

PENAL INSTITUTIONS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Penal Institutions Act 1954.

Clause 1 relates to the Short Title and commencement of the Bill.

Clause 2 amends section 31 of the principal Act relating to early release from detention by remission of sentence. Subsection (4) of that section requires the Secretary for Justice to fix the actual date of release of an inmate. Once the date has been fixed, it stands unless the Minister, acting under subsection (5) of the section "in exceptional circumstances", postpones the date.

The amendment provides that, where an inmate escapes after the date of his release has been fixed, that date is cancelled.

Clause 3 is consequential upon *clause 5*. It provides that, if an inmate refuses to permit a blood specimen to be taken or refuses to give a urine specimen when required to do so under the proposed *section 36B* (set out in *clause 5*), he commits an offence against discipline. In such a case, the inmate may be dealt with by a Visiting Justice under section 33 of the principal Act.

Clause 4 relates to the amount of accrued remission that may be ordered forfeited by a Visiting Justice or a Superintendent where an inmate is found guilty of an offence against discipline. The intent of the present provisions is that an inmate may be required to forfeit part or all of the remission that has accrued to him at the time he is dealt with, but no more. However, the present wording is only appropriate in respect of inmates entitled to one-quarter remission under subsection (1) of section 31 of the principal Act. It is inappropriate in respect of inmates entitled to one-third remission under subsection (2) of that section.

The amendments rectify the situation by extending the same rule to both classes of inmates.

Clause 5 provides for the taking from inmates of blood and urine specimens to determine whether or not they are under the influence of drugs. It inserts in the principal Act a new *section 36B*.

Subsection (1) is an interpretative provision.

Subsection (2) empowers the Superintendent, or a specially authorised officer, to require an inmate to submit to a blood test or urine test if he believes on reasonable grounds that the inmate is under the influence of drugs.

Subclause (3) requires blood specimens to be taken by a doctor or nurse, and *subclause (4)* requires the doctor or nurse to refrain from doing so if he or she considers it may be prejudicial to the inmate's health.

Subclause (5) makes provision for appropriate regulations.

It should be noted that, while it is an offence for the inmate to refuse to comply with a direction under this section, it is not an offence in itself if, as a result of tests under this section, the inmate is found to be under the influence of drugs.

Hon. Mr McLay

PENAL INSTITUTIONS AMENDMENT

ANALYSIS

Title	4. Powers of Visiting Justice and Superintendent in relation to offences by inmates
1. Short Title and commencement	5. Inmate may be required to give blood or urine specimens, etc.
2. Release after serving part sentence	
3. Offences by inmates	

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 1979, and shall be read together with and deemed part of the Penal Institutions Act 1954* (hereinafter referred to as the principal Act).
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(2) Sections 2 and 4 of this Act shall come into force on the date appointed for the commencement of sections 14 to 16 of the Penal Institutions Amendment Act 1975 in relation to sentences of imprisonment.

15 (3) Except as provided in subsection (2) of this section, this Act shall come into force on the day after the date on which it receives the Governor-General's assent.

*1957 Reprint, Vol. 11, p. 667

Amendments: 1961, No. 18; 1963, No. 36; 1965, No. 104; 1969, No. 34; 1975, No. 48; 1976, No. 113; 1978, No. 34; 1978, No. 67

2. Release after serving part sentence—Section 31 of the principal Act (as substituted by section 14 of the Penal Institutions Amendment Act 1975) is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) Where any person escapes from lawful custody after the actual date for his release has been fixed pursuant to subsection (4) of this section, the fixing of that date shall be cancelled.” 5

3. Offences by inmates—Section 32 (2) of the principal Act is hereby amended by adding the following paragraph: 10

“(j) Having been directed, pursuant to subsection (2) of section 36B of this Act, to permit a blood specimen to be taken from him, or to supply a urine specimen, or both, refuses, after that section has been read to him, to comply with that direction.” 15

4. Powers of Visiting Justice and Superintendent in relation to offences by inmates—(1) Section 33 (3) of the principal Act (as amended by section 15 (1) of the Penal Institutions Amendment Act 1975) is hereby amended by adding to subparagraph (ii) of paragraph (a) the words “, in the case of an inmate to whom subsection (1) of that section applies, or to one-half of the term already served under the sentence, in the case of an inmate to whom subsection (2) of that section applies” 20

(2) Section 34 (3) of the principal Act (as amended by section 16 (1) of the Penal Institutions Amendment Act 1975) is hereby amended by adding to subparagraph (ii) of paragraph (a) the words “, in the case of an inmate to whom subsection (1) of that section applies, or to one-half of the term already served under the sentence, in the case of an inmate to whom subsection (2) of that section applies” 25 30

5. Inmate may be required to give blood or urine specimens, etc.—The principal Act is hereby amended by inserting, after section 36A (as inserted by section 6 of the Penal Institutions Amendment Act 1961), the following section: 35

“36B. (1) In this section—

“‘Blood specimen’ means a specimen of venous blood taken in accordance with normal medical procedures:

“ ‘Doctor’ means a person registered as a medical practitioner under the Medical Practitioners Act 1968:

“ ‘Drug’ means a controlled drug as defined in section 2 of the Misuse of Drugs Act 1975:

5 “ ‘Nurse’ means a person registered as a nurse under the Nurses Act 1977 who holds a current annual practising certificate under that Act; but does not include an enrolled nurse.

10 “(2) Where any Superintendent, or other officer authorised for the purpose by the Secretary, believes on reasonable grounds that an inmate is under the influence of drugs, he may direct that inmate to permit a blood specimen to be taken from him, or to supply a urine specimen, or both, in accordance with the provisions of this section.

15 “(3) A blood specimen shall not be taken from an inmate pursuant to this section except by a doctor or a nurse.

20 “(4) Notwithstanding anything in subsection (2) of this section or the terms of any direction given under that subsection, no doctor or nurse shall take a blood specimen from an inmate if the doctor or nurse considers that to do so may be prejudicial to the inmate’s health.

“(5) Without limiting the general power to make regulations under section 45 of this Act, regulations may be made under that section for either or both of the following purposes:

25 “(a) Prescribing the procedures to be followed in the taking or supply of specimens under this section:

“ (b) Prescribing the method or methods to be used in testing specimens taken under this section for the presence of drugs.”