

CRIMINAL JUSTICE AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill abolishes sentences of preventive detention except for sex offenders, increases from three years to seven the minimum period of preventive detention for such offenders in future cases, and makes consequential alterations to the law relating to their release on probation. It also gives the Prisons Parole Board a new jurisdiction to recommend the release of persons serving sentences of imprisonment for six years or more.

It also gives the Court power, when imposing a sentence of imprisonment for four years or more, to order a longer period of probation after release than the Act at present provides for.

It also removes the present limitation on the Court's discretion to prohibit the publication of the name of an accused or convicted person.

Clause 1 relates to the Short Title and commencement of the Bill, which will come into force on 1 January 1968.

Preventive Detention

Clause 2: The effect of this clause is to abolish the sentence of preventive detention except on a second or subsequent conviction for a sexual offence.

Clause 3: This clause increases from three years to seven years the minimum period of detention under a future sentence of preventive detention.

Clause 4: Under section 35 (2) of the principal Act, if a person detained under a sentence of preventive detention for sexual offences is released from detention he is on probation for the rest of his life; but under section 38 (5A) he may apply to the Prisons Parole Board for his discharge from probation at any time after the expiry of three years from the time of his release on probation, provided not less than 14 years have expired since the commencement of his sentence. The effect of this clause is to remove the 14 years' limitation, so that a person released from preventive detention may apply for a discharge from probation after the expiry of three years from the time of his release on probation, and a probation officer may apply for his discharge at any time.

Clause 5 makes consequential amendments. The effect of *subclause (2) (a)* is that the Prisons Parole Board will not consider the case of an offender undergoing preventive detention until after the expiry of seven years from his reception in prison, instead of after three years as at present.

Clause 6 contains transitional provisions relating to all persons subject to sentences of preventive detention at the commencement of the new Act. Subject to *subclauses (2) and (3)*, the amendments made by this Part of the Bill will not apply to them.

Subclause (2) however provides that in the cases of persons who at the commencement of the new Act are detained under such a sentence, except those sentenced for sexual offences, the Prisons Parole Board may exercise its functions of recommending release on probation notwithstanding that the minimum term of three years has not expired.

The effect of *subclause (3)* is that a person who is on probation (after release from preventive detention) at the commencement of the new Act, or is released from preventive detention after such commencement, may apply for his discharge from probation at any time after the expiry of three years from the time of his release on probation.

Release and Subsequent Supervision of Offenders

The effect of *clause 7* is that the functions of the Prisons Parole Board will now include the making of recommendations to the Minister for the release on probation of any offender undergoing imprisonment for a term of not less than six years. (At present the Board may make such recommendations only in relation to persons undergoing preventive detention or imprisonment for life, or in other cases of imprisonment specially referred to it.) The case of such an offender is to be first considered after the expiry of three years and six months from the date of his imprisonment.

The effect of *clause 8* is that the Supreme Court, in imposing a sentence of imprisonment of four years or more, may if it thinks fit order that when the offender is released he is to be on probation for a specified period longer than that at present provided for in section 35 of the principal Act.

Publication of Names

Clause 9: At present, under section 46 of the principal Act, a Court has a discretion to prohibit the publication of the name of a person accused or convicted of an offence, or the name of any other person connected with the proceedings; but it is not permitted to prohibit the publication of the name of the accused or convicted person if he has been previously convicted of an offence punishable by imprisonment. This clause removes the last-mentioned limitation on the Court's discretion.

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
5 of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Criminal Justice Amendment Act 1967, and shall be read together with and deemed part of the Criminal Justice Act 1954* (hereinafter referred to as the principal
10 Act).

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-eight.

*Reprinted with amendments, 1965, Vol. 3, p. 1323
Amendment: 1966, No. 99

Preventive Detention

2. Preventive detention—Section 24 of the principal Act is hereby amended—

- (a) By omitting from paragraph (a) of subsection (1) (as substituted by section 3 (1) of the Criminal Justice Amendment Act 1961) the word “or”:
- (b) By repealing paragraphs (b) and (c) of subsection (1).

3. Period of preventive detention—The principal Act is hereby amended by repealing section 26, and substituting the following section:

“26. Every person sentenced to preventive detention shall be detained in a prison until he is released on the recommendation of the Prisons Parole Board under Part V of this Act: “Provided that no such person shall be so detained for less than seven years from the commencement of the sentence.”

4. Discharge from probation—Section 38 of the principal Act is hereby amended—

- (a) By omitting from subsection (5) the words “not being a person released from preventive detention”:
- (b) By inserting in paragraph (a) of subsection (5), after the words “imprisonment for life”, the words “or preventive detention”:
- (c) By repealing subsection (5A) (as inserted by section 7 (3) of the Criminal Justice Amendment Act 1960):
- (d) By omitting from paragraph (b) of subsection (6) the words “not being a person released from preventive detention”.

5. Consequential amendments and repeals—(1) Section 24 of the principal Act is hereby further amended by repealing subsection (3) (as substituted by section 5 of the Criminal Justice Amendment Act 1960), and substituting the following subsection:

“(3) Where any person is convicted by a Magistrate’s Court of any sexual offence, and the Court has reason to believe from the report of a probation officer or otherwise that the offender is liable to preventive detention, section 44 of the Summary Proceedings Act 1957 shall apply as if there were added to subsection (1) the words ‘and a statement that the Court has declined jurisdiction upon the ground that the Court has reason to believe that the offender is liable to preventive detention’.”

(2) Section 33A of the principal Act (which was enacted by section 4 of the Criminal Justice Amendment Act 1961) is hereby amended—

5 (a) By omitting from paragraph (b) of subsection (2) the word “three”, and substituting the word “seven”:

(b) By inserting in subsection (7), before the word “crimes”, the word “sexual”.

(3) Section 35 of the principal Act is hereby amended—

10 (a) By omitting from subsection (1) (as amended by section 7 (1) (a) of the Criminal Justice Amendment Act 1960) the words “or, not being a person to whom paragraph (a) of subsection (1) of section 24 of this Act applies, is detained under a sentence of preventive detention”:

15 (b) By repealing paragraph (c) of subsection (1):

(c) By omitting from subsection (2) (as amended by section 7 (1) (b) of the Criminal Justice Amendment Act 1960) the words “being a person to whom paragraph (a) of subsection (1) of section 24 of this Act applies”.

(4) The following enactments are hereby repealed:

20 (a) Section 5, paragraph (a) of subsection (1) of section 7, and subsection (3) of section 7 of the Criminal Justice Amendment Act 1960:

25 (b) So much of the First Schedule to the Criminal Justice Amendment Act 1961 as relates to section 26 and to subsection (5A) of section 38 of the principal Act:

30 (c) So much of the Third Schedule to the Crimes Act 1961 as relates to section 24 of the principal Act.

6. Transitional provisions—(1) Subject to the provisions of this section, where at the commencement of this Act any person is subject to a sentence of preventive detention, the principal Act shall continue to apply to him as if this Act had not been passed.

35 (2) If the person is one to whom paragraph (b) or paragraph (c) of subsection (1) of section 24 of the principal Act applies, and he is detained under the sentence, the Prisons Parole Board may at any time after the commencement of this Act exercise its functions in respect of that person in accordance with section 33A of the principal Act (as applied by subsection (1) of this section), notwithstanding that the periods of three years referred to in paragraph (a) of subsection (2) of section 26 of the principal Act and in 40 paragraph (b) of subsection (2) of the said section 33A have not expired.

(3) Section 38 of the principal Act as amended by section 4 of this Act shall apply, as far as it is applicable, to every person who—

- (a) At the commencement of this Act is on probation after having been released from preventive detention; or 5
- (b) At any time after the commencement of this Act is released from preventive detention.

Release and Subsequent Supervision of Offenders

7. Functions of Prisons Parole Board—(1) Section 33A of the principal Act (which was enacted by section 4 of the Criminal Justice Amendment Act 1961) is hereby further amended— 10

- (a) By inserting in paragraph (a) of subsection (1), after the words “imprisonment for life”, the words “or for a term of not less than six years”: 15
- (b) By inserting in the said paragraph (a), before the words “offender undergoing imprisonment”, the word “other”:
- (c) By inserting in subsection (4) (which was substituted by section 26 (2) of the Criminal Justice Amendment Act 1962), after the words “imprisonment for life”, the words “or for a term of not less than six years”: 20
- (d) By inserting in subsection (5), after the words “for any term”, the words “less than six years”.

(2) The said section 33A is hereby further amended by adding to subsection (2) (as amended by section 26 (1) of the Criminal Justice Amendment Act 1962) the following paragraph: 25

- “(e) In the case of every offender undergoing imprisonment for a term of not less than six years, as soon as may be practicable after the expiry of three years and six months from the date of his reception in the prison, and at least once in every period of twelve months thereafter.” 30

8. Released offender to be on probation—(1) Section 35 of the principal Act is hereby further amended by inserting, after subsection (3A) (as inserted by section 8 (1) of the Criminal Justice Amendment Act 1960), the following subsection: 35

“**(3B)** The Supreme Court, in imposing on any offender a sentence of imprisonment of four years or more, may if it thinks fit make an order directing that the term of probation to which he is to be liable on his release from the sentence shall be
5 not less than a period specified in the order. If the Court makes such an order the offender shall, when he is released from detention under the sentence, be on probation for the period specified in the order or the period calculated in accordance with the foregoing provisions of this section, whichever is the
10 longer.”

(2) The said section 35 is hereby further amended by adding to subsection (4) the following proviso:

“Provided that—

15 “(a) An order made under subsection (3B) of this section shall have no effect on the term of probation to which the offender is liable following his recall, if it did not affect the term of probation to which he was liable when he was first released from detention under the sentence in respect of which he was
20 recalled:

25 “(b) If when the offender was so released the term of his probation was fixed in accordance with the order, the order shall not operate to extend the term of probation to which he is liable following his release after recall beyond the date on which that term would have expired had he not been recalled.”

Publication of Names

9. **Court may prohibit publication of names**—Section 46 of the principal Act is hereby amended by repealing the
30 proviso to subsection (1).