for home detention, whichever is sooner.

\*Delete if inapplicable.

**Legal representation**

\*The offender was legally represented (as contemplated by section 30(1) of the Sentencing Act 2002) at the stage of the proceedings at which the offender was at risk of conviction.

\*The offender was not legally represented (as contemplated by section 30(1) of the Sentencing Act 2002) at the stage of the proceedings at which the offender was at risk of conviction, but the Court was satisfied, in accordance with section 30(2) of the Sentencing Act 2002, that the offender refused or failed to exercise his or her rights relating to legal representation (or engaged counsel but subsequently dismissed him or her).

\*Delete if inapplicable.

Form 6—*continued***Home detention**

\*The offender was not a person to whom section 97 of the Sentencing Act 2002 applies.

\*The offender was a person to whom section 97 of the Sentencing Act 2002 applies, and an order was made granting the offender leave to apply to the New Zealand Parole Board for release to home detention.

\*The offender was a person to whom section 97 of the Sentencing Act 2002 applies, and an order was made declining leave for the offender to apply to the New Zealand Parole Board for release to home detention.

\*Delete if inapplicable.

**You**, the members of the police, are directed to deliver the offender to the Superintendent of the prison at [*place*].

**And you**, the Superintendent, are directed to receive the offender into your custody and to detain the offender for the purposes of the sentence.

**Release conditions imposed by the Court**

\*The offender was a person to whom section 93(1) of the Sentencing Act 2002 applies, and the Court imposed—

\*(a) the standard release conditions set out in section 14 of the Parole Act 2002, which expire on [*specify*]:

\*(b) the special conditions listed below, which expire on [*specify*].

\*The offender was a person to whom section 93(2) of the Sentencing Act 2002 applies, and—

\*(a) the standard release conditions set out in section 14 of the Parole Act 2002 apply until they expire on [*specify*]:

\*(b) the special conditions listed below apply until they expire on [*specify*].

\*Delete if inapplicable.

Form 6—*continued*

Dated at the [*specify*] Court at [*place*] on [*date*].

.....  
Judge

\* *Special conditions:*

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**Legislative history**

29 June 2004	Divided from Parole (Extended Supervision) and Sentencing Amendment Bill (Bill 88–2), third reading
6 July 2004	Royal assent

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

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