

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 11 April 1975

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

Hon. Dr Finlay

PENAL INSTITUTIONS AMENDMENT

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A BILL INTITULED

An Act to amend the Penal Institutions Act 1954

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

1. **Short Title and commencement**—(1) This Act may be cited as the Penal Institutions Amendment Act (1974) 1975, and shall be read together with and deemed part of the Penal Institutions Act 1954* (hereinafter referred to as the principal
10 Act).

*1957 Reprint, Vol. 11, p. 667

Amendments: 1961, No. 18; 1963, No. 36; 1964, No. 104; 1965, No. 104; 1969, No. 34

No. 129—2

Price 15c

(2) Subject to subsection (3) of this section, this Act shall come into force on the date of its passing.

(3) Sections 2, 3, 5, 7 to 10, and 14 to 17 of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council. Any of those provisions may be brought into force either generally, or in respect of such type of sentence or such class of offenders as may be specified from time to time by Order in Council. 5

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by omitting from the definition of the term “penal institution” the words “borstal institution, detention centre”, and substituting the words “corrective training institution”. 10

(2) The said section 2 is hereby further amended by adding the following definition: 15

“‘Youth prison’ means any prison that pursuant to section 4 (1A) of this Act is specified to be used, except as otherwise expressly provided by this or any other Act, only for the detention of persons under 20 years of age.” 20

3. Establishment of penal institutions—(1) Section 4 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections: 20

“(1) The Minister may from time to time, by notice in the *Gazette*, declare any land or building or any part of any land or building to be any one, but not more than one, of the following kinds of penal institution, namely: 25

“(a) A prison:

“(b) A corrective training institution:

“(c) A police jail. 30

“(1A) Where any land or building or any part of any land or building is declared to be a prison, the Minister may, by the same or by a subsequent notice in the *Gazette*, specify that, except as otherwise expressly provided by this or any other Act, the prison is to be used only for the detention of persons under 20 years of age.” 35

(2) Section 11 of the principal Act is hereby consequentially repealed.

(3) Notwithstanding anything in this Act, or in any Order in Council made under section 1 (3) of this Act, for as long as any penal institution existing at the commencement of this Act is and remains declared to be a prison or a borstal institution or both, it shall continue to be a prison or a borstal 40

institution or both in every way as if for the purposes of that institution and its inmates this Act were not in force and any Order in Council made under the said section 1 (3) had not been made.

5 **4. Superintendent to be charged with general administration of institution**—(1) Section 7 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections:

10 “(1A) Without limiting the generality of subsection (1) of this section, if a Superintendent is satisfied that—

 “(a) The safety of an inmate or of any other person, or the security of the institution, would otherwise be endangered; or

15 “(b) Directions to be given under this subsection are in the interests of an inmate and the inmate consents to or requests the giving of the directions; or

 “(c) Failure to give the directions would be seriously prejudicial to the good order and discipline of the institution,—

20 he may in the discharge of his responsibility for the general administration of the institution give directions that the opportunity of the inmate to associate with other inmates be restricted or denied for a period.

25 “(1B) Every Superintendent giving directions under subsection (1A) of this section shall as soon as practicable send a report on the circumstances to the Secretary for Justice who may at any time revoke the directions, in whole or in part.

30 “(1C) No directions given under subsection (1A) of this section shall remain in force for more than 14 days, unless the Secretary for Justice so authorises, in which case their continuance shall be reviewed by him at intervals not exceeding 3 months.”

(2) Paragraph (d) of subsection (2) of section 45 of the principal Act is hereby consequentially repealed.

35 **5. Detention of inmates**—The principal Act is hereby further amended by repealing section 12, and substituting the following section:

40 “12. (1) Except as otherwise provided by this Act, and subject to section 43 (2B) of the Criminal Justice Act 1954 (as inserted by section 7 of the Criminal Justice Amendment Act (No. 2) 1974),—

 “(a) A person sentenced to corrective training shall serve his sentence in a corrective training institution;

- “(b) A person under 20 years of age who is sentenced to imprisonment for 3 months or more, but not to life imprisonment, shall serve his sentence in a youth prison:
- “(c) A person under 20 years of age who is sentenced to less than 3 months’ imprisonment shall serve his sentence in prison, and may be detained in any prison: 5
- “(d) A person under 20 years of age who is sentenced to life imprisonment shall serve his sentence in prison, and may be detained in any prison: 10
- “(e) A person aged 20 years or more who is sentenced to imprisonment for more than 1 month shall serve his sentence in any prison that is not a youth prison:
- “(f) A person sentenced to preventive detention shall serve his sentence in a prison that is not a youth prison: 15
- “(g) A person aged 20 years or more who is sentenced to imprisonment for 1 month or less shall serve his sentence in prison, and may be detained in any prison: 20
- “(h) Notwithstanding anything in paragraph (c) or paragraph (g) of this section, any person sentenced to imprisonment for 1 month or less may be detained in a police jail for that period or any part thereof:
- “(i) Notwithstanding anything in paragraph (c) or paragraph (g) of this section, any person sentenced to imprisonment for 8 days or less may be detained in a police station for that period or any part thereof. 25
- “(2) A person held in custody for the purposes of any remand pending or during the trial of that person or pending his being sentenced may be detained in any penal institution. 30
- “(3) In this section references to persons sentenced to imprisonment include references to persons committed to prison or otherwise liable to be detained in custody except for the purposes of any remand pending or during trial or sentence.” 35

6. Temporary release from custody—The principal Act is hereby amended by repealing section 21, and substituting the following section:

“21. (1) The Minister may from time to time, subject to such conditions and restrictions as he thinks fit, give authority for the temporary release from custody of an inmate in such 40

circumstances or for such purpose as the Minister specifies. Any authority given by the Minister under this section may be given either generally or in respect of cases of any specified class or in respect of any particular case.

5 “(2) Any release under this section shall be for a period fixed by the Secretary for Justice or by the Superintendent of the institution within the limits of any authority given to him by the Secretary and may be subject to conditions imposed by the Secretary or by the Superintendent within the
10 limits of that authority.

“(3) The Secretary or the Superintendent of the institution may at any time direct the return to an institution of any person released from custody under this section.

15 “(4) Every person released from custody under this section shall be deemed to be unlawfully at large if he is at large after the expiry of the period for which he was so released or after the giving of a direction for his return to an institution as aforesaid.

20 “(5) If any person released under this section is at large without lawful excuse after the expiry of the period for which he was released (the proof of which excuse shall be on him), he shall be deemed to have escaped from lawful custody and shall be liable accordingly.”

7. Part-time release to engage in employment—(1) Section
25 21A of the principal Act (as inserted by section 2 of the Penal Institutions Amendment Act 1961, and amended by section 3 (2) of the Penal Institutions Amendment Act 1963) is hereby further amended by omitting from subsection (2) the word “borstal”, and substituting the word “corrective”.

30 (2) The said section 21A is hereby further amended by omitting from subsection (2A) the word “borstal”, and substituting the words “corrective training”.

(3) The said section 21A is hereby further amended by
35 omitting from subsection (2C) the word “borstal”, and substituting the words “corrective training”.

8. Transfer of a corrective training inmate to a youth prison—The principal Act is hereby further amended by repealing section 23, and substituting the following section:

40 “23. (1) If the Secretary for Justice is satisfied that an inmate of a corrective training institution is medically unfit to undergo his sentence of corrective training the Secretary

for Justice may direct that the inmate be transferred to a youth prison. The direction shall be sufficient authority for the reception and detention of the inmate in a youth prison.

“(2) If the Minister is satisfied on the recommendation of the Secretary for Justice that an inmate of a corrective training institution is exercising a bad influence on the other inmates of the institution or that it would be in the interests of the inmate to be transferred to a youth prison, the Minister may direct that the inmate be transferred to a youth prison. The direction shall be sufficient authority for the reception and detention of the inmate in a youth prison.”

“(3) Any inmate transferred pursuant to subsection (1) or subsection (2) of this section shall, while detained in a youth prison, be treated as an inmate of a youth prison; except that he shall continue to be subject to the same provisions relating to length of sentence, release, and subsequent supervision as apply to persons sentenced to corrective training.”

“(4) The Minister may at any time direct that any inmate transferred to a youth prison under this section be transferred back to a corrective training institution.”

9. Transfer of an inmate of a youth prison to a prison other than a youth prison—The principal Act is hereby further amended by repealing section 24, and substituting the following section:

“24. (1) If the Minister is satisfied on the recommendation of the Secretary for Justice that an inmate of a youth prison is exercising a bad influence on the other inmates of the institution or that it would be in the interests of the inmate to be transferred to a prison that is not a youth prison, the Minister may direct that the inmate be transferred to a prison that is not a youth prison. Any such direction shall be sufficient authority for the reception and detention of the inmate in a prison that is not a youth prison; except that if an inmate of a corrective training institution has been transferred to a youth prison under section 23 of this Act, and is transferred to a prison that is not a youth prison under this section, he shall continue to be subject to the same provisions relating to length of sentence, release, and subsequent supervision as apply to persons sentenced to corrective training.”

“(2) The Minister may at any time direct that any inmate transferred to a prison that is not a youth prison under this section be transferred back to a youth prison.”

10. Transfer of an inmate of a prison that is not a youth prison—(1) The principal Act is hereby further amended by repealing section 25, and substituting the following section:

“25. (1) If the Minister is satisfied on the recommendation of the Secretary for Justice that it would be in the interests of an inmate of any prison that is not a youth prison who is under 23 years of age to be transferred to a youth prison he may direct that the inmate be transferred to a youth prison. Any such direction shall be sufficient authority for the reception and detention of the inmate in a youth prison.

“(2) The Minister may at any time direct that any inmate transferred to a youth prison under this section be transferred back to a prison that is not a youth prison.”

New

(2) Section 25 (2) of the Criminal Justice Amendment Act 1962 is hereby consequentially repealed.

11. Removal of inmate for judicial purposes—Section 26 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) For the purposes of bringing an inmate before a Court or Coroner in accordance with any order given under subsection (2) of this section, the inmate may be held in custody for not more than 7 days in any institution other than one of the kind in which he is required or permitted by law to be detained, or if the Court, Justice, or Magistrate thinks necessary or expedient for such longer period as the Court, Justice, or Magistrate directs in the order. For the purposes of this subsection, the term ‘institution’ includes a police station.”

12. Removal of inmate from institution—(1) Section 28 of the principal Act is hereby amended by omitting from subsection (1) the words “or other purpose”, and substituting the words “(compassionate or rehabilitative purpose)” “compassionate, or other purpose that is in the interests of the inmate and”.

(2) The said section 28 is hereby further amended by “(omitting from subsection (2) the words “or other”, and substituting the words “compassionate or rehabilitative”) inserting, after the word “recreational,” the word “compassionate,”.

13. Calculation of term of sentence—Section 29 of the principal Act is hereby amended by inserting in subsection (5), after the words “Christmas Day”, the words “New Zealand Day”.

14. New sections (as to release) inserted in principal Act—

(1) The principal Act is hereby amended by repealing section 31, and substituting the following sections:

“31. **Release after serving part sentence**—(1) Subject to subsection (3) of section 33, and to subsection (3) of section 34, of this Act, every person who is sentenced to imprisonment, not being a sentence of life imprisonment, shall be eligible for release in accordance with this section after he has served not less than *(three-quarters)* two-thirds of the term of his sentence. 5 10

“(2) Subject to subsection (3) of section 33, and to subsection (3) of section 34, of this Act, but notwithstanding anything in subsection (1) of this section, every person who is sentenced to corrective training, and every other person having satisfied such specified conditions, whether as to the kind of institution in which he is detained or otherwise, as may be determined in writing by the Minister of Justice, shall be eligible for release in accordance with this section after he has served not less than two-thirds of the term of his sentence. 15 20

“(3) Where any person released under this section is under the provisions of Part V of the Criminal Justice Act 1954 released on probation, the Secretary for Justice may impose such special conditions as he thinks fit.

“(4) The Secretary for Justice or such other person to whom the Secretary may delegate his functions shall, in accordance with regulations made by the Governor-General by Order in Council, fix the actual date for the release of each person pursuant to this section. 25

“(5) The Minister may, in exceptional circumstances, postpone for a specified period the date that has been fixed for the release of any person under this section; and this power may be exercised from time to time in respect of the same person. 30

“(6) For the purposes of this section,— 35

“(a) A person who is committed to prison in default of payment of any sum of money shall be treated as an inmate serving a sentence of imprisonment for the term for which he is committed:

“(b) Terms of imprisonment under cumulative sentences shall be treated as one term. 40

“31A. **Early release for special purpose**—(1) Notwithstanding that an inmate may not otherwise be eligible for release, the Minister may direct the release on a specified date of any inmate who— 45

“(a) Has given birth to a child; or

“(b) Would be eligible for release at any time within the period that commences with the 15th day of

December in any year and ends with the 4th day of January in the next following year; or

5 “(c) Is serving a sentence of 6 months or less and proposes on release to undertake a full-time educational course which will commence before he would otherwise be released.

10 “(2) Notwithstanding anything in subsection (1) of this section, no inmate who would be eligible for release at any time within the period mentioned in paragraph (b) of that subsection may be released before the 1st day of December immediately preceding that period.

15 “(3) Where any person released under this section is released on probation under the provisions of the Criminal Justice Act 1954 the Minister may impose such special conditions as he thinks fit.

20 “(4) Where any person released under this section is not on probation in accordance with the provisions of the Criminal Justice Act 1954 the Minister may direct that for a specified period such a person shall be subject to such conditions as the Minister specifies. Any such period shall not exceed a period equal to that commencing with the date of release under this section and ending with the date on which such a person would have become eligible for release under section 31 of this Act if he had not been released under this section.

25 “(5) Where any person has been released on any condition imposed under subsection (4) of this section and it appears to the Minister that the condition has been broken the Minister may at any time before the date on which the condition expires direct that the offender be returned to or otherwise
30 detained in any institution in which he may be lawfully detained in accordance with the provisions of this Act, whereupon he shall continue to serve his sentence from the time of his return or other detention until he is again released under the provisions of this Act.

35 “(6) Every person released on conditions imposed under subsection (4) of this section shall be deemed to be unlawfully at large if he is at large after the giving of a direction for his return to an institution as aforesaid.

40 “(7) A direction given by the Minister for the release of any offender may be revoked by the Minister at any time before the offender is released.”

Struck Out

(2) The Penal Institutions Amendment Act 1964 is hereby consequentially repealed.

New

(2) The following enactments are hereby consequentially repealed:

- (a) Section 2 of the Penal Institutions Amendment Act 1955: 5
- (b) Section 4 of the Penal Institutions Amendment Act 1963:
- (c) The Penal Institutions Amendment Act 1964.

(3) Section 35 of the Criminal Justice Act 1954 is hereby consequentially amended by omitting from subsection (5) 10 the words "a partial remission of his sentence under".

(4) Section 36 of the Criminal Justice Act 1954 is hereby consequentially amended by omitting from subsection (3) the words "a partial remission of his sentence under", and also by omitting the words "any further remission of part of his sentence", and substituting in the latter case the words "the Penal Institutions Act 1954". 15

15. Powers of Visiting Justice in relation to offences by inmates—(1) Section 33 of the principal Act is hereby amended by repealing paragraph (a) of subsection (3), 20 and substituting the following paragraph:

"(a) Postponement for a specified period of any eligibility of the inmate for release in accordance with section 31 of this Act from any sentence which he is then serving; but no period of postponement shall exceed 25 the shorter of the following periods:

"(i) Three months; or

"(ii) A period which by itself or when added to such other period or periods of postponement as there may be affecting the same sentence is equal 30 to one-third of the term already served under the sentence:"

(2) The said section 33 is hereby further amended by repealing paragraph (f) of subsection (3).

(3) The said section 33 is hereby further amended by 35 adding the following subsections:

"(5) The postponement for a specified period of any eligibility of an inmate for release in accordance with section 31 of this Act may be imposed under paragraph (a) of subsection (3) of this section notwithstanding that a date for 40 release has been fixed in accordance with the said section 31 or, if that date has already been postponed, substituted in accordance with this subsection. The postponement shall operate to substitute for the date so fixed or already substituted a new date which shall be the day on which the 45 specified period of that postponement expires.

"(6) For the purposes of paragraph (a) of subsection (3) of this section, cumulative sentences shall be treated as one sentence."

16. Powers of Superintendent in relation to offences by inmates—(1) Section 34 of the principal Act is hereby amended by repealing paragraph (a) of subsection (3), and substituting the following paragraph:

5 “(a) Postponement for a specified period of any eligibility of the inmate for release in accordance with section 31 of this Act from any sentence which he is then serving; but no period of postponement shall exceed the shorter of the following periods:

- 10 “(i) Seven days; or
“(ii) A period which by itself or when added to such other period or periods of postponement as there may be affecting the same sentence is equal to one-third of the term already served under the sentence.”.

15 (2) The said section 34 is hereby further amended by repealing paragraph (f) of subsection (3).

(3) The said section 34 is hereby further amended by adding the following subsections:

20 “(5) The postponement for a specified period of any eligibility of an inmate for release in accordance with section 31 of this Act may be imposed under paragraph (a) of subsection (3) of this section notwithstanding that a date for release has been fixed in accordance with the said section 31
25 or, if that date has already been postponed, substituted in accordance with this subsection. The postponement shall operate to substitute for the date so fixed or already substituted a new date which shall be the day on which the specified period of that postponement expires.

30 “(6) For the purposes of paragraph (a) of subsection (3) of this section, cumulative sentences shall be treated as one sentence.”

17. Arrest of inmate unlawfully at large—Section 41 of the principal Act is hereby amended by omitting the words
35 “borstal training, or detention in a detention centre”, and substituting the words “or corrective training”.

18. New sections (relating to compensation for property damage by escapers) inserted in principal Act—(1) The principal Act is hereby further amended by inserting, after
40 section 41, the following sections:

“41A. Compensation for property damage by escapers—

(1) This section shall apply in any case where any person suffers, whether before or after the commencement of this section, any loss of or damage to any real or personal property through or by means of any act or omission of an escaper (being an act or omission that occurred in New Zealand) that was intended to facilitate the flight of the escaper or the avoidance of his recapture, or occurred in the course of his escaping or attempting to escape or while he was fleeing to avoid recapture. 5

“(2) Any person who suffers any loss or damage to which this section applies may apply to any Magistrate’s Court designated by the Minister by notice in the *Gazette* to be a Court that may hear applications under this section, in accordance with the rules of that Court for compensation for such loss or damage and the Court may award under this section to or for the benefit of the applicant compensation in respect of any one or more of the following matters: 10

“(a) Actual loss of or damage to any property:

“(b) Expenses actually and reasonably incurred in recovering any property that has been stolen or removed: 20

“(c) Expenses actually and reasonably incurred as a result of the loss of the use of any property for any period.

“(3) No compensation shall be awarded under this section unless the Court is satisfied, on a balance of probabilities,— 25

“(a) That there was such an act or omission as aforesaid; and

“(b) That the loss or damage resulted from that act or omission.

“(4) Notwithstanding any other enactment the amount awarded to any applicant under this section may in the aggregate amount to \$5,000, but shall not exceed that amount. 30

“(5) In determining the amount (if any) to be awarded to any applicant under this section the Court—

“(a) Shall have regard to any behaviour of the applicant which directly or indirectly contributed to the loss or damage, and to any failure by the applicant to take reasonable steps to avoid or mitigate the loss or damage; and 35

“(b) Shall deduct any payments received by the applicant by way of compensation or damages from the escaper or any person on the escaper’s behalf, or under the Accident Compensation Act 1972, in respect of the loss or damage; and 40

“(c) Shall deduct any payments received by or payable to the applicant under any policy of insurance in respect of the property; and

5 “(d) May have regard to such other circumstances as it considers relevant.

“(6) For the purposes of paragraph (a) of subsection (5) of this section, a failure by the applicant to insure against the loss or damage shall, if the Court considers that such failure was imprudent having regard to the circumstances of the case and to normal practice, be treated as a failure to take reasonable steps to avoid the loss or damage.

10 “(7) No compensation shall be awarded under this section unless the application has been made within one year from the time the loss or damage occurred; but the Court may, at any time before or after the expiry of the said period of one year extend the time for making an application for any further period if in the circumstances of the case the Court thinks it just to do so.

15 “(8) The Registrar of a Court making any award of compensation under this section shall notify the Secretary for Justice of the award.

“(9) Where any compensation is awarded under this section any right of action the applicant may have against the escaper shall be subrogated to the Crown.

20 “(10) The amount of any compensation awarded by any Court under this section shall be paid out of the Consolidated Revenue Account from money appropriated by Parliament for the purpose.

25 “(11) For the purposes of this section, the term ‘escaper’ means any inmate of a penal institution who escapes or attempts to escape from legal custody.

“41B. **Hearing of claims**—(1) Where an application for compensation is made under section 41A of this Act in respect of any loss of or damage to property, the Magistrate’s Court shall consider any representations made by or on behalf of the applicant and, unless in his application the applicant objects, may make such inquiries as it thinks fit as to the circumstances surrounding the loss or damage and as to the nature or extent of any such loss or damage or expenses incurred or as to any other matter to which the application relates.

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“(2) If on such inquiry it appears to the Court that the application is one in respect of which an order for the payment of compensation should be made, it may determine the amount of compensation to be awarded and may, with the prior consent of the applicant, make an order for payment of compensation in accordance with such determination. 5

“(3) In any case where no order is made under subsection (2) of this section, the Court shall, on application, fix a time and place for the hearing of the application for compensation, and shall cause notice thereof to be given to the applicant, and the Court shall determine the application for compensation on the evidence adduced at the hearing. 10

“(4) On the hearing of any application under this section the applicant in person or by his counsel or solicitor shall be entitled to appear and be heard. 15

“(5) The Court may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectually with the matters before it whether or not the same would be otherwise admissible in a Court of law. 20

“(6) Without limiting the generality of subsection (5) of this section, the Court may receive in evidence any notes of evidence or depositions taken at any trial of the offender in respect of any alleged offence arising out of the act or omission on which a claim under section 41A of this Act is based, or any notes of evidence taken in any civil proceedings arising out of that act or omission. 25

“(7) Unless by way of appeal to the Supreme Court on any point of law, no appeal shall lie against any determination of a Magistrate’s Court under section 41A of this Act or under this section, nor, except on the ground of lack of jurisdiction, shall any proceeding, order, or decision of a Magistrate’s Court under those sections be liable to be challenged, reviewed, quashed, held bad for want of form, or called in question by any Court.” 30 35

(2) The Criminal Injuries Compensation Act 1963 is hereby consequentially amended by repealing section 22A (as inserted by section 2 of the Criminal Injuries Compensation Amendment Act 1966) (and by omitting from the Schedule the heading “Offences to Which Section 17 of This Act Applies”, and substituting the heading “Offences to Which This Act Applies”.) 40

(3) The Criminal Injuries Compensation Amendment Act 1966 is hereby consequentially repealed.

(4) Notwithstanding anything in subsections (1) to (3) of this section, if at the commencement of this section any application under section 22A of the Criminal Injuries Compensation Act 1963 has been made to the Crimes Compensation Tribunal, the Tribunal shall proceed to hear and determine the application in every way as if this section had not been enacted, and the provisions of the said section 22A shall apply to that application in every way as if they had not been repealed.