

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 7 December 1976.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr Thomson

CRIMINAL JUSTICE AMENDMENT (NO. 2)

ANALYSIS

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A BILL INTITULED

An Act to amend the Criminal Justice Act 1954

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 (No. 2) 1976, and shall be read together with and deemed part of the Criminal Justice Act 1954* (hereinafter referred to as the principal Act).

*Reprinted, 1973, Vol. 2, p. 1267
Amendments: 1975, No. 47; 1975, No. 67; 1976, No. 4

No. 143—2

Price 15c

2. Effect of subsequent sentence on probation—Section 12 of the principal Act is hereby amended by adding the following subsection:

“(3) Where—

“(a) A Court sentences a person to imprisonment for less than 1 year (in this subsection referred to as the original sentence) and, acting under section 6 (3) of this Act, orders that on release from imprisonment the person shall be on probation for the period specified in the order; and

“(b) While serving the term of imprisonment, the person is sentenced to imprisonment for a term of less than 1 year (in this section referred to as the subsequent sentence) for another offence; and

“(c) The Court imposing the subsequent sentence, acting under section 28 of this Act, directs that the subsequent sentence shall commence on the expiry of the original sentence; and

“(d) The total term of imprisonment imposed under the original sentence and the subsequent sentence is at least 1 year—

the order made in respect of that person under section 6 (3) of this Act shall, on the passing of the subsequent sentence, be deemed to be cancelled.”

3. New sections (relating to confiscation of motor vehicles) inserted—(1) The principal Act is hereby amended by inserting, after section 44A (as inserted by section 11 (1) of the Criminal Justice Amendment Act 1969), the following sections:

“44B. Court may order confiscation of motor vehicles—
(1) For the purposes of this section and sections 44c to 44E of this Act, unless the context otherwise requires,—

“‘Encumbrance’, in relation to any motor vehicle in respect of which a confiscation order is made under this section, includes a hire purchase agreement, a leasing agreement, an instrument by way of security, and any other agreement entered into (*at any time before the commission of the offence for which the order is made*) between the offender and another party under which that other party obtains or retains any interest in the motor vehicle; and includes any lien over that motor vehicle under the Wages Protection and Contractors Liens Act 1939:

“‘Hire purchase agreement’, in relation to any such motor vehicle, means a hire purchase agreement within the meaning of section 2 of the Hire Purchase Act 1971:

5 “‘Instrument by way of security’, in relation to any such vehicle, means an instrument by way of security within the meaning of section 2 of the Chattels Transfer Act 1924:

New

10 “‘Interest’, in relation to a motor vehicle, means any proprietary interest, whether legal or equitable, and whether vested or contingent:

15 “‘Leasing agreement’, in relation to any such motor vehicle, does not include any agreement entered into between the offender and the holder of a rental service licence under the Transport Act 1962:

20 “‘Motor vehicle’ means a motor vehicle within the meaning of section 2 of the Transport Act 1962; but does not include a trailer within the meaning of that Act.

25 “(2) Where a person is convicted of any offence (*not being an offence against the Transport Act 1962*) punishable by imprisonment for a term of (not less than 1 year) 1 year or more, or by imprisonment for life, and the Court by or before which he is convicted is satisfied that any motor vehicle owned by him (whether solely or as joint tenant or tenant in common with any other person or persons) or in which he has any interest (whether pursuant to a hire purchase agreement, leasing agreement, or otherwise) at the

30 time of his conviction—
“*(a)* Was used to facilitate the commission of the offence by the offender, whether or not he was the driver or person in charge; or

35 “*(b)* Was used by the offender, whether or not he was the driver or person in charge, to facilitate his flight or avoid his detection or arrest after the commission of the offence,—

40 the Court, in addition to or instead of passing any other sentence or making any other order, may in its discretion order that the motor vehicle be confiscated.

New

“(2A) Notwithstanding anything in subsection (2) of this section, if, in any case to which that subsection would otherwise apply the offender has, before the date of his conviction, ceased to be the owner of the motor vehicle or to have any interest in it the Court may— 5

“(a) Make an order prohibiting the offender from acquiring any interest in any motor vehicle within 12 months ~~after the date of the order; in which case~~ the provisions of section 44c (2) of this Act, with any necessary modifications, shall apply; or 10

“(b) If the offender has, at any time subsequent to the commission of the offence but before the date of his conviction, become the owner of any motor vehicle (whether solely or as joint tenant or tenant in common with any other person or persons) or acquired any interest in any motor vehicle (whether pursuant to a hire purchase agreement, leasing agreement, or otherwise), order that that motor vehicle be confiscated. 15 20

“(3) In exercising its discretion under subsection (2) of this section the Court shall have regard to—

“(a) Any undue hardship that the making of the order would cause to the offender in relation to his trade, business, profession, occupation, or employment: 25

“(b) Any undue hardship that the making of the order would cause to any member of the offender's family or to any of his dependants other person who would otherwise have the use or benefit of the motor vehicle on a regular basis: 30

“(c) The nature and extent of the offender's interest in the motor vehicle, and the nature and extent of any other person's interest in it: 35

“(d) Such other considerations as it thinks fit to take into account. 35

“(4) Where the Court makes a confiscation order under this section it shall specify in that order the time and place at which the offender shall surrender the motor vehicle to a bailiff or constable; and the offender shall surrender the motor vehicle in accordance with the order. 40

“(5) If the offender fails to surrender the motor vehicle in accordance with the order the Court shall issue a warrant in the prescribed form authorising any bailiff or constable to confiscate the motor vehicle.

“(6) For the purpose of executing any such warrant of confiscation the bailiff or constable executing it may enter on any premises, by force if necessary, if he has reasonable cause to believe that the motor vehicle in respect of which
5 it is issued is on those premises:

“Provided that if any person in actual occupation of the premises requires him to produce evidence of his authority, the bailiff or constable executing the warrant shall produce the warrant before entering on the premises.

10 “(7) Notwithstanding any enactment, rule of law, or agreement to the contrary, where an offender surrenders his motor vehicle (*in accordance with the provisions of*) under this section, or where a bailiff or constable pursuant to a warrant issued under this section seizes the motor vehicle described in
15 the warrant, the property in the motor vehicle shall thereupon pass absolutely to the Crown free of all encumbrances.

“*(8)* No confiscation made under the authority of this section shall be deemed unlawful nor shall any person making the same be deemed a trespasser by reason of any defect or
20 want of form in the warrant of confiscation, nor shall any such person be deemed a trespasser from the beginning by reason of any irregularity afterwards committed by him; but all persons aggrieved by any such defect or irregularity may recover satisfaction for the special damage by action at law.

25 “*(9)* Where any motor vehicle is surrendered to or seized by any bailiff or constable pursuant to this section he shall, as soon as practicable, deliver it into the custody of the Registrar of the Court in which the confiscation order was made.

30 “*(10)* Every person commits an offence and is liable on summary conviction to a fine not exceeding \$200 who removes or attempts to remove any motor vehicle surrendered to or seized by any bailiff or constable pursuant to this section from the custody of that bailiff or constable, or from the
35 custody of the Registrar of the Court, without the approval of the Registrar.

New

40 “(11) Notwithstanding anything in this section, where it appears to any Registrar of a Magistrate’s Court in which an order for the confiscation of any motor vehicle is made that the order may be more effectively enforced in another Magistrate’s Court the Registrar may, by order under his hand, so direct; and thereupon the provisions of this section and of section 44E of this Act shall apply accordingly.”

“44C. Offender not to acquire new interest in motor vehicle for 12 months—(1) Where a Court makes an order for the confiscation of a motor vehicle under section 44B of this Act the offender shall not, within 12 months after the date of the order, acquire any interest in any motor vehicle. 5

“(2) Every person who acquires any interest in any motor vehicle in contravention of subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$500. In any such case the Court may, instead of or in addition to imposing a fine, order the confiscation of the motor vehicle concerned and the provisions of section 44B, this section, and sections 44D and 44E of this Act shall apply accordingly. 10

“44D. Registrar to notify Registrar of Motor Vehicles—(1) Where any Court makes an order for the confiscation of a motor vehicle under section 44B of this Act the Registrar shall give written notice of the terms of the order to the Registrar of Motor Vehicles appointed under section 8 of the Transport Act 1962. 15

“(2) On receipt of any such notice the Registrar of Motor Vehicles shall— 20

“(a) Issue to the Registrar of the Court a duplicate certificate of registration in respect of the motor vehicle; and

“(b) Make an appropriate entry in the appropriate register, and endorse a memorandum thereof on the duplicate certificate of registration; and 25

New

“(ba) Take all reasonable steps to notify every person (other than the offender) known to him to have any interest in the motor vehicle that he believes the motor vehicle to be the subject of a confiscation order: 30

“Provided that the Registrar shall not be liable in any way to any person for any loss suffered by that person arising from the failure by the Registrar to comply with this provision; and 35

“(c) Take all reasonable steps to ensure that no certificate of registration is issued to the offender in respect of any motor vehicle within the period of 12 months commencing with the date of the Court’s order. 40

New

5 “(3) In addition to complying with subsection (1) of this section the Registrar of the Court shall cause notice of the order to be published in the *Gazette*, and in such newspaper or newspapers circulating in the district as he thinks fit.

10 “44E. Disposal of confiscated motor vehicles—(1) Subject to the succeeding provisions of this section, as soon as practicable after any motor vehicle is delivered into a Registrar’s custody pursuant to section 44B of this Act the Registrar shall arrange for the sale of the motor vehicle by public auction or in such other manner as the Court may direct.

15 “(2) Notwithstanding anything in the Auctioneers Act 1928 or the Motor Vehicle Dealers Act 1975, for the purposes of subsection (1) of this section the Registrar, or any officer of the Department of Justice authorised in writing by the Registrar, may conduct the auction notwithstanding that the Registrar or that officer does not hold a licence under either of those Acts.

20 “(3) The proceeds of the sale shall be applied in the following manner and order of priority:

25 “(a) In payment of the costs of the sale (*including storage costs, if any*) (including all costs incurred in seizing the motor vehicle and complying with the provisions of this Act preliminary to the sale):

“*(b)* In satisfaction of any amount owed by the offender under any encumbrance brought to the notice of the Registrar within 1 month after the date of sale and established to his satisfaction:

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30 “(c) In payment of any outstanding fines or costs imposed on the offender:

New

35 “(c) In payment of any sum known by the Registrar to be payable by the offender in respect of any fine imposed on the offender or any compensation or Court costs ordered to be paid by him:

“(d) To the offender.

“(4) Where notice is given to the Registrar that the motor vehicle is subject to any encumbrance and the claim is not established to his satisfaction he shall issue a summons calling before the Court the party making the claim and the provisions of section 94 of the Magistrates' Courts Act 1947 shall apply to every such summons with any necessary modifications. 5

“(5) Notwithstanding the foregoing provisions of this section, any party (other than the offender) to a leasing agreement (not being a hire purchase agreement) relating to the motor vehicle concerned may apply to the Registrar, at any time before he has sold the motor vehicle, for the transfer of the motor vehicle, to that party as if the offender had breached the terms of the agreement, and the Registrar may transfer the motor vehicle to that party accordingly. 10 15

“(6) Notwithstanding any of the foregoing provisions of this section, any party (other than the offender) to any encumbrance (including a hire purchase agreement but not including any other type of leasing agreement) relating to the motor vehicle concerned may apply to the Court, at any time before the Registrar has sold the motor vehicle, for an order directing the Registrar to transfer the motor vehicle to that other party for disposal in accordance with the provisions of the encumbrance as if the offender had breached the terms of that encumbrance, and the Court may, if it thinks fit, make such an order accordingly. 20 25

“(7) Every person to whom a motor vehicle is transferred pursuant to an order of the Court made under subsection (6) of this section shall, on disposing of the motor vehicle, account to the Registrar, and shall pay the balance (if any) of the sale price, after deducting the costs of the sale and the amount owed under the encumbrance, to the Registrar, who shall apply it in accordance with the provisions of subsection (3) of this section.” 30 35

New

“44F. Order may be cancelled on application by bona fide purchaser—On application to it by any person the Court shall cancel any confiscation order made in respect of any motor vehicle if it is satisfied that at any time after the conviction of the offender that person purchased the motor vehicle in good faith without knowledge of the conviction; and in such a case the Court may make such other consequential order or orders as it thinks just and reasonable.” 40

(2) Section 6 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

5 “(2) Where the Court releases any person on probation under this section it may also do one or more of the following:

“(a) Sentence that person to pay any fine authorised by law:

10 “(b) Make an order pursuant to section 44A of this Act disqualifying that person from holding or obtaining a driver’s licence:

“(c) Make an order pursuant to section 44B of this Act confiscating any motor vehicle in which that person has an interest.”

15 (3) Section 11 (2) of the Criminal Justice Amendment Act 1969 is hereby consequentially repealed.

Amendments of Criminal Justice Amendment Act 1962

20 **4. Interpretation**—Section 3 of the Criminal Justice Amendment Act 1962 is hereby amended by inserting, after the definition of the term “fine” (as inserted by section 6 of the Criminal Justice Amendment Act 1963), the following definition:

“‘Reporting Centre’ means any reporting centre established under section 4A of this Act.”

25 **5. Duration of sentence of periodic detention**—(1) Section 3 of the Criminal Justice Amendment Act 1962 is hereby further amended by adding, as subsection (2), the following subsection:

30 “(2) For the purposes of this Part of this Act, where a Court sentences a person to periodic detention and, acting under section 11 of this Act, orders that as part of his sentence he shall be on probation for the period specified in the order, that person shall be deemed to be subject to the sentence of periodic detention until the expiry of that period
35 of probation (or any extended period ordered under section 10 of the principal Act), or until the sentence of periodic detention is sooner cancelled, terminated, or deemed to be terminated in accordance with any of the provisions of this Part of this Act.”

40 (2) Section 13 of the Criminal Justice Amendment Act 1962 is hereby amended by adding, as subsection (2), the following subsection:

“(2) Nothing in section 11 of the principal Act shall apply to a person on probation under this Part of this Act.”

6. Establishment of reporting centres—The Criminal Justice Amendment Act 1962 is hereby amended by inserting, after section 4, the following section:

“4A. (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 reporting centre to be used with and for the purposes of a specified work centre (not being a residential work centre). 5

“(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 reporting centre. 10

“(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. 15

“(5) Except as otherwise provided in this Act, every reporting centre shall, for the purposes of this Act, be deemed to comprise part of the work centre specified in the notice constituting the reporting centre.” 20

7. Appointment of temporary Warden—Section 6 of the Criminal Justice Amendment Act 1962 is hereby amended by adding the following subsection:

“(3) There may be appointed under the State Services Act 1962 such number of temporary Wardens as may from time to time be required. A temporary Warden shall be appointed in respect of a particular work centre and shall, for the purposes of this Act, be deemed to have been appointed as a Warden under subsection (1) of this section until his appointment expires or is terminated.” 30

8. Exercise of Warden's powers during incapacity—Section 7 of the Criminal Justice Amendment Act 1962 is hereby amended by adding the following subsection:

“(3) In the event of the incapacity, illness, sudden absence, or death of a Warden the Secretary for Justice may, by notice in writing, direct any officer or employee engaged in the work centre to exercise the powers of the Warden under this Act (except the powers conferred on the Warden by sections 19 and 20 of this Act) until— 35

“(a) The Warden returns to work; or 40

“(b) A new or temporary Warden is appointed; or

“(c) The expiration of a period of 2 weeks from the date of the direction—
whichever sooner occurs.”

9. Medical examination before sentence of periodic detention not obligatory—Section 15 of the Criminal Justice Amendment Act 1962 is hereby amended—

- 5 (a) By omitting from subsection (1) the words “, and until a medical practitioner has examined him and reported to the Court on the result of the examination”:
- 10 (b) By omitting from subsection (2) the words “or that such a report by a medical practitioner was not given”:
- (c) By omitting from subsection (3) the words “both those reports have”, and substituting the words “the probation officer’s report has”.

10. Offender may request medical examination before sentence of periodic detention imposed—The Criminal Justice Amendment Act 1962 is hereby amended by inserting, after section 15, the following section:

20 “15A. (1) Where a Court is considering sentencing a person to periodic detention the Court shall first advise the person of that fact, and of his right to request a medical examination under subsection (2) of this section.

25 “(2) In such a case the person concerned may request the Court to arrange for him to be examined by a medical practitioner to assist the Court in deciding whether or not to sentence the person to periodic detention.

30 “(3) Where a medical examination is requested the Court shall not sentence the person to periodic detention until a medical practitioner has examined him and reported to the Court on the result of the examination, and the Court has considered the report.

“(4) In every case to which this section applies the provisions of subsections (2) and (3) of section 15 of this Act, as far as they are applicable and with the necessary modifications, shall also apply.”

35 11. Offenders reporting for sentence of periodic detention—Section 16 of the Criminal Justice Amendment Act 1962 is hereby amended by inserting, after subsection (1), the following subsection:

40 “(1A) Notwithstanding subsection (1) of this section, a Warden of any work centre (not being a residential work centre) may from time to time direct that any offender shall thereafter report at a reporting centre used with and for the purposes of that work centre, and the offender shall report accordingly. Any such direction may be revoked at any time.”

12. Warden may apply for substituted sentence where offender unfit—The Criminal Justice Amendment Act 1962 is hereby amended by inserting, after section 22B (as substituted by section 7 of the Criminal Justice Amendment Act 1970), the following section:

“22C. (1) If a person serving a term of periodic detention appears to the Warden of the work centre at which the person is required to report to be medically unfit to undergo or to continue to undergo the sentence of periodic detention the Warden may arrange for the person to be examined by a medical practitioner. 5 10

“(2) If, from the medical practitioner’s report, it appears to the Warden that the person is unfit to undergo or to continue to undergo periodic detention the Warden may apply to the Court to substitute another sentence for the sentence of periodic detention. 15

“(3) In every case to which this section applies the provisions of sections 22A (2) and 22B of this Act, as far as they are applicable and with the necessary modifications, shall also apply.” 20