

CRIMINAL JUSTICE AMENDMENT BILL (NO. 2)

EXPLANATORY NOTE

THIS Bill amends the provisions of the Criminal Justice Act 1985 relating to concurrent sentences and replaces the provisions of section 13 as set out in section 6 of the Criminal Justice Amendment Act 1993.

A difficulty arises under the new section 13, which is to come into force on 1 September 1993, with offenders who come before a court for sentencing for an offence while serving a sentence imposed on an earlier occasion. In contrast to the present section 13, the new section 13 sets out exhaustively the concurrent sentencing options. The new section 13 does not allow the court to impose any of the following sentences concurrently with the earlier sentence:

- (a) A sentence of preventive detention, if the earlier sentence is a sentence of imprisonment:
- (b) A sentence of imprisonment, if the earlier sentence is a sentence of preventive detention:
- (c) A sentence of imprisonment, if the earlier sentence is a sentence of corrective training:
- (d) A community-based sentence, if the earlier sentence is a community-based sentence (other than supervision or periodic detention).

All of the combinations set out above are available under the present section 13. The proposed amendment restores the present section and incorporates the provisions of the section set out in section 6 of the Criminal Justice Amendment Act 1993 that—

- (a) Allow the combination of periodic detention, supervision, and reparation or a fine or both (*subclauses (1) and (3)*);
- (b) Set out the rules for suspended sentences of imprisonment (*subclauses (4), (5), and (7)*):

The proposed amendment also—

- (a) Ensures that sentences of imprisonment and preventive detention may be imposed on an offender at the same time for different offences (*subclause (6)*);
- (b) Ensures that the provisions do not limit a court's power to impose a community-based sentence that is cumulative on a sentence of imprisonment (*subclause (10)*).

Hon. D. A. M. Graham

CRIMINAL JUSTICE AMENDMENT (NO. 2)

ANALYSIS

Title	1. Short Title and commencement 2. Concurrent sentences
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A BILL INTITULED

An Act to amend the Criminal Justice Act 1985

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Criminal Justice Amendment Act (No. 2) 1993, and shall be read together with and deemed part of the Criminal Justice Act 1985* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of September 1993.

10 **2. Concurrent sentences**—(1) The principal Act is hereby amended by repealing section 13 (as substituted by section 6 of the Criminal Justice Amendment Act 1993), and substituting the following section:

15 “13. (1) Where a court imposes on an offender for any offence a sentence of reparation or a sentence of a fine or both, it may also impose on the offender, for that offence,—

“(a) Either or both of the following:

20 “(i) Any one kind of community-based sentence or the combination of the sentences of periodic detention and supervision:

 “(ii) A suspended sentence of imprisonment; or

“ (b) Any one kind of full-time custodial sentence.

“ (2) Except as provided in subsections (1), (3), and (4) of this section, where a court imposes on an offender any kind of

*1985, No. 120

Amendments: 1986, No. 83; 1987, No. 25; 1987, No. 95; 1987, No. 168; 1988, No. 181; 1989, No. 20; 1989, No. 91; 1993, No. 43

community-based sentence, it shall not at the same time also impose on the offender any other kind of community-based sentence or any kind of full-time custodial sentence, whether for the offence for which that community-based sentence was imposed or for any other offence for which the offender has appeared for sentence. 5

“(3) Where a court imposes on an offender a sentence of periodic detention, it may at the same time also impose on the offender a sentence of supervision.

“(4) Where a court imposes on an offender a suspended sentence of imprisonment, it may at the same time also impose on the offender either or both of the following: 10

“(a) Any one kind of community-based sentence or the combination of the sentences of periodic detention and supervision: 15

“(b) A sentence of reparation or a sentence of a fine, or both.

“(5) Except as provided in subsection (6) of this section, where a court imposes on an offender any kind of full-time custodial sentence, it shall not at the same time also impose on the offender any other kind of full-time custodial sentence or any kind of community-based sentence or a suspended sentence of imprisonment, whether for the offence for which that full-time custodial sentence was imposed or for any other offence for which the offender has appeared for sentence. 20

“(6) Where a court imposes on an offender for any offence a sentence of preventive detention or a sentence of imprisonment, it may at the same time also impose on the offender any other kind of full-time custodial sentence, other than a sentence of corrective training, for any other offence for which the offender has appeared for sentence. 25 30

“(7) Where an offender who is before a court for sentence is already detained under a full-time custodial sentence imposed on an earlier occasion, the court shall not impose on the offender any kind of community-based sentence or a suspended sentence of imprisonment. 35

“(8) Nothing in this section shall empower a court to impose any sentence that it would not otherwise be empowered to impose.

“(9) Nothing in this section shall limit the power of a court to make any order that it is empowered to make on the conviction of any person, whether under this Act or under any other enactment. 40

“(10) Nothing in this section shall limit the power of the court to impose, pursuant to any other section of this Act, a

community-based sentence that is cumulative on a sentence of imprisonment.”

(2) Section 6 of the Criminal Justice Amendment Act 1993 is hereby consequentially repealed.