

CRIMES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes several important amendments to the Crimes Act 1961.

Clause 1 relates to the Short Title and commencement. The Act is to come into force on 1 October 1966.

Clause 2 substitutes new sections which provide new machinery for the enforcement of fines imposed by the Supreme Court.

Clause 3 amends section 124 of the principal Act so as to make it an offence to exhibit or present any indecent show or performance in the presence of any person for gain. Prosecutions for offences against section 124 may only be undertaken with the leave of the Attorney-General.

Clause 4 allows a Judge in his discretion to comment adversely on the failure of an accused person to give evidence or to call his wife or her husband, as the case may be.

Clause 5 inserts a new section which provides that no accused person shall be entitled to make an unsworn statement of fact at his trial.

Clause 6 substitutes a new section 367 in the principal Act. The new section makes it clear that the prosecution may sum up to the jury in every case but gives the defence the right to address the jury last in every case, whether or not evidence is called for the defence and whether or not the Attorney-General or the Solicitor-General appears for the Crown at the trial.

Clause 7 amends section 373 of the principal Act so that it will not be mandatory for the Court to direct that the jury be kept together during adjournments in every case in which the accused is charged with murder, piracy, committing a piratical act, or treason.

Clause 8 confers a right of appeal, with the leave of the Court of Appeal, in respect of certain preliminary matters that may arise before trial.

Clause 9 confers on the Solicitor-General, with the leave of the Court of Appeal, the right to appeal to the Court of Appeal against the sentence passed on the conviction of any person on indictment, unless the sentence is one fixed by law.

Clause 10 is a transitional provision which provides that *clauses 4 to 6* are not to apply to trials which have commenced or are in progress when the Act comes into force.

Hon. Mr Hanan

CRIMES AMENDMENT

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A BILL INTITULED

An Act to amend the Crimes Act 1961

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

1. **Short Title and commencement**—(1) This Act may be cited as the Crimes Amendment Act 1966, and shall be read together with and deemed part of the Crimes Act 1961* (hereinafter referred to as the principal Act).
- 10 (2) This Act shall come into force on the first day of October, nineteen hundred and sixty-six.

*1961, No. 43
Amendment: 1963, No. 120

2. New sections inserted as to payment of fines—The principal Act is hereby amended by repealing section 19, and substituting the following sections:

“19. Payment of fine, etc.—(1) Where the Court sentences an offender on conviction on indictment to pay a fine, or orders him to pay any other sum of money, it may do all or any of the following things—

“(a) Allow time for payment:

“(b) Direct payment to be made by instalments:

“(c) Direct payment to be made to such person or persons and in such place or places as the Court may specify.

“(2) Where a sum is directed to be paid by instalments and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in the payment of all instalments then remaining unpaid.

“19A. Supervision of offender when time for payment is allowed—Where an offender is sentenced on conviction on indictment to pay a fine or is ordered to pay any other sum of money and the Court allows time for payment or directs payment to be made by instalments, the Court may order that he be placed under the supervision of a Probation Officer or such other person as it shall appoint until the fine or other sum of money is paid.

“19B. Immediate execution—If the Court which sentences an offender to pay a fine or which orders an offender to pay any other sum of money is of opinion—

“(a) That the offender has sufficient means to pay the fine or other sum of money forthwith; or

“(b) That the offender has no fixed place of residence; or

“(c) That for any other reason, having reference to the gravity of the offence, the character of the offender, or other special circumstances, execution should issue without delay—

the Court may direct that a writ of sale be issued against the personal property of an offender, without waiting for the expiration of the period mentioned in the rules of Court made under this Act, or it may impose on the offender a period of imprisonment in default of payment of the fine or other sum of money (not exceeding the appropriate maximum period prescribed in section 19E of this Act).

“19c. **Warrant to collect fine or other sum of money ordered to be paid**—(1) Where any fine imposed on conviction on indictment or any other sum of money which an offender has been ordered to pay is not paid within fourteen days there-
5 after, or within such further time as may be allowed or fixed for the payment thereof, any Registrar may issue a warrant in the form prescribed in the rules of Court made under this Act to collect the sum or so much of it as remains unpaid.

“(2) Where a warrant has been issued under this section,
10 the constable executing it shall demand payment from the offender if he can be found and shall, unless the fine or other sum of money, or so much of it as remains unpaid, and the fee for the issue of the warrant are sooner paid, make a report as to the means of the offender so far as he has been able to
15 ascertain them, or, as the case may be, a report that after reasonable inquiry the offender could not be found.

“19d. **Execution**—Where a constable makes a report as mentioned in section 19c of this Act, the Judge who sentenced the offender to pay the fine or who ordered the offender to
20 pay the other sum of money or, if that Judge is not available, any other Judge, shall consider the report and may make such order as he thinks fit including an order for the remission of either the whole or part of the fine or other sum of money, an order for the issue of a writ of sale or an order for the
25 immediate imprisonment of the offender, or an order allowing time for payment or allowing payment by instalments.

“19e. **Period of imprisonment for non-payment of money**—
(1) The period of imprisonment imposed under this Act in
30 respect of the non-payment of any fine or other sum of money shall not exceed the maximum term of imprisonment to which the offender was liable on the conviction or two years, whichever is the less.

“(2) Where a person is imprisoned for non-payment of any fine or other sum of money, he may pay or cause to be paid
35 to the Superintendent of the prison in which he is imprisoned the sum payable and the Superintendent shall thereupon discharge that person, unless he is in custody for some other matter.

“(3) Where any person who is imprisoned for non-payment
40 of any fine or other sum of money pays or causes to be paid to any person authorised or entitled to receive the same any sum in partial satisfaction of the total amount (including costs and charges) for which he is liable, the term of his imprisonment shall be reduced by a number of days bearing

as nearly as possible the same proportion to the total number of days for which he has been committed as the sum so paid bears to the total amount (including costs and charges) for which he is liable, and the Superintendent of the prison in which he is imprisoned shall, upon the expiration of the term so reduced, discharge that person unless he is in custody for some other matter. 5

“19F. **Stay of execution on appeal**—The Court may at any time, in the case of any appeal or application for leave to appeal, or in any case if it thinks fit, suspend any order made under sections 19, 19A, 19B, or 19D of this Act or any warrant issued under section 19C of this Act.” 10

3. Indecent performances for gain—(1) Section 124 of the principal Act is hereby amended by adding to subsection (1) the following paragraph: 15

“(c) Exhibits or presents in the presence of any person in consideration or expectation of any payment or otherwise for gain, any indecent show or performance.”

(2) Section 124 of the principal Act is hereby further amended by adding to paragraph (b) of subsection (1) the word “or”. 20

4. Adverse comment—(1) The principal Act is hereby amended by repealing section 366, and substituting the following section: 25

“366. Where a person charged with an offence refrains from giving evidence, or from calling his wife or her husband, as the case may be, as a witness, comment adverse to the person charged may be made on that fact by the Judge but not by any other person.” 30

(2) Section 364 of the principal Act is hereby consequentially amended by omitting the statement set out in that section, and substituting the following statement:

“When the evidence against you has been heard, you will be asked whether you wish to give evidence yourself or to call witnesses. You are not obliged to give or call evidence but, if you do, that evidence may be used against you. You should consider in particular whether evidence which you can give, or which your wife or husband, as the case may be, can give, is relevant and will assist you in your defence. If you fail to give evidence or to call your wife or husband that fact may be the subject of adverse comment by the Judge, but not by any other person.” 35 40

5. Unsworn statement prohibited—(1) The principal Act is hereby amended by inserting, after section 366, the following section:

5 “366A. (1) No accused person shall be entitled to make an unsworn statement of fact at his trial.

“(2) Nothing in this section shall limit the provisions of section 369 of this Act.”

10 (2) Section 5 of the Evidence Act 1908 (as substituted by section 2 (1) of the Evidence Amendment Act 1952) is hereby amended by repealing paragraph (f) of the proviso to subsection (2).

6. Evidence and addresses—The principal Act is hereby amended by repealing section 367, and substituting the following section:

15 “367. (1) Upon the trial of any accused person, counsel for the prosecution may open his case and after such opening (if any) shall be entitled to examine such witnesses as he thinks fit; and the accused person, whether he is defended by counsel or not, shall be allowed at the end of the case for
20 the prosecution, if he thinks fit, to open his case, and after such opening (if any) shall be entitled to examine such witnesses as he thinks fit.

“(2) When all the evidence (including any evidence given on cross-examination, re-examination, or in rebuttal) is con-
25 cluded, counsel for the prosecution may make a closing address to the jury on the evidence.

“(3) After the closing address (if any) on behalf of the prosecution the accused or his counsel may make a closing address to the jury and the prosecution shall have no right of
30 reply in any case.”

7. Discretion to keep jury together—(1) Section 373 of the principal Act is hereby amended by repealing subsections (3) and (4).

35 (2) Section 373 of the principal Act is hereby further amended by adding to subsection (2) the words “but, if no such direction is given, the jury shall be permitted to separate”.

8. New heading and section inserted—(1) The principal Act is hereby amended by inserting, after section 379, the following heading and section:
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“Appeal on Matters Arising Before Trial

45 “379A. **Right of appeal in certain cases—**(1) At any time before the trial either the prosecutor or the accused person, with the leave of the Court of Appeal, may appeal to that Court—

- “(a) Against the refusal of a Judge of the Supreme Court to make an order under subsection (1) of section 322 of this Act:
- “(b) Against the making of an order under subsection (3) of section 330 of this Act or under subsection (3) of section 340 of this Act, or against the refusal of the Supreme Court to make any such order: 5
- “(c) Against the quashing or amendment of the indictment under subsection (2) of section 342 of this Act, or against the refusal of the Supreme Court to quash or amend the indictment under that subsection: 10
- “(d) Against the making of an order directing separate trials of persons jointly charged, or against the refusal of the Supreme Court or a Judge thereof to make such an order. 15
- “(2) At any time before the trial, the accused person, with the leave of the Court of Appeal, may appeal to that Court—
- “(a) Against the making of an order under subsection (1) of section 322 of this Act, or against the imposition by a Judge of any condition under subsection (3) of that section: 20
- “(b) Against the refusal of the Supreme Court to make an order under the proviso to section 331 of this Act.
- “(3) On any appeal under this section the Court of Appeal may confirm the decision of the Supreme Court or the Judge thereof, as the case may be, or vary it, or set it aside and make such other order as the Court of Appeal thinks ought to have been made in the first place, and that Court may also make such order as to the costs of the appeal as to that Court seems just. 30
- “(4) Where a person desires to obtain the leave of the Court of Appeal to appeal to that Court under this section, he shall give notice of his application for leave to appeal in such manner as may be directed by rules of Court within ten days after the decision of the Supreme Court or the Judge thereof is given, irrespective of whether reasons for the decision are given at a later date and irrespective of whether any formal steps to sign, enter, or otherwise perfect the decision are necessary or are afterwards taken. 35
- “(5) The time within which notice of an application for leave to appeal under this section may be given may be extended at any time by the Court of Appeal.” 40
- (2) Section 326 of the principal Act is hereby consequentially amended by inserting at the beginning of subsection (2) the words “Except as provided in section 379A of this Act”. 45

(3) Section 380 of the principal Act is hereby consequentially amended by adding to subsection (1) the words "other than a question arising on any of the proceedings preliminary to the trial and already determined by the Court of Appeal under section 379A of this Act".

(4) Section 382 of the principal Act is hereby consequentially amended by inserting in subsection (2), after the word "Act", the words "other than section 379A,".

9. Right of appeal against sentence—(1) Section 383 of the principal Act is hereby amended by adding, as subsections (2) to (4), the following subsections:

"(2) The Solicitor-General, with the leave of the Court of Appeal, may appeal to the Court of Appeal against the sentence passed on the conviction of any person on indictment, unless the sentence is one fixed by law.

"(3) Every appeal under subsection (2) of this section against a sentence of detention which is not heard before the date on which the person convicted has completed serving that sentence shall lapse on that date, and thereupon the appeal shall be deemed to have been dismissed by the Court of Appeal for non-prosecution.

"(4) For the purposes of an appeal under subsection (2) of this section, the term 'sentence' shall include any method of disposing of a case following conviction."

(2) Subsection (1) of section 388 of the principal Act is hereby consequentially amended—

(a) By inserting after the words "so to appeal" the words "or where the Solicitor-General desires to obtain the leave of the Court of Appeal to appeal against the sentence passed on the conviction of any person on indictment,":

(b) By omitting the words "if he is", and substituting the words "if the convicted person is".

(3) Section 390 of the principal Act is hereby consequentially amended by inserting, after the words "against conviction or sentence", the words "by the person convicted".

10. Transitional provision—Every trial commenced or in progress at the date of the commencement of this Act shall be continued and completed as if sections 4 to 6 of this Act had not been passed.