

[AS REPORTED FROM THE STATUTES REVISION
COMMITTEE]

House of Representatives, 1 September 1954

Words struck out by Statutes Revision Committee are shown in italics within bold brackets or in roman enclosed in panel; words inserted are shown in black or in roman with rule down side.

Hon. Mr Webb

CRIMINAL JUSTICE

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A BILL INTITULED

Title.

AN ACT to consolidate and amend the law relating to the probation of offenders and borstal detention, and to reform existing methods and provide new methods for dealing with offenders liable to imprisonment; and to amend the law relating to criminal proceedings. 5

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: 10

Short Title and commencement.

1. (1) This Act may be cited as the Criminal Justice Act 1954.

(2) Except as otherwise specially provided herein, this Act shall come into force on the *first* day of January, nineteen hundred and fifty-five. 15

Interpretation.

2. (1) In this Act, unless the context otherwise requires,—

“Court” means any Court exercising any jurisdiction in criminal cases:

“Detention centre” means a detention centre established under the *Penal Institutions Act 1954*: 1954, No. 00

“Magistrate’s Court” includes a Children’s Court:

“Minister” means the Minister of Justice:

“Penal institution” means a penal institution established under the *Penal Institutions Act 1954*:

“Probationer” means any person for the time being under the supervision of a probation officer under or by virtue of this Act:

“Probation officer” means a probation officer appointed under Part I of this Act.

(2) Any reference in this Act to a previous conviction shall be construed as a reference to a conviction before or after the commencement of this Act, and within or out of New Zealand, and whether on indictment or in a summary way. For the purposes of this subsection, a committal for sentence under section one hundred and eighty-one of the *Justices of the Peace Act 1927*, and a plea of guilty under section forty-one of the *Statutes Amendment Act 1936*, shall be deemed to be convictions on indictment.

See Reprint of Statutes, Vol. II, p. 401 1936, No. 58

(3) Any reference in this Act to a previous sentence of borstal training shall be construed as including a reference to a previous order for detention in a borstal institution; and, unless the context otherwise requires, any such reference to a previous sentence of corrective training shall be construed as including a reference to a previous sentence of reformatory detention.

Cf. Criminal Justice Act 1948 (11 and 12 Geo. VI, ch. 58), s. 80 (U.K.)

(4) This Act shall apply to offences committed before or after the commencement of this Act.

PART I

PROBATION

3. (1) There may from time to time be appointed under the *Public Service Act 1912* such probation officers as are required for the purposes of this Act.

Probation officers. 1920, No. 39, s. 3 (2), (3), (4), (6)

(2) Notwithstanding anything in subsection one of this section, the Minister may from time to time appoint any person, or the holder for the time being of any office or appointment, as a probation officer in a part-time capacity for the purposes of this Act. No person

See Reprint of Statutes, Vol. VII, p. 522

See Reprint
of Statutes,
Vol. VII,
p. 522
1947, No. 57

appointed under this subsection shall by virtue of that appointment become an officer or employee of the Public Service, and nothing in the Public Service Act 1912 or the Superannuation Act 1947 shall apply with respect to that appointment. Any probation officer appointed under this subsection may be paid out of money appropriated by Parliament for the purpose such remuneration by way of salary or fees, and such allowances, as may be determined by the Minister with the concurrence of the Minister of Finance.

(3) Any appointment under this section may be held in conjunction with any office or appointment that is not deemed inconsistent therewith.

Powers and
duties of
probation
officers.
1920, No. 39,
ss. 4, 5

4. (1) A probation officer may, and shall when so required by any Court, report to the Court on the character and personal history of any person convicted of any offence punishable by imprisonment, with a view to assisting the Court in determining the most suitable method of dealing with his case; and may in any such report advise the Court whether the offender would be likely to respond satisfactorily to probation **and whether any condition of probation should be imposed.**

(2) It shall be the duty of every probation officer—

(a) To supervise all persons placed under his supervision, with a view to assisting their social rehabilitation and preventing the commission of further offences:

(b) To perform such other duties as may be prescribed by or under this Act or any other enactment.

(3) Any probation officer may commence or appear in any proceedings in any Court on behalf of any other probation officer.

(4) In the exercise of his powers and duties, every probation officer shall have the powers, protection, and privileges of a constable.

Report of
probation
officer to be
shown or given
to offender.
1920, No. 39,
s. 6

5. (1) Where, under any provision of this Act or of any other enactment, a written report is made to the Court by a probation officer, a copy of the report shall be shown, or [*shall be given*] if the Court so directs **shall be given**, to the solicitor or counsel appearing for the offender, or, if the offender is not represented by a solicitor or counsel, to the offender.

(2) The offender or his solicitor or counsel may tender evidence on any matter referred to in any report, whether written or oral, that is made to the Court by a probation officer.

5 (3) Failure to show or give a copy of any report in accordance with this section shall not affect the validity of the proceedings in any Court or of any order made or sentence passed by the Court.

10 6. (1) Where any person is convicted of any offence punishable by imprisonment the Court may, in its discretion, instead of sentencing him to imprisonment, release him on probation for a period specified by the Court, being a period of not less than one year nor more than three years:

Power of Court to impose probation. 1920, No. 39, ss. 7 (1), (2), 8 Cf. Criminal Justice Act 1948 (U.K.), s. 3 (1)

15 Provided that nothing in this Act shall affect the power conferred on any Court by any enactment other than this Act to release any offender on probation for any period referred to in that enactment and on any conditions therein referred to.

20 (2) Where the Court releases any person on probation under this section, it may also sentence that person to pay any fine authorized by law.

25 (3) Where any Court sentences any person to imprisonment for less than one year it may in its discretion order, as part of the sentence, that on his release from imprisonment he shall be on probation for any period, not exceeding one year, specified by the Court, and may impose any condition of probation under section *eight* of this Act. In any such case that person shall, 30 on his release from imprisonment, be deemed to be an offender released on probation under *Part V* of this Act, and any conditions imposed under this subsection shall be deemed to be special conditions imposed under that Part, and the provisions of that Part shall apply 35 accordingly.

(4) For the purpose of any appeal or application for leave to appeal, a release on probation under this section shall be deemed to be a sentence or, where a fine is also imposed, to be part of the sentence.

40 (5) Where any person is released on probation **under subsection one of this section**, the Registrar of the Court shall notify the Secretary for Justice and the probation officer in whose district the Court office is situated.

(6) Every probationer shall be under the supervision of a probation officer in whose district he resides for the time being, or of such other probation officer as the Secretary for Justice may from time to time direct.

(7) When any person is released on probation, the probation officer shall issue to him a probationary licence setting out the conditions subject to which he has been released. 5

Conditions of
release.
1920, No. 39,
s. 10 (1)

7. Where any person is released on probation, the following conditions shall apply: 10

- (a) Within twenty-four hours after his release on probation, he shall report in person to a probation officer for the district in which the Court office is situated:
- (b) He shall report to the probation officer under whose supervision he is, as and when he is required to do so by the probation officer: 15
- (c) He shall give to the probation officer reasonable notice of his intention to move from his address; and if he removes to any place within the district of another probation officer he shall, within forty-eight hours after his arrival in that district, notify that other probation officer of his arrival, his address, and the nature and place of his employment: 20
- (d) He shall not reside at an address that is not approved by the probation officer: 25
- (e) He shall not continue in any employment, or continue to engage in any occupation, that is not approved by the probation officer: 30
- (f) He shall not associate with any specified person, or with persons of any specified class, with whom the probation officer has, in writing, warned him not to associate:
- (g) He shall be of good behaviour and commit no offence against the law. 35

Power of Court
to impose
additional
conditions.
1920, No. 39,
s. 10 (1) (h)
1939, No. 39,
s. 54

8. (1) The Court releasing any person on probation may in its discretion impose all or any of the following additional conditions, namely:

- (a) That he shall, within such period and by such instalments as may from time to time be directed by the probation officer, pay the whole or such portion as the Court may direct 40

of the costs of the prosecution in relation to the offence for which he is released on probation and any other offence of which he may be convicted or for which he may be brought up for sentence at the same time:

5 (b) That he shall, within such period and by such instalments as may from time to time be directed by the probation officer, pay, by way of damages for injury or compensation for loss
10 suffered by any person through or by means of any such offence as aforesaid, such sum as the Court may direct or as may be fixed by the probation officer under the direction of the Court, not exceeding in any case a sum specified by the Court:

15 (c) That he shall apply for a prohibition order and keep it renewed during the term of probation:

(d) That he shall abstain from the use of intoxicating liquor or drugs:

20 (e) That he shall not, either alone or jointly with any other person, own or have in his possession any specified article or articles of any specified class:

25 (f) That he shall not associate with any specified person or with persons of any specified class:

(g) That he shall undergo any specified course of education or training:

(h) Such conditions relating to his place of residence, employment, or earnings, as the Court thinks fit:

30 (i) Such other conditions as the Court thinks necessary for ensuring his good conduct or for preventing the commission by him of any offence.

35 (2) Where under this section a direction for the payment of damages or compensation is given and at the expiry of the term of probation any sum remains owing to any person under the direction, that person may at
40 any time within twelve months thereafter obtain from the Registrar of the Court where the direction was given a certificate of the direction and of the sum so owing. When any such certificate is filed in a Court of competent jurisdiction it may be enforced as if it were a judgment of that Court.

(3) No civil remedy for any act or omission shall be suspended by the imposition of a condition for the payment of any damages or compensation.

[Variation or discharge of conditions of probation.]

Variation of conditions and discharge from probation.

1920, No. 39,
s. 12

9. (1) Subject to the provisions of subsection *five* of this section, any probationer under this Part of this Act may,— 5

(a) At any time, apply to a Court for the remission, suspension, or variation of any condition imposed by the Court, whether on his release or under this section: 10

(b) At any time after the expiration of half the term of his probation, apply to a Court for his discharge from probation.

(2) Subject as aforesaid, any probation officer may at any time apply to a Court— 15

(a) For the remission, suspension, or variation of any condition imposed by the Court on any such probationer, whether on his release or under this section:

(b) For the discharge of any such probationer from probation: 20

(c) For the imposition of any additional condition in respect of any such probationer:

(d) For an extension of the term of probation of any such probationer, where that term is less than three years. 25

(3) On any application under this section, the Court, in its discretion, having regard to any change of circumstances since the offender was released on probation, may make an order remitting, suspending, or varying any condition, or imposing any additional condition, or extending the term of probation, or doing all or any two or more of those things, or discharging the probationer: 30

Provided that the Court shall not extend the term of probation beyond the end of three years from the date on which that term began. 35

(4) Where the Court makes an order for the discharge of any probationer, the term of his probation shall expire on such date as may be specified in that behalf in the order of discharge. 40

(5) Every application under this section shall be made—

5 (a) Where it relates to a person released on probation by the Supreme Court or the Court of Appeal, to the Supreme Court or a Judge thereof [*by motion*]:

10 (b) Where it relates to a person released on probation by a Magistrate's Court, or by the Supreme Court on appeal from a Magistrate's Court, to a Magistrate's Court presided over by a Magistrate.

15 (6) A copy of every application under this section shall, either before or immediately after the application is lodged in the office of the Court, be served on the probation officer or, as the case may require, the probationer.

20 (7) Where any application is made under this section for the remission, suspension, or variation of any condition imposed on a probationer under paragraphs (c) to (i) of subsection *one* of section *eight* of this Act, the probation officer may in his discretion suspend the condition until the application has been heard and disposed of.

25 (8) Any application under this section may, in the discretion of the Court, be heard either in open Court or in Chambers, and the provisions of section *forty-six* of this Act shall apply with all necessary modifications.

30 (9) Notice of any order made under this section shall be given by the Registrar of the Court to the Secretary for Justice and to the probation officer in whose district the Court office is situated.

35 10. (1) Every probationer commits an offence, and is liable on summary conviction before a Magistrate to imprisonment for a term not exceeding three months or to a fine not exceeding twenty pounds, who contravenes or fails to comply with any condition of his probation.

Breach of conditions of probation. 1920, No. 39, s. 13 (1)

(2) Where any probationer is convicted under this section, any Magistrate may, in addition to or instead of sentencing the offender under subsection *one* of this section, do all or any of the following things, namely:

40 (a) Extend the term of probation by any specified period expiring not later than three years after the date on which that term began:

(b) Vary any condition of the probation imposed by any Court under this Part of this Act:

(c) Impose any additional condition.

(3) Notice of any order made under this section shall be given by the Registrar of the Court to the Secretary for Justice and to the probation officer in whose district the Court office is situated. 5

(4) Where any probation officer or any constable believes on reasonable and probable grounds that any probationer has committed a breach of a condition of his probation, he may arrest the probationer without warrant. 10

Sentence for original offence. 1920, No. 39, s. 14 (1)

11. (1) Whenever any probationer is convicted of an offence under section *ten* of this Act or is convicted of any other offence committed during the period of probation, any probation officer may apply to the Court to sentence him for the offence for which he was released on probation. 15

(2) Notice of every application made by a probation officer under this section shall be served on the probationer: 20

Provided that whenever an offender is charged under section *ten* of this Act, any probation officer may if he thinks fit give notice to the probationer that if he is convicted of the charge under that section the Court will then be asked to sentence him for the original offence; and in any such case it shall not be necessary for any subsequent notice to be served on the probationer. 25

(3) Any application under this section shall be made to the Supreme Court if the offender was released on probation by the Supreme Court or by the Court of Appeal, and to a Magistrate's Court presided over by a Magistrate if the offender was released on probation by a Magistrate's Court or by the Supreme Court on appeal from a Magistrate's Court. If the application is dealt with by a Judge or Magistrate other than the Judge or Magistrate who released the offender on probation, the Judge or Magistrate shall, before sentencing the offender, make such inquiries as to the circumstances of the case as he considers reasonable, and may if he thinks fit hear such evidence as is relevant thereto. 30 35 40

(4) The Judge or Magistrate by whom an application is heard under this section may if he thinks fit deal with the offender for the offence for which he was released on probation in any way, other than by again 45

releasing him on probation, in which the Judge or Magistrate could have dealt with him if he had just convicted him of that offence. If the offender is not sentenced or otherwise dealt with for that offence, he shall continue to be on probation.

12. (1) Where any person released on probation under this Part of this Act is sentenced in respect of any offence to borstal training, or to corrective training, or to imprisonment for life or for a term of one year or more, or to preventive detention, the probation shall be deemed to be terminated.

Effect of subsequent sentence on probation.

(2) Where any person released on probation under this Part of this Act is sentenced in respect of any offence to detention in a detention centre or to imprisonment for less than one year, the term of his probation shall continue to run while he is detained under the sentence, and on his release from detention he shall continue to be on probation for the then unexpired residue of that term, unless he is sooner discharged from probation under this Part of this Act.

13. Every probationer shall at the expiry of the term of his probation be deemed to be discharged, in respect of the offence for which he was released on probation, as if he had been sentenced and had served the term of his sentence.

Discharge on expiry of probation. 1930, No. 13, s. 4 (1)

PART II

YOUNG OFFENDERS

Restrictions on Imprisonment or Detention

14. (1) Where any person appears to any Court to be under the age of twenty-one years, the Court shall not—

Restrictions on imprisonment or detention of persons under twenty-one years of age. 1939, No. 11, s. 5

- (a) Sentence him to detention in a detention centre; or
 or
 (b) Sentence him to imprisonment; or
 (c) Impose on him a term of imprisonment in default of payment of any sum adjudged or ordered to be paid,—

unless the Court, having regard to his character and personal history and to all the circumstances of the case, has formed the opinion that he should be so detained or imprisoned notwithstanding his age.

(2) No Magistrate knowing any person to be under the age of twenty-one years shall issue a warrant of commitment in respect of the default of sufficient distress to satisfy any sum adjudged or ordered to be paid by that person unless, having regard to his character and personal history and to all the circumstances of the case, the Magistrate has formed the opinion that he should be imprisoned notwithstanding his age. 5

(3) References in this section to a sum adjudged or ordered to be paid include references to any sum of money adjudged or ordered to be paid by any conviction or order, whether as a fine or for costs or otherwise. 10

Detention Centres

Commencement of next two succeeding sections.

15. Sections *sixteen* and *seventeen* of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and different dates may from time to time be so appointed for the coming into force of those sections in respect of different parts of New Zealand or in respect of specified Courts or in respect of male or female offenders. 15

Detention in a detention centre.
Cf. Criminal Justice Act 1948 (U.K.), s. 18 (1)

16. (1) Subject to the provisions of this section and of section *fourteen* of this Act, where any person who is not less than seventeen and is under twenty-three years of age is convicted of any offence punishable by imprisonment, the Court, instead of passing any other sentence, may sentence that person to detention in a detention centre. 20

See Reprint of Statutes, Vol. II, p. 896

(2) Nothing in this section shall apply where the offence of which the person is convicted is an offence under Part VIII of the Destitute Persons Act 1910. 30

(3) Nothing in this section shall be construed to apply to any case where the liability of any person to imprisonment arises out of default in payment of any fine imposed on that person by any Court or in payment of any sum adjudged or ordered to be paid by any conviction or order. 35

(4) No Court shall sentence any person to detention in a detention centre if it is shown to the Court that at any time previously he has been sentenced—

- (a) To detention in a detention centre, or to borstal training, or to corrective training; or 40
- (b) To imprisonment for a term of one month or more.

(5) Where any person serves a sentence of detention in a detention centre and is later brought before a Court for any other offence, any probation officer or any Superintendent of a penal institution or any other officer of the Department of Justice may make a report in writing to the Court on the conduct of that person while in the detention centre; and where the report is made by a person other than the probation officer the provisions of section *five* of this Act shall apply with the necessary modifications.

17. Every person sentenced to detention in a detention centre shall be detained in a detention centre for four months: Period of detention.

Provided that the [*Governor-General may, on the recommendation of the Minister*] **Minister may remit** any part, not exceeding one month, of the period for which any offender is liable to be detained under this section.

Borstal Training

18. (1) Subject to the provisions of this section and of section *nineteen* of this Act, where any person who is not less than seventeen and is under twenty-one years of age is convicted of any offence punishable by imprisonment, and the Court is satisfied, having regard to his character and personal history and to all the circumstances of the case, that it is expedient for his reformation and the prevention of crime that he should undergo a period of training in a borstal institution, the Court may, instead of passing any other sentence, pass a sentence of borstal training. Borstal training.
1924, No. 20,
ss. 7, 8
Cf. Criminal
Justice Act
1948 (U.K.),
s. 20 (1)

(2) The power conferred by subsection *one* of this section may be exercised in respect of any person who is less than seventeen but not less than fifteen years of age, and who is convicted of any offence punishable by imprisonment, if in the opinion of the Court, having regard to such matters as aforesaid and to any special circumstances, borstal training would be more conducive to that person's reformation and the prevention of crime than any other way of dealing with him.

(3) The powers conferred by this section shall not be exercised in a Magistrate's Court, except by a Magistrate.

Struck out

Court to consider report of probation officer before passing sentence of borstal training.
1924, No. 20, s. 10

19. Before sentencing any offender to borstal training, the Court, unless it is a Children's Court, shall consider any report that may be made to it by a probation officer on the character and personal history of the offender.

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New

Court to consider report of probation officer before passing sentence of borstal training.
1924, No. 20, s. 10

19A. (1) No Court, other than a Children's Court, shall pass any sentence of borstal training until a report on the character and personal history of the offender has been made by a probation officer and has been considered by the Court.

10

(2) No sentence of borstal training shall be deemed to be invalid on the ground that a report was not so made or was not considered by the Court.

(3) If any Court sentences any offender to borstal training before a report has been made and considered under this section, the defendant or the prosecutor or any counsel or solicitor on behalf of the Crown may at any time apply in accordance with this section to have the sentence reviewed.

20

(4) Any such application as aforesaid may be made—

(a) In the case of a sentence passed by the Supreme Court, to any Judge of the Court at any place, whether or not the sentence was passed by that Judge or at that place:

25

(b) In the case of a sentence passed by a Magistrate's Court, to any Magistrate's Court presided over by a Magistrate at any place, whether or not the sentence was passed by that Magistrate or at that place.

30

(5) The Judge or Magistrate to whom the application is made, after inquiry into the circumstances of the case and after considering the report of the probation officer, may in his discretion confirm the sentence or substitute for it any other sentence that could have been passed on the offender at the time when the original sentence was passed.

35

(6) With respect to any sentence so substituted, the following provisions shall apply:

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(a) For the purpose of any appeal or application for leave to appeal against it, the substituted sentence shall be deemed to be a sentence

passed on the conviction of the offender, but the time allowed for giving notice of the appeal or application shall run from the day on which the substituted sentence was in fact passed:

5 (b) For the purpose of calculating the period for which the offender is liable to be detained under it, the substituted sentence shall be deemed to have commenced on the day on which the original sentence commenced.

10 20. Every person sentenced to borstal training shall be detained in a borstal institution until he is released on the recommendation of the Parole Board under Part V of this Act:

Period of borstal training. 1924, No. 20, ss. 7, 8

15 Provided that no such person shall be so detained for any period exceeding three years from the commencement of the sentence.

Cf. Prisons Act 1952 (15 & 16 Geo. VI and 1 Eliz. II, ch. 52), s. 45 (U.K.)

PART III

CORRECTIVE TRAINING AND PREVENTIVE DETENTION

Corrective Training

20 21. (1) Subject to the provisions of this section and of section *twenty-two* of this Act, where any person who is not less than twenty-one and is under thirty years of age—

Corrective training. 1910, No. 15, ss. 3, 4

25 (a) Is convicted of an offence punishable by imprisonment for a term of three years or more; or

Cf. Criminal Justice Act 1948 (U.K.), s. 21 (1)

30 (b) Having been previously convicted on at least two occasions on separate dates of offences punishable by imprisonment for terms exceeding three months, and having on at least one of those occasions been released on probation or sentenced to imprisonment or to detention in a detention centre or to borstal training or to corrective training, is convicted of an offence punishable by imprisonment for a term exceeding three months, being an offence committed after the last of those previous convictions,—

40 the Court, if it is satisfied that it is expedient for his reformation and the prevention of crime that he should receive training of a corrective character for a substantial period, may, instead of *[imposing]* passing any other sentence, pass a sentence of corrective training.

(2) The power conferred by subsection *one* of this section may be exercised in respect of any person who is not less than thirty and is under thirty-five years of age, and who would be liable to corrective training if he were under thirty years of age, if in the opinion of the Court, having regard to any special circumstances, including his character and personal history, corrective training would be more conducive to his reformation and the prevention of crime than any other sentence. 5

(3) The powers conferred by this section shall not be exercised in a Magistrate's Court, except by a Magistrate. 10

Struck out

Court to consider report on offender before passing sentence of corrective training.

Cf. Criminal Justice Act 1948 (U.K.), s. 21 (4), (5)

22. (1) Before sentencing any offender to corrective training, the Court shall consider any report that may be made to it by a probation officer or by the Superintendent of a penal institution or by any other officer of the Department of Justice on the character and personal history of the offender. 15

(2) Any such Superintendent or officer as aforesaid shall whenever he is required by the Court to do so, and may in any case, make to the Court a report in writing on the character and personal history of any person liable to corrective training. 20

(3) The provisions of section *five* of this Act shall, with the necessary modifications, extend and apply to any report made under this section by a person other than a probation officer. 25

New

Court to consider report on offender before passing sentence of corrective training.

Cf. Criminal Justice Act 1948 (U.K.), s. 21 (4), (5)

22A. (1) No Court shall pass any sentence of corrective training until a report on the character and personal history of the offender has been made by a probation officer or by the Superintendent of a penal institution or by some other officer of the Department of Justice and has been considered by the Court. 30 35

(2) Any such Superintendent or officer as aforesaid shall whenever he is required by the Court to do so, and may in any case, make to the Court a report in writing on the character and personal history of any person liable to corrective training. 40

(3) The provisions of section *five* of this Act shall, with the necessary modifications, extend and apply to any report made under this section by a person other than a probation officer.

(4) No sentence of corrective training shall be deemed to be invalid on the ground that a report was not so made or was not considered by the Court.

5 (5) If any Court sentences any offender to corrective training before a report has been made and considered under this section, the defendant or the prosecutor or any counsel or solicitor on behalf of the Crown may at any time apply to have the sentence reviewed; and for that purpose the provisions of subsections *four* to *six* of section 10 *nineteen A* of this Act shall apply with any necessary modifications.

23. Every person sentenced to corrective training shall be detained for corrective training in a prison until he is released on the recommendation of the Parole Board under Part V of this Act: 15
 Provided that no such person shall be so detained for any period exceeding three years from the commencement of the sentence.

Period of corrective training.

1910, No. 15, s. 6

Cf. Prison Act 1952 (U.K.), s. 26

Preventive Detention

20 24. (1) This section shall apply to any person who is not less than twenty-five years of age, and who,—

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

25 (b) Having been previously convicted on at least three occasions on separate dates, since he attained the age of seventeen years, of offences punishable by imprisonment for terms of three years or more, and having been sentenced on at least two of those occasions to imprisonment for one year or more or to reformatory detention for one year or more or to borstal training or to corrective training, is convicted of an offence punishable by imprisonment for a term of three years or more, being an offence committed after the last of those previous convictions; or

30 (c) Having been previously convicted on at least seven occasions on separate dates, since he attained the age of seventeen years, of offences

Preventive detention.

1908, No. 32, ss. 29, 30

Cf. Criminal Justice Act 1948 (U.K.), s. 21 (2)

punishable by imprisonment for terms exceeding three months, and having been sentenced on at least four of those occasions to imprisonment or reformatory detention or to borstal training or to corrective training, is convicted of an offence punishable by imprisonment for a term exceeding three months, being an offence committed after the last of those previous convictions. 5

(2) Subject to the provisions of this section and of section *twenty-five* of this Act, the Supreme Court, if it is satisfied that it is expedient for the protection of the public that any person to whom this section applies should be detained in custody for a substantial period, may, instead of **[imposing]** passing any other sentence, pass a sentence of preventive detention. 10 15

(3) Where any person is convicted by any Magistrate or Justice of any offence and is liable to preventive detention, the Magistrate or Justice may commit him to the Supreme Court for sentence. The Magistrate or Justice shall thereupon endorse on the information a certificate to that effect, and shall cause the information and the charge sheet and a statement of the facts of the case to be sent to the Registrar of the Supreme Court. In any such case the offender shall as soon as practicable be brought before the Supreme Court or a Judge sitting in open Court, and the Judge may pass any sentence authorized by law. 20 25

(4) Nothing in subsection *three* of this section shall be construed to affect the right of the offender to appeal to the Supreme Court against his conviction. 30

1945, No. 23

(5) For the purposes of paragraph (c) of section three of the Criminal Appeal Act 1945, any person who is sentenced by the Supreme Court after committal under subsection *three* of this section shall be deemed to be a person convicted on indictment, and the sentence shall be deemed to be a sentence passed on his conviction. 35

See Reprint
of Statutes,
Vol. II, pp. 227,
241-243

(6) For the purposes of this section, the expression "sexual offence against a child" means any offence under any of the following sections of the Crimes Act 1908, if the child was under sixteen years of age at the time of the commission of the offence—that is to say, sections one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, two hundred and 40

eight, two hundred and twelve, two hundred and thirteen, two hundred and fourteen, two hundred and fifteen, and two hundred and sixteen.

5 25. (1) Before sentencing any offender to preventive detention, the Court shall consider any report that may be made to it by a probation officer or by the Superintendent of a penal institution or by any other officer of the Department of Justice.

Court to consider report on offender before passing sentence of preventive detention.

10 (2) Any such Superintendent or officer as aforesaid shall whenever he is required by the Court to do so, and may in any case, make to the Court a report in writing on the character and personal history of any person liable to preventive detention.

Cf. Criminal Justice Act 1948 (U.K.), s. 21 (4), (5)

15 (3) The provisions of section *five* of this Act shall, with the necessary modifications, extend and apply to any report made under this section by a person other than a probation officer.

20 26. (1) Every person sentenced to preventive detention shall be detained in a prison until he is released on the recommendation of the Parole Board under *Part V* of this Act.

Period of preventive detention.

Cf. Prison Act 1952 (U.K.), s. 26

Struck Out

25 Provided that no such person shall be so detained for less than three years or more than fourteen years from the commencement of the sentence.

New

30 (2) Notwithstanding anything in subsection *one* of this section,—

(a) No such person shall be so detained for less than three years from the commencement of the sentence:

35 (b) No such person, other than a person to whom paragraph (a) of subsection *one* of section *twenty-four* of this Act applies, shall be so detained for more than fourteen years from the commencement of the sentence.

PART IV

CUMULATIVE AND CONCURRENT SENTENCES

40 27. (1) A sentence of detention in a detention centre shall not be cumulative on any other sentence of detention in a detention centre or on any sentence of any other kind.

Detention in a detention centre.

(2) No sentence of any kind shall be cumulative on a sentence of detention in a detention centre.

Imprisonment.
1908, No. 32,
s. 39
1939, No. 11,
s. 17

28. (1) In imposing any sentence of imprisonment, the Court may direct that the sentence shall commence on the expiry of any other sentence or sentences of imprisonment specified in the direction, whether then imposed by the Court or then being undergone or to be undergone by the offender, including any sentence or sentences in respect of which any such direction is or has been given. 5

(2) Where a term of imprisonment is imposed in respect of the non-payment of any sum adjudged or ordered to be paid by any conviction or order, whether as a fine or for costs or otherwise, or where a warrant of commitment is issued in respect of the non-payment of any such sum or in default of sufficient distress to satisfy any such sum, the Court or, as the case may require, the Magistrate or Justices issuing the warrant, may direct that the imprisonment shall commence on the expiry of any sentence or sentences of imprisonment specified in the direction, whether then imposed by the Court or then being undergone or to be undergone by the offender, including any sentence or sentences in respect of which any such direction is or has been given. 10 15 20

Borstal
training and
corrective
training.

29. (1) A sentence of borstal training shall not be cumulative on any other sentence of borstal training or on any sentence of any other kind. 25

(2) A sentence of corrective training shall not be cumulative on any other sentence of corrective training or on any sentence of any other kind.

(3) No sentence of any kind shall be cumulative on any sentence of borstal training or of corrective training. 30

(4) Notwithstanding anything in this Act, where any person who is serving a sentence of borstal training or of corrective training is convicted of any offence or offences punishable by imprisonment and committed after that sentence was passed, the Court may, if it thinks fit, pass a sentence extending the maximum term of borstal training or corrective training for which he could then be detained under the sentence he is serving for such period, not exceeding one year, as it thinks fit, and thereupon the sentence he is serving shall be deemed to be extended accordingly. Any sentence so extended may from time to time, on the conviction in each case of the offender of any such offence as aforesaid, be further extended in accordance with this section, but the periods of all extensions of the sentence under this section shall not in the aggregate exceed two years. The power conferred by this subsection may be exercised 35 40 45

notwithstanding that the offender has attained the age of twenty-one years in the case of borstal training or thirty-five years in the case of corrective training.

(5) Where any person who is serving a sentence of borstal training or of corrective training is convicted of any offence or offences punishable by imprisonment, and committed before or after that sentence was passed, and the Court sentences that person to a term or terms of imprisonment, the following provisions shall apply:

10 (a) If the term or terms of imprisonment will expire on or before the expiry of the maximum term for which he could then be detained under the sentence of borstal training or corrective training, he shall continue to serve that sentence unless the Court directs that instead of doing so he shall serve the sentence or sentences of imprisonment:

15 (b) If the term or terms of imprisonment will expire after the maximum term for which he could then be detained under the sentence of borstal training or corrective training, he shall serve the sentence or sentences of imprisonment instead of continuing to serve the sentence of borstal training or corrective training.

20 (6) For the purposes of this section, no person shall be deemed to be serving a sentence of borstal training or of corrective training if he is on probation after release therefrom.

30 30. (1) A sentence of preventive detention shall not be cumulative on any other sentence of preventive detention or on any sentence of any other kind. Preventive detention.

(2) No sentence of any kind shall be cumulative on any sentence of preventive detention.

PART V

RELEASE AND SUBSEQUENT SUPERVISION OF OFFENDERS

35 31. (1) For the purposes of this Act, there shall be a Board to be called the Parole Board, which shall be the same Board as the Prisons Board constituted under the Crimes Amendment Act 1910. Parole Board.
1910, No. 15,
ss. 9, 9A
See Reprint
of Statutes,
Vol. II, p. 335.

(2) The Board shall consist of not less than three nor more than seven members, being—

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

(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.

(3) Every member of the Board, other than the Secretary for Justice, shall be appointed by the Governor-General for a term of three years, but may from time to time be reappointed, or may at any time be removed from office by the Governor-General for disability, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may at any time resign his office by writing addressed to the Minister. 5 10

(4) The Governor-General may from time to time appoint any person to act temporarily as a member of the Board while any member is incapacitated by illness, absence from New Zealand, or other sufficient cause from performing the duties of his office, or during the absence of any member from any place at which a meeting of the Board is to be held. 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. 15 20 25

(5) The Board is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951. 30

(6) There shall be paid out of money appropriated by Parliament for the purpose to the members of the Board, other than the Chairman, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly. 35

Meetings and
procedure of
Board.

1910, No. 15,
s. 10

1920, No. 15,
s. 14

32. (1) Meetings of the Board shall be held at such times and places as the Board or the Chairman appoints.

(2) At any meeting of the Board three members shall form a quorum. 40

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

33. (1) The functions of the Board shall be—

Functions of Board.

(a) To make recommendations to the **[Governor-General] Minister** as to the release of any

1910, No. 15,
s. 12

1920, No. 15,
s. 6

offender undergoing borstal training, corrective training, preventive detention, or imprisonment for life, and as to the release of any offender undergoing imprisonment whose case the Board is requested to consider under subsection *five* of this section:

(b) To make recommendations to the **[Governor-General] Minister** as to the discharge from probation of any offender released under this Part of this Act:

(c) To make recommendations to the **[Governor-General] Minister** as to the remission, suspension, or variation of any condition of the probation of any offender released under this Part of this Act, or as to the imposition on any such offender of any additional condition of probation:

(d) To report to the **[Governor-General] Minister** from time to time, when requested by him to do so, on any matter relating to any recommendation made under this section.

(2) Subject to the provisions of this section, the 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 borstal training or corrective training, within twelve months after the date of his reception in the borstal institution or, as the case may be, the prison, and at least twice in every period of twelve months thereafter:

(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:

(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.

(3) After any offender has become entitled to have his case considered for the first time under subsection *two* of this section, he may from time to time apply to the 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. 5

(4) The Board shall from time to time visit every institution where there are offenders undergoing borstal training, corrective training, preventive detention, or imprisonment for life; and shall give to every offender who is entitled to have his case considered under subsection *two* of this section an opportunity to appear before it and state his case in person at least once in every year. 10 15

(5) Any member of the 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. 20

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

(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: 25

(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: 30

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

(e) Any representation made by the offender.

(7) The 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. 35

(8) Where the Board recommends the release of the offender it may recommend that the release be subject to such special conditions as it thinks fit. 40

(9) Not later than the thirty-first day of March in every year the 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. 45

34. (1) Where the Board recommends the release of any person or his discharge from probation, the **[Governor-General] Minister**, if he thinks fit, may direct the release of that person subject to such special conditions as the **[Governor-General] Minister** thinks fit, and to the provisions of this Part of this Act, or, as the case may require, may direct the discharge of that person from probation.

(2) Notwithstanding anything in this Part of this Act, where any person has been convicted of murder, whether before or after the commencement of this Act, and upon conviction he has been sentenced to death and the sentence has been commuted to imprisonment for life, or upon conviction he has been sentenced to imprisonment for life, he shall not be released on probation or discharged under this Act until after the approval of the Governor-General in Council has been obtained.

35. (1) Subject to the provisions of this Part of this Act, where any offender who is detained under a sentence of borstal training or of corrective training, or is detained under a sentence of imprisonment of one year or more, not being imprisonment for life, or is detained under a sentence of preventive detention, is released from detention before the expiry of the maximum term for which he is liable to be detained under the sentence, he shall be on probation, from the time of his release,—

- (a) In the case of a sentence of borstal training or of corrective training, for one year:
- 30 (b) In the case of a sentence of imprisonment of one year or more, until the expiry of the term of his sentence, or for one year if the unexpired part of that term is less than a year:
- 35 (c) In the case of a sentence of preventive detention, until the expiry of the maximum term for which he might have been detained under the sentence.

(2) Subject to the provisions of this Part, where any offender detained under a sentence of imprisonment for life is released from detention, he shall be on probation, from the time of his release, for the rest of his life.

Release or discharge of offender.
1910, No. 15, ss. 13, 20
1920, No. 15, s. 10 (2)
1924, No. 20, s. 15 (1)
1910, No. 15, s. 21
1950, No. 81, s. 3

Released offender to be on probation.
1910, No. 15, s. 13
1920, No. 15, s. 7
1924, No. 20, ss. 15 (2), 16
Cf. Criminal Justice Act 1948 (U.K.), s. 22 (1) and Prison Act 1952 (U.K.), ss. 26, 29, 45

(3) Subject to the provisions of this Part, where any offender who is detained under a sentence of borstal training or of corrective training, or is detained under a sentence of imprisonment of one year or more, is released from detention at the expiry of the maximum term for which he is liable to be detained under the sentence, he shall be on probation for one year from the time of his release. 5

(4) This section shall apply to any such release as aforesaid, whether it is for the first time or after any recall of the offender under this Part of this Act. 10

(5) This section, so far as it is applicable to a person released from detention under a sentence of imprisonment of one year or more, shall apply whether the release is under this Part of this Act or is pursuant to a partial remission of his sentence under the *Penal Institutions Act 1954*. 15

1954, No. 00

(6) For the purposes of this section, cumulative terms of imprisonment shall be deemed to be one term.

Recall of offender released on probation before expiry of sentence.

1910, No. 15,

ss. 14, 17, 18

1920, No. 15,

ss. 8, 9

1924, No. 20,

s. 15 (3), (4)

36. (1) Whenever any offender detained under a sentence of imprisonment for life is released from detention, or whenever any offender undergoing preventive detention is so released before the expiry of the maximum term for which he is liable to be detained under his sentence, the **[Governor-General] Minister** may at any time **[by warrant under his hand]** direct that the offender be recalled. On the giving of the direction, the probation shall be deemed to be cancelled, and the offender may be arrested without warrant by any constable and shall continue to serve his sentence, unless he is again released on the recommendation of the Parole Board under this Part of this Act: 20 25 30

Provided that an offender released from preventive detention shall not be liable to be recalled after the expiry of such maximum term as aforesaid. 35

(2) Whenever any offender detained under a sentence of borstal training or of corrective training is released from detention before the expiry of the maximum term for which he is liable to be detained under his sentence, any Magistrate, at any time before the expiry of that term and while the offender is still on probation, on the application of the probation officer, may direct that the offender be recalled. On the giving of the direction, the probation shall be deemed to be cancelled, and the offender shall be detained for further borstal training or 40 45

corrective training under his sentence until he is again released on the recommendation of the Parole Board under this Part of this Act, or until the expiry of such term as aforesaid, whichever event first happens.

5 (3) Whenever any offender detained under a sentence of imprisonment of one year or more, not being imprisonment for life, is released from detention, whether under this Part of this Act or pursuant to a partial remission of his sentence under the *Penal Institutions Act* 1954, No. 00
10 1954, before the expiry of the term of his sentence, any Magistrate, at any time before the expiry of that term and while the offender is still on probation, on the application of the probation officer, may direct that the offender be recalled. On the giving of the direction the
15 probation shall be deemed to be cancelled, and the offender shall be detained and shall serve the then unexpired part of his sentence, unless he is again released on the recommendation of the Parole Board under this Part of this Act or pursuant to any further remission of
20 part of his sentence, as the case may be.

(4) The powers conferred by this section may be exercised on such grounds as the **[Governor-General]** Minister or, as the case may be, the Magistrate thinks fit, and whether or not the offender has committed a
25 breach of the conditions of his probation.

(5) On any application to a Magistrate under this section, the offender shall be entitled to be heard and may be represented by a solicitor or counsel.

(6) Any such application may be dealt with in
30 Chambers.

(7) Any probation officer or any constable may arrest any such offender without warrant for the purpose of taking him before a Magistrate to be dealt with in accordance with this section.

(8) The provisions of sections eighty-six and eighty-seven of the Justices of the Peace Act 1927 shall apply to every such application and the hearing thereof as if it were an information.
35

See Reprint
of Statutes,
Vol. II, p. 374

(9) Where a Magistrate directs the recall of any
40 offender under this section, he may issue a warrant in the prescribed form directing that the offender be returned to a penal institution in which he may be lawfully detained.

Term of probation to be deemed part of sentence.
 1910, No. 15, s. 19
 1920, No. 15, s. 10 (1)
 1924, No. 20, s. 15 (5)

Conditions of probation, and discharge therefrom.

37. (1) Whenever any person detained under any sentence is released on probation before the expiry of the sentence, the term of the sentence shall continue to run while he is on probation as if he were still serving the sentence; and the date of expiry of the sentence shall be determined accordingly. 5

(2) The fact that any probationer under this Part of this Act is sentenced to borstal training, corrective training, imprisonment, or preventive detention shall not be deemed to extend the term of his probation. 10

38. (1) Whenever any offender is released on probation under this Part of this Act, the conditions set out in section *seven* of this Act, except paragraph (a) of that section, shall apply, in addition to any special conditions imposed under this Part. 15

(2) There shall be issued to the probationer a probationary licence setting out the conditions subject to which he has been released.

(3) Every probationer under this Part of this Act shall be under the supervision of a probation officer in whose district he resides for the time being, or of such other probation officer as the Secretary for Justice may from time to time direct. 20

(4) Any probationer under this Part of this Act may at any time apply to the Parole Board for the remission, suspension, or variation of any condition imposed by or under this Part of this Act. 25

(5) Any probationer under this Part of this Act, not being a person released from preventive detention, may apply to the Parole Board for his discharge from probation— 30

(a) If he is under sentence of imprisonment for life, at any time after the expiry of three years from the time of his release on probation:

(b) In any other case, at any time after the expiry of half the term of his probation. 35

(6) Any probation officer may at any time apply to the Board—

(a) For the remission, suspension, or variation of any condition imposed on any probationer by or under this Part of this Act: 40

(b) For the discharge from probation of any probationer, not being a person released from preventive detention:

(c) For the imposition of any additional condition in respect of any probationer.

(7) On any such application, the Board may make to the **[Governor-General] Minister** such recommendation as it thinks fit; and thereupon the **[Governor-General] Minister** may give such directions as he thinks fit.

(8) Where under this section the **[Governor-General] Minister** directs the discharge from probation of any probationer, the term of his probation shall expire on such date as may be specified in the direction, and on that date his sentence, if still in force, shall expire.

(9) Where any application is made under this section for the remission, suspension, or variation of any special condition, the probation officer may in his discretion suspend the condition until the application has been heard and disposed of.

(10) Notice of any direction given by the **[Governor-General] Minister** under this section shall be given by the Secretary for Justice to the probation officer.

20 **39.** (1) Every probationer under this Part of this Act who contravenes or fails to comply with any condition of his probation commits an offence and is liable on summary conviction by a Magistrate to imprisonment for a term not exceeding three months, or to a fine not exceeding twenty pounds.

Breach of conditions of probation.
1910, No. 15,
s. 15

(2) Where any probation officer or any constable believes on reasonable and probable grounds that any probationer under this Part has committed a breach of a condition of his probation, he may arrest the probationer without warrant.

(3) The conviction and sentencing of any probationer under this section shall not limit the power of recall conferred by this Part.

PART VI

MISCELLANEOUS

35 **40.** (1) Every reference in any enactment to imprisonment with hard labour, or to imprisonment without hard labour, shall hereafter be construed as a reference to imprisonment.

Sentences of imprisonment.
Cf. Criminal Justice Act 1948 (U.K.), s. 1 (2)

40 (2) Every sentence of imprisonment with hard labour or of imprisonment without hard labour, whether passed before or after the commencement of this Act, shall be deemed to be a sentence of imprisonment.

Power of Court
to order
offender to
come up for
sentence if
called upon.
1927, No. 37,
s. 92 (b)

41. (1) Any Court by or before which any person is convicted of any offence, or before which any person appears for sentence, may, having regard to the circumstances, including the nature of the offence and the character of the offender, instead of passing sentence, order the offender to appear for sentence if called upon to do so, on such conditions as the Court thinks fit. 5

(2) The making of an order under this section shall not limit or affect the power of the Court, under any enactment applicable to the offence, to make any order for the payment of costs, damages, or compensation, or for the restitution of any property, notwithstanding that the offender is not sentenced on conviction, and the provisions of every such enactment shall apply accordingly. 10 15

(3) Any person in respect of whom an order is made under this section may be called upon to appear for sentence within any period specified by the Court in the order, being a period not exceeding three years from the date of the conviction, or, if no period is so specified, within one year from the date of the conviction. 20

(4) Where any person is brought up for sentence under this section, any Judge, Magistrate, or Justice having jurisdiction to deal with offences of the same kind, whether or not he is the Judge, Magistrate, or Justice before whom the case was heard, may, after inquiry into the circumstances of the case and the conduct of the offender since the order was made, sentence or otherwise deal with the offender for the offence in respect of which the order was made. 25 30

Struck out

Power of Court
to discharge
offender
without
conviction or
sentence.
1908, No. 32,
s. 37
1920, No. 39,
s. 18
1927, No. 37,
s. 92 (a)

42. (1) Notwithstanding anything in any enactment, where any person is accused of any offence, any Magistrate's Court, after hearing the evidence, may in its discretion discharge that person without convicting or sentencing him. 35

New

(1A) Where any person is accused of any offence, any Magistrate's Court, after inquiry into the circumstances of the case, may in its discretion discharge that person without convicting him, unless by any enactment applicable to the offence a minimum penalty is expressly provided for. 40

(2) Notwithstanding anything in any enactment, where any person is committed to the Supreme Court for sentence in respect of any indictable offence or, having 45

been committed for trial in respect of any such offence, pleads guilty thereto before trial, the Supreme Court may, in its discretion, instead of sentencing the offender, direct that he be discharged.

5 (3) Notwithstanding anything in any enactment, where any person is committed for trial in respect of any indictable offence, the Supreme Court may in its discretion,—

10 (a) After perusal of the depositions, direct that no bill of indictment shall be preferred, or, if a bill has been found before the Grand Jury, direct that the accused shall not be arraigned thereon; and in either case direct that the accused be discharged:

15 (b) At any stage of the trial, whether before or after verdict, direct that the accused be discharged.

(4) A discharge under this section shall have all the effect of an acquittal.

New

20 (4A) The Court discharging any person under this section may, if it is satisfied that the charge is proved against him, make any order for the payment of costs, damages, or compensation, or for the restitution of any property, that it could have made under any enactment
25 applicable to the offence with which he is charged if it had convicted and sentenced him, and the provisions of every such enactment shall apply accordingly.

(5) Nothing in this section shall affect the power of any Court to convict and discharge any person.

30 43. (1) Where in respect of any offence the Court sentences to detention in a detention centre, borstal training, corrective training, or preventive detention any person appearing to the Court to be of an age at which he is liable to that sentence for that offence, the sentence
35 shall not be invalid by reason only of the fact that because of his age at the time when the sentence was imposed that person was not liable to that sentence.

(2) Where it appears that because of his age at the time when the sentence was passed the offender was not
40 liable to the sentence, the defendant or the prosecutor or any counsel or solicitor on behalf of the Crown may at any time apply in accordance with this section for the substitution of some other sentence.

Sentence not invalidated by mistake in age of offender.

Cf. Criminal Justice Act 1948 (U.K.), s. 80 (3)

(3) Any such application as aforesaid may be made—

(a) In the case of a sentence passed by the Supreme Court, to any Judge of the Court at any place, whether or not the sentence was passed by that Judge or at that place: 5

(b) In the case of a sentence passed by a Magistrate's Court, to any Magistrate at any place, whether or not the sentence was passed by that Magistrate or at that place. 10

(4) The Judge or Magistrate to whom the application is made, after inquiry into the circumstances of the case, may pass in substitution for the original sentence any sentence that could have been passed on the offender at the time of his conviction. 15

(5) For the purpose of any appeal or application for leave to appeal against the substituted sentence, that sentence shall be deemed to be a sentence passed on the conviction of the offender, but the time allowed for giving notice of the appeal or application shall run from the day on which the substituted sentence was in fact passed. 20

(6) For the purpose of calculating the period for which the offender is liable to be detained under any such substituted sentence, that sentence shall be deemed to have commenced on the day on which the original sentence was passed. 25

Discretion of
Court as to
punishment.
1908, No. 32,
s. 25 (2), (4)
1924, No. 11,
s. 27

44. (1) Where under any enactment any person is liable to imprisonment for life or for any specified term, he may be sentenced to imprisonment for any shorter term, unless a minimum term of imprisonment is expressly provided for by that enactment. 30

(2) Where under any enactment any Court may sentence any person to imprisonment, or to imprisonment or a fine, that Court may sentence that person to pay a fine in addition to or instead of sentencing him to imprisonment, unless there is express provision to the contrary in that enactment: 35

Provided that—

(a) No person shall be sentenced to pay a fine exceeding in amount any maximum fine prescribed by the enactment: 40

(b) Where no maximum fine is prescribed by the enactment, no person shall be sentenced by a Magistrate's Court to pay a fine exceeding two 45

hundred pounds if the Court is presided over by a Magistrate or fifty pounds if the Court is presided over by any Justice.

(3) Where a corporation is convicted of any offence punishable only by imprisonment, the corporation may be sentenced to pay a fine:

Provided that where the conviction is by a Magistrate's Court the fine shall not exceed two hundred pounds if the Court is presided over by a Magistrate or fifty pounds if it is presided over by any Justice.

(4) Where under any enactment any person is liable to a fine of a specified amount, he may be sentenced to pay a fine of any less amount, unless a minimum fine is expressly provided for by that enactment.

45. In fixing the amount of any fine to be imposed on any offender, the Court shall take into consideration, amongst other things, the means of the offender so far as they appear or are known to the Court.

Means of offender to be taken into consideration in fixing amount of fine.

1939, No. 11,
s. 3

46. (1) Except as otherwise expressly provided in any enactment, the Court may in its discretion prohibit the publication, in any report relating to any proceedings in respect of any offence, of the name of the person accused or convicted of the offence, or the name of any other person connected with the proceedings.

Court may prohibit publication of names.

1920, No. 39,
s. 9

1930, No. 13,
s. 2

(2) Where the publication of any person's name is prohibited under this section, it shall not be lawful to publish that person's name, or any name or particulars likely to lead to the identification of that person.

(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding fifty pounds who acts in contravention of subsection *two* of this section.

47. (1) Notwithstanding anything in any enactment, where any Court remands or commits for trial or for sentence any person who appears to the Court to be under the age of twenty-one years, it shall release him on bail or otherwise subject to such conditions as it thinks fit, or, if he is under seventeen years of age, may remand him in the custody of the Superintendent of the Child Welfare Division of the Department of Education:

Special provision as to young persons remanded or committed for trial or sentence.

Cf. Criminal Justice Act 1948 (U.K.),
s. 27 (1)

Provided that—

(a) The Court may in any case direct that he be detained in a penal institution if in its opinion no other course is desirable, having regard to all the circumstances: 5

(b) If he is seventeen years of age or more, the Court may remand him in the custody of the Superintendent if in its opinion it is desirable to do so by reason of special circumstances, and if it is satisfied that the Superintendent is able and willing to keep him in custody in accordance with this section. 10

(2) Where any person is remanded in the custody of the Superintendent as aforesaid, that person may, until he is brought up for trial or sentence, be placed in any institution under the Child Welfare Act 1925, or under the care of any suitable person pursuant to that Act. 15

See Reprint of Statutes, Vol. III, p. 1091

Power of adjournment for inquiries as to suitable punishment. Cf. Criminal Justice Act 1948 (U.K.), s. 25

48. (1) Any Court may from time to time adjourn the proceedings in any case against any offender **after he has been convicted and** before he has been sentenced or otherwise dealt with, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with his case. 20

(2) Where any case is adjourned for the purposes of this section, any Judge, Magistrate, or Justice having jurisdiction to deal with offences of the same kind, whether or not he is the Judge, Magistrate, or Justice before whom the case was heard, may, after inquiry into the circumstances of the case, sentence or otherwise deal with the offender for the offence to which the adjournment relates. 25 30

Commutation of death sentence to sentence of imprisonment. Cf. Criminal Justice Act (U.K.), s. 69

Warrant of commitment where punishment is imprisonment or detention, etc.

1927, No. 37, s. 181 (2) (d) 1939, No. 11, s. 16

49. Where any person has been sentenced to death, whether before or after the commencement of this Act, and the sentence has been commuted to imprisonment for life, that person shall be deemed to have been sentenced by the Court before which he was convicted to imprisonment for life. 35

50. (1) Where any Court passes any sentence of imprisonment, preventive detention, or detention in a detention centre, or of borstal training or corrective training, a warrant shall be issued stating briefly the particulars of the offence and directing the detention of the offender in accordance with the sentence. 40

(2) Where the sentence is imposed by the Supreme Court, any Judge may sign the warrant. 45

(3) Where the sentence is imposed by a Magistrate's Court, any Magistrate or Justice may sign the warrant.

(4) Any warrant under this section may be issued in respect of any number of sentences imposed on the offender at the same sitting of the Court.

51. (1) The Governor-General may from time to time remit, either wholly or partly, any fine imposed on any offender or any sum of money ordered to be paid by any person by way of penalty, costs, compensation, or forfeiture, although the amount thereof may be payable to any person other than the Crown; and may direct the release of any person imprisoned in default of payment of any such fine or sum of money as aforesaid.

(2) Any such remission as aforesaid may be subject to such conditions as the Governor-General thinks fit.

52. Nothing in this Act shall be construed to limit or affect in any way the Royal prerogative of mercy.

53. (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) All regulations made under this section shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session.

54. (1) Section eight of the Crimes Act 1908 is hereby amended by omitting the words "imprisonment with hard labour, imprisonment without hard labour", and substituting the word "imprisonment".

(2) Section four hundred and twenty-eight of the Crimes Act 1908 is hereby amended by repealing subsections five and six, and substituting the following subsections:

"(5) If no such motion is made, or if the Court decides against the accused on any such motion, the Court may, during the sitting of the Court, sentence the accused or deal with him in any other manner authorized by law.

Remission of monetary penalties.
1908, No. 142, s. 3

Royal prerogative not affected.
1910, No. 15, s. 30

Regulations.
1910, No. 15, s. 29
1920, No. 39, s. 20

Consequential amendments.
See Reprint of Statutes, Vol. II, p. 186

See Reprint of Statutes, Vol. II, p. 321

“(6) If the accused is not so sentenced or dealt with during the sitting, the Court may, in its discretion, remand him in custody or discharge him from custody on his recognizance, with or without sureties as it thinks fit, to appear for sentence at some future sitting of the Court or when called upon. In any such case, any Judge of the Court may, at a subsequent sitting, sentence the accused or deal with him in any other manner authorized by law.” 5

1952, No. 41 (3) Section six of the Summary Jurisdiction Act 1952 is hereby amended by omitting from paragraph (b) of subsection one the words “Sections twenty-four to twenty-six”, and substituting the words “Sections twenty-four and twenty-six”. 10

New 15

(4) The enactments specified in the *First* Schedule to this Act (which relate to disqualifications for membership of certain local authorities and public bodies) are hereby amended in the manner indicated in that Schedule. 20

Transitory provisions as to existing sentences.

55. (1) Where at the commencement of this Act any person is subject to any order declaring him to be an habitual criminal or an habitual offender, whether or not that person has been released on probation, the order shall continue in force subject to the provisions of the Crimes Amendment Act 1910, except section twenty-four thereof, in all respects as if that Act were still in force. 25

See Reprint of Statutes, Vol. II, p. 335

Provided that if at any time any such person as aforesaid is sentenced to preventive detention the order shall be deemed to be cancelled, and the provisions of this Act shall apply accordingly. 30

(2) Subject to the provisions of this section, where at the commencement of this Act any person is under a sentence of reformatory detention or is subject to any order or direction for his detention in a borstal institution, the sentence, order, or direction shall continue to have effect according to the tenor thereof. 35

(3) Where at the commencement of this Act any person to whom subsection *two* of this section applies, or any person under sentence of imprisonment, is detained under the sentence, order, or direction, the provisions 40

of Part V of this Act (which relate to the release and subsequent supervision of offenders), so far as they are applicable and with the necessary modifications, shall apply to that person. In the application of the said
5 Part V for the purposes of this subsection, the following provisions shall apply:

10 (a) Any reference in that Part to a sentence of corrective training shall be deemed to be a reference to a sentence of reformatory detention, [*and any person undergoing reformatory detention shall be deemed to be undergoing corrective training*] and any reference to an
15 offender undergoing corrective training shall be deemed to be a reference to an offender undergoing reformatory detention:

20 (b) Any reference in that Part to a sentence of borstal training shall be deemed to be a reference to [*an order of detention in a borstal institution, and any person undergoing such detention shall be deemed to be undergoing borstal training*] an order or direction for
25 detention in a borstal institution, and any reference to an offender undergoing borstal training shall be deemed to be a reference to an offender undergoing detention in a borstal institution:

30 (c) The term of any sentence of imprisonment or reformatory detention or of any order of detention in a borstal institution shall continue to run while that person is on probation under the said Part V, and the date of the expiry of the sentence or order shall be determined accordingly:

35 (d) The term of probation (if any) of any such person when released shall not be longer than the term of probation (if any) to which he would have been liable on release if this Act had not been passed.

40 (4) Where at the commencement of this Act any person to whom subsection *two* of this section applies—

(a) Is on probation after release from reformatory detention or imprisonment; or

(b) Is absent from a borstal institution under a licence; or

(c) Is under supervision after the expiration of a term of borstal detention,—
 the period of probation or supervision, and the probationary or other licence, as the case may be, shall continue in force subject to the provisions of the Crimes Amendment Act 1910 (except section twenty-four thereof) or, as the case may require, the Prevention of Crime (Borstal Institutions Establishment) Act 1924 in all respects as if those Acts were still in force. 5

See Reprint of Statutes, Vol. II, p. 335
 See Reprint of Statutes, Vol. II, p. 539

(5) Where before the date of the commencement of this Act any person has been released on probation by any Court under section seven of the Offenders Probation Act 1920, and at that date the term of his probation has not expired, the provisions of Part I of this Act shall, until the expiry of the term of his probation, apply to that person as if he had been released on probation under that Part: 10 15

See Reprint of Statutes, Vol. II, p. 494

Provided that—

(a) Every condition of his probation shall continue in force as if this Act had not been passed, unless it is remitted or suspended or varied under the said Part I: 20

(b) The term of his probation, unless it is extended under that Part, or unless he is discharged from probation under that Part, shall continue in force as if this Act had not been passed. 25

Repeals and savings.

56. (1) The enactments specified in the Second Schedule to this Act are hereby repealed.

See Reprint of Statutes, Vol. VIII, p. 568

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done. 30 35 40

SCHEDULES

Schedule.

New
FIRST SCHEDULE

Section 54 (4)

ENACTMENTS AMENDED

Title of Act	Nature of Amendment
1914, No. 32— The Local Railways Act 1914 (Reprint of Statutes, Vol. VII, p. 941)	By repealing paragraph (e) of subsection (1) of section 16, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.
1921 (Local), No. 17— The Auckland Electric Power Board Act 1921–22	By repealing paragraph (e) of subsection (1) of section 12, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.
1925, No. 38— The Electric Power Boards Act 1925 (Reprint of Statutes, Vol. III, p. 17)	By repealing paragraph (e) of subsection (1) of section 22, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.
1926, No. 18— The Hospitals Act 1926 (Reprint of Statutes, Vol. III, p. 735)	By repealing paragraph (e) of subsection (1) of section 24, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.
1926, No. 70— The New Zealand University Amendment Act 1926 (Reprint of Statutes, Vol. II, pp. 1140, 1145)	(a) By repealing paragraph (e) of subsection (1) of section 5, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”; (b) By repealing paragraph (e) of subsection (1) of section 16, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.
1928, No. 44— The Auckland Transport Board Act 1928	By repealing paragraph (e) of subsection (1) of section 11, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Act	Nature of Amendment
1930, No. 31— The Canterbury Agricultural College Act 1930	By repealing paragraph (e) of subsection (1) of section 9, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.
1933, No. 26— The Victoria University College Act 1933	By repealing paragraph (e) of subsection (1) of section 9, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.
1933, No. 27— The Canterbury University College Act 1933	By repealing paragraph (e) of subsection (1) of section 9, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.
1941, No. 12— The Soil Conservation and Rivers Control Act 1941	By repealing paragraph (e) of subsection (1) of section 55, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.
1944 (Local), No. 7— The Hawke's Bay Crematorium Act 1944	By repealing paragraph (f) of subsection (1) of section 10, and substituting the following paragraph: “(f) Is convicted of any offence punishable by imprisonment; or”.
1946, No. 25— The University of Otago Council Act 1946	By repealing paragraph (e) of subsection (1) of section 7, and substituting the following paragraph: “(e) Is convicted of any offence punishable by imprisonment; or”.

SECOND SCHEDULE

Section 56

ENACTMENTS REPEALED

1908, No. 32—

The Crimes Act 1908: Subsection (1) of section 24, and sections 25, 29, 30, and 37 to 39. (Reprint of Statutes, Vol. II, p. 185.)

1908, No. 104—

The Licensing Act 1908: Subsection (3) of section 243. (Reprint of Statutes, Vol. IV, p. 321.)

1908, No. 142—

The Penalties Remission Act 1908. (Reprint of Statutes, Vol. II, p. 500.)

1910, No. 15—

The Crimes Amendment Act 1910: Sections 2 to 23 and 27 to 30. (Reprint of Statutes, Vol. II, p. 335.)

1920, No. 15—

The Crimes Amendment Act 1920: Sections 6 to 11, 13, and 14. (Reprint of Statutes, Vol. II, p. 344.)

1920, No. 39—

The Offenders Probation Act 1920. (Reprint of Statutes, Vol. II, p. 493.)

1924, No. 11—

The Acts Interpretation Act 1924: Section 27. (Reprint of Statutes, Vol. VIII, p. 583.)

1924, No. 20—

The Prevention of Crime (Borstal Institutions Establishment) Act 1924: Sections 7 to 10, 15, and 16. (Reprint of Statutes, Vol. II, p. 540.)

1927, No. 35—

The Police Offences Act 1927: Sections 55 and 56 (Reprint of Statutes, Vol. II, p. 529.)

1927, No. 37—

The Justices of the Peace Act 1927: Sections 92 and 125, paragraph (d) of subsection (2) of section 181, and the forms numbered 24 and 44 in the First Schedule. (Reprint of Statutes, Vol. II, p. 376.)

1930, No. 12—

The Prevention of Crime (Borstal Institutions Establishment) Amendment Act 1930: Section 2. (Reprint of Statutes, Vol. II, p. 546.)

1930, No. 13—

The Offenders Probation Amendment Act 1930. (Reprint of Statutes, Vol. II, p. 499.)

1936, No. 58—

The Statutes Amendment Act 1936: Subsection (6) of section 41.

1937, No. 38—

The Statutes Amendment Act 1937: Section 6.

1939, No. 11—

The Summary Penalties Act 1939: Sections 3, 5, 16, and 17.

*SECOND SCHEDULE—continued**ENACTMENTS REPEALED—continued*

1939, No. 39—

The Statutes Amendment Act 1939: Section 54.

1950, No. 81—

The Capital Punishment Act 1950: Section 3.

1951, No. 79—

The Fees and Travelling Allowances Act 1951: So much of the First Schedule as relates to the Prisons Board, and so much of the Second Schedule as relates to the Crimes Amendment Act 1910.

1952, No. 41—

The Summary Jurisdiction Act 1952: So much of the Second Schedule as relates to the Acts Interpretation Act 1924 and to subsection (2) of section 92 of the Justices of the Peace Act 1927.

1952, No. 42—

The Crimes Amendment Act 1952: Section 14.