

CRIMINAL JUSTICE AMENDMENT BILL

EXPLANATORY NOTE

This Bill amends the Criminal Justice Act 1954.

Clause 1 relates to the Short Title.

Clause 2 amends section 6 of the principal Act, and makes it clear that unless otherwise expressly provided by the principal Act, or as may otherwise be empowered by any other Act, any period of probation imposed by the Court must commence from the date on which the order releasing him on probation is made.

Clause 3 amends section 39 of the principal Act, and increases the fine for the offence of breaking a condition of probation from \$40 to \$200.

Clause 4 amends section 2 of the Criminal Justice Amendment Act 1962. At present, section 2 empowers the making of an Order in Council to describe the Courts, and by reference to age and sex, the offenders, to whom sections 9 to 15 of the Criminal Justice Amendment Act 1962, relating to periodic detention, shall apply. The Order in Council gives those Courts situated in areas having work centres jurisdiction to impose sentences of periodic detention. The clause amends section 2 of the Criminal Justice Amendment Act 1962 to enable the making of an Order in Council empowering Courts situated in areas without a work centre to impose sentences of periodic detention on offenders coming before those Courts but whose normal place of residence is in some area having a work centre.

Clause 5 amends section 16 of the Criminal Justice Amendment Act 1962 to make clear that any person who is sentenced to periodic detention (which may, under section 11 of the Criminal Justice Amendment Act 1962, include a period of probation as part of the sentence) is obliged to report at a work centre only during the term of the periodic detention and not during any subsequent period of probation imposed as part of the sentence.

Clause 6 amends section 19 of the Criminal Justice Amendment Act 1962 to enable a probation officer to apply to the Court for variation or cancellation of any sentence of periodic detention in respect of any period of probation imposed as part of that sentence.

Clause 7 repeals section 22 of the Criminal Justice Amendment Act 1962, and substitutes new sections 22, 22A, and 22B.

At present, if any person subject to a sentence of periodic detention is during that sentence sentenced to imprisonment, preventive detention, borstal training, or detention in a detention centre, the sentence of periodic detention is deemed to be terminated. The Court may in any other case where a person subject to a sentence of periodic detention is during the term of that sentence convicted of an offence, order that the sentence of periodic detention be terminated.

The new section 22 provides that imprisonment for any term less than 1 year will not automatically terminate the sentence of periodic detention. Unless any application is made pursuant to the new section 22A, the Court may, in imposing any sentence of imprisonment for any term less than 1 year, or, in any other case where the sentence of periodic detention is not deemed to be terminated, make an order terminating the sentence of periodic detention. If no such order is made and the person subject to the sentence of periodic detention is sentenced to imprisonment for less than 1 year, the term of periodic detention continues to run during his imprisonment and thereafter for any residue of the term of periodic detention.

The new section 22A enables a probation officer to apply to the Court for substitution of another sentence for a sentence of periodic detention if the person subject to the sentence of periodic detention has been convicted of any offence punishable by imprisonment committed after the sentence of periodic detention was passed, unless the sentence of periodic detention has been terminated under the new section 22.

The probation officer must notify the person subject to the sentence of periodic detention of the application to the Court for the substitution of another sentence for the sentence of periodic detention. If the person subject to a sentence of periodic detention is charged with an offence against section 21 (1) of the Criminal Justice Amendment Act 1962, the probation officer may, before conviction, notify the person charged that if he is convicted the Court will be asked to substitute another sentence for the sentence of periodic detention. If the person charged is convicted, unless the sentence of periodic detention is terminated under the new section 22, the probation officer may apply to the Court to substitute another sentence for the sentence of periodic detention.

The new section 22B prescribes the Courts to which applications under the new section 22A shall be made. If the person subject to the sentence of periodic detention was sentenced to periodic detention by the Supreme Court or by the Court of Appeal on appeal from the Supreme Court, the application shall be made to the Supreme Court. If the person subject to the sentence of periodic detention was sentenced to periodic detention by a Magistrate's Court or by the Supreme Court on appeal from a Magistrate's Court, the application shall be made to any Magistrate's Court presided over by a Magistrate.

Subsection (2) of the new section 22B provides that if the application is dealt with by a Judge or Magistrate other than the one who sentenced the person to periodic detention, the Judge or Magistrate dealing with the application shall, before determining the application, make such inquiries as to the circumstances of the case as he considers reasonable, and may hear evidence relevant to those circumstances.

Subsection (3) of the new section 22B empowers the Judge or Magistrate hearing the application to substitute any sentence (other than a sentence of periodic detention) which could have been imposed on the offender at the time he was sentenced to periodic detention if that sentence of periodic detention was imposed pursuant to section 9 of the Criminal Justice Amendment Act 1962. (Under that section if any person not less than 15 years of age is convicted of any offence punishable by imprisonment the Court may sentence him to periodic detention for any period not exceeding 12 months.) If the sentence of periodic detention was imposed under section 10 of the Criminal Justice Amendment Act 1962 (which allows a sentence of periodic detention to be imposed in place of imprisonment in any case where a warrant of commitment may be issued for non-payment of a fine imposed on any person not less than 15 years of age) the Court may substitute for the sentence of periodic detention such imprisonment as will satisfy the justice of the case, not exceeding 1 day per \$2, or a period of 90 days, whichever is the less. If the sentence of periodic detention was imposed under section 10A of the Criminal Justice Amendment Act 1962 (which was inserted by section 8 of the Criminal Justice Amendment Act 1966, and allows a sentence of periodic detention to be imposed in place of imprisonment for non-payment of a fine imposed by the Supreme Court) the Court may substitute for the sentence of periodic detention a sentence of imprisonment not exceeding the maximum term of imprisonment to which the person was liable on the original conviction, or 2 years, whichever is the less.

Subsection (4) of the new section 22B provides that on substitution of any other sentence for a sentence of periodic detention, the sentence of periodic detention shall be deemed to be terminated.

Subsection (5) of the new section 22B provides that for the purposes of any appeal or application for leave to appeal any sentence substituted for a sentence of periodic detention passed on indictment shall be deemed to be passed on indictment, and any sentence substituted for a sentence of periodic detention passed on the determination of an information shall be deemed to be a sentence passed on the determination of an information.

Clause 8 provides for consequential repeals.

Hon. Mr Riddiford

CRIMINAL JUSTICE AMENDMENT

ANALYSIS

Title	7. New sections as to effect of subsequent convictions on periodic detention substituted
1. Short Title	22. Effect of subsequent convictions
2. Power of Court to impose probation	22A. Application for substituted sentence
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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,
5 as follows:

1. **Short Title**—This Act may be cited as the Criminal Justice Amendment Act 1970, and shall be read together with and deemed part of the Criminal Justice Act 1954* (hereinafter referred to as the principal Act).

10 **2. Power of Court to impose probation**—(1) Section 6 of the principal Act is hereby amended by inserting in subsection (1), after the word “years”, the words “which shall, unless otherwise expressly provided by this Act, commence from the date on which the order releasing him on probation
15 is made”.

*Reprinted 1965, Vol. 3, p. 1323
Amendments: 1966, No. 99; 1967, No. 48; 1969, No. 17

(2) The said section 6 is hereby further amended by omitting from the proviso to subsection (1) the words “and on any conditions”, and substituting the words “commencing from such time and on such conditions as are”.

3. Breach of conditions of probation—Section 39 of the principal Act (as amended by section 7 of the Decimal Currency Act 1964) is hereby further amended by omitting the words “forty dollars”, and substituting the figures “\$200”. 5

4. Application of provisions as to periodic detention—Section 2 of the Criminal Justice Amendment Act 1962 is hereby amended by omitting the words “such offenders described by reference to their age or sex or both”, and substituting the words “such classes of offenders”. 10

5. Sentence of periodic detention—Section 16 of the Criminal Justice Amendment Act 1962 is hereby amended by omitting from subsection (1) the words “the sentence”, and substituting the words “periodic detention”. 15

6. Variation or cancellation of sentence of periodic detention—Section 19 of the Criminal Justice Amendment Act 1962 is hereby amended by inserting, after the word “report”, the words “or of any probation officer in respect of any probation ordered as part of that sentence”. 20

7. New sections as to effect of subsequent convictions on periodic detention substituted—The Criminal Justice Amendment Act 1962 is hereby amended by repealing section 22, and substituting the following sections: 25

“22. **Effect of subsequent convictions**—If any person subject to a sentence of periodic detention is convicted of another offence and sentenced to detention in a detention centre, or to borstal training, or to imprisonment for life or for a term of 1 year or more, or to preventive detention, the sentence of periodic detention shall be deemed to be terminated; but in the case of any other sentence imposed the Court by which he is sentenced or otherwise dealt with may, unless any application pursuant to section 22A of this Act has been made to that or any other Court, in its discretion make an order terminating the sentence of periodic detention. If the Court makes no 30 35

such order and the person subject to the sentence of periodic detention is sentenced to imprisonment for less than 1 year, the term of periodic detention shall continue to run while he is detained under the sentence of imprisonment, and
5 on his release from imprisonment he shall continue to be subject to the sentence of periodic detention for any unexpired residue of the term.

“22A. **Application for substituted sentence**—(1) If any person who is subject to a sentence of periodic detention is
10 convicted of any offence, committed after the sentence was passed, which is punishable by imprisonment (whether or not the person subject to the sentence was sentenced to pay a fine), any probation officer may, unless the sentence of periodic detention has been terminated under section 22 of
15 this Act, apply to the Court, in accordance with this section and section 22B of this Act, to substitute another sentence for the sentence of periodic detention.

“(2) Before the hearing by the Court of any application under this section for the substitution of another sentence for
20 a sentence of periodic detention, the probation officer making the application shall cause notice of the application to be served on the person subject to the sentence of periodic detention.

“(3) Notwithstanding anything in subsection (1) or
25 subsection (2) of this section, if the person who is subject to a sentence of periodic detention is charged with an offence against subsection (1) of section 21 of this Act, the probation officer if he thinks fit may before the hearing of the charge give notice to the person
30 charged that if he is convicted of the offence the Court will be asked to substitute another sentence for the sentence of periodic detention. If the person so notified is convicted of the offence charged, the probation officer may, unless the sentence of periodic detention has been terminated under
35 section 22 of this Act, apply to the Court to substitute another sentence for the sentence of periodic detention, and it shall not be necessary for the probation officer to cause any subsequent notice of the application to be served on that person.

“22B. Court empowered to substitute sentence—(1) Any application made under section 22A of this Act to substitute another sentence for a sentence of periodic detention shall be made to—

“(a) The Supreme Court if the person subject to the sentence of periodic detention was sentenced to periodic detention by the Supreme Court or by the Court of Appeal on appeal from the Supreme Court; or

“(b) Any Magistrate’s Court presided over by a Magistrate if the person was sentenced to periodic detention by a Magistrate’s Court or by the Supreme Court on appeal from a Magistrate’s Court.

“(2) If the application is dealt with by a Judge or Magistrate other than the one who sentenced the person to periodic detention, the Judge or Magistrate shall, before determining the application, make such inquiries as to the circumstances of the case as he considers reasonable, and may if he thinks fit hear any evidence relevant to those circumstances.

“(3) The Judge or Magistrate by whom an application is heard under this section may, if he thinks fit, having regard to the gravity of the offence for which the sentence was imposed, the amount of any fine cancelled by the sentence, the extent (if any) to which the offender has actually served the sentence (including the payment of any fine imposed with the sentence) and any other circumstances which the Judge or Magistrate thinks relevant,—

“(a) If the sentence was imposed on the offender pursuant to section 9 of this Act, substitute for it any sentence (other than a sentence of periodic detention) which could have been imposed on him at the time he was sentenced to periodic detention; or

“(b) If the sentence was imposed on the offender pursuant to section 10 of this Act, substitute for it a sentence to a term of imprisonment not exceeding the maximum term for which he could have been committed to prison if he had been so dealt with under section 88 of the Summary Proceedings Act 1957, instead of being sentenced to periodic detention; or

5 “(c) If the sentence was imposed on the offender pursuant to section 10A of this Act, substitute for it a sentence to a term of imprisonment not exceeding the maximum term for which he could have been committed to prison if he had been so dealt with under section 19D of the Crimes Act 1961 (as inserted by section 2 of the Crimes Amendment Act 1966) instead of being sentenced to periodic detention.

10 “(4) When under this section a sentence is substituted for a sentence of periodic detention, the sentence of periodic detention shall be deemed to be terminated.

15 “(5) For the purposes of any appeal or application for leave to appeal, any sentence substituted under this section for a sentence of periodic detention passed on the conviction of the offender on indictment shall be deemed to be a sentence passed on the conviction of the offender on indictment, and any sentence substituted under this section for any sentence of periodic detention passed on the determination of an information against him in a Magistrate’s Court shall be deemed to be a sentence passed on the determination of an information against him in a Magistrate’s Court.”

8. Consequential repeals—The following enactments are hereby repealed.

25 (a) Subsection (4) of section 2 of the Criminal Justice Amendment Act 1963:

(b) Paragraph (d) of section 7 of the Criminal Justice Amendment Act 1966.