

Parole (Extended Supervision) and Sentencing Amendment Bill

Government Bill

Explanatory note

General policy statement

Extended supervision orders

In recognition of the unique risks that high risk child sex offenders pose to the community, the Government has decided to introduce a new extended supervision regime to actively manage such offenders.

Part 1 of the Bill creates a new extended supervision regime for child sex offenders who have received a finite sentence of imprisonment for a relevant sexual offence. The regime is aimed at managing the long-term risks posed by higher risk child sex offenders who are no longer subject to release conditions or recall from parole. The extended supervision regime will address a critical gap that has been identified in the ability to monitor and support these types of offenders, and thereby reduce their likelihood of re-offending, by allowing monitoring of relevant offenders for up to 10 years.

An offender subject to an extended supervision order will be supervised by a probation officer under parole-type conditions. For the highest risk offenders, home detention-type conditions will be available for the first 12 months of the order. Offenders subject to an extended supervision order may also be required to submit to electronic monitoring to check compliance with conditions prohibiting offenders from going to specified places or areas.

The Bill contains transitional provisions to ensure that the new regime will also apply to those higher risk child sex offenders who are in prison, released on parole, or subject to release conditions as at the date of the Bill's introduction to Parliament. The transitional

provisions reflect the concern about the risks posed by higher risk child sex offenders who were sentenced before the Sentencing Act 2002 came into force. Under the Sentencing Act 2002, these offenders would have been more likely to receive a sentence of preventive detention.

Other amendments to Sentencing Act 2002 and Parole Act 2002

Part 2 of the Bill makes a number of amendments to the Sentencing Act 2002 and the Parole Act 2002. Those Acts represented a comprehensive reform of the laws relating to sentencing and parole as contained in the Criminal Justice Act 1985. The Sentencing Act 2002 and the Parole Act 2002 came into force on 30 June 2002. Since the new legislation has been in force, and its operation able to be observed, a number of minor issues have been identified where the original drafting could be improved to better reflect the legislation's policy intent. This Bill presents an opportunity to "tidy up" those matters.

The amendments fall into the following 2 categories:

- technical amendments to address drafting matters such as incorrect cross references, anomalies and omissions, and clarification of certain expressions:
- amendments to clarify the legislation, in order to ensure that the original policy intention underlying particular provisions is implemented.

The amendments that fall within the second category include—

- home detention (section 97 of the Sentencing Act 2002 and section 35 of the Parole Act 2002):
- deferral of sentences (section 100 of the Sentencing Act 2002, and consequential amendments to the Bail Act 2000):
- minimum terms of imprisonment (sections 86 and 103 of the Sentencing Act 2002).

Home detention

Section 97 of the Sentencing Act 2002 was intended to codify the Court of Appeal's approach to the equivalent provision in the Criminal Justice Act 1985, which was that the court's role was to "sift out those cases where it can clearly be said that home detention is not relevant". There was no intention to change the law relating to the

granting of leave to apply for home detention. However, section 97 of the Sentencing Act 2002 has been interpreted as narrowing the court's discretion, and there is now a presumption that leave to apply for home detention is to be granted "in the normal course of events".

The amendment to section 97 (and the related amendment to section 35(2) of the Parole Act 2002) clarifies this situation, and emphasises that the court has a "sifting role". The court has the primary role in determining whether wider sentencing considerations such as denunciation, deterrence, safety of the community, the offender's background, and information in the victim's impact statement make home detention inappropriate.

Deferral of start date of prison sentences

Section 100 of the Sentencing Act 2002 allows the court to defer the start date of prison sentences for up to 2 months—

- on humanitarian grounds; or
- if the court has granted leave to apply for home detention and is satisfied that there are special reasons (such as retention of employment) why the sentence should not commence immediately.

An equivalent provision existed in the Criminal Justice Act 1985. The following amendments are included in the Bill to clarify the operation of this provision in accordance with the original policy intent.

First, where a sentence is deferred there is currently no power to release an offender on bail. Amendments are made to address this anomaly in the legislation, by requiring the court to impose bail conditions on an offender whose sentence has been deferred.

Secondly, it was not intended that deferral would be used as extensively as it has been. The term "special reasons" has been given a much broader interpretation than was intended. An amendment is being made to clarify this situation, by tightening the circumstances in which deferral may be granted.

Thirdly, minor amendments are made to make home detention application processes involving deferral more timely, to clarify that only one period of deferral of up to 2 months may be granted, and that deferral may not be granted if the offender has already commenced serving the sentence or is in custody serving another sentence.

Minimum terms of imprisonment

Section 86 of the Sentencing Act 2002 allows the court to impose minimum terms of imprisonment. The Court of Appeal's approach to section 86 of the Sentencing Act 2002 is developed in the line of cases beginning with *R v Brown* [2002] 3 NZLR 670. In *Brown*, the court held that minimum period orders were designed for cases of such seriousness that release after one-third of the sentence imposed would represent insufficient denunciation, deterrence and punishment. It also held that the safety of the community was not relevant to the imposition of minimum terms.

The Court of Appeal's approach to minimum terms is consistent with the intention underlying section 86, with its focus on increased culpability in individual cases by reference to the presence of aggravating circumstances. However, contrary to *Brown*, it was intended that a longer minimum term should be imposed where earlier release would clearly be inconsistent with the requirements of public safety, thus avoiding the need to have unnecessary parole hearings. The Court of Appeal, in *R v M & D* (CA 296/02 & CA 299/02, 30 July 2003), has also sought clarification of the language used in section 86.

Section 86 is consequently being amended to remove the language which the Court of Appeal identified as causing it difficulty, replacing it with language reflecting the Court's approach in the line of cases starting with *Brown*, and clarifying that the safety of the public is relevant to determining minimum terms.

The same issues relate to section 103 of the Sentencing Act 2002, which sets out the test for imposing minimum terms of imprisonment for life sentences for murder above the 10-year statutory minimum. A similar amendment is therefore being made to that provision. Section 103 is also being amended to require the court to impose a minimum term in every case, to make it clear that consideration must be given to the amount of time an offender subject to life imprisonment for murder should serve before being eligible for parole.

Clause by clause analysis

Clause 1 sets out the Title of the Bill.

Clause 2 provides that the Act commences on the day after the date on which it receives the Royal assent.

Part 1

Extended supervision orders

Clause 3 provides that, in *Part 1*, the Parole Act 2002 is called “the principal Act”.

Amendments to principal Act consequential on new Part 1A

Clause 4 amends section 4 of the principal Act, which is the interpretation clause, by inserting a definition of **extended supervision order**.

Clause 5 amends section 10 of the principal Act to ensure that *new Part 1A* applies to offenders detained in hospital as if they were detained in a penal institution.

Clause 6 amends section 15 of the principal Act, which is about special conditions imposed by the Parole Board. Section 15(3) lists examples of the kinds of conditions that may be imposed on offenders as special conditions. These conditions may be imposed on offenders released on parole or to home detention, as well as on offenders subject to extended supervision orders. In order to avoid doubt, particularly in relation to extended supervision orders, *subsection (1)* adds 2 further examples to the list. These are—

- conditions prohibiting the offender from entering or remaining in specified places or areas;
- conditions requiring the offender to submit to electronic monitoring of compliance with any conditions imposed under the Act that relate to his or her whereabouts.

New subsection (3A) clarifies that electronic monitoring may involve attaching equipment to the offender’s body.

Clause 7 amends section 18 of the principal Act to confirm that release conditions must be imposed on an offender who is subject to an extended supervision order and released at the statutory release date of a long-term sentence. This is in order to ensure that release conditions apply if the offender is released early under section 52 of the principal Act.

Clause 8 amends section 29 of the principal Act to require the Parole Board, if it orders the release on parole of an offender who is subject to an extended supervision order, to impose the standard conditions up to the offender’s statutory release date. On that date the offender

will cease to be liable to recall and the order will commence under *new section 107J*.

Clause 9 makes a consequential amendment to section 74 of the principal Act, which is the regulation-making power.

New Part 1A providing for extended supervision orders

Clause 10 inserts *new Part 1A* dealing with extended supervision orders into the principal Act.

Part 1A

Extended supervision orders

Preliminary

New section 107A provides an overview of *new Part 1A*.

New section 107B sets out the meaning of the key expressions **eligible offender**, **relevant offence**, and **sentencing court**. An eligible offender is someone who has been convicted of a relevant offence and has not, since his or her latest conviction, ceased to be subject to a sentence of imprisonment or release conditions. However, a person who is serving an indeterminate sentence cannot be an eligible offender. The relevant offences are sexual offences involving (in most cases) victims under the age of 16. The sentencing court is the High Court, unless the offender was sentenced in a District Court, or in a court on appeal from a District Court, in which case the sentencing court is a District Court presided over by a trial Judge.

New section 107C requires the chief executive of the Department of Corrections to assess every eligible offender, before his or her release from detention, to determine the likelihood of the offender committing further relevant offences on release.

Application for, and making of, extended supervision orders

New section 107D provides that the chief executive may apply to the sentencing court for an extended supervision order. The application may be made at any time before the earlier of the following:

- the sentence expiry date of the sentence to which the offender is subject that has the latest sentence expiry date;
- the date on which the offender ceases to be subject to release conditions.

Subclause (2) requires an application to be accompanied by a report by a health assessor. The report must address the following matters:

- the nature of any likely future sexual offending by the offender, including the age and sex of likely victims;
- the offender's ability to control his or her sexual impulses;
- the offender's predilection and proclivity for sexual offending;
- the offender's acceptance of responsibility and remorse for past offending;
- any other relevant factors.

New section 107E provides that the procedures relating to an application for an extended supervision order are those that apply to the hearing of a summary offence punishable by imprisonment. The section therefore applies, with some minor modifications, the relevant provisions of the Summary Proceedings Act 1957. It also applies the provisions of the Criminal Justice Act 1985 that relate to name suppression and the Costs in Criminal Cases Act 1967.

New section 107F provides that, at the hearing of an application for an extended supervision order, the court—

- may receive and take into account any evidence it thinks fit;
- may take into account the fact that the offender refused to cooperate in the preparation of the health assessor's report.

New section 107G provides that the purpose of an extended supervision order is to protect members of the community from those who pose a real and ongoing risk of committing sexual offences against children or young persons. A sentencing court may make an extended supervision order if it is satisfied, having considered the matters in the health assessor's report, that the offender is likely to commit further relevant offences on ceasing to be an eligible offender. An order may be for up to 10 years.

Nature of extended supervision orders

New section 107H provides that the standard release conditions (which are set out in section 14 of the principal Act) apply during the term of an extended supervision order, as well as any special conditions that may be imposed by the Parole Board under *new section 107I*.

New section 107I provides for the Parole Board to impose special conditions on an extended supervision order, as provided for in section 15 of the principal Act. In addition, the Board may impose, for a maximum of 12 months, a condition requiring the person to reside at a specified address and be subject to the standard detention conditions as if he or she were on home detention.

New section 107J sets out when an extended supervision order commences and expires. If an extended supervision order is made while the offender is detained or liable to be recalled, the order comes into force on the offender's statutory release date. If it is made at any other time, it comes into force on the date specified in the order.

Cancellation, variation, and suspension of extended supervision orders

New section 107K provides that, on application by the offender or the chief executive, the sentencing court may cancel an extended supervision order if it is satisfied that the offender is no longer likely to commit further relevant offences within the term of the order.

New section 107L provides for the variation, by the Parole Board, of any condition of an extended supervision order.

New section 107M describes when an extended supervision order is suspended, and when it is reactivated after suspension.

New section 107N describes what happens when an offender who is subject to an extended supervision order becomes subject to a new sentence.

Appeals and reviews

New section 107O provides that appeals against decisions of the sentencing court relating to the grant or cancellation of extended supervision orders must be made to the Court of Appeal, and Part XIII of the Crimes Act 1961 applies.

New section 107P applies section 67 of the principal Act, which is about reviews of Parole Board decisions, to decisions under this Part of the principal Act.

Miscellaneous provisions

New section 107Q makes it an offence to breach a condition of an extended supervision order, punishable by up to 2 years' imprisonment. (The penalty for breach of release conditions on parole is a maximum of 1 year's imprisonment.)

New section 107R provides that rules may be made for regulating the practice and procedure of courts in proceedings under *section 107I* or *section 107L*.

New section 107S requires that the current contact and address information of any victim of the offender not be disclosed to the offender, which mirrors section 13(2)(a) of the principal Act.

Transitional measures

New sections 107T and *107U* provide a special regime to ensure that, within the first 6 months after *Part 1A* comes into force, an extended supervision order may be made in respect of any person who, though not at that time an eligible offender, would have been an eligible offender had the Part been in force on and from the date on which this Bill is introduced.

Further consequential amendment to principal Act

Clause 11 amends section 109 of the principal Act by adding a reference to the Parole Board's duties in connection with extended supervision orders.

Consequential amendments to other enactments

Clause 12 amends section 125 of the Criminal Justice Act 1985 by adding to the list of the duties of a probation officer the supervision of people subject to extended supervision orders.

Clause 13 amends section 6 of the Legal Services Act 2000 in order to ensure that criminal legal aid is available to offenders in proceedings under *Part 1A* of the principal Act.

Part 2**Amendments to Sentencing Act 2002 and Parole Act 2002**

Subpart 1—Amendments to Sentencing Act 2002

Clause 14 provides that in *subpart 1* of this Part, the Sentencing Act 2002 is called "the principal Act".

Clause 15 amends section 24 of the principal Act. Section 24 sets out the basis for the factual foundation on which sentencing occurs and prescribes the process for determining facts that are in dispute. Section 24(2)(c) requires the prosecution to prove “beyond a reasonable doubt” any disputed fact, and to negate any disputed mitigating factor. However, the provision does not specify that that negation must also be “beyond a reasonable doubt”. The amendment corrects that omission.

Clause 16 amends section 33(1) of the principal Act. Section 33 provides that if the court considers that a sentence of reparation “should be imposed”, the court may order a reparation report to be prepared in accordance with section 34. In order to streamline court processes, it would be useful if the court could order reparation reports to be made before it decides that the sentence “should be imposed”. The amendment therefore allows the court to order the report if it considers that the sentence “may be appropriate”.

The other amendment to section 33(1) of the principal Act is intended to align that section with section 34. Section 34(3)(c) requires a probation officer to determine *the value of* loss or damage consequential on emotional or physical harm. Under section 33(1)(b) and 33(1)(c)(i), however, the court may only seek a report on the *nature* of any consequential loss or damage. The amendment allows the court to seek a report on the value of such loss or damage, to match the requirements in section 34(3)(c).

Clause 17 amends section 36 of the principal Act. Section 36(c) allows the court to order that reparation be paid immediately in 1 lump sum. It is intended that this should be ordered only if the court is satisfied that the offender has the means to make immediate payment. The amendment makes that intention explicit. It also clarifies how orders for immediate payment of lump sums may be enforced using the procedures in section 83(2) of the Summary Proceedings Act 1957, which is about the enforcement of fines.

Clause 18 amends section 83 of the principal Act by substituting a *new subsection (2)*. Section 83(2) provides that if an offender is still subject to a sentence of imprisonment, but is not detained under it, then a subsequent sentence cannot be imposed cumulatively. The subsection is intended to apply to situations such as where the offender has been released on conditions from a short-term sentence, or on parole from a long-term sentence. It is not intended to apply if the offender is subject to a sentence of imprisonment but is not

detained under it because its start date has been deferred. The redrafted provision makes this clear.

Clause 19 amends section 86 of the principal Act, which is about the imposition of minimum terms of imprisonment. The amendment replaces the test for when the court may impose a minimum term with a test that reflects the sentencing purposes set out in section 7(1)(a), (e), (f), and (g) of the principal Act.

Clause 20 amends section 93 of the principal Act. This section is about the conditions that a court may impose on offenders subject to short term sentences of imprisonment (ie, 24 months or under). The effect of the amendment is to—

- provide that the standard conditions are imposed automatically up to the sentence expiry date (unless the court specifies otherwise) on an offender who is subject to a sentence of imprisonment of more than 12 months and not more than 24 months;
- permit the court to impose conditions that last up to 6 months beyond the sentence expiry date. (This matches the Parole Act 2002, under which conditions can be imposed in respect of long-term sentences for up to 6 months beyond the offender’s statutory release date.)

Clause 21 amends section 97 of the principal Act, which is about when the court grants leave to apply for home detention. Subsection (3) currently provides that the court must grant leave unless it is satisfied that it would be inappropriate, taking into account 3 specific factors and any other factors that the court considers relevant. The amendment changes this test so that the court may grant leave only if it is satisfied that granting leave would be appropriate, taking into account only the 3 specific factors currently provided for.

Clause 22 amends section 100 of the principal Act, which is about deferral of the start date of a sentence of imprisonment. Under section 100(1), the court may defer commencement on either humanitarian grounds or on the ground that the court has given leave for the offender to apply for home detention, and there are “special reasons (such as retention of employment)” why the sentence should not start immediately. The amendment in *subclause (1)* tightens up the second ground, so that deferral may be ordered only in “exceptional circumstances” when the offender has been given leave to apply for home detention.

Subclause (2) inserts a *new subsection (3A)*, which provides that an offender whose sentence is deferred must be granted bail during the period of deferral. The amendments to the Bail Act 2000 contained in *clauses 31 to 35* are consequential on this provision.

The amendments in *subclauses (3) and (4)* impose further limits on the court's power to order deferral by expressly providing that—

- no more than 1 order for deferral can be made in respect of a sentence:
- deferral cannot be ordered if the offender has already commenced serving the sentence or is detained under another sentence or order.

Clause 23 amends section 103 of the principal Act, which relates to the minimum term of imprisonment that an offender sentenced to life imprisonment for murder must serve. Section 103 currently provides that the minimum term is 10 years unless the court orders a longer term to be served. Under the amendment, the court will in every case be required to impose a minimum term of imprisonment, which in no case may be less than 10 years. The test for determining the term reflects the sentencing purposes set out in section 7(1)(a), (e), (f), and (g) of the principal Act.

Clauses 24, 25, and 26 each make the same amendment to section 106 (Discharge without conviction), section 108 (Conviction and discharge), and section 110 (Order to come up for sentence if called upon). The amendment allows the court to order a reparation report to be prepared under section 33 if it is considering ordering payment of compensation under any of these 3 sections.

Clause 27 corrects a wrong cross-reference in section 121(4) of the principal Act.

Clause 28 amends section 129 of the principal Act. This section provides for the confiscation of a motor vehicle if the driver or person in charge of it is convicted of a second offence from the list of offences given in section 129(1)(a). The amendment adds the following 3 offences to the list:

- section 39(1) of the Land Transport Act 1998 (Aggravated careless use of vehicle causing injury or death):
- section 61(2) of the Land Transport Act 1998 (Person in charge of motor vehicle causing injury or death—while under influence of drink or drugs):

- section 171 of the Crimes Act 1961 (Manslaughter) (but only where the offence involved the use of a motor vehicle).

Clause 29 amends section 143 of the principal Act, which provides that a sentence is not invalidated by a mistake in the age of the offender. The section relates to section 18 of the principal Act, which provides that a sentence of imprisonment cannot be imposed on an offender (other than for a purely indictable offence) if the offender was under the age of 17 “at the time of commission of the offence”. Section 143, however, refers to the age of the offender “at the time of conviction” for the offence. The amendment changes this to refer to the age at the time of the commission of the offence, in line with section 18.

Amendment to Misuse of Drugs Act 1975

Clause 30 amends section 32 of the Misuse of Drugs Act 1975. Schedule 1 of the Sentencing Act 2002 consequentially amended section 32 of the Misuse of Drugs Act 1975 by substituting a new subsection (5). A proviso in the original subsection (5) ensured that surplus proceeds from the sale of forfeited goods went to the Crown rather than to the offender. That proviso was inadvertently omitted when the subsection was replaced by the amendment in the Sentencing Act 2002. The omission was discussed in the case of *R v Parmee* (High Court, Christchurch T 37/03, 30 July 2003). *Clause 30* corrects the omission by replacing section 32(5) with a provision that includes the original requirement that surplus be paid into the Crown Bank Account.

Amendments to Bail Act 2000 consequential upon amendments to section 100 of principal Act

Clauses 31 to 35 amend the Bail Act 2000 and insert machinery provisions—

- requiring offenders whose sentence start dates are deferred under section 100 of the Sentencing Act 2002 to be on bail during the period of the sentence deferral:
- providing for the grant of bail, conditions of bail, and making it an offence to fail to comply with any of those conditions.

Subpart 2—Amendments to Parole Act 2002

Clause 36 provides that in *subpart 2* of this Part, the Parole Act 2002 is called “the principal Act”.

Clause 37 amends section 34 of the principal Act by substituting a *new subsection (1)*. The current section 34(1) provides for the Parole Board to request a report from a probation officer on an offender’s suitability for home detention, and states that the report must address the matters referred to in section 35(2)(b). Section 35(2)(b) is being repealed by *clause 38(2)*, but the probation officer’s report still needs to provide information to the Parole Board on the matters listed in that paragraph. That information is relevant to the Board’s assessment of risk to the community, the understanding and agreement of other occupants of the home detention residence, and the offender’s understanding of the conditions of home detention. The substituted *subsection (1)* therefore lists the matters that were in section 35(2)(b) in full.

Clause 38 amends section 35 of the principal Act, which is about directions for home detention. *Subclause (1)* inserts the word “only” in subsection (2), so that the Parole Board may give a direction *only* if it is satisfied as to the matters listed in subsection (2)(a)-(d).

Subclause (2) repeals subsection (2)(b). The effect of this is that the Board’s decision is made only on the basis of an assessment of risk to the community, the understanding and agreement of other occupants of the home detention residence, and the offender’s understanding of the conditions of home detention. The amendment focuses the Board’s decision-making on “undue risk” to the safety of the community, consistent with the guiding principle in section 7 of the principal Act. The factors currently listed in subsection (2)(b) are, however, relevant to the Board’s consideration of risk to the community, which is why information on those factors will continue to be provided to the Board in the report required under section 34(1).

Subclause (3) amends section 35(4) in order to clarify that subsection (4) applies only to offenders serving long-term *determinate* sentences.

Clause 39 corrects a wrong cross-reference in section 40 of the principal Act.

Clause 40 amends section 52 of the principal Act. Section 52(3) is intended to allow for early release from a penal institution over the

Christmas period, but as presently drafted it applies also to people detained on home detention. That was not intended. The amendment corrects this.

Clause 41 amends section 66(3) of the principal Act to clarify that when a final recall order is made in respect of an offender, the offender may be arrested on the warrant issued under section 66(3).

Clause 42 inserts a *new section 73A* into the principal Act. It provides that a member of the police who is seeking to arrest an offender who is subject to interim or final recall may enter premises for the purposes of arresting the offender.

Clause 43 substitutes a *new section 79*, which is about identifying the start date of a sentence. The amendment clarifies the situation where a conviction is quashed and, following a retrial, another sentence of imprisonment is imposed.

Clause 44 substitutes a *new section 91(6)* to clarify a technical matter relating to the calculation of pre-sentence detention.

Clause 45 amends section 105 of the principal Act, which is about the calculation of final release dates. The amendment makes more explicit the fact that the section relates only to offenders who are subject to pre-cd sentences.

Clause 46 amends section 106 of the principal Act. This section sets out the circumstances in which the final release date of an offender who is subject to a pre-cd sentence may be varied or cancelled. A *new subsection (6)* is inserted to clarify that, if an offender is recalled, his or her final release date is cancelled. This explicitly maintains the effect of the former provisions of the Criminal Justice Act 1985.

Hon Phil Goff

Parole (Extended Supervision) and Sentencing Amendment Bill

Government Bill

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**Parole (Extended Supervision) and
Sentencing Amendment**

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Parole (Extended Supervision) and Sentencing Amendment Act **2003**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5

Part 1 **Extended supervision orders**

Preliminary

- 3 Parole Act 2002 called principal Act in this Part** 10
In this Part, the Parole Act 2002¹ is called “the principal Act”.
¹ 2002 No 10

Amendments to principal Act consequential on new Part 1A

- 4 Interpretation** 15
Section 4 of the principal Act is amended by inserting, after the definition of **determinate sentence**, the following definition:
“**extended supervision order** means an order made under **section 107G**”.
- 5 Application of Part to offenders detained in hospital** 20
(1) The heading of section 10 of the principal Act is amended by omitting the words “**of Part**”.
(2) Section 10(2) of the principal Act is amended by inserting, after the words “of this Part”, the words “and **Part 1A**”.
- 6 Special conditions** 25
(1) Section 15(3) of the principal Act is amended by adding the following paragraphs:
“(e) conditions prohibiting the offender from entering or remaining in specified places or areas, at specified times, or at all times;
“(f) conditions requiring the offender to submit to the electronic monitoring of compliance with any release conditions, or conditions on an extended supervision order, that relate to the whereabouts of the offender.” 30

- (2) Section 15 of the principal Act is amended by inserting, after subsection (3), the following subsection:
“(3A) The electronic monitoring referred to in **subsection 3(f)** may involve attaching equipment to the offender’s body.”
- 7 Conditions applying to release at statutory release date** 5
Section 18 of the principal Act is amended by inserting, after subsection (2), the following subsection:
“(2A) Subsection (2) applies to an offender in respect of whom an extended supervision order is made, in order to ensure that, if the offender is released early under section 52, he or she will be subject to release conditions before the extended supervision order comes into force.” 10
- 8 Release conditions applying to parole**
Section 29 of the principal Act is amended by inserting, after subsection (2), the following subsection: 15
“(2A) Despite subsection (2), if an offender in respect of whom an extended supervision order is made is released on parole, the Board must impose the standard release conditions for the period up to, but not beyond, the offender’s statutory release date.” 20
- 9 Regulations**
Section 74 of the principal Act is amended by—
(a) adding to paragraph (a) the words “and **Part 1A**”; and
(b) omitting from paragraph (f) the words “this Part, and its due”, and substituting the words “this Part and **Part 1A**, and their due”. 25
- New Part 1A providing for extended supervision orders*
- 10 New Part 1A inserted in principal Act**
The principal Act is amended by inserting, after section 107, the following heading and Part: 30

**“Part 1A
“Extended supervision orders**

“Preliminary

“107A Overview of Part

This Part—

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“(a) provides that offenders who have been convicted of certain sexual offences may, after assessment by a health assessor, be made subject to an extended supervision order by a court; and

“(b) provides that an extended supervision order may last for up to 10 years; and

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“(c) provides that the conditions of an extended supervision order are the standard release conditions and any special conditions imposed by the Board; and

“(d) provides rights of appeal and review relating to extended supervision orders.

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“107B Meanings of: eligible offender, relevant offence, sentencing court

“(1) In this Part, **eligible offender** means an offender who—

“(a) has been sentenced to imprisonment for a relevant offence, and that sentence has not been quashed or otherwise set aside; and

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“(b) has not ceased, since his or her latest conviction for a relevant offence that has not been quashed or otherwise set aside, to be subject to a sentence of imprisonment (whether for a relevant offence or otherwise) or to release conditions (whether the release conditions are suspended or not); but

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“(c) is not subject to an indeterminate sentence.

“(2) In this Part, **relevant offence** means an offence under any of the following sections of the Crimes Act 1961, or an offence that is equivalent to any of the following offences but was under a provision of the Crimes Act 1961 that has been repealed:

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“(a) section 128 (sexual violation), but only where the victim of the offence was under the age of 16 at the time of the offence:

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- “(b) section 129 (attempt to commit sexual violation), but only where the victim of the offence was under the age of 16 at the time of the offence:
- “(c) section 129A (inducing sexual connection by coercion), but only where the victim of the offence was under the age of 16 at the time of the offence: 5
- “(d) section 130 (incest), but only where the victim of the offence was under the age of 16 at the time of the offence:
- “(e) section 131 (sexual intercourse with girl under care and protection), but only where the victim of the offence was under the age of 16 at the time of the offence: 10
- “(f) section 132(1) and (2) (sexual intercourse, and attempted sexual intercourse, with girl under 12):
- “(g) section 133 (indecent with girl under 12): 15
- “(h) section 134(1) and (2) (sexual intercourse, and indecency, with girl between 12 and 16):
- “(i) section 138 (sexual intercourse with severely subnormal woman or girl):
- “(j) section 139 (indecent act between woman and girl): 20
- “(k) section 140 (indecent with boy under 12):
- “(l) section 140A (indecent with boy between 12 and 16):
- “(m) section 142 (anal intercourse), but only where the victim of the offence was under the age of 16 at the time of the offence: 25
- “(n) section 144A (sexual conduct with children outside New Zealand):
- “(o) section 144C (organising or promoting child sex tours):
- “(p) section 208 (abduction of woman or girl), but only where the victim of the offence was under the age of 16 at the time of the offence: 30
- “(q) section 210 (abduction of child under 16), but only where the offence involved a girl under the age of 16 and an intention to have sexual intercourse with the girl.
- “(3) In this Part, **sentencing court**, in relation to an offender, means the High Court, unless every relevant offence for which the offender is subject to a sentence of imprisonment was imposed by a District Court, or any court on appeal from a District Court, in which case the sentencing court is a District Court presided over by a trial Judge. 40

“107C Obligation to assess eligible offenders

The chief executive must ensure that, before an eligible offender is released from detention, the offender is assessed to determine the likelihood that the offender will commit further relevant offences after release.

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“Application for, and making of, extended supervision orders

“107D Chief executive may apply for extended supervision order

“(1) The chief executive may apply to the sentencing court for an extended supervision order in respect of an eligible offender at any time before the later of—

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“(a) the sentence expiry date of the sentence to which the offender is subject that has the latest sentence expiry date, regardless of whether that sentence is for a relevant offence; and

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“(b) the date on which the offender ceases to be subject to any release conditions.

“(2) An application under this section must be in the prescribed form and be accompanied by a report by a health assessor (as defined in section 4 of the Sentencing Act 2002) that addresses (without limitation) the following matters:

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“(a) the nature of any likely future sexual offending by the offender, including the age and sex of likely victims:

“(b) the offender’s ability to control his or her sexual impulses:

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“(c) the offender’s predilection and proclivity for sexual offending:

“(d) the offender’s acceptance of responsibility and remorse for past offending:

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“(e) any other relevant factors.

“107E Hearing of application

“(1) Part II of the Summary Proceedings Act 1957 applies so far as applicable, with all necessary modification and subject to this section, to the hearing of an application for an extended supervision order, as if—

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“(a) the application were a charge for an offence punishable on summary conviction by imprisonment; and

- “(b) references in that Part to an information were references to an application under **section 107D**; and
- “(c) references in that Part to a defendant were references to the person in respect of whom an application under **section 107D** is made; and 5
- “(d) references in that Part to an informant were references to the chief executive; and
- “(e) where the sentencing court is the High Court,—
- “(i) references in that Part to a Court were references to the High Court; and 10
- “(ii) references to a District Court Judge, Justice of the Peace, or Community Magistrate were references to a High Court Judge; and
- “(iii) references to a Registrar were references to a Registrar of the High Court. 15
- “(2) If a summons is issued under section 19 of the Summary Proceedings Act 1957, it must be accompanied by—
- “(a) a copy of the application under **section 107D**, including the health assessor’s report; and
- “(b) a notice setting out the rights of the person summoned and the procedure to be followed in relation to the hearing of the application. 20
- “(3) Despite section 24 of the Summary Proceeding Act 1957, in any case where the court must serve a document on the person to whom an application relates, service must be by personal service. 25
- “(4) Section 46 of the Summary Proceedings Act 1957 applies only in respect of persons to whom an application relates who have been arrested.
- “(5) Section 61 of the Summary Proceedings Act 1957 applies as if the person in respect of whom the application is made is entitled to elect to be tried by a jury. 30
- “(6) Sections 138 to 141 of the Criminal Justice Act 1985 (which relate generally to name suppression) apply, with all necessary modifications, to the hearing of an application for an extended supervision order as if the hearing was a proceeding in respect of an offence under any of sections 128 to 142A of the Crimes Act 1961. 35
- “(7) The Costs in Criminal Cases Act 1967 applies, with all necessary modifications, to proceedings under this Part. 40

“107F Evidence at hearings

“(1) At the hearing of an application for an extended supervision order, the court may receive and take into account any evidence that it thinks fit for the purpose of determining the application.

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“(2) The court is entitled to take into account the fact that an offender refused to co-operate with the preparation of the health assessor’s report required under **section 107D(2)**.

“107G Sentencing court may make extended supervision order

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“(1) The purpose of an extended supervision order is to protect members of the community from those who, following receipt of a determinate sentence, pose a real and ongoing risk of committing sexual offences against children or young persons.

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“(2) A sentencing court may make an extended supervision order if, following the hearing of an application made under **section 107D**, the court is satisfied, having considered the matters addressed in the health assessor’s report as set out in **section 107D(2)**, that the offender is likely to commit further relevant offences on ceasing to be an eligible offender.

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“(3) Every extended supervision order must state the term of the order, which may not exceed 10 years.

“(4) The term of the order must be the minimum period required for the purposes of the safety of the community in light of—

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“(a) the level of risk posed by the offender; and

“(b) the seriousness of the harm that might be caused to victims; and

“(c) the likely duration of the risk.

“(5) If the person to whom an application for an extended supervision order relates is already subject to an extended supervision order, any new order may not be made for a period that, when added to the unexpired portion of the earlier order, exceeds 10 years.

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“(6) A copy of every order made under this section must be provided to the offender, the chief executive, the police, and every victim of the offender who has given notice under section 31 of the Victims’ Rights Act 2002.

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“(7) Every order under this section, and every decision not to make an order, must be accompanied by reasons, and the reasons must be provided to the offender and to the chief executive.

“Nature of extended supervision orders

- “107H **Conditions of extended supervision order** 5
The conditions of an extended supervision order are—
- “(a) the standard release conditions, which apply throughout the term of the order and are, for the purpose of sections 56 to 58, to be treated as having been imposed by the Board; and 10
- “(b) any special conditions imposed by the Board under **section 107I**, which apply for the period determined by the Board.
- “107I **Board may impose special conditions**
- “(1) At any time before an extended supervision order expires or is cancelled, and whether or not it has come into force, the Board may, on an application by the chief executive or a probation officer, impose on the offender— 15
- “(a) any special condition that the Board is entitled to impose under section 15; and 20
- “(b) a special condition requiring the person to reside at a specified address and be subject to the standard detention conditions set out in section 36(2)(a) and (b), as if the person were on home detention.
- “(2) If the Board imposes special conditions under this section, it must specify the duration of those conditions which,— 25
- “(a) in the case of a condition referred to in **subsection (1)(a)**, may be for the full term of the order, or any lesser period; and
- “(b) in the case of the condition referred to in **subsection (1)(b)**, may apply only within the first 12 months of the term of the order. 30
- “(3) Subsections (2) and (4) of section 15 apply in respect of special conditions imposed under this section.
- “(4) If an offender is subject to a special condition under this section that requires the offender to take prescription medication, the offender does not breach his or her conditions, for the 35

- purposes of **section 107Q**, if he or she withdraws consent to taking prescription medication.
- “(5) Notice of any special conditions attached to an extended supervision order must be provided to the following:
- “(a) the offender: 5
 - “(b) the chief executive:
 - “(c) the police:
 - “(d) every victim of the offender who has given notice under section 31 of the Victims’ Rights Act 2002, but the notice may only refer to any special conditions that are of personal relevance to the victim or his or her family. 10
- “107J **Commencement and expiry of extended supervision order**
- “(1) An extended supervision order comes into force,—
- “(a) if the order is made while the offender is detained or liable to be recalled, on the offender’s statutory release date; or 15
 - “(b) if the order is made at any other time, on the date specified in the order.
- “(2) On the date on which an extended supervision order comes into force, any release conditions to which the offender is subject are discharged. 20
- “(3) An extended supervision order expires on the date on which the order is cancelled or the term of the order expires.
- “*Cancellation, variation, and suspension of extended supervision orders* 25
- “107K **Sentencing court may cancel extended supervision order**
- “(1) At any time after an extended supervision order has come into force, the offender who is subject to the order, or the chief executive, may apply to the sentencing court to cancel the order on the grounds that the offender is no longer likely to commit further relevant offences within the term of the order. 30
- “(2) On receipt of an application for cancellation, the Registrar of the sentencing court must set the matter down for hearing. 35
- “(3) The applicant for cancellation must serve on the other party—
- “(a) a copy of the application:

- “(b) notice of the date of the hearing.
- “(4) If the other party opposes the application, that party must lodge submissions at the relevant court, and serve the applicant with a copy of the submissions, at least 7 days before the date of the hearing. 5
- “(5) The sentencing court may order the cancellation of an extended supervision order only if the applicant satisfies the court that the offender is no longer likely to commit further relevant offences within the term of the order.
- “(6) **Section 107G(6) and (7)** apply to every cancellation order under this section. 10
- “(7) If the sentencing court declines to order the cancellation of an order, the court may at the same time, and on its own initiative or on application by the chief executive, order that the offender not be permitted to apply under this section for a specified period. 15
- “107L Board may vary conditions of extended supervision order**
- “(1) At any time after an extended supervision order has come into force, the offender who is subject to the order, or a probation officer, may apply to the Board for the variation or discharge of any condition of the order. 20
- “(2) Sections 56, 57, and 58(1) and (4)(a) and (b) apply as if the conditions of the extended supervision order were release conditions. 25
- “(3) If the conditions of an extended supervision order are varied or discharged, notice of the conditions as so varied or discharged must be provided to the following:
- “(a) the offender:
- “(b) the probation officer involved: 30
- “(c) the police:
- “(d) every victim of the offender who has given notice under section 31 of the Victims’ Rights Act 2002, but the notice may only refer to any special conditions that are of personal relevance to the victim or his or her family. 35
- “107M Suspension of extended supervision orders**
- “(1) An extended supervision order is suspended, and time ceases to run on it, during any period that the offender is detained in a

- penal institution or hospital under a determinate sentence or a court order (for instance, on remand).
- “(2) A suspended extended supervision order is reactivated on,—
- “(a) in the case of an offender who is detained under a sentence of imprisonment, the offender’s statutory release date; and 5
- “(b) in the case of an offender who is detained under a court order, on the date on which the offender is released.

“107N **Effect of new sentence on offender subject to extended supervision order** 10

- “(1) If an offender who is subject to an extended supervision order that is in force is sentenced to a community-based sentence, the extended supervision order continues in force while the offender serves the sentence.
- “(2) If an offender who is subject to an extended supervision order is sentenced to a determinate sentence, the order is suspended and then reactivated in accordance with **section 107M(2)(a)**. 15
- “(3) If an offender who is subject to an extended supervision order is sentenced to an indeterminate sentence, the order is cancelled. 20

“Appeals and reviews

“107O **Appeals against decisions of sentencing court**

- “(1) An appeal against a decision or order made by the sentencing court under **section 107G or section 107K** may be made by the offender to whom the decision or order relates or by the chief executive. 25
- “(2) Every appeal must be to the Court of Appeal, and Part XIII of the Crimes Act 1961 applies, with all necessary modifications, as if the appeal were an appeal against sentence under section 383 of that Act. 30
- “(3) The lodging of an appeal against a decision or order does not prevent that decision or order taking effect according to its terms.

“107P Review of Board decisions

Section 67 (which provides for reviews of decisions by the Board) applies to decisions by the Board under **section 107I** or **section 107L**.

“Miscellaneous provisions

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“107Q Offence to breach extended supervision order

An offender who is subject to an extended supervision order and who breaches, without reasonable excuse, any conditions attaching to that order commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 2 years.

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“107R Rules about court practice and procedure

The Governor-General may from time to time, by Order in Council, make rules regulating the practice and procedure of courts in proceedings under **section 107I** or **section 107L**.

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Compare: 1991 No 120, s 90

“107S Information about victims not to be disclosed

In any proceedings under this Part, no person may, directly or indirectly, disclose to the offender any information that discloses the current address or contact details of any victim of the offender (as defined in section 4 of the Victims Rights Act 2002).

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*“Transitional measures***“107T Definitions**

In this section and **section 107U**,—

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“introduction date means the date on which the Bill for the **Parole (Extended Supervision) and Sentencing Amendment Act 2003** was introduced into the House of Representatives

“transitional eligible offender means any one of the following:

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“(a) any person who, on the introduction date, would have been an eligible offender if this Part had been in force on that date:

“(b) any person who, on the date on which this Part comes into force, is an eligible offender, but who ceases to be

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an eligible offender within 6 months of the Part commencing.

- “107U **Applications in respect of transitional eligible offenders to be made within first 6 months after commencement** 5
- “(1) This Part applies to a transitional eligible offender in the same way as it applies to an eligible offender, except as provided in **subsection (2)**.
- “(2) The chief executive may apply for an extended supervision order in respect of a transitional eligible offender until 5 pm on the day that is 6 months after the date on which this section commences, but no later. 10
- “(3) However, nothing in this section prevents the chief executive applying for an extended supervision order more than 6 months after this section commences if, after that date, the offender is an eligible offender.” 15

Further consequential amendment to principal Act

11 Functions of Board

- (1) Section 109(1)(e) of the principal Act is amended by inserting, after subparagraph (i), the following subparagraph: 20
- “(ia) the variation and discharge of conditions on extended supervision orders as provided for in **section 107L**; and”.
- (2) Section 109(1) of the principal Act is amended by inserting, after paragraph (g), the following paragraph: 25
- “(ga) to impose special conditions on offenders in respect of whom extended supervision orders have been made:”.

Consequential amendments to other enactments

12 Amendment to Criminal Justice Act 1985

- Section 125(1) of the Criminal Justice Act 1985 is amended by inserting, after paragraph (a), the following paragraph: 30
- “(aa) to supervise all persons placed under the officer’s supervision under an extended supervision order made under **Part 1A** of the Parole Act 2002, and to ensure that the conditions of the order are complied with:” 35

- 13 Amendments to Legal Services Act 2000**
- (1) Section 6(c)(i) of the Legal Services Act 2000 is amended by—
- (a) omitting the words “or section 107”, and substituting the words “, section 107, or **section 107L**”; and 5
 - (b) omitting the words “and orders under section 107 of that Act”, and substituting the words “orders under section 107 of that Act, and extended supervision orders”.
- (2) Section 6(c) of the Legal Services Act 2000 is amended by adding the following subparagraph: 10
- “(iii) in the High Court or a District Court relating to the imposition of an extended supervision order under **Part 1A** of the Parole Act 2002, or to the duration of such an order.” 15

Part 2 Amendments to Sentencing Act 2002 and Parole Act 2002

Subpart 1—Amendments to Sentencing Act 2002

- 14 Sentencing Act 2002 called principal Act in this subpart** 20
- In this subpart, the Sentencing Act 2002² is called “the principal Act”.
- ² 2002 No 9
- 15 Proof of facts**
- Section 24(2)(c) of the principal Act is amended by inserting, after the word “negate”, the words “beyond a reasonable doubt”. 25
- 16 Court may order reparation report**
- (1) Section 33(1) of the principal Act is amended by omitting the words “should be imposed”, and substituting the words “may be appropriate”. 30
- (2) Section 33(1) of the principal Act is amended by—
- (a) inserting in paragraph (b), after the word “and”, the words “the value of”; and
 - (b) inserting in paragraph (c)(i), after the word “nature”, the words “and value”. 35

17 Conditions of sentence of reparation

Section 36 of the principal Act is amended by adding, as subsections (2) and (3), the following subsections:

- “(2) The court may not impose a condition that an amount to be paid in 1 lump sum must be paid immediately unless the court is satisfied that the offender has sufficient means to pay it immediately. 5
- “(3) If the court imposes a condition on a sentence of reparation that it must be paid immediately in 1 lump sum, section 83(2) of the Summary Proceedings Act 1957 applies as if the condition were an order under section 83(1) of that Act.” 10

18 Cumulative and concurrent sentences of imprisonment

Section 83 of the principal Act is amended by repealing subsection (2) and substituting the following subsection:

- “(2) Despite subsection (1), a court may not impose a sentence of imprisonment cumulatively on another sentence of imprisonment if, at the time of sentencing, the offender is subject to a sentence of imprisonment but, having commenced serving the sentence, is no longer detained under it.” 15

19 Imposition of minimum period of imprisonment in relation to determinate sentence of imprisonment 20

Section 86 of the principal Act is amended by repealing subsections (2) and (3), and substituting the following subsection:

- “(2) The court may impose a minimum period of imprisonment that is longer than the period otherwise applicable under section 84(1) of the Parole Act 2002 if it is satisfied that that period is insufficient for all or any of the following purposes: 25
- “(a) holding the offender accountable for the harm done to the victim and the community by the offending;
- “(b) denouncing the conduct in which the offender was involved: 30
- “(c) deterring the offender or other persons from committing the same or a similar offence;
- “(d) protecting the community from the offender.”

- 20 Imposition of conditions on release of offender sentenced to imprisonment for short term**
- (1) Section 93 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections: 5
- “(1) A court that sentences an offender to a term of imprisonment of 12 months or less may impose the standard conditions and any special conditions on the offender and, if it does so, must specify when the conditions expire.
- “(2) If a court sentences an offender to a term of imprisonment of more than 12 months but not more than 24 months,— 10
- “(a) the standard conditions apply to the offender until the sentence expiry date, unless the court specifies otherwise; and sections 94, 95, and 96 apply as if the standard conditions had been imposed by order of the court; 15
- and
- “(b) the court may at the same time impose any special conditions on the offender and, if it does so, must specify when the conditions expire.
- “(2A) The court may specify that conditions imposed under this section expire on— 20
- “(a) the sentence expiry date; or
- “(b) the date that is a specified period before the sentence expiry date; or
- “(c) the date that is a specified period of up to 6 months after the sentence expiry date. 25
- “(2B) In this section,—
- “**sentence expiry date** has the meaning given to it in section 4 of the Parole Act 2002
- “**special conditions** includes, without limitation, conditions of a kind described in section 15(3) of the Parole Act 2002 30
- “**standard conditions** means the conditions set out in section 14(1) of the Parole Act 2002.”
- (2) Section 93(7) of the principal Act is repealed.
- 21 Court must consider granting offender leave to apply for home detention in certain cases** 35
- Section 97 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

- “(3) The court may grant the offender leave to apply to the New Zealand Parole Board under section 33 of the Parole Act 2002 for home detention only if the court is satisfied that it would be appropriate to grant leave, taking into account—
- “(a) the nature and seriousness of the offence; and 5
 - “(b) the circumstances and background of the offender; and
 - “(c) any relevant matters in the victim impact statement in the case.”
- 22 Court may defer start date of sentence of imprisonment**
- (1) Section 100(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph: 10
- “(b) if the court has given leave for the offender to apply for home detention and it is satisfied that there are exceptional circumstances justifying deferral of the start of the sentence.” 15
- (2) Section 100 of the principal Act is amended by inserting, after subsection (3), the following subsection:
- “(3A) An offender whose sentence is deferred under this section may, under the Bail Act 2000, be granted bail.”
- (3) Section 100(4)(b) of the principal Act is amended by omitting the full stop, and substituting the word “; or”. 20
- (4) Section 100(4) of the principal Act is amended by adding the following paragraphs:
- “(c) an order under this section has already been made in respect of the sentence; or 25
 - “(d) the offender has already commenced serving the sentence or is detained under any other sentence or order.”
- 23 Imposition of minimum period of imprisonment if life imprisonment imposed for murder**
- Section 103 of the principal Act is amended by repealing subsections (1) to (6), and substituting the following subsections: 30
- “(1) If a court sentences an offender convicted of murder to imprisonment for life it must order that the offender serve a minimum period of imprisonment under that sentence. 35

- “(2) The minimum term of imprisonment ordered may not be less than 10 years, and must be the minimum term of imprisonment that the court considers necessary to satisfy all or any of the following purposes:
- “(a) holding the offender accountable for the harm done to the victim and the community by the offending: 5
 - “(b) denouncing the conduct in which the offender was involved:
 - “(c) deterring the offender or other persons from committing the same or a similar offence: 10
 - “(d) protecting the community from the offender.
- “(3) An order under this section must be made within 28 days of the date on which the sentence of life imprisonment was imposed.”
- 24 Discharge without conviction 15**
Section 106 of the principal Act is amended by inserting, after subsection (3), the following subsection:
- “(3A) If the court is considering making an order under subsection (3)(b), it may order a report to be prepared under section 33 as if the court were considering imposing a sentence of reparation.” 20
- 25 Conviction and discharge**
Section 108 of the principal Act is amended by inserting, after subsection (2), the following subsection:
- “(2A) If the court is considering making an order under subsection (2)(b), it may order a report to be prepared under section 33 as if the court were considering imposing a sentence of reparation.” 25
- 26 Order to come up for sentence if called on 30**
Section 110 of the principal Act is amended by inserting, after subsection (3), the following subsection:
- “(3A) If the court is considering making an order under subsection (3)(b), it may order a report to be prepared under section 33 as if the court were considering imposing a sentence of reparation.” 35

- 27 Application for review of non-association order**
Section 121(4) of the principal Act is amended by omitting the expression “section 119”, and substituting the expression “section 120”.
- 28 Confiscation of motor vehicle after second offence** 5
Section 129(1)(a) of the principal Act is amended by—
(a) inserting, after the expression “36A(1)(a) or (c),”, the expression “39(1),”; and
(b) inserting, after the expression “61(1),”, the expression “61(2),”; and 10
(c) inserting, after the words “Land Transport Act 1998 (which relate to driving offences)”, the words “or section 171 of the Crimes Act 1961 (but only where the manslaughter involved the use of a motor vehicle)”.
- 29 Sentence not invalidated by mistake in age of offender** 15
Section 143 of the principal Act is amended by omitting subsections (1) and (2), and substituting the following subsections:
“(1) A sentence imposed on an offender for a particular offence is not invalid by reason only of the fact that the offender was, at the time when the offence was committed, under the age at which he or she was liable to the sentence imposed. 20
“(2) If a sentence to which **subsection (1)** applies has been imposed on an offender, the offender, the prosecutor, or any counsel on behalf of the Crown may, at any time, apply in accordance with this section for the substitution of some other sentence.” 25
- Amendment to Misuse of Drugs Act 1975*
- 30 Amendment to Misuse of Drugs Act 1975**
The Misuse of Drugs Act 1975 is amended by repealing section 32(5) (as inserted by Schedule 1 of the principal Act), and substituting the following subsection: 30
“(5) If an order for forfeiture is made under subsection (4), the following provisions of the Sentencing Act 2002 apply, so far as they are applicable and with any necessary or specific modifications: 35
“(a) section 127;
“(b) section 128, except subsection (2);

- “(c) sections 130 to 136:
“(d) section 137, except that paragraphs (c) and (d) of subsection (3) do not apply and, instead, any proceeds of sale remaining after payment in accordance with subsection (3)(a) and (b) must be paid into the Crown Bank Account:
“(e) sections 138 to 142.”

Amendments to Bail Act 2000 consequential on amendment to section 100 of principal Act

- 31 Conditions of bail** 10
Section 31(1) of the Bail Act 2000 is amended by inserting, after the expression “section 32”, the words “and to **sections 39A and 65A**”.
- 32 Failure to answer bail** 15
Section 37 of the Bail Act 2000 is amended by adding the word “; or” to paragraph (b) and adding the following paragraph:
“(c) fails without reasonable excuse to comply with any condition imposed under **section 39A(3)**.”
- 33 New heading and new section 39A inserted in Bail Act 2000** 20
The Bail Act 2000 is amended by inserting, after section 39, the following heading and section:
“Bail on deferment of sentence
“39A Bail on deferment of sentence 25
“(1) This section applies if the start date of a sentence imposed on an offender following summary conviction is deferred under **section 100** of the Sentencing Act 2002 and the offender is not liable to be detained under any other sentence or order.
“(2) If this section applies, the Court that defers the start date of the offender’s sentence must grant the offender bail. 30
“(3) An offender who is granted bail under this section must be released on condition that the offender must,—
“(a) if he or she has been given leave to apply for home detention,— 35

- “(i) apply, within 2 weeks of the bail being granted, for home detention in accordance with section 33(1) of the Parole Act 2002; and
“(ii) appear at any hearing by the New Zealand Parole Board of that application; and: 5
“(b) surrender himself or herself to the Superintendent of the penal institution at which the offender is to serve his or her sentence at the expiry of the period of deferral unless, before that expiry, the New Zealand Parole Board directs the offender, under section 35(1) of the Parole Act 2002, to continue serving his or her sentence on home detention. 10
“(4) The provisions of sections 31 to 38, and 41 to 44, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail. 15
“(5) If any decision is made under section 34(1) (as applied by **subsection (4)**) in respect of any offender, the provisions of section 41(3) to (6) and section 42, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail.” 20
- 34 Failure to answer bail**
Section 62 of the Bail Act 2000 is amended by adding the words “; or” to paragraph (b) and adding the following paragraph:
“(c) fails without reasonable excuse to comply with any condition imposed under **section 65A(3)**.” 25
- 35 New heading and new section 65A inserted in Bail Act 2000**
The Bail Act 2000 is amended by inserting, after section 65, the following heading and section: 30
“*Bail on deferment of sentence*
“65A **Bail on deferment of sentence**
“(1) This section applies if the start date of a sentence imposed on an offender following conviction on indictment is deferred under **section 100** of the Sentencing Act 2002 and the offender is not liable to be detained under any other sentence or order. 35

- “(2) If this section applies, the Court that defers the start date of the offender’s sentence must grant the offender bail.
- “(3) An offender who is granted bail under this section must be released on condition that the offender must—
- “(a) if he or she has been given leave to apply for home detention,—
- “(i) apply, within 2 weeks of the bail being granted, for home detention in accordance with section 33(1) of the Parole Act 2002; and
- “(ii) appear at any hearing by the New Zealand Parole Board of that application; and
- “(b) surrender himself or herself to the Superintendent of the penal institution at which the offender is to serve his or her sentence at the expiry of the period of deferral unless, before that expiry, the New Zealand Parole Board directs the offender, under section 35(1) of the Parole Act 2002, to continue serving his or her sentence on home detention.
- “(4) The following provisions, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant who had been granted bail:
- “(a) in the case of an offender granted bail by a District Court, sections 31 to 38, and 41 to 44:
- “(b) in the case of an offender granted bail by the High Court or the Court of Appeal, sections 56 to 63 and sections 66 to 69.
- “(5) If any decision is made under section 34(1) (as applied by **subsection (4)(a)**) in respect of an offender, the provisions of section 41(3) to (6) and section 42, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail.
- “(6) If any decision is made under section 57(1) (as applied by **subsection (4)(b)**), in respect of an offender, the provisions of sections 66 and 67, as far as they are applicable and with all necessary modifications, apply as if the offender were a defendant granted bail.”

Subpart 2—Amendments to Parole Act 2002

- 36 Parole Act 2002 called principal Act in this subpart**
In this subpart, the Parole Act 2002³ is called “the principal Act”. 5
- ³ 2002 No 10
- 37 Report on suitability for home detention**
Section 34 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) On receiving an application under section 33 for home detention, the Board must request a report from a probation officer on the offender’s suitability for home detention, and the report must address the following: 10
- “(a) the nature of the offence or offences for which the offender is currently serving a sentence of imprisonment or has previously been convicted: 15
- “(b) the likelihood that the offender’s rehabilitation and reintegration will be assisted by home detention: 15
- “(c) the safety and welfare of the occupants of the residence where the offender is to be detained: 20
- “(d) the outcome of any restorative justice processes that have occurred.” 20
- 38 Direction for detention on home detention**
- (1) Section 35(2) of the principal Act is amended by inserting, after the words “subsection (1)”, the word “only”.
- (2) Section 35(2) of the principal Act is amended by repealing paragraph (b). 25
- (3) Section 35(4) of the principal Act is amended by inserting, after the word “long-term”, the word “determinate”.
- 39 When home detention ends**
Section 40(d) of the principal Act is amended by omitting the expression “section 27(3)”, and substituting the expression “section 37(3)”. 30
- 40 Release of offenders released at statutory release date**
Section 52(3) of the principal Act is amended inserting, after the words “an offender”, the words “who is detained in a penal institution and”. 35

- 41 Board may make final recall order**
Section 66(3) of the principal Act is amended by inserting, after the words “for the”, the words “arrest of the offender and for”.
- 42 New section 73A inserted** 5
The principal Act is amended by inserting, after section 73, the following section:
- “73A Power to enter premises to arrest**
- “(1) A member of the police may, at any time, for the purpose of arresting an offender named in a warrant issued under section 63(1) or section 66(3), enter any premises, by force if necessary, if he or she has reasonable cause to believe that the offender is in or on the premises. 10
- “(2) If the member of the police who is executing the warrant is not in uniform, and the person in actual occupation of the premises asks the member to produce evidence of his or her authority, the member must produce the warrant or a badge or other evidence that he or she is a member of the police. 15
Compare: 1957 No 87, s 22”.
- 43 New section 79 substituted** 20
The principal Act is amended by repealing section 79, and substituting the following section:
- “79 Start date if later sentence replaces original sentence**
- “(1) The start date of a sentence that is substituted for a sentence that was quashed or otherwise set aside on appeal (the **original sentence**) is the start date of the original sentence. 25
- “(2) If a sentence (the **original sentence**) ceases to apply because the conviction to which it relates is quashed and a retrial ordered, and if a sentence of imprisonment is imposed following the retrial, the start date of the later sentence is the start date of the original sentence. 30
- “(3) In either situation referred to in **subsection (1) or (2)**, if the original sentence was directed to be served cumulatively on another sentence but the later sentence is not directed to be served cumulatively, then the start date of the later sentence is the start date that the original sentence would have had if it had not been directed to be served cumulatively.” 35

44 Meaning of pre-sentence detention

Section 91(6) of the principal Act is repealed, and the following subsection is substituted:

- “(6) In subsection (5)(a), **serving a sentence of imprisonment in a penal institution** includes time spent in a penal institution following an application for a recall order, but only if— 5
- “(a) a final recall order is made following that application; and
 - “(b) the offender was not, immediately before the application for the recall order was made, detained on home detention.” 10

45 Calculation of final release dates

Section 105(1) of the principal Act is amended by omitting the words “An offender’s final release date”, and substituting the words “The final release date of an offender who is subject to a pre-cd sentence”. 15

46 Variation and cancellation of final release dates

Section 106 of the principal Act is amended by adding the following subsection:

- “(6) The final release date of an offender who is subject to a long-term pre-cd sentence is cancelled, and section 104(1) therefore ceases to apply, if the offender is recalled under a final recall order from parole, home detention, or compassionate release.” 20