

## PENAL INSTITUTIONS AMENDMENT BILL

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### EXPLANATORY NOTE

#### 1. GENERAL POLICY STATEMENT

THIS Bill is part of a wider strategy aimed at reducing the use of drugs and alcohol by inmates in prison. Substance abuse is recognised as a significant factor in offending, and the use of drugs and alcohol by inmates creates major management problems in the prison system.

This Bill includes measures designed to reduce the demand for drugs and alcohol; to facilitate the treatment of inmates with drug problems; and to reduce the supply of drugs into prisons.

The new provisions provide a sound statutory basis on which other drug and alcohol measures can be built. They draw extensively on overseas experience with combating drug use in prisons.

The deterrence aspects of the Bill include the following:

- (a) It becomes a disciplinary offence for inmates, or people on temporary release from custody, to use drugs or consume alcohol, unless authorised to do so:
- (b) Where a staff member suspects on reasonable grounds that an inmate, or a person who has returned from temporary leave, has used drugs or consumed alcohol, that inmate can be required to undergo a drug or alcohol test. The types of test which can be used, and the procedures associated with them, will be spelt out in regulations. Tests involving blood samples will not be permitted, and inmates will have the right to receive written notification about the result of any test:
- (c) The results of any drug or alcohol test can be used as evidence at a hearing of a disciplinary offence relating to the use of drugs or consumption of alcohol. Under the current legislation this is not allowed:
- (d) Authority is given for setting up a system for random testing of inmates for drugs. As well as the deterrent effect of this, the results of the tests will provide information about the extent of drug use in prisons and the types of drugs being used.

The Bill permits drug testing to be undertaken on any inmate who is on a programme aimed at reducing drug and alcohol use and who has agreed to undergo testing on demand. This provision supports the operation of treatment programmes for inmates with drug abuse problems by enabling participants to be monitored to ensure that they are complying with the conditions of the

programme. Prisons will be able to assess which programmes are effective in helping inmates to remain drug free.

The Bill also includes an amendment to the principal Act to assist with reducing the supply of drugs into prisons. The existing section of the principal Act that deals with strip-searching is amended, in accordance with medical advice, so that strip searches can be conducted more effectively and with as much dignity and modesty as is consistent with the purpose of the search.

## 2. CLAUSE BY CLAUSE ANALYSIS

*Clause 1* relates to the Short Title and commencement. Except for *clause 5 (4)*, the Bill is to come into force on a date to be appointed by Order in Council.

*Clause 2* amends section 2 of the principal Act, which relates to interpretation. The amendments—

- (a) Insert a new definition of the term “drug” (which is defined to mean a controlled drug within the meaning of section 2 of the Misuse of Drugs Act 1975); and
- (b) Consequentially amend the definition of the term “unauthorised item”.

*Clause 3* amends section 21E of the principal Act, which defines a strip search for the purposes of the principal Act. At present, that section permits a searcher to require the person being searched, among other things,—

- (a) To spread his or her legs so as to expose his or her pubic area;
- (b) To bend forward so as to expose his or her anal area.

When this section was enacted in 1994, it was believed that the definition of strip search enabled prison officers to continue the practice of requiring persons to adopt a squat-like position. Such a position is considered to be the most effective way of detecting items (particularly drugs) concealed in the buttock or groin area. The 2 movements specified in section 21E have been found to be insufficient because they do not result in concealed items dropping out, or allow a proper visual inspection of the relevant areas of the body.

The amendment in *clause 3* repeals the provisions permitting a searcher to require a person to carry out the 2 specified movements, and replaces it with a provision expressly allowing a searcher to require a person to adopt a squat-like position.

*Clause 4* inserts a *new section 32A* into the principal Act. The new section creates new offences relating to the use or consumption of drugs or alcohol by inmates.

It is made a disciplinary offence for—

- (a) An inmate to use any drug, or consume alcohol, without the authority of a medical officer (a doctor who provides medical services to inmates);
- (b) An inmate who is on temporary release to use any drug or consume alcohol, where this is done without the authority of a medical officer and in breach of the conditions on which the inmate is temporarily released.

It is also made a disciplinary offence for an inmate to refuse to submit to a procedure to detect whether or not the inmate has used drugs or consumed alcohol, or to tamper with any sample supplied in accordance with such a procedure.

In order to avoid undue intrusion into the privacy of an inmate who is on temporary release, an inmate may not, while on temporary release, be charged with the offence of using drugs or consuming alcohol. But the inmate may be charged once he or she returns to the penal institution after such release.

*Clause 5* repeals section 36B of the principal Act, and substitutes *new sections 36B to 36C*.

The existing section 36B allows an inmate to be required to submit to a sputum test or finger swab, or to supply a urine sample, for the purpose of detecting the presence of drugs. However, the existing section does not allow the fact that an inmate has been required to submit to such a test, or to supply such a sample, nor any information obtained from such a test or sample, to be used as evidence against the inmate or any other person in any proceedings (other than proceedings against an inmate for refusing to submit to a test or to supply a sample).

The *new section 36B* allows a wider range of procedures to be employed to detect the use of drugs or the consumption of alcohol by inmates. These procedures will be prescribed by regulations. However, no procedure may be prescribed which requires an inmate to supply a sample of blood.

An officer of a penal institution will be permitted to require an inmate to submit to a prescribed procedure in any of the following situations:

- (a) Where the Superintendent or some other staff member authorised by the Superintendent believes, on reasonable grounds, that the inmate has—
  - (i) Used drugs or consumed alcohol in the institution, in breach of the *new section 32A (1) (a)*; or
  - (ii) Used drugs or consumed alcohol while on temporary release, in breach of the *new section 32A (2)*;
- (b) Where the inmate's name has been selected at random to undergo the procedure, but in this case the inmate can be required to undergo the procedure only for the purpose of testing for drug use;
- (c) Where the inmate is taking part in a voluntary programme that aims to reduce drug and alcohol use amongst inmates, and only if, as part of that programme, the inmate has agreed to submit to the procedure on demand.

A person who is on temporary release may not be required to submit to a prescribed procedure, but may be required to do so on his or her return to the institution.

The *new section 36BA* requires the Superintendent to inform an inmate of the result of a prescribed procedure.

The *new section 36BB* permits the results of a prescribed procedure to be used as evidence against an inmate in proceedings for a disciplinary offence against the *new section 32A*, but otherwise continues the existing restrictions (contained in the existing section 36B) on the use of such results as evidence in other proceedings.

The *new section 36BC* empowers the making of regulations—

- (a) Prescribing the types of procedure to which an inmate may be required to submit pursuant to the *new section 36B*, and how such procedures are to be carried out;
  - (b) Prescribing how samples obtained from such procedures are to be analysed and stored;
  - (c) Prescribing, or authorising the chief executive of the Department of Corrections to prescribe, procedures for preserving the chain of evidence;
  - (d) Prescribing, or authorising the chief executive of the Department of Corrections to prescribe, procedures for the random selection of inmates to be required to submit to a prescribed procedure;
  - (e) Providing for the disposal of samples obtained from a prescribed procedure, and the destruction of information obtained from an analysis of such samples.
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*Hon. Paul East*

## PENAL INSTITUTIONS AMENDMENT

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### ANALYSIS

Title		<i>Testing for Drugs and Alcohol</i>
1. Short Title and commencement		36B. Inmate may be required to submit to drug or alcohol test
2. Interpretation		36BA. Inmates to be informed of result of procedure
3. Definition of strip search		36BB. Restrictions on use of results of procedure
4. Offences relating to drugs and alcohol		36BC. Regulations relating to drug and alcohol testing
5. New heading and sections substituted		

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### A BILL INTITULED

#### **An Act to amend the Penal Institutions Act 1954**

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

5     **1. Short Title and commencement**—(1) This Act may be cited as the Penal Institutions Amendment Act 1996, and shall be read together with and deemed part of the Penal Institutions Act 1954\* (hereinafter referred to as the principal Act).

10    (2) Except as provided in section 5 (4) of this Act, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

15     **2. Interpretation**—(1) Section 2 of the principal Act (as substituted by section 2 (1) of the Penal Institutions Amendment Act 1994) is hereby amended by inserting in subsection (1), after the definition of the term “designated security monitor”, the following definition:

“ ‘Drug’ means a controlled drug within the meaning of section 2 of the Misuse of Drugs Act 1975:”.

\*R.S. Vol. 18, p. 557

Amendments: 1989, No. 126; 1993, Nos. 30, 44; 1994, No. 120

(2) Section 2 (1) of the principal Act (as so substituted) is hereby amended by repealing paragraphs (b) and (c) of the definition of the term “unauthorised item”, and substituting the following paragraph:

“(b) Any drug, alcohol, or other intoxicating substance.” 5

**3. Definition of strip search**—Section 21E of the principal Act (as inserted by section 13 of the Penal Institutions Amendment Act 1994) is hereby amended by repealing paragraphs (f) and (g) of subsection (2), and substituting the following paragraph: 10

“(f) With his or her legs spread apart, bend his or her knees.”

**4. Offences relating to drugs and alcohol**—(1) The principal Act is hereby amended by inserting, after section 32, the following section: 15

“32A. (1) Every inmate commits an offence who,—

“(a) Without the authority of a medical officer, uses any drug or consumes any alcohol; or

“(b) Having been required, pursuant to **section 36B** of this Act to submit to a prescribed procedure, refuses to comply with that requirement; or 20

“(c) Tamper with any sample required to be supplied (whether by that inmate or any other inmate) in accordance with such a procedure.

“(2) Every person commits an offence who,— 25

“(a) While he or she is on temporary release under section 21 of this Act; and

“(b) In breach of a condition or restriction imposed on his or her release; and

“(c) Without the authority of a medical officer,— 30  
uses any drug or consumes alcohol.

“(3) For the purposes of this Act, an offence against **subsection (1) or subsection (2)** of this section is deemed to be an offence against discipline under section 32 (1) of this Act committed by an inmate, and the following provisions of this Act shall apply accordingly: 35

“(a) Section 32 (3) (which relates to attempts, and aiding, counselling, and procuring offences):

“(b) Section 33 (which relates to the powers of Visiting Justices to hear disciplinary offences): 40

“(c) Section 34 (which relates to the powers of a Superintendent to hear certain disciplinary offences).

5 “(4) No complaint alleging that a person has committed an offence against **subsection (2)** of this section shall be laid while that person is on temporary release under section 21 of this Act, but nothing in this subsection prevents the laying of such a complaint once that person has ceased to be on temporary release.”

(2) Section 32 (2) (j) of the principal Act is hereby consequentially repealed.

10 **5. New heading and sections substituted**—(1) The principal Act is hereby amended by repealing section 36B (as inserted by section 5 of the Penal Institutions Amendment Act 1975), and substituting the following heading and sections:

*“Testing for Drugs and Alcohol*

15 **“36B. Inmate may be required to submit to drug or alcohol test**—(1) Subject to **subsection (3)** of this section, an officer may, in any of the situations referred to in **subsection (2)** of this section, require an inmate to submit to any prescribed procedure for the purpose of detecting—

20 “(a) Whether or not the inmate has used drugs; or  
“(b) Whether or not the inmate has consumed alcohol,—  
or both.

“(2) The situations referred to in **subsection (1)** of this section are as follows:

25 “(a) Where the Superintendent, or any other staff member authorised for the purpose by the Superintendent, believes, on reasonable grounds, that the inmate has committed an offence against **section 32A (1) (a)** or **section 32A (2)** of this Act:

30 “(b) In any case to which **subsection (1) (a)** of this section applies, where the inmate’s name has been selected at random in accordance with regulations made under this Act:

“(c) Where the inmate is a voluntary participant in any programme—

35 “(i) That aims to reduce drug and alcohol use among inmates; and

“(ii) Under which the inmate agrees to submit, on demand made under this section, to any prescribed procedure.

40 “(3) No person may be required to submit to a prescribed procedure pursuant to this section while that person is on temporary release under section 21 of this Act, but nothing in this subsection prevents that person from being required to

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and a procedure once that person has ceased to be  
eligible for release.

requiring an inmate to submit to a prescribed  
procedure pursuant to this section, the officer shall—  
inform the inmate—

“(i) Of the reason for the requirement; and

“(ii) Of the consequences for the inmate if the  
inmate refuses to submit to the procedure; and

“(iii) That it is a disciplinary offence to tamper  
with any sample required to be supplied in  
accordance with the procedure; and

“(b) Explain to the inmate, in general terms,—

“(i) How the procedure will be carried out; and

“(ii) How any sample obtained from the  
procedure will be analysed.

**“36BA. Inmates to be informed of result of  
procedure—**Where, pursuant to **section 36A** of this Act, an  
inmate submits to a prescribed procedure, the Superintendent  
shall ensure that the inmate is informed, as soon as practicable  
and in writing, of the results of the procedure.

**“36BB. Restrictions on use of results of procedure—**  
Neither the fact that an inmate has been required, pursuant to  
**section 36A** of this Act, to submit to a prescribed procedure, nor  
any information obtained from any such prescribed procedure,  
shall be admissible as evidence against any inmate or any other  
person—

“(a) In any proceedings under this Act, other than  
proceedings for an offence against **section 32A** of this  
Act; or

“(b) In any proceedings under any other enactment.

**“36BC. Regulations relating to drug and alcohol  
testing—**(1) Without limiting the generality of section 45 of  
this Act, but subject to **subsection (2)** of this section, regulations  
may be made under that section for any of the following  
purposes:

“(a) Prescribing one or more types of procedure to which an  
inmate may be required to submit, pursuant to  
**section 36A** of this Act, for the purpose of detecting—

“(i) Whether or not the inmate has used drugs; or

“(ii) Whether or not the inmate has consumed  
alcohol,—

or both:

“(b) Prescribing how any such procedure is to be carried out:

- “(c) Prescribing how any samples obtained from any such procedure are to be analysed or stored, or both:
- 5 “(d) Prescribing procedures for preserving the chain of evidence, or authorising the Secretary to prescribe such procedures by operational standard:
- 10 “(e) Prescribing procedures for the random selection of inmates to be required to submit, pursuant to **section 36B** of this Act, to a prescribed procedure for the purpose of detecting whether or not the inmates have used drugs; or prescribing requirements that such random selection procedures must meet, and authorising the Secretary to prescribe such random selection procedures by operational standard:
- 15 “(f) Providing for the disposal of samples obtained from a prescribed procedure, and for the destruction of information obtained from the analysis of such samples.
- 20 “(2) No procedure may be prescribed pursuant to **subsection (1) (a)** of this section which requires any inmate to supply a sample of his or her blood, but nothing in this subsection limits the power to prescribe any procedure that requires an inmate to supply any other type of sample (including, without limitation, a sample of saliva, or urine, or
- 25 other bodily sample).”
- (2) The following enactments are hereby consequentially repealed:
- (a) The Penal Institutions Amendment Act 1979;
- 30 (b) Section 17 of the Penal Institutions Amendment Act 1994.
- (3) Section 45 of the principal Act (as substituted by section 26 (1) of the Penal Institutions Amendment Act 1994) is hereby amended by repealing paragraphs (22) and (23).
- 35 (4) **Subsection (3)** of this section shall come into force on the date on which section 26 (1) of the Penal Institutions Amendment Act 1994 comes into force.