

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

Government Bill

As reported from the Justice and Electoral Committee

## **Commentary**

### **Recommendation**

The Justice and Electoral Committee has examined the Parole (Extended Supervision) and Sentencing Amendment Bill and recommends that it be passed with the amendments shown.

### **Introduction**

The Parole (Extended Supervision) and Sentencing Amendment Bill proposes the introduction of a new extended supervision regime that will actively manage high-risk child sex offenders. Part 1 of the bill creates the regime, and clause 10 inserts new Part 1A dealing with extended supervision orders into the Parole Act 2002. Part 2 of the bill contains miscellaneous amendments to the Sentencing Act 2002 and the Parole Act 2002 that modify the original drafting to better reflect its policy intent, and codify the Court of Appeal's approach to date.

This commentary focuses on the main amendments recommended to the bill and outlines the main issues considered. It does not cover minor or technical amendments.

### **Extended supervision regime**

Those child sex offenders who come within the bill's definition of "eligible offender" will be assessed by the Department of Corrections to establish whether they are considered high-risk individuals who should be subject to an extended supervision order.

We are advised that the key factors that increase the risk of sexual recidivism against children include:

- age of onset of offending—the younger the offender the greater the risk of reoffending, specifically, those under 25 years of age
- gender of victim/s—those who offend against boys pose a greater risk of reoffending
- whether the victim is a stranger or a relative—there is a greater likelihood of reoffending where victims are strangers
- previous offending history—in particular where the offender has a conviction for a previous sex offence
- failure to complete therapy.

Risk assessment tools will enable management of the two distinct groups of offenders within the general category of "high-risk offender" in the following way:

- a standard management regime for medium-high and high-risk offenders similar to that used for offenders on parole
- an intensive management regime for the highest risk offenders, which may require the use of home detention-like conditions and electronic monitoring.

### **Numbers of offenders expected to be involved**

The Department of Corrections estimates 60 additional offenders each year will be subject to an extended supervision order. Of that 60, it estimates that 56 will be subject to a standard management regime, and four to an intensive management regime. It estimates 16 offenders on an extended supervision order each year will be subject to electronic monitoring. The Department has identified:

- 107 offenders currently subject to a sentence of imprisonment (either in prison or on release conditions) for whom an application for an order could potentially be made

- of the 107 offenders, 44 are medium-high and high-risk offenders who would be subject to the retrospective application of the bill. The Department has 6 months from the enactment of the bill to make applications for these transitional offenders.

We are advised there may also be a small number of offenders who have not been assessed as high risk by the assessment tool, but for whom the Department will be making an application, due to other factors which indicate the offender is at high risk of sexual recidivism against children.

### **High-risk transitional offenders**

A small number of people with a predisposition for child sex offending were released from psychiatric institutions in 1992 because their condition did not fit the then-new definition of “mental disorder” under the Mental Health (Compulsory Assessment and Treatment) Act 1992. Several of those released went on to commit serious sexual crimes against children, were sentenced prior to the passage of the Sentencing Act 2002 and received finite prison sentences, which posed the risk of future child sex offending when their sentences expired. If these offenders had been sentenced after the enactment of the Sentencing Act, they would have been eligible for preventive detention on their first offence, and therefore be liable to life imprisonment or lifetime monitoring if released. This small number of offenders represents a real risk to society.

We are advised that of the sex offenders released in 1992–1993, 43 percent of those assessed as having a high risk of reoffending, and 24 percent of those assessed as having a medium-high risk of reoffending, went on to be convicted of subsequent sex offences in the next 10 years. In the same period, 12 percent of offenders assessed as having a medium-low risk of reoffending and 8 percent of those assessed as having a low risk of reoffending went on to reoffend.

### **Transitional eligible offenders**

We propose amendments to the definition of “transitional eligible offender” in new section 107T in clause 10, to include those persons who may have become, and then ceased to be, eligible offenders between the date on which the bill was introduced and the date on

which it comes into force. Proposed new section 107G(2A) clarifies that an extended supervision order may be made in relation to an offender who has ceased to be an “eligible offender”, as long as the individual was an “eligible offender” when the application for the order was made.

We were advised that 44 medium-high and high-risk offenders would be subject to the retrospective application of the bill.

### **Retrospectivity**

We recommend an amendment to clarify the retrospective intent of the extended supervision regime. New section 107BA(2) in clause 10 confirms that a person may be an “eligible offender” even if he or she was most recently convicted, or became subject to release conditions or detention conditions, before Part 1 came into force. We consider the risk of further offending against children justifies retrospective application of the extended supervision regime to those high-risk child sex offenders currently in the criminal justice system. We note that the bill only imposes eligibility status; this does not mean an extended supervision order will be imposed. A risk assessment will be carried out prior to an application being made, and the court must be satisfied that the offender poses an ongoing risk before imposing an order.

### **The Attorney-General’s report**

The Attorney-General’s report on the bill under the New Zealand Bill of Rights Act 1990 found that its provisions were inconsistent with the rights and freedoms contained in that Act on the following counts:

- unreasonable limit on right not to be subject to double jeopardy (clause 10, new sections 107B and 107T)
- unreasonable search or seizure (clause 6 and clause 10, new section 107I).

The key question for the “double jeopardy” finding is whether retrospective application of an extended supervision order should be considered “punishment”. The Attorney-General considered that the retrospective application of the provisions that allow for the more significant restrictions of liberty on someone convicted before the bill came into force should be viewed as a punishment.

It is possible to consider retrospective application of the extended supervision regime not to be “punishment”. Some eligible offenders may welcome the protection afforded by an extended supervision order. They may recognise that the intensive monitoring will assist them to remain in the community, and provide an element of self-protection. They may consider the restrictive conditions of an order to be rehabilitative rather than punitive.

The “search and seizure” concern expressed by the Attorney-General focused on the need for additional information about the proposed method of electronic monitoring, and uncertainty regarding the accuracy of current electronic monitoring technology. We acknowledge that Global Positioning System (GPS) or other new technology will allow for the collection of information that could be irrelevant to compliance with extended supervision order conditions. We consider that the provisions in new clause 6A around the purpose and use of information collected through electronic monitoring adequately meet this concern.

## **Extension of extended supervision orders**

### **Extension of orders up to 10 years**

An extended supervision order may be made for any period up to 10 years. We recommend the inclusion of new section 107KA in clause 10, to enable the Department of Corrections to apply to the sentencing court for an order of less than 10 years to be extended up to the 10-year maximum where the offender has been convicted of breach of conditions within the last 12 months.

### **Extension of orders beyond 10 years**

We considered whether the extended supervision regime should allow for the term of the order to be extended beyond the 10-year maximum if the offender still poses a likelihood of reoffending at the end of 10 years. We do not recommend such an extension. Where an offender has not been convicted of a relevant offence during a 10-year order it would be difficult to provide the court with satisfactory evidence that the offender continued to have a likelihood of reoffending.

We are advised in this regard that:

- after 10 years there could be non-government agency support structures in place
- the offender could have good support strategies in place
- further extended supervision raises additional funding issues.

We note that international developments in comparable supervision regimes will inform future consideration of the extension of the extended supervision regime past 10 years. Currently there is insufficient information to enable firm conclusions to be drawn about the effectiveness of monitoring beyond 10 years.

### **Review process**

We recommend the extended supervision regime be subject to a review process. We consider the need for a review arises, in particular, from the 10-year time limit on extended supervision orders. The time limit, for example, should be reviewed prior to the legislation having been in place for 10 years.

### **Offender input in extension of orders**

New section 107KA in clause 10 allows:

- an application to be made on the basis of an offender's written agreement
- an offender to agree to an extension of his or her order up to the maximum term of 10 years.

We consider that an offender should be able to discuss an extension to his or her extended supervision order with the department. An offender could ask the department to apply on his or her behalf for an extension to an order.

### **Suspension of conditions**

We recommend amendments to new section 107M in clause 10, to make clear that when an offender is detained during the term of an extended supervision order, the "suspension" refers to the conditions of the order, not to the order itself.

We also recommend an amendment to new subsection 107M(3)(a) in clause 10, to provide that although conditions of an extended supervision order are suspended when the offender is detained in a

hospital or secure facility under a compulsory care order or compulsory treatment order, a probation officer may reactivate them. We identified that there may be a need for discretion in the suspension of an extended supervision order where the offender is considered to pose undue risk.

### **Application for cancellation of an order**

We recommend an amendment to new section 107K(7) in clause 10, to enable a Judge to order that an offender who has made an unsuccessful application for cancellation of his or her extended supervision order must wait for up to 2 years before making a further application.

The New Zealand Council for Civil Liberties submitted that new section 107K(7) was a potential penalty for an applicant seeking to have an order cancelled. The Council told us that the offender should have the grounds for an order tested in court without the risk of suffering the penalty of losing the right to challenge the order again.

### **Special conditions**

A range of special conditions may be imposed under an extended supervision order. There are safeguards in the current legislation that effectively prohibit unjustified limitations being placed on offenders through conditions.

We recommend the inclusion of proposed new section 107I(1A) in clause 10, to clarify that 24-hour person-to-person monitoring is possible for “home detention”-type conditions. New section 107I(1A) allows offenders to be placed under such conditions for the first 12 months of the order. Some of these offenders will require 24-hour person-to-person monitoring, and the provision as drafted may not have made this clear.

We also recommend the inclusion of new clause 38A, to provide that electronic monitoring for home detainees should be managed by the probation officer, rather than the Parole Board. This amendment will give the probation officer greater flexibility, and mirrors the current practice.

## **Electronic monitoring**

Electronic monitoring has been used by the Department of Corrections to monitor offenders on home detention since 1999. The bill includes a special condition requiring an offender to submit to electronic compliance with conditions relating to his or her whereabouts. Electronic monitoring usually involves the offender being fitted with a transmitter that continuously sends signals to a receiver. The technology used to date has restricted monitoring to a set location. In recent years, the development of GPS and other technologies has offered a tool for the monitoring of offenders in the community. Although the accuracy of GPS technology for the purpose of monitoring offenders has yet to be tested in New Zealand, the bill clarifies that it may be used.

We recommend the inclusion of new clause 6A, which inserts a new section 15A into the Parole Act 2002, to provide information about electronic monitoring. The key amendments are discussed under the following relevant subheadings.

### **Eligibility for electronic monitoring**

Proposed new section 15A(1) in new clause 6A provides that the range of offenders who will be eligible for electronic monitoring includes:

- offenders subject to an extended supervision order, or a sentence of preventive detention
- offenders released on parole where electronic monitoring is necessary in order to provide the supervision required to ensure that the offender does not pose an undue risk to the community or any persons or class of persons (as required by section 28 of the Parole Act 2002)
- those referred to in new section 15A(1)(d) (who are people who are not subject to discretionary release).

Some submitters expressed concerns in relation to the need for cautious and circumscribed use of electronic monitoring. These concerns are discussed more fully under “Response to submitters’ concerns”.



**Purpose of imposing electronic monitoring**

Proposed new section 15A(2) in new clause 6A describes the purpose of imposing electronic monitoring, which is to deter the offender from breaching conditions that relate to his or her whereabouts, and to monitor compliance with those conditions.

**Use of electronic monitoring information**

Proposed new section 15A(3) in new clause 6A describes the uses to which information obtained through electronic monitoring may be put. Aside from the above-mentioned deterrence and compliance functions, these uses are:

- to verify compliance with any release conditions, detention conditions, or conditions of an extended supervision order
- to detect, and to provide evidence of, non-compliance with any conditions and the commission of offences.

Proposed new section 15A(5) in new clause 6A requires the Department of Corrections to include information on electronic monitoring in its annual report. We agree with those submitters who indicated there was a statutory need for prescribed reporting requirements around electronic monitoring.

**Relevant offence**

We recommend an amendment to new section 107B(1) in clause 10, to clarify that the definition of “relevant offence” includes an attempt to commit such an offence, and conspiracy to commit such an offence.

We consider it is necessary to amend the bill to reflect the coverage of individuals who are convicted of attempts, where attempts are not specifically included in the offence provision. We consider that it is similarly necessary to reflect the intent that it covers conspiracies.

**Child pornography**

We recommend the inclusion in the definition of “relevant offence” of certain offences under the Films, Videos, and Publications Classifications Act 1993 related to child pornography, subject to the qualifications specified in new section 107B(3) in clause 10.

We are advised that this amendment will ensure that those offenders convicted of child pornography offences and sentenced to prison will be assessed to determine whether they are likely in the future to commit a sexual offence under Part VII of the Crimes Act 1961 involving a child under 16. Those offenders in this category who are assessed as a medium-high or high risk of offending sexually against children would be the subject of an application for an extended supervision order.

### **Victims' role**

We recommend a number of amendments to do with victim participation. We consider that it is appropriate to:

- enable victim input into hearings about extended supervision orders, with the leave of the court
- notify victims in advance if the Parole Board is considering the imposition of special conditions under new section 107I in clause 10, and permit them to make submissions to the Board about those conditions
- advise victims of the death of an offender subject to an extended supervision order, and also when an offender's order expires
- include new clause 39A and new clause 39B, to enable the Parole Board to provide notification to the offender's victims of any release or detention conditions, and to withhold advice if disclosing the condition would unduly interfere with the privacy of any other person (other than the offender).

The bill as drafted is silent on whether victims will be able to attend hearings and make representation to the court or Parole Board. Our proposal to give the court the ability to give leave for the victim to participate reflects the fact that the making of an extended supervision order involves a professional determination about risk of future reoffending. The need for flexibility arises because although few victims could offer assistance on whether or not an application for an order should be made, there may be situations where victims do have information that could help the court in determining questions of risk.

## **Evidence**

We recommend an amendment to new section 107F(2) in clause 10, to enable the court to have regard to any reasons an offender may have given for refusal to cooperate with the preparation of a health assessor's report. This amendment is to take into account concerns raised in submissions from the New Zealand Law Society and the New Zealand Council for Civil Liberties that offenders may refuse to provide evidence because they maintain they are not guilty.

We recommend a further amendment to new section 107F(1) to clarify that the court can consider any evidence it thinks fit, regardless of whether it would be admissible in a court of law. We are advised that it is not unusual for the court not to apply the rules of evidence in situations outside a criminal trial, and that while there is no general rule that illegally obtained evidence is inadmissible, Judges may exclude evidence that has been unfairly obtained.

## **Inter-agency information sharing**

We discussed the issue of inter-agency information sharing for the purposes of managing the risks posed by child sex offenders in the community.

The Ministry of Justice has been working on this issue since September 2000. A multi-agency trial involving the Department of Corrections, the New Zealand Police, Housing New Zealand, Work and Income New Zealand, and the Department of Child, Youth and Family Services has been in operation in Dunedin since July 2003. We are advised that one of the major issues identified is the operational agencies' desire for a specific information-sharing provision, to put beyond doubt that the proposed information-sharing practices will not breach the Privacy Act 1993.

We agree that an amendment should be made to take account of the agencies' concern, and the concerns raised by submitters. We are advised that further policy work is required in this area. We would give conditional support to the introduction of such an amendment by way of a Supplementary Order Paper at the committee of the whole House stage. We understand that the anticipated amendment would clarify that disclosures by relevant agencies for the purpose of managing the risks posed by convicted child sex offenders, who are being supervised by the Department of Corrections in the community, could be done consistently with the Privacy Act 1993.

At the time of this report being produced, we were provided a draft policy summary which we expect to result in a Supplementary Order Paper. This is appended as Appendix B. We are advised that further consultation is necessary. We all support the intent of this provision, however the ACT and United Future members consider the Privacy Act should not impede the sharing of such information in any way, provided the subject has the right to challenge inaccuracies.

### **Young offenders**

We considered whether young people who have not been convicted and sentenced to prison for a relevant offence should be able to submit voluntarily to supervision under the extended supervision regime. A submission from Barnardos New Zealand asked that provision be made for assessment and monitoring of young persistent sex offenders after their discharge of orders. We have no recommendations to make in this area, although we note that there is currently a gap in relation to the supervision of young offenders in the community. We consider the extended supervision regime is not appropriate for young non-convicted offenders because it allows for the imposition of stringent conditions, and also provides a serious sanction for breach of condition. The scheme is designed for serious offenders who have been convicted of a relevant offence and sentenced to imprisonment. It is envisaged that further policy work will be done to identify the most appropriate regime for these young non-convicted offenders.

### **Response to submitters' concerns**

We have clarified that the extended supervision regime is not aimed at younger offenders, and that further work is needed in this area, in response to concerns about younger offenders expressed by Barnardos New Zealand.

We have indicated support for a provision to do with inter-agency information sharing for the purposes of managing the risks posed by child sex offenders in the community (see "Inter-agency information sharing" section), partly in response to concerns about the need for inter-agency collaboration and information sharing expressed in submissions by Alison Thom, and by the SAFE programme.

We have recommended amendments to clarify the purpose of electronic monitoring and the uses to which information obtained

through electronic monitoring may be put, in response to concerns expressed by a number of submitters about the imposition of electronic monitoring.

We have both recommended amendments to clarify the range of offenders who will be eligible for extended supervision orders, and included estimated numbers of offenders who will be affected by the bill in this report, in response to concerns expressed by submitters about the potential for expansion of the extended supervision regime to other categories of offenders.

### **Deferral of start date of imprisonment**

We concur with clause 22 as drafted, which changes the threshold test for deferral of the start date of a sentence of imprisonment from “special reasons (retention of employment)” to “exceptional circumstances”.

Three submissions objected to this change. The New Zealand Law Society and The Howard League for Penal Reform disagreed with the notion that deferral was being granted too readily. The Auckland District Council of Social Services considered that a better threshold test would be that the court must be satisfied that there are special reasons that justify deferral having regard to all the circumstances, including desirability of keeping the offender in the community, and retention of employment.

The current approach to the “special reasons” test means that “retention of employment” is, in some cases, being used to justify deferral on the basis of the fact of the offender being employed and the possibility that the job might be lost. We note the following examples illustrate the policy intent in this regard, which is that retention of employment alone is not enough to justify deferral:

- *R v Porter* (Court of Appeal, 27/9/01, CA 305/01)—the offender was the sole director of two trucking firms. The Court of Appeal held that the adverse effects on a number of the offender’s employees and their families of the offender being absent, which could lead to the failure of the businesses, was a special reason. However, the court emphasised that the decision turned on the interests of the employees, not just the offender retaining his employment.
- *McWatters v R* (HC Whangarei, 6/6/2003, CRI-2003-488-000002)—an employer was holding a job open for the

offender, which was costing him a lot of money. The hardship caused to the employer, coupled with the court's finding that the employment in question would influence the offender's rehabilitation, was found to constitute a sufficient reason to warrant deferral.

- *Metcalf v Police* (17/12/2003, CRI-2003-419-000056)—the court granted deferral on the ground that, at the age of 52, the appellant would have difficulty finding new employment.

### **ACT minority view**

The ACT member is disappointed with this bill. He wants to see parole abolished, but even accepting that it will continue, considers that this bill only tinkers with a range of parole problems. The Parole Board still can not take account, in ordinary cases, of the reasons for a sentence, it has no duty to consider whether the practical enforcement of conditions is likely, and the changes to take more account of the victims of child sex offences only highlight how much more should have been done to ensure justice for them, let alone the victims of other crimes. But ACT would nevertheless have supported this bill as some improvement, but for the provisions that make it retrospective.

Their stated purpose is to cover some 44 offenders who were sentenced around 10 years ago, and have recently been, or will shortly be, released. The argument is that the interests of their prospective victims outweigh the ancient principles against double jeopardy and retrospectivity. The victim's interests would be just as well, or better secured, by simply dumping the foolish privacy restrictions that stop or discourage the police and every other authority from warning everyone, by making their convictions known wherever the offenders go or settle. If the 44 were named and their photos published, the entire community would make sure they kept themselves out of temptation's way. No more need be disclosed than is theoretically public knowledge of what transpired in open court.

If the courts had remained transparent we would not be being pressured to impose fresh sentences of supervision after these men have served their time. We would not be creating a dangerous precedent. There is no getting around the fact that this is a new law to confine people for what they might be thinking of doing, not for what they have done. The proud boast of our law for centuries has been that it punishes for what people are proven to have done, not what some

authority theorizes they might want to do. In this case the new sentence will not even be on any actions. The court will have to order on the basis of the judgment of some psychologist or other “health” professional. Even the most optimistic claims do not give them better than 50:50 predictive success, for the worst offenders, and much less for the less serious.

ACT would substantially increase the sentences for what the offenders actually do, and require supervision at the end of every new sentence, but respect our valuable ancient principles. These principles are being overridden simply to avoid limiting recent and discreditable privacy law. This change is instead of once again simply trusting the community with the knowledge that will enable everyone to take precautions, and let the offenders know that everyone is watching them, not just “the authorities”. The 44 should know that the police will be aided in keeping the same close eye on them they should keep on any high-risk suspect.

Retrospectivity is so unprincipled that ACT will have to oppose the bill, just to ensure the record shows that someone in our Parliament tried to stop the erosion of fundamental freedoms.

## Appendix A

### Committee process

The Parole (Extended Supervision) and Sentencing Amendment Bill was referred to the committee on 19 November 2003. The closing date for submissions was 2 April 2004. We received and considered 13 submissions from interested groups and individuals. We heard five of these submissions. Hearing of evidence took 3 hours and 21 minutes and consideration took 9 hours and 7 minutes.

We received advice from the Ministry of Justice and the Department of Corrections.

### Committee membership

Tim Barnett, Chairperson (Labour)

Stephen Franks, Deputy Chairperson (ACT)

Judith Collins (National)

Lianne Dalziel (Labour)

Russell Fairbrother (Labour)

Dave Hereora (Labour)

Dail Jones (New Zealand First)

Moana Mackey (Labour)

Murray Smith (United Future)

Nandor Tanczos (Green)

Richard Worth (National)

Mita Ririnui and Darren Hughes were replaced as permanent members by Lianne Dalziel and Dave Hereora respectively.

Edwin Perry replaced Dail Jones for most of this item of business.



## Appendix B

### Draft information-sharing provision

- 1 It is proposed that an information sharing provision state that:
  - It applies to personal information obtained and held by specified public sector agencies in relation to people who:
  - have committed the offences prescribed in clause 107B(2) of the Parole (Extended Supervision) and Sentencing Amendment Bill; and
  - are under the supervision of the Department of Corrections under a community-based sentence or release conditions after imprisonment.
  
- 2 Its purpose is to facilitate co-operation between specified public sector agencies in:
  - monitoring compliance with conditions;
  - managing the risks of further sexual offending against children by these offenders;
  - identifying increased risks that these offenders may breach conditions or commit further sexual offences against children;
  - detecting and investigating breaches of conditions and sexual offending against children;
  - prosecuting, convicting and punishing offenders for breach of conditions or sexual offending against children.
  
- 3 The provision will authorise disclosure of information about these offenders, for these purposes, by specified public sector agencies who have entered into information sharing agreements. This authorisation applies to disclosures of information obtained before or after information sharing agreements have been entered into.
  
- 4 Information sharing agreements will be entered into between the chief executives of the Department of Corrections and other specified public sector agencies. The agreements will

specify operational details for use or disclosure under the provision, including:

- The nature of the information to be disclosed
- The manner of disclosure
- Procedures for complying with the information privacy principles set out in the Privacy Act 1993
- Any other matters considered appropriate.

Agencies should consult with the Privacy Commissioner on the content of agreements before they are entered into. Agencies should also consult the Privacy Commissioner before making any substantive changes to the agreements, or during the course of reviewing agreements.

5 The specified agencies are:

- Department of Corrections
- Department of Child, Youth and Family Services
- Housing New Zealand Corporation
- Ministry of Social Development (Work and Income)
- New Zealand Police.

6 Other public sector agencies may be included in this provision by the Minister of Justice issuing a Gazette notice to that effect. Before issuing a notice, the Minister of Justice should consult with the Privacy Commissioner and the Minister responsible for the agency concerned.

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Parole (Extended Supervision)  
and Sentencing Amendment

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

**Struck out (unanimous)**

Subject to this Act,

Text struck out unanimously

**New (majority)**

Subject to this Act,

Text inserted by a majority

**New (unanimous)**

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

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Hon Phil Goff

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Government Bill

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

<p>107U Applications in respect of transitional eligible offenders to be made within first 6 months after commencement</p> <p style="text-align: center;"><i>Further consequential amendment to principal Act relating to Part 1A</i></p> <p>11 Functions of Board</p> <p style="text-align: center;"><i>Consequential amendments to other enactments relating to Part 1A</i></p> <p>12 Amendment to Criminal Justice Act 1985</p> <p>12A Amendment to Corrections Act 2004</p> <p>12B Amendment to Criminal Procedure (Mentally Impaired Persons) Act 2003</p> <p>13A Amendment to Parole Regulations 2002 in Schedule 1</p> <p style="text-align: center;"><b>Part 2 Amendments to Sentencing Act 2002 and Parole Act 2002</b></p> <p style="text-align: center;">Subpart 1—Amendments to Sentencing Act 2002</p> <p>14 Sentencing Act 2002 called principal Act in this subpart</p> <p>15 Proof of facts</p> <p>16 Court may order reparation report</p> <p>17 Conditions of sentence of reparation</p> <p>18 Cumulative and concurrent sentences of imprisonment</p> <p>19 Imposition of minimum period of imprisonment in relation to determinate sentence of imprisonment</p> <p>19A Sentence of preventive detention</p> <p>20 Imposition of conditions on release of offender sentenced to imprisonment for short term</p> <p>21 Court must consider granting offender leave to apply for home detention in certain cases</p> <p>22 Court may defer start date of sentence of imprisonment</p> <p>23 Imposition of minimum period of imprisonment if life imprisonment imposed for murder</p> <p>24 Discharge without conviction</p> <p>25 Conviction and discharge</p> <p>26 Order to come up for sentence if called on</p> <p>27 Application for review of non-association order</p> <p>28 Confiscation of motor vehicle after second offence</p>	<p>29 Sentence not invalidated by mistake in age of offender</p> <p style="text-align: center;"><i>Amendment to Misuse of Drugs Act 1975</i></p> <p>30 Amendment to Misuse of Drugs Act 1975</p> <p style="text-align: center;"><i>Amendments to Bail Act 2000 and Corrections Act 2004 consequential on amendment to section 100 of principal Act</i></p> <p>31 Conditions of bail</p> <p>32 Failure to answer bail</p> <p>33 New heading and new section 39A inserted in Bail Act 2000</p> <p style="text-align: center;"><i>Bail on deferment of sentence</i></p> <p>39A Bail on deferment of sentence</p> <p>34 Failure to answer bail</p> <p>35 New heading and new section 65A inserted in Bail Act 2000</p> <p style="text-align: center;"><i>Bail on deferment of sentence</i></p> <p>65A Bail on deferment of sentence</p> <p>35A Consequential amendments to Corrections Act 2004</p> <p style="text-align: center;"><i>Amendments to Sentencing Regulations 2002</i></p> <p>35B Consequential amendments to Sentencing Regulations 2002 in Schedule 2</p> <p style="text-align: center;">Subpart 2—Amendments to Parole Act 2002</p> <p>36 Parole Act 2002 called principal Act in this subpart</p> <p style="text-align: center;"><i>Other miscellaneous amendments to principal Act</i></p> <p>37 Report on suitability for home detention</p> <p>38 Direction for detention on home detention</p> <p>38A Detention conditions</p> <p>39 When home detention ends</p> <p>39A Decisions must be notified</p> <p>39B Decisions to be notified to certain victims</p> <p>40 Release of offenders released at statutory release date</p> <p>40A What happens when interim recall order made</p> <p>41 Board may make final recall order</p> <p>41A New section 66A inserted</p> <p>66A Protection of members of police</p>
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<p>42 New section 73A inserted 73A Power to enter premises to arrest</p> <p>43 New section 79 substituted 79 Start date if later sentence replaces original sentence</p> <p>44 Meaning of pre-sentence detention</p> <p>45 Calculation of final release dates</p> <p>46 Variation and cancellation of final release dates</p> <p>47 Order that offender not be released</p> <p>48 New section 117A inserted 117A Board may regulate own procedure</p>		<p style="text-align: center;"><i>Consequential amendments to other enactments</i></p> <p>49 Consequential amendments to Corrections Act 2004</p> <p>50 Consequential amendments to Parole Regulations 2002</p> <p style="text-align: center;">—————</p> <p style="text-align: center;"><b>Schedule 1</b> <b>New forms inserted in Schedule of Parole Regulations 2002</b></p> <p style="text-align: center;"><b>Schedule 2</b> <b>New forms substituted to Schedule of Sentencing Regulations 2002</b></p>
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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**

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In this Part, the Parole Act 2002<sup>1</sup> is called “the principal Act”.  
<sup>1</sup> 2002 No 10

*Amendments to principal Act consequential on new Part 1A*

**4 Interpretation**

Section 4 of the principal Act is amended by inserting, after the definition of **determinate sentence**, the following definition: 15

“**extended supervision order** means an order made under **section 107G**”.

**5 Application of Part to offenders detained in hospital**

- (1) The heading (*of*) to 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**”.

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**6 Special conditions**

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 of an extended supervision order, that relate to the whereabouts of the offender.”

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**Struck out (unanimous)**

- (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.”

**New (majority)****6A New section 15A inserted**

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The principal Act is amended by inserting, after section 15, the following section:

**“15A Electronic monitoring**

- “(1) A condition referred to in **section 15(3)(f)** that requires an offender to submit to electronic monitoring may be imposed only on an offender who—
- “(a) is subject to a sentence of preventive detention; or
- “(b) is subject to an extended supervision order; or
- “(c) is or will be on parole, and electronic monitoring of the offender is necessary in order to provide the supervision required to ensure that the offender does not pose an

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**New (majority)**

- undue risk to the community or any person or class of persons; or
- “(d) is or will be subject to release conditions imposed by the Board, having been released—
- “(i) at the offender’s statutory release date; or 5
  - “(ii) under section 104; or
  - “(iii) on the expiry or revocation of an order made under section 107.
- “(2) The purpose of an electronic monitoring condition (whether imposed as a special condition under section 15 or as a standard detention condition under section 36) is to deter the offender from breaching conditions that relate to his or her whereabouts, and to monitor compliance with those conditions. 10
- “(3) For the purposes of the Privacy Act 1993, information about an offender that is obtained through electronic monitoring may be used both for the purposes referred to in **subsection (2)** and for the following purposes: 15
- “(a) to verify compliance with any release conditions, detention conditions, or conditions of an extended supervision order: 20
  - “(b) to detect non-compliance with any conditions and the commission of offences:
  - “(c) to provide evidence of non-compliance with conditions and the commission of offences. 25
- “(4) To avoid doubt, an offender who is subject to an electronic monitoring condition may be required to have equipment attached to his or her body.
- “(5) The annual report of the Department of Corrections must include the following information about the use of electronic monitoring in the year reported on: 30
- “(a) the number of offenders of each class identified in **subsection (1)** who were at any time subject to an electronic monitoring condition:
  - “(b) the average number of offenders of each class identified in **subsection (1)** who were subject to an electronic monitoring condition and the average duration of the condition: 35



**New (majority)**

“(c) the percentage of offenders who, while subject to an electronic monitoring condition (other than as a standard detention condition while on home detention), were—	
“(i) convicted for a breach of the condition; or	5
“(ii) convicted of any other offence; or	
“(iii) recalled to prison under an interim recall order or a final recall order:	
“(d) a description of processes and systems relating to electronic monitoring that were in place during the year reported on.”	10

<b>7</b>	<b>Conditions applying to release at statutory release date</b>	
	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.”	15
<b>8</b>	<b>Release conditions applying to parole</b>	20
	Section 29 of the principal Act is amended by inserting, after subsection (2), the following subsection:	
	“(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.”	25
<b>9</b>	<b>Regulations</b>	
	Section 74 of the principal Act is amended by—	
	(a) adding to paragraph (a) the words “and <b>Part 1A</b> ”; and	30
	(b) omitting from paragraph (f) the words “this Part, and its due”, and substituting the words “this Part and <b>Part 1A</b> , and their due”.	

*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:

**“Part 1A**

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**“Extended supervision orders**

*“Preliminary*

**“107A Overview of Part**

This Part—

- “(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 10
- “(b) provides that an extended supervision order may last for up to 10 years; and 15
- “(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. 20

**“107B (Meanings of: eligible offender,) Meaning of relevant offence(, *sentencing court*)**

**Struck out (unanimous)**

- “(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 25
  - “(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 30
  - “(c) is not subject to an indeterminate sentence.

## New (unanimous)

- “(1) In this Part, unless otherwise specified, **relevant offence** means any of the following:
- “(a) an offence referred to in **subsection (2)** or **subsection (3)**:
  - “(b) an attempt to commit any offence referred to in **subsection (2)** or **subsection (3)**, where the offence is not itself specified as an attempt and the provision does not itself provide that the offence may be completed on an attempt: 5
  - “(c) a conspiracy to commit any offence referred to in **subsection (2)** or **subsection (3)**. 10
- “(2) *(In this Part, relevant offence means an)* 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, is a relevant offence: 15
- “(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:
  - “(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: 20
  - “(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:
  - “(d) section 130 (incest), but only where the victim of the offence was under the age of 16 at the time of the offence: 25
  - “(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: 30
  - “(f) section 132(1) and (2) (sexual intercourse, and attempted sexual intercourse, with girl under 12):
  - “(g) section 133 (indecenty with girl under 12):
  - “(h) section 134(1) and (2) (sexual intercourse, and indecenty, with girl aged between 12 and 16): 35
  - “(i) section 138 (sexual intercourse with severely subnormal woman or girl):
  - “(j) section 139 (indecent act between woman and girl):

- “(k) section 140 (indecenty with boy under 12):
- “(l) section 140A (indecenty 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*): 5
- “(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*) offence involved a girl under the age of 16 and an intention to have sexual intercourse with the girl: 10
- “(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. 15

**Struck out (unanimous)**

- “(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. 20

**New (unanimous)**

- “(3) An offence under the Films, Videos, and Publications Classifications Act 1993 is also a relevant offence if the offence is punishable by imprisonment and any publication that is the subject of the offence is objectionable because it does any or all of the following: 25
- “(a) promotes or supports, or tends to promote or support, the exploitation of children, or young persons, or both, for sexual purposes: 30
- “(b) describes, depicts, or otherwise deals with sexual conduct with or by children, or young persons, or both:
- “(c) exploits the nudity of children, or young persons, or both.

## New (unanimous)

**“107BA Meaning of eligible offender**

“(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 5

“(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 or detention conditions (whether those conditions are suspended or not); but 10

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

“(2) To avoid doubt, and to confirm the retrospective application of this provision, despite any enactment or rule of law, an offender may be an eligible offender (including a transitional eligible offender as defined in **section 107T**) even if he or she committed a relevant offence, was most recently convicted, or became subject to release conditions or detention conditions, before this Part came into force. 15

**“107BB Meaning of sentencing court 20**

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. 25

**“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*) any of the relevant offences referred to in **section 107B(2)** after release. 30

*“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— 5
- “(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 10
  - “(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: 15
- “(a) the nature of any likely future sexual offending by the offender, including the age and sex of likely victims: 20
  - “(b) the offender’s ability to control his or her sexual impulses: 20
  - “(c) the offender’s predilection and proclivity for sexual offending: 20
  - “(d) the offender’s acceptance of responsibility and remorse for past offending: 25
  - “(e) any other relevant factors.

**New (unanimous)**

- “(3) The chief executive must ensure that a copy of an application made under this section, along with the relevant report by the health assessor, is served on the eligible offender as soon as practicable after the application is made. 30

**“107E Hearing of application**

- “(1) Part II of the Summary Proceedings Act 1957 applies so far as applicable, with all necessary modifications and subject to this section, to the hearing of an application for an extended supervision order, as if— 35

- “(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,— 10
- “(i) references (*in that Part*) to a Court were references to the High Court; and
- “(ii) references to a District Court Judge, Justice of the Peace, or Community Magistrate were references to a High Court Judge; and 15
- “(iii) references to a Registrar were references to a Registrar of the High Court.
- “(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 20
- “(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.
- “(3) Despite section 24 of the Summary Proceedings 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. 30
- “(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.
- “(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 40

“(7) The Costs in Criminal Cases Act 1967 applies, with all necessary modifications, to proceedings under this Part.

“107F (*Evidence at hearings*) Hearings relating to extended supervision orders

**New (unanimous)**

“(1AA) In this section, **hearing** means any hearing before a sentencing court or the Court of Appeal that relates to any of the following: 5

- “(a) an application for an extended supervision order:
- “(b) an application for cancellation of an extended supervision order: 10
- “(c) an application for extension of an extended supervision:
- “(d) an appeal under **section 1070**.

“(1) *(At the hearing of an application for an extended supervision order,)* At any hearing, the court may receive and take into account any evidence or information that it thinks fit for the purpose of determining the application or appeal, whether or not it would be admissible in a court of law. 15

“(2) At any hearing, 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)**, but it must also take into account any reasons the offender gives for refusal to co-operate with the preparation of the health assessor’s report. 20

**New (unanimous)**

“(3) When any hearing is to be held, the chief executive must notify every victim of the offender concerned about the hearing. 25

“(4) A victim may make written submissions to the court and, with the leave of the court, may appear and make oral submissions at the hearing.



## New (unanimous)

- “(5) The court must provide a copy of every order made at or following any hearing, along with the reasons for the order, to the offender concerned, the chief executive, and the police.
- “(6) The chief executive must notify every victim of the offender concerned of the outcome of every hearing.

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“107G **Sentencing court may make extended supervision order**

- “(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.
- “(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)* any of the relevant offences referred to in **section 107B(2)** on ceasing to be an eligible offender.

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## New (unanimous)

- “(2A) To avoid doubt, a sentencing court may make an extended supervision order in relation to an offender who was, at the time the application for the order was made, an eligible offender, even if, by the time the order is made, the offender has ceased 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—
- “(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.

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- “(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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**Struck out (unanimous)**

- “(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.

- “(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.

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*“Nature of extended supervision order*

**“107H Conditions of extended supervision order**

- “(1) 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
- “(b) any special conditions imposed by the Board under **section 107I**, which apply for the period determined by the Board.

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**New (unanimous)**

- “(2) The standard release conditions—
- “(a) apply throughout the term of the order (except as provided in **section 107I(1A)** and **section 107L**); and
- “(b) must be treated for the purpose of sections 56 to 58 as having been imposed by the Board.

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**“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

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may, on an application by the chief executive or a probation officer, impose on the offender—

“(a) any special condition that the Board is entitled to impose under section 15; and

“(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) and (d), as if the person were on home detention. 5

**New (unanimous)**

“(1A) If an offender is subject to a special condition referred to in **subsection (1)(b)**— 10

“(a) the condition may include a requirement that the offender submit to being accompanied and monitored, for up to 24 hours a day, by an individual who has been approved, by a person authorised by the chief executive, to undertake person-to-person monitoring; and 15

“(b) the standard release conditions do not apply.

“(2) If the Board imposes special conditions under this section, it must specify the duration of those conditions which,—

“(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 20

“(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.

“(3) Subsections (2) and (4) of section 15 apply in respect of special conditions imposed under this section. 25

“(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 purposes of **section 107Q**, if he or she withdraws consent to taking prescription medication. 30

**New (unanimous)**

“(4A) The Board must notify the offender concerned, and every victim of the offender, if it is considering imposing special conditions under this section.

“(4B) The offender and any victim of the offender may make written submissions to the Board and, with the leave of the Board, may appear and make oral submissions on whether special conditions should be imposed, what the conditions should be, and their duration.

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“(5) Notice of any special conditions attached to an extended supervision order must be provided, in writing, to the following:

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“(a) the offender:

“(b) the chief executive:

“(c) the police:

**Struck out (unanimous)**

“(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.

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**New (unanimous)**

“(d) every victim of the offender; but the Board may withhold notice of a particular condition if disclosure of the condition would unduly interfere with the privacy of any other person (other than the offender).

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**“107J Commencement and expiry of extended supervision order**

“(1) An extended supervision order comes into force,—

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“(a) if the order is made while the offender is detained or liable to be recalled, on the offender’s statutory release date; or

“(b) if the order is made at any other time, on the date specified in the order.

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- “(2) On the date on which an extended supervision order comes into force, any release conditions or detention conditions to which the offender is subject are discharged.
- “(3) An extended supervision order expires on the date on which the order is cancelled or the term of the order expires. 5

*“Cancellation, extension, variation, and suspension of extended supervision orders or conditions”*

**“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)* any of the relevant offences referred to in **section 107B(2)** within the term of the order. 10 15
- “(2) On receipt of an application for cancellation, the Registrar of the sentencing court must set the matter down for hearing.
- “(3) The applicant for cancellation must, as soon as practicable, serve on the other party— 20
- “(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. 25
- “(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)* any of the relevant offences referred to in **section 107B(2)** within the term of the order. 30

**Struck out (unanimous)**

“(6) **Section 107G(6) and (7)** apply to every cancellation order under this section.

- “(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 35

offender not be permitted to apply under this section for a specified period of not more than 2 years.

**New (unanimous)**

**“107KA Extension of short extended supervision order**

- “(1) At any time before the expiry of an extended supervision order whose term is less than 10 years, the chief executive may apply to the sentencing court for an extension of the order up to the maximum term of 10 years. 5
- “(2) An application may be made under this section only if—
- “(a) the offender to whom the order relates has been convicted under **section 107Q**, in the 12 months preceding the application, of the offence of breaching a condition of the order; or 10
- “(b) the offender agrees in writing to the application being made.
- “(3) **Subsection 107E** applies, with all necessary modifications, to an application under this section. 15
- “(4) The sentencing court may order that an extended supervision order be extended if—
- “(a) it 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 any of the relevant offences referred to in **section 107B(2)** after the expiry of the existing order; or 20
- “(b) the offender agrees in writing to the extension of the order for the term ordered by the court. 25
- “(5) An extended supervision order may not be extended for a term that results in the total term of the order exceeding 10 years.

**“107L Board may vary conditions of extended supervision order**

- “(1) At any time, whether before or 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. 30
- “(2) Sections 56, 57, and 58(1) and (4)(a) and (b) apply as if the conditions of the extended supervision order were release 35

conditions, and as if the offender were already subject to the conditions.

- “(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: 5
- “(a) the offender:
- “(b) the probation officer involved:
- “(c) the police:

**Struck out (unanimous)**

“(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

**New (unanimous)**

“(d) every victim of the offender; but the Board may withhold notice of a particular condition if disclosure of the condition would unduly interfere with the privacy of any other person (other than the offender). 15

**“107M Suspension of conditions of extended supervision order(s)**

- “(1) *(An) The conditions of an offender’s extended supervision order (is) are suspended, and time ceases to run on (it) the order, 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)).* 20
- “(2) *(A suspended extended supervision order is) If the conditions of an extended supervision order are suspended under **sub-section (1)**, they are reactivated (on),—* 25
- “(a) in the case of an offender who is detained under a sentence of imprisonment, on the offender’s statutory release date; and
- “(b) in the case of an offender who is detained under a court order, on the date *(on which)* the offender is released. 30

**New (unanimous)**

- “(3) If an offender who is subject to an extended supervision order is detained in a hospital under a compulsory treatment order, then—
- “(a) the conditions of the order are suspended while the offender is detained, but a probation officer may reactivate any condition that is required to ensure that the offender does not pose an undue risk to the community or any person or class of persons; and 5
  - “(b) time on the order continues to run during the period of detention; and 10
  - “(c) the conditions that have not been reactivated earlier are reactivated when the offender is released.

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

- “(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. 15
- “(2) If an offender who is subject to an extended supervision order is sentenced to a determinate sentence, time ceases to run on the order, and the conditions of the order (is) are suspended and then reactivated, in accordance with **section 107M(2)(a)**. 20
- “(3) If an offender who is subject to an extended supervision order is sentenced to an indeterminate sentence, the order is cancelled; but if the sentence is subsequently quashed or otherwise set aside, the extended supervision order is to be treated as if it had not been cancelled. 25

*“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, or section 107KA** may be made by the offender to whom the decision or order relates or by the chief executive. 30
- “(2) Every appeal must be to the Court of Appeal, and Part XIII of the Crimes Act 1961 applies, with all necessary modifications, 35



as if the appeal were an appeal against sentence under section 383 of that Act.

- “(3) The lodging of an appeal against a decision or order does not prevent that decision or order taking effect according to its terms. 5

“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* 10

“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. 15

“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 (107A) 107G (or), section (107L) 107K, or section 107KA**. 20

Compare: 1991 No 120, s 90

**New (unanimous)**

“107RA **Additional victim notification**

The chief executive must notify every victim of an offender who is subject to an extended supervision order if any of the following occurs: 25

“(a) the offender is convicted of an offence against **section 107Q**:

“(b) the offender’s extended supervision order expires:

“(c) the offender dies. 30

“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).

5

**New (unanimous)**

“107SA **Application of Legal Services Act 2000**

For the purposes of section 6(a) of the Legal Services Act 2000 (which identifies proceedings for which legal aid may be granted), proceedings under this Part before any court are criminal proceedings.

10

*“Transitional measures*

“107T **Definitions**

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

“**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

15

“**transitional eligible offender** means any one of the following:

“(a) any person who, on or after the introduction date, would have been an eligible offender if this Part had been in force on or after that date, but who ceases to be an eligible offender before this Part comes into force:

20

“(b) any person who, on the date on which this Part comes into force, is an eligible offender, but who ceases to be an eligible offender within 6 months *(of the)* after this Part (commencing) comes into force.

25

“107U **Applications in respect of transitional eligible offenders to be made within first 6 months after commencement**

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“(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*) comes into force, but no later. This subsection overrides **section 107D(1)(a) and (b)**. 5
- “(3) However, nothing in this section prevents the chief executive applying for an extended supervision order more than 6 months after this section (*commences*) comes into force if, after that date, the offender is an eligible offender.”

*Further consequential amendment to principal Act relating to Part 1A* 10

**11 Functions of Board**

- (1) Section 109(1)(e) of the principal Act is amended by inserting, after subparagraph (i), the following subparagraph: 15
- “(ia) the variation and discharge of conditions of 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: 20
- “(ga) to impose special conditions on offenders in respect of whom extended supervision orders have been made:”.

*Consequential amendments to other enactments relating to Part 1A*

**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: 25
- “(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:”.

**New (unanimous)**

**12A Amendment to Corrections Act 2004**

- Section 25(1) of the Corrections Act 2004 is amended by inserting, after paragraph (a), the following paragraph:

**New (unanimous)**

“(ab) 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:”.

- 12B Amendment to Criminal Procedure (Mentally Impaired Persons) Act 2003** 5
- The Schedule of the Criminal Procedure (Mentally Impaired Persons) Act 2003 is amended by adding, under the heading “**Parole Act 2002** (2002 No 10)”, the item “Insert in **section 107M(3)**, after the words “a hospital”, the words “or secure facility under a compulsory care order or” ”. 10

**Struck out (unanimous)**

- 13 Amendments to Legal Services Act 2000**
- (1) Section 6(c)(i) of the Legal Services Act 2000 is amended by— 15
- (a) omitting the words “or section 107”, and substituting the words “, section 107, or **section 107L**”; and 15
  - (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”. 20
- (2) Section 6(c) of the Legal Services Act 2000 is amended by adding the following subparagraph: 20
- “(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.” 25

**New (unanimous)**

- 13A Amendments to Parole Regulations 2002 in Schedule 1**
- The Parole Regulations 2002 (SR 2002/179) are amended by adding the 3 forms set out in **Schedule 1**.

## 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** 5  
 In this subpart, the Sentencing Act 2002<sup>2</sup> is called “the principal Act”.
- <sup>2</sup> 2002 No 9
- 15 Proof of facts** 10  
 Section 24(2)(c) of the principal Act is amended by inserting, after the word “negate”, the words “beyond a reasonable doubt”.
- 16 Court may order reparation report** 15  
 (1) Section 33(1) of the principal Act is amended by omitting the words “should be imposed”, and substituting the words “may be appropriate”.
- (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”. 20
- 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. 25
- “(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.” 30

**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.”

5

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

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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:
- “(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;
  - “(c) deterring the offender or other persons from committing the same or a similar offence;
  - “(d) protecting the community from the offender.”

15

20

**New (unanimous)**

**19A Sentence of preventive detention**

Section 87(5)(b) of the principal Act is amended by omitting the expression “237”, and substituting the expression “236”.

25

**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:

30

- “(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.

35

- “(2) If a court sentences an offender to a term of imprisonment of more than 12 months but not more than 24 months,—
- “(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; and 5
- “(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. 10
- “(2A) The court may specify that conditions imposed under this section expire on—
- “(a) the sentence expiry date; or
- “(b) the date that is a specified period before the sentence expiry date; or 15
- “(c) the date that is a specified period of up to 6 months after the sentence expiry date.
- “(2B) In this section,—
- “**sentence expiry date** has the meaning given to it in section 4 of the Parole Act 2002 20
- “**special conditions** includes, without limitation, conditions of a kind described in section 15(3) of the Parole Act 2002
- “**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. 25
- 21 Court must consider granting offender leave to apply for home detention in certain cases**
- 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— 30
- “(a) the nature and seriousness of the offence; and
- “(b) the circumstances and background of the offender; and 35
- “(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:

“(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.”

5

- (2) Section 100 of the principal Act is amended by inserting, after subsection (3), the following subsection:

**Struck out (unanimous)**

“(3A) An offender whose sentence is deferred under this section may, under the Bail Act 2000, be granted bail.”

10

**New (unanimous)**

“(3A) The Bail Act 2000 provides that an offender whose sentence is deferred under this section must be granted bail.”

**Struck out (unanimous)**

- (3) Section 100(4)(b) of the principal Act is amended by omitting the full stop, and substituting the word “; or”.

15

- (4) Section 100(4) of the principal Act is amended by adding the word “; or” to paragraph (b), and adding the following paragraphs:

“(c) an order under this section has already been made in respect of the sentence; or

20

“(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:

25



- “(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.
- “(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: 5
- “(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: 10
- “(c) deterring the offender or other persons from committing the same or a similar offence;
- “(d) protecting the community from the offender.”

**Struck out (unanimous)**

- “(3) An order under this section must be made within 28 days of the date on which the sentence of life imprisonment was imposed.” 15

**24 Discharge without conviction**

Section 106 of the principal Act is amended by inserting, after subsection (3), the following subsection: 20

- “(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.”

**25 Conviction and discharge** 25

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.” 30

**26 Order to come up for sentence if called on**

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.”
- 27 Application for review of non-association order** 5  
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** 10  
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  
(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)”. 15
- 29 Sentence not invalidated by mistake in age of offender** 20  
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. 25  
“(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.” 30
- Amendment to Misuse of Drugs Act 1975*
- 30 Amendment to Misuse of Drugs Act 1975** 35  
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:

- “(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:
- “(a) section 127: 5
  - “(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: 10
  - “(e) sections 138 to 142.”
- Amendments to Bail Act 2000 and Corrections Act 2004 consequential on amendment to section 100 of principal Act* 15
- 31 Conditions of bail**
- 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** 20
- 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)**.” 25
- 33 New heading and new section 39A inserted in Bail Act 2000**
- The Bail Act 2000 is amended by inserting, after section 39, the following heading and section:
- “Bail on deferment of sentence* 30
- “39A Bail on deferment of sentence**
- “(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. 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:

**Struck out (unanimous)**

- “(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.

**New (unanimous)**

- “(b) surrender himself or herself to the Superintendent of the penal institution concerned at the expiry of the period of the deferral, being the period specified by the court or the period ending with the date on which the New Zealand Parole Board determines the application for home detention, whichever is sooner.
- “(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.
- “(5) If any decision is made under section 34(1) (as applied by **subsection (4)**) 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.”

**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)**.” 5

**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: 10

*“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. 15

“(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,— 20

“(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 25

“(ii) appear at any hearing by the New Zealand Parole Board of that application; and

**Struck out (unanimous)**

“(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. 30

**New (unanimous)**

“(b) surrender himself or herself to the Superintendent of the penal institution concerned at the expiry of the period of the deferral, being the period specified by the court or the period ending with the date on which the New Zealand Parole Board determines the application for home detention, whichever is sooner.

5

“(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:

10

“(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.

15

“(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.”

20

**New (unanimous)**

**35A Consequential amendments to Corrections Act 2004**

25

The item relating to the Bail Act 2000 in Schedule 2 of the Corrections Act 2004 is amended by—

(a) omitting from the first item the words “and 33(1)”, and substituting the words “33(1), **39A(3)(b)**, and **65A(3)(b)**”; and

30

(b) inserting in the second item, after the expression “33(1),”, the expression “**39A(3)(b)**,”; and

(c) inserting in the second item, after the expression “64,”, the expression “**65A(3)(b)**,”.

**New (unanimous)***Amendments to Sentencing Regulations 2002***35B Consequential amendments to Sentencing Regulations  
2002 in Schedule 2**

The Sentencing Regulations 2002 (SR 2002/178) are consequentially amended by revoking forms 4 and 6, and substituting the **forms 4 and 6** set out in **Schedule 2**.

5

## Subpart 2—Amendments to Parole Act 2002

**36 Parole Act 2002 called principal Act in this subpart**

In this subpart, the Parole Act 2002<sup>3</sup> is called “the principal Act”.

10

<sup>3</sup> 2002 No 10

**New (unanimous)***Other miscellaneous amendments to principal Act***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:

15

“(a) the nature of the offence or offences for which the offender is currently serving a sentence of imprisonment or has previously been convicted:

20

“(b) the likelihood that the offender’s rehabilitation and reintegration will be assisted by home detention:

“(c) the safety and welfare of the occupants of the residence where the offender is to be detained:

25

“(d) the outcome of any restorative justice processes that have occurred.”

**38 Direction for detention on home detention**

(1) Section 35(2) of the principal Act is amended by inserting, after the expression “subsection (1)”, the word “only”.

30

- (2) Section 35(2) of the principal Act is amended by repealing paragraph (b).
- (3) Section 35(4) of the principal Act is amended by inserting, after the word “long-term”, the word “determinate”.

**New (unanimous)**

**38A Detention conditions**

5

Section 36(2) of the principal Act is amended by adding the following paragraph:

“(d) the offender must, as and when required by a probation officer, submit to the electronic monitoring of compliance with his or her detention conditions.”

10

**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)”.

**New (unanimous)**

**39A Decisions must be notified**

15

Section 50 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

“(2) When advising a victim under this section of any release or detention conditions applying to an offender, the Board may withhold advice of a particular condition if disclosing the condition would unduly interfere with the privacy of any other person (other than the offender).”

20

**39B Decisions to be notified to certain victims**

Section 50B of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

25

“(2) When advising a person under this section of any release or detention conditions, the Board may withhold advice of a particular condition if disclosing the condition would unduly interfere with the privacy of any other person (other than the offender).”

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”.

**New (unanimous)**

- 40A What happens when interim recall order made** 5  
Section 63(1) of the principal Act is amended by inserting, after the words “for the”, the words “arrest of the offender and for the”.

- 41 Board may make final recall order**  
(1) Section 66(3) of the principal Act is amended by inserting, after the words “for the”, the words “arrest of the offender and for the”. 10

**New (unanimous)**

- (2) Section 66 of the principal Act is amended by inserting, after subsection (3), the following subsection:  
“(3A) If a warrant is issued under subsection (3) in respect of an offender who is not currently detained, a member of the police may at any time arrest the offender, whether or not the member has possession of the warrant, for the purpose of returning the offender to a penal institution to resume serving his or her sentence.” 15  
20

- 41A New section 66A inserted**  
The principal Act is amended by inserting, after section 66, the following section:  
“66A **Protection of members of police**  
Section 39 of the Police Act 1958 applies to protect members of the police as if a warrant issued under section 63(1) or section 66(3) were a process issued out of a court.” 25

- 42 New section 73A inserted**  
The principal Act is amended by inserting, after section 73, the following section: 30

**“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. 5

“(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. 10

Compare: 1957 No 87, s 22”.

**43 New section 79 substituted**

The principal Act is amended by repealing section 79, and substituting the following section: 15

**“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. 20

“(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. 25

“(3) In either situation referred to in **subsection (1) or subsection (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.” 30

**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— 35

“(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)* subject to detention conditions, whether those conditions were suspended or not.”

- 45 Calculation of final release dates** 5  
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”.
- 46 Variation and cancellation of final release dates** 10  
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.” 15

**New (unanimous)**

- 47 Order that offender not be released**  
Section 107(9) of the principal Act is amended by omitting from paragraph (c) of the definition of **specified offence** the expression “237”, and substituting the expression “236”. 20
- 48 New section 117A inserted**  
The principal Act is amended by inserting, after section 117, the following section:  
“117A **Board may regulate own procedure** 25  
The Board may regulate its own procedure as it thinks fit, subject to this Act and any regulations made under it.”

*Consequential amendments to other enactments*

- 49 Consequential amendments to Corrections Act 2004** 30  
The fifth item relating to the Parole Act 2002 in Schedule 2 of the Corrections Act 2004 is amended by—

**New (unanimous)**

- (a) omitting the expression “52(1)”, and substituting the words “52(1) and (3)”; and
- (b) omitting the words “66(1) and (3)”, and substituting the words “66(1), (3), and **(3A)**”; and
- (c) omitting the words “and 94(a)”, and substituting the words “94(a), and **107M(1)**”. 5

**50 Consequential amendments to Parole Regulations 2002**

Form 9 and form 13 in the schedule of the Parole Regulations 2002 (SR 2002/179) are amended by inserting, after the words “the members of the police, are directed to”, the words “arrest the offender and to” in each case. 10

New (unanimous)

s 13A

**Schedule 1**  
**New forms inserted in Schedule of Parole**  
**Regulations 2002**

Form 15

Application for extended supervision order 5  
*Section 107D, Parole Act 2002*

Case number:

In the High Court of New Zealand/District Court at *[place]*:

Applicant: chief executive of the Department of Corrections

Respondent: *[full name of offender]*, of *[address]* 10

I, *[name of applicant]*, chief executive of the Department of Corrections,—

1 assert that the respondent is an eligible offender within the  
meaning of **section 107BA** of the Parole Act 2002 and attach  
evidence in support of this assertion; and 15

2 will apply to the High Court/District Court at *[place]* for an  
extended supervision order to be imposed on the respondent  
on the ground that I consider, on the basis of the attached  
health assessor’s report, that the respondent is likely to com-  
mit an offence referred to in **section 107B(2)** of the Parole Act 20  
2002 after he or she ceases to be an eligible offender.

\*And on the further grounds set out in the attached affidavit[s]  
of *[name]*, dated *[date]*.

\*Delete if inapplicable.

*[Attach evidence that the offender is an eligible offender and a copy* 25  
*of the health assessor’s report.]*

Dated at *[place]* on *[date]*.

.....  
Chief executive of 30  
the Department of  
Corrections

Name and contact details of person for inquiries:

**New (unanimous)**

Form 15—*continued*

**Date of hearing**

I appoint [*date*] at [*time*] at the High Court/District Court at [*place*]  
for the hearing of this application.

.....  
Registrar

.....  
Date

5

**New (unanimous)**

Form 16

Extended supervision order

*Section 107G, Parole Act 2002*

To the chief executive of the Department of Corrections and *[full name of offender to whom the order relates]*: 5

On *[date]*, the High Court/District Court at *[place]* made an extended supervision order against *[full name of offender]* under **section 107G** of the Parole Act 2002.

The term of the order is: *[specify]*

The order comes into force on: 10

\*the offender’s statutory release date (in the case of an offender who is detained or liable to be recalled):

\**[specify date]*.

\*Delete if inapplicable.

The standard conditions printed on this form apply to the offender from the time the order comes into force and throughout the term of the order except— 15

- during any period when the offender is subject to a special condition referred to in **section 107I(1)(b)** of the Parole Act 2002; or 20
- during any period when the conditions are suspended under **section 107M** of the Parole Act 2002; or
- as varied by the Parole Board.

The Parole Board may also impose special conditions on the offender. 25

Dated at the *[specify]* Court at *[place]* on *[date]*.

.....  
(Deputy) Registrar

**New (unanimous)**

Form 16—*continued*

**Standard conditions of extended supervision order**

The offender is subject to the following conditions:

- (a) the offender must report in person to a probation officer in the probation area in which the offender resides as soon as practicable, and not later than 72 hours, after the extended supervision order comes into force: 5
- (b) the offender must report to a probation officer as and when required to do so by a probation officer, and must notify the officer of his or her residential address and the nature and place of his or her employment when asked to do so:
- (c) the offender must not move to a new residential address in another probation area without the prior written consent of a probation officer: 10
- (d) if consent is given under paragraph (c), the offender must report in person to a probation officer in the new probation area in which the offender is to reside as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area: 15
- (e) if an offender intends to change his or her residential address within a probation area, the offender must give a probation officer reasonable notice before moving from his or her residential address (unless notification is impossible in the circumstances) and must advise the probation officer of the new address: 20
- (f) the offender must not reside at any address at which a probation officer has directed the offender not to reside: 25
- (g) the offender must not engage, or continue to engage, in any employment or occupation in which a probation officer has directed the offender not to engage or continue to engage:



**New (unanimous)**

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Form 16—*continued*

- (h) the offender must not associate with any specified person, or with persons of any specified class, with whom a probation officer has, in writing, directed the offender not to associate:
  
  - (i) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by a probation officer.
- 

5

New (unanimous)

Form 17

Application for extension of short extended  
supervision order

*Section 107KA, Parole Act 2002*

- Case number: 5
- In the High Court of New Zealand/District Court at *[place]*:  
Applicant: chief executive of the Department of Corrections  
Respondent: *[full name of offender]*, of *[address]*  
I, *[name of applicant]*, chief executive of the Department of Corrections,— 10
- 1 assert that—
- (a) the respondent is subject to an extended supervision order for a term of *[specify term]*, which is due to expire on approximately *[date]*;
  - \***(b)** the offender has been convicted under **section 107Q** of the Parole Act 2002 of breaching a condition of the order: 15
  - \***(c)** the offender consents in writing to the making of this application; and
- 2 will apply to the High Court/District Court at *[place]* for an extension of the offender's extended supervision order on the ground that— 20
- \***(a)** I consider, on the basis of the attached health assessor's report, that the respondent is likely to commit an offence referred to in **section 107B(2)** of the Parole Act 2002 after the expiry of his or her extended supervision order: 25
  - \***(b)** the offender agrees in writing to the extended supervision order being extended.
- \*Delete if inapplicable. 30
- [Attach evidence of the offender's conviction or the offender's consent to the application and a copy of the health assessor's report or the offender's written consent to the making of the order.]*

**New (unanimous)**

Form 17—*continued*

Dated at [*place*] on [*date*].

.....  
Chief executive of  
the Department of  
Corrections

Name and contact details of person for inquiries: 5

**Date of hearing**

I appoint [*date*] at [*time*] at the High Court/District Court at [*place*]  
for the hearing of this application.

.....  
Registrar 10

.....  
Date

\_\_\_\_\_

New (unanimous)

**Schedule 2** s 35B  
**New forms substituted of Schedule of Sentencing  
Regulations 2002**

Form 4

Order for minimum period of imprisonment within determinate sentence or sentence of imprisonment for life 5

*Sections 86 and 103, Sentencing Act 2002*

*[to be attached to warrant of commitment (form 6)]*

To every member of the police and to the Superintendent of the prison at *[place]* 10

*[Full name]* of *[address]*, *[occupation]* (the **offender**), was, on *[date]*, convicted of *[specify offence]* by the *[specify]* Court at *[place]* and was this day (or on *[date]*) sentenced to—

\*imprisonment for a term of *[specify period]*.

\*imprisonment for life. 15

\*Delete if inapplicable.

\* I am satisfied that the period of imprisonment otherwise applicable to the offender's determinate sentence under section 84(1) of the Parole Act 2002 is insufficient for all or any of the following purposes: 20

\* I consider that the minimum term of imprisonment specified below is necessary to satisfy all or any of the following purposes:

\*Delete if inapplicable.

- holding the offender accountable for the harm done to the victim and the community by the offending: 25

- denouncing the conduct in which the offender was involved:

- deterring the offender or other persons from committing the same or a similar offence:

- protecting the community from the offender. 30

**New (unanimous)**

Form 4—*continued*

The Court therefore orders, under section 86 (*or* section 103) of the Sentencing Act 2002, that the offender must serve a minimum period of imprisonment of [*specify period*].

Dated at the [*specify*] Court at [*place*] on [*date*].

.....  
Judge

5

**New (unanimous)**

Form 6

Warrant of commitment for imprisonment

*Section 91, Sentencing Act 2002*

To every member of the police and to the Superintendent of the prison at [place] 5

[Full name] of [address], [occupation] [the offender], was, on [date], convicted of [specify offence] by the [specify] Court at [place] and was sentenced to—

\*imprisonment for a term of [specify period].

\*imprisonment for life. 10

\*preventive detention.

\*Delete if inapplicable.

**Start date of sentence**

\*The start date of the sentence is that set out in section 76 of the Parole Act 2002. 15

\*The start date of the sentence is deferred, under section 100(1) of the Sentencing Act 2002, for [specify period] or the period ending with the date on which the Parole Board determines the application for home detention, whichever is sooner.

\*Delete if inapplicable. 20

**Legal representation**

\*The offender was legally represented (as contemplated by section 30(1) of the Sentencing Act 2002) at the stage of the proceedings at which the offender was at risk of conviction.

\*The offender was not legally represented (as contemplated by section 30(1) of the Sentencing Act 2002) at the stage of the proceedings at which the offender was at risk of conviction, but the Court was satisfied, in accordance with section 30(2) of the Sentencing Act 2002, that the offender refused or failed to exercise his or her rights relating to legal representation (or engaged counsel but subsequently dismissed him or her). 25 30

\*Delete if inapplicable.

## New (unanimous)

Form 6—*continued***Home detention**

\*The offender was not a person to whom section 97 of the Sentencing Act 2002 applies.

\*The offender was a person to whom section 97 of the Sentencing Act 2002 applies, and an order was made granting the offender leave to apply to the New Zealand Parole Board for release to home detention. 5

\*The offender was a person to whom section 97 of the Sentencing Act 2002 applies, and an order was made declining leave for the offender to apply to the New Zealand Parole Board for release to home detention. 10

\*Delete if inapplicable.

**You**, the members of the police, are directed to deliver the offender to the Superintendent of the prison at [*place*].

**And you**, the Superintendent, are directed to receive the offender into your custody and to detain the offender for the purposes of the sentence. 15

**Release conditions imposed by the Court**

\*The offender was a person to whom section 93(1) of the Sentencing Act 2002 applies, and the Court imposed—

\*(a) the standard release conditions set out in section 14 of the Parole Act 2002 which expire on [*specify*]; 20

\*(b) the special conditions listed below, which expire on [*specify*].

\*The offender was a person to whom section 93(2) of the Sentencing Act 2002 applies, and—

\*(a) the standard release conditions set out in section 14 of the Parole Act 2002 apply until they expire on [*specify*]; 25

\*(b) the special conditions listed below apply until they expire on [*specify*].

\*Delete if inapplicable.

**New (unanimous)**

Form 6—*continued*

Dated at the [*specify*] Court at [*place*] on [*date*].

.....  
Judge

\* *Special conditions:*

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**Legislative history**

11 August 2003

Introduction (Bill 88-1)

19 November 2003

First reading and referral to the Justice and Electoral  
Committee

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