

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

House of Representatives, 28 September 1961

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

Hon. Mr Hanan

CRIMINAL JUSTICE AMENDMENT

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 and commencement**—(1) This Act may be cited as the Criminal Justice Amendment Act 1961, and shall be read together with and deemed part of the Criminal Justice Act 1954* (hereinafter referred to as the principal Act).

10 (2) Sections 3 and 6 of this Act shall come into force on the first day of January, nineteen hundred and sixty-two.

(3) Sections 2, 4, and 5 of this Act shall come into force on the passing of this Act.

*1957 Reprint, Vol. 3, p. 455
Amendment: 1960, No. 116

2. Sentence of probationer for original offence—(1) Section 11 of the principal Act is hereby amended—

- (a) By inserting in subsection (3), after the words “Court of Appeal”, the words “or, where the Supreme Court has so directed when releasing him on probation, by the Supreme Court on appeal from a Magistrate’s Court”:
- (b) By inserting in subsection (3), after the words “from a Magistrate’s Court”, the words “unless the Supreme Court has given such a direction as aforesaid”:
- (c) By omitting from subsection (4) the words “he had just convicted him”, and substituting the words “the offender had just been convicted”.

(2) Section 11 of the principal Act is hereby further amended by inserting, after subsection (3), the following subsection:

“(3A) Notwithstanding any direction by the Supreme Court under subsection (3) of this section in respect of any offender, no sentence imposed upon the offender by a Magistrate’s Court shall be deemed to be invalid on the ground that the application under this section was made to and the sentence was imposed by a Magistrate’s Court instead of the Supreme Court.”

3. Preventive detention on second conviction of sexual offence—(1) Section 24 of the principal Act is hereby amended by repealing paragraph (a) of subsection (1), and substituting the following paragraph:

- “(a) Having been previously convicted on at least one occasion, since he attained the age of seventeen years, of a sexual offence, is convicted of any sexual offence, being an offence committed after such previous conviction as aforesaid; or”.

(2) Section 24 of the principal Act is hereby further amended by repealing subsection (6), and substituting the following subsection:

“(6) For the purposes of this section, the expression ‘sexual offence’ means—

- “(a) If committed against a child under sixteen years of age at the time of the commission of the offence,—
- “(i) Any offence against any of the following sections of the Crimes Act 1961—that is to say, sections 130 to 134 and sections 140 to 142; or
- “(ii) An attempt to commit an offence against the said section 142:

“(b) If committed against any person, whether or not a child under sixteen years of age at the time of the commission of the offence, any offence against section 128 or section 129 of the Crimes Act 1961.”

5 **4. New sections as to Parole Boards substituted**—The principal Act is hereby further amended by repealing sections 31 to 33, and substituting the following sections:

“31. Prisons Parole Board and Borstals Parole Boards—

10 (1) For the purposes of this Act, there shall be a Board, to be called the Prisons Parole Board, which shall consist of not less than three nor more than seven members, being—

 “(a) A Judge of the Supreme Court, who shall be appointed on the recommendation of the Minister and shall be the Chairman:

15 “(b) The Secretary for Justice:

 “(c) Not less than one nor more than five other members, who shall be appointed on the recommendation of the Minister.

20 “(2) For the purposes of this Act, there shall be such number of Borstal Parole Boards as the Minister determines from time to time, each of which shall be appointed in respect of a specified borstal institution and shall be called the [*Name of borstal institution*] Borstal Parole Board, and the members of which shall consist of—

25 “(a) A Magistrate, who shall be appointed on the recommendation of the Minister and shall be the Chairman:

 “(b) The Secretary for Justice:

30 “(c) The Superintendent of the institution in respect of which the Board is appointed:

 “(d) Two residents of the locality in which that institution is situated.

35 “(3) Every member of a Parole Board, other than the Secretary for Justice or the Superintendent of a borstal institution, shall be appointed by the Governor-General for a term of three years, but may from time to time be re-appointed, or may at any time be removed from office by the Governor-General for disability, or may at any time resign his office by writing addressed to the Minister.

“(4) Every member of a Parole Board appointed under paragraph (c) of subsection (1) of this section or paragraph (d) of subsection (2) of this section may at any time be removed from office by the Governor-General for neglect of duty or misconduct proved to the satisfaction of the Governor-General. 5

“(5) The Governor-General may from time to time appoint any person to act temporarily as a member of a Parole Board while any member is incapacitated by illness, absence from New Zealand, or other sufficient cause from performing the duties of his office, or, except in the case of a member of a Parole Board under paragraph (b) of subsection (1) of this section or under paragraph (a) or paragraph (b) of subsection (2) of this section, during the absence of any member from any place at which a meeting of the Board is to be held. 10 15

“(6) No appointment of a temporary member and no acts done by him as such, and no acts done by the Board while any temporary member is acting as such, shall in any proceedings be questioned on the ground that the occasion for any such appointment had not arisen or had ceased, or on the ground that any permanent member of the Board acted as such while a temporary member appointed in his place remained in office. 20

“(7) In any case where the Chairman of a Borstal Parole Board does not attend any meeting of the Board, any Magistrate may attend the meeting in his place, and while attending that meeting and in respect of any matter arising from that meeting he shall be deemed for all purposes to be the Chairman of the Board. 25

“(8) In the absence of the Secretary for Justice from any meeting of a Parole Board, he may authorise any other officer of the Department of Justice to attend the meeting in his stead, and while any such officer is attending any meeting under this subsection he shall be deemed for all purposes to be a member of the Board. The fact that any such officer attends and acts as a member of the Board at any such meeting shall be conclusive proof of his authority to do so. 30 35

“(9) Every Parole Board is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951. 40

“(10) There shall be paid out of money appropriated by Parliament for the purpose to the members of a Parole Board remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the
5 Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

“32. **Jurisdiction of Parole Boards**—(1) The Prisons Parole Board shall have jurisdiction in respect of persons undergoing sentences of imprisonment, corrective training, or preventive detention and of persons released on probation under
10 this Part of this Act after serving any such sentence.

“(2) Every Borstal Parole Board shall have jurisdiction in respect of persons undergoing borstal training in the borstal institution in respect of which the Board is appointed
15 and in such other institutions as are specified by the Minister, and of persons released on probation under this Part of this Act after serving a sentence of borstal training.

“33. **Meetings and procedure of Parole Boards**—(1) Meetings of a Parole Board shall be held at such times and places
20 as the Board or the Chairman appoints.

“(2) At any meeting of the Prisons Parole Board three members shall form a quorum.

“(3) At any meeting of a Borstal Parole Board three members (including the Chairman or a Magistrate acting
25 in place of the Chairman) shall form a quorum.

“(4) Subject to the provisions of this Act and of any regulations thereunder, a Parole Board may regulate its procedure in such manner as it thinks fit.

“33A. **Functions of Prisons Parole Board**—(1) The functions
30 of the Prisons Parole Board shall be—

“(a) To make recommendations to the Minister as to the release of any offender undergoing corrective training, preventive detention, or imprisonment for life, and as to the release of any offender undergoing
35 imprisonment whose case the Board is requested to consider under subsection (5) of this section:

“(b) To make recommendations to the Minister as to the discharge from probation of any offender who is on probation under this Part of this Act after
40 undergoing corrective training, preventive detention, or imprisonment:

- “(c) To make recommendations to the Minister as to the remission, suspension, or variation of any condition of the probation of any offender who is on probation under this Part of this Act after undergoing corrective training, preventive detention, or imprisonment, or as to the imposition on any such offender of any additional condition of probation: 5
- “(d) To report to the Minister from time to time, when requested by him to do so, on any matter relating to any recommendation made under this section. 10
- “(2) Subject to the provisions of this section, the Prisons Parole Board, for the purpose of carrying out its functions, shall consider the cases of offenders in the following manner:
- “(a) In the case of every offender undergoing corrective training, within twelve months after the date of his reception in the prison, and at least twice in every period of twelve months thereafter: 15
- “(b) In the case of every offender undergoing preventive detention, as soon as may be practicable after the expiry of three years from the date of his reception in the prison, and at least once in every period of twelve months thereafter: 20
- “(c) In the case of every offender undergoing imprisonment for life, as soon as may be practicable after the expiry of five years from the date of his reception in the prison, and at least once in every period of twelve months thereafter: 25
- “(3) After any offender has become entitled to have his case considered for the first time under subsection (2) of this section, he may from time to time apply to the Prisons Parole Board for the further consideration of his case: 30
- “Provided that no application under this subsection shall be made to the Board at any time within six months after the making of a previous application under this subsection.
- “(4) The Prisons Parole Board shall from time to time visit every institution where there are offenders undergoing corrective training, preventive detention, or imprisonment for life; and shall give to every offender who is entitled to have his case considered under subsection (2) of this section an opportunity to appear before it and state his case in person at least once in every year. 35 40
- “(5) Any member of the Prisons Parole Board may at any time request the Board to consider any case, including the case of any offender who is undergoing imprisonment for any term, and on any such request the Board shall consider that case at its next meeting. 45

“(6) In considering any case under this section, the Board shall have regard to—

5 “(a) The safety of the public, and of any person or any class or classes of persons who may be affected by the release of the offender:

“(b) The welfare of the offender and his reformation and training in the institution in which he is detained:

“(c) The class of sentence imposed by the Court and the term of the sentence:

10 “(d) Any recommendation made by the Superintendent of the institution:

“(e) Any representation made by the offender.

15 “(7) The Prisons Parole Board shall not recommend the release of any offender undergoing preventive detention, unless it is of opinion that if he is released he is not likely to continue to commit crimes.

“(8) Where the Prisons Parole Board recommends the release of any offender it may recommend that the release be subject to such special conditions as it thinks fit.

20 “(9) Not later than the thirty-first day of March in every year the Prisons Parole Board shall send to the Minister a report on its proceedings during the year ended on the thirty-first day of December preceding the making of the report.

25 “33B. **Functions of Borstal Parole Boards**—(1) The functions of a Borstal Parole Board shall be—

“(a) To direct the release of any offender undergoing borstal training in any institution in respect of which the Board has jurisdiction:

30 “(b) To direct the discharge from probation of any offender who is on probation under this Part of this Act after serving a sentence of borstal training:

35 “(c) To direct the remission, suspension, or variation of any condition of the probation of any offender who is on probation under this Part of this Act after serving a sentence of borstal training, or as to the imposition on any such offender of any additional condition of probation.

40 “(2) Subject to the provisions of this section, every offender who is undergoing borstal training shall be entitled to have his case considered by a Borstal Parole Board at least once in every period of six months.

45 “(3) After any offender who is undergoing borstal training has been detained under the sentence for at least six months, he may from time to time apply to the Borstal Parole Board for the further consideration of his case:

“Provided that no application under this subsection shall be made to the Board at any time within six months after the making of a previous application under this subsection.

“(4) Every offender who is undergoing borstal training shall be given an opportunity of appearing before a Borstal Parole Board and stating his case in person at least once in every period of six months, and for that purpose a Borstal Parole Board shall from time to time visit every institution in respect of which it has jurisdiction or shall have the offender brought before it. 5 10

“(5) Any member of a Borstal Parole Board may at any time request the Board to consider any case, and on any such request the Board shall consider that case as its next meeting.

“(6) In considering any case under this section, the Board shall have regard to— 15

“(a) The safety of the public, and of any person or any class or classes of persons who may be affected by the release of the offender:

“(b) The welfare of the offender and his reformation and training in the institution in which he is detained: 20

“(c) Any recommendation made by the Superintendent of the institution:

“(d) Any representation made by the offender.

“(7) Where a Borstal Parole Board directs the release of any offender, the release shall be subject to the provisions of this Part of this Act, and in addition the Board may direct that the release be subject to such special conditions as it thinks fit. 25

“(8) Not later than the thirty-first day of March in every year every Borstal Parole Board shall send to the Minister a report on its proceedings during the year ended on the thirty-first day of December preceding the making of the report.” 30

5. Consequential amendments and repeal—(1) The principal Act is hereby further amended in the manner indicated in the First Schedule to this Act. 35

(2) Section 6 of the Criminal Justice Amendment Act 1960 is hereby repealed.

6. Cancellation of motor-driver's licences on conviction for certain offences—(1) The principal Act is hereby further amended by inserting, after section 44, the following section:

Struck Out

5 “44A. Where any person—
“**(a)** Is convicted of any offence specified in Part I of the Second Schedule to this Act; or
“**(b)** Is convicted of any offence specified in Part II of that
10 Schedule and was at the time of the commission of the offence the driver or person in charge of a motor vehicle,—
the convicting Court, whether or not it imposes any other penalty for the offence or makes any other order authorised by any other enactment, may make an order under the provisions of the Transport Act 1961 disqualifying the person
15 convicted from holding or obtaining a motor-driver's licence and an order under that Act for the endorsement of any such licence held by or issued to that person.”

New

20 “44A. (1) Where any person is convicted of any offence specified in Part I of the Second Schedule to this Act or of any offence specified in Part II of that Schedule and, in the case of any offence specified in the said Part II, the person convicted was at the time of the commission of the offence
25 the driver or person in charge of a motor vehicle as defined in the Transport Act 1949, the convicting Court, whether or not it imposes any other penalty for the offence or makes any other order authorised by any other enactment,—
“**(a)** May, if the person convicted holds a motor-driver's
30 licence under Part II of the Transport Act 1949, cancel the licence or suspend it for such period after the date of the conviction, being a period not exceeding two years, as the Court thinks fit, and may also declare the person convicted to be disqualified from obtaining a motor-driver's licence or any specified class of motor-driver's licence for
35 such period after the date of the conviction, being a period not exceeding two years, as the Court thinks fit:

New

- “(b) May, if the person convicted does not hold a motor-driver’s licence under the said Part II, declare him to be disqualified from obtaining a motor-driver’s licence or any specified class of motor-driver’s licence for such period as the Court thinks fit, being a period not exceeding two years after the date of the conviction or, if the person is under the age of fifteen years, not exceeding two years after the day on which he attains that age: 5
- “(c) Shall, if the Court makes an order of cancellation or suspension or disqualification under this subsection, cause particulars of the conviction and of any such order to be endorsed on the defendant’s motor-driver’s licence (if any) and on every motor-driver’s licence that may thereafter be issued to him within the next succeeding period of three years. 10
- “(2) The provisions of section 31 of the Transport Act 1949, except subsections (1) and (3) thereof, shall apply, so far as they are applicable and with the necessary modifications, in every case where the Court makes an order of cancellation or suspension or disqualification under this section.” 15

- (2) The principal Act is hereby further amended— 25
- (a) By omitting from subsection (1) of section 56 the word “Second”, and substituting the word “Third”:
- (b) By inserting, after the First Schedule, the Second Schedule set out in the Second Schedule to this Act:
- (c) By omitting from the heading to the Second Schedule the word “Second”, and substituting the word “Third”. 30
- (3) The following enactments are hereby repealed:
- (a) Section 79A of the Police Offences Amendment Act 1927 (as enacted by section 4 of the Police Offences Amendment Act (No. 2) 1960): 35
- (b) Section 4 of the Police Offences Amendment Act (No. 2) 1960.

SCHEDULES

FIRST SCHEDULE

Section 5 (1)

AMENDMENTS OF PRINCIPAL ACT

Section Amended	Amendment
Section 20	<p>(By omitting the words “the Parole Board”, and substituting the words “a Borstal Parole Board”.)</p> <p>By omitting the words “<u>recommendation of the Parole Board</u>”, and substituting the words “<u>direction of a Borstal Parole Board</u>”.</p>
Section 23	By inserting, before the words “Parole Board”, the word “Prisons”.
Section 26	By inserting in subsection (1), before the words “Parole Board”, the word “Prisons”.
Section 34	By omitting from subsection (1) and also from paragraph (b) of subsection (2) (as substituted by section 9 of the Criminal Justice Amendment Act 1960) the word “Board”, and substituting in each case the words “Prisons Parole Board”.
Section 36	<p>By inserting in subsection (1) (as substituted by subsection (2) of section 7 of the Criminal Justice Amendment Act 1960) and also in subsection (3), before the words “Parole Board”, the word “Prisons”.</p> <p>By omitting from subsection (2) the words “recommendation of the Parole Board”, and substituting the words “direction of a Borstal Parole Board or recommendation of the Prisons Parole Board, as the case may be”.</p>
Section 38	<p>By omitting from subsection (4) and also from subsection (5) the words “the Parole Board” and from subsection (6) the words “the Board”, and substituting in each case the words “the Prisons Parole Board, in the case of a probationer who is on probation after undergoing corective training, preventive detention, or imprisonment, or to any Borstal Parole Board, in the case of an offender who is on probation after undergoing borstal training”.</p> <p>By inserting in subsection (5A) (as inserted by subsection (3) of section 7 of the Criminal Justice Amendment Act 1960), before the words “Parole Board”, the word “Prisons”.</p> <p>By inserting in subsection (7), after the word “application”, the words “to the Prisons Parole Board”.</p> <p>By inserting, after subsection (7), the following subsection:</p> <p>“(7A) On any such application to a Borstal Parole Board, the Board may give such directions as it thinks fit.”</p> <p>By inserting in subsection (8) and also in subsection (10), after the word “Minister”, the words “or a Borstal Parole Board”.</p>

Section 6 (2) (b)SECOND SCHEDULE

NEW SECOND SCHEDULE TO PRINCIPAL ACT

Section 44A

"SECOND SCHEDULE"

PART I

OFFENCES IN RESPECT OF WHICH COURT MAY MAKE ORDER OF DISQUALIFICATION
AND ENDORSEMENT OF DRIVER'S LICENCE

Title of Act	Section	Offence
The Crimes Act 1961	<u>Section 228</u>	Conversion or attempted conversion of a motor vehicle or unlawfully interfering with or getting into or upon a motor vehicle

PART II

OFFENCES COMMITTED WHILE DRIVING OR IN CHARGE OF MOTOR VEHICLE

Title of Act	Section	Offence
The Police Offences Act 1927 (1957 Reprint, Vol. 12, p. 1)	Section 3A (as inserted by section 3 (1) of the Police Offences Amendment Act 1955) Section 3B (as inserted by section 2 (1) of the Police Offences Amendment Act 1960) Section 3D (as inserted by section 2 (1) of the Police Offences Amendment Act (No. 2) 1960) Section 3E (2) (as inserted by section 3 (1) of the Police Offences Amendment Act (No. 2) 1960) Section 6 (as substituted by section 2 of the Police Offences Amendment Act (No. 2) 1952) Section 48	Throwing or leaving bottles or glass in public place. Fighting in a public place. Riotous, etc., behaviour in a public place. Being under twenty-one years of age, drinking or being in possession of intoxicating liquor in a public place. Wilful destruction of property. Using profane, indecent, or obscene language in a public place.

"SECOND SCHEDULE—*continued*PART II—*continued*OFFENCES COMMITTED WHILE DRIVING OR IN CHARGE OF MOTOR VEHICLE—*continued*

Title of Act	Section	Offence
The Police Offences Amendment Act (No. 2) 1952 (1957 Reprint, Vol. 12, p. 50)	Section 4	Common assault.
The Crimes Act 1961	<u>Section 192</u>	Aggravated assault.
	<u>Section 193</u>	Assault with intent to injure.
	<u>Section 194</u>	Assault on female or child.
	<u>Section 195</u>	Common assault.
	<u>Section 294</u>	Arson.
	<u>Section 295</u>	Attempted arson.
	<u>Section 296</u>	Damage to property by fire or explosive.
	<u>Section 297</u>	Attempt to damage property by fire or explosive.
	<u>Section 298</u>	Wilful damage.
	<u>Section 300</u>	Interfering with means of transport."