

# House of Representatives

## Supplementary Order Paper

Thursday, 7 April 2005

### Crimes Amendment Bill (No 2)

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#### *Proposed amendments*

Hon Phil Goff, in Committee, to move the following amendments:

*Clause 2(3)*

To insert, before the word “day” (at line 10 on page 2), the expression “30th”.

*Clause 4*

To add as *subsection (2)* (after line 26 on page 3) the following subsection:

- (2) Section 7A of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) Even if some or all of the acts alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for an offence against **section 131B**—

“(a) if the person to be charged—

“(i) is a New Zealand citizen; or

“(ii) is ordinarily resident in New Zealand; or

“(iii) has been found in New Zealand and has not been extradited; or

“(b) if any of the acts is alleged to have occurred—

“(i) on board a ship registered or required to be registered under the Ship Registration Act 1992; or

“(ii) on board a ship used as a ship of the New Zealand Defence Force; or

“(iii) on board a New Zealand aircraft; or

“(iv) on board an aircraft that is leased to a lessee whose principal place of business is in New Zealand, or who is a New Zealand citizen or a person ordinarily resident in New Zealand; or

“(c) if a person in respect of whom the offence is alleged to have been committed—

“(i) is a New Zealand citizen; or

“(ii) is ordinarily resident in New Zealand.

*Clause 7*

To omit proposed *new section 131A(1)(a)(iii)* (line 34 on page 14), and substitute the following subparagraph:

“(iii) a child of his or her parent or step-parent; or

To insert in proposed *new section 131A(1)(a)(iv)*, before the word “partner” (at line 1 on page 15), the words “spouse or de facto”.

To omit from proposed *new section 131A(2)* the definition of **partner** (lines 24 to 26 on page 15).

To insert, after proposed *new section 131A* (after line 29 on page 15), the following section:

“**131B Meeting young person under 16 following sexual grooming, etc**

“(1) Every person is liable to imprisonment for a term not exceeding 7 years if,—

“(a) having met or communicated with a person under the age of 16 years (the **young person**) on an earlier occasion, he or she takes one of the following actions:

“(i) intentionally meets the young person:

“(ii) travels with the intention of meeting the young person:

“(iii) arranges for or persuades the young person to travel with the intention of meeting him or her; and

“(b) at the time of taking the action, he or she intends—

“(i) to take in respect of the young person an action that, if taken in New Zealand, would be an offence against this Part, or against any of **paragraphs (a)(i), (d)(i), (e)(i), (f)(i), of section 98AA(1)**; or

“(ii) that the young person should do on him or her an act the doing of which would, if he or she permitted it to be done in New Zealand, be an offence against this Part on his or her part.

“(2) It is a defence to a charge under **subsection (1)** if the person charged proves that,—

“(a) before the time he or she took the action concerned, he or she had taken reasonable steps to find out whether the young person was of or over the age of 16 years; and

“(b) at the time he or she took the action concerned, he or she believed on reasonable grounds that the young person was of or over the age of 16 years.

To omit from the heading of proposed *new section 134A* (line 30 on page 17) the word “**Defences**”, and substitute the word “**Defence**”.

To omit from proposed *new section 134A(1)(b)* the word “concerned” where it secondly occurs (at line 5 on page 18).

To omit *subsections (2) and (3)* of proposed *new section 134A* (lines 8 to 16 on page 18).

*Schedule 1*

To insert, before the amendments relating to the Criminal Investigations (Blood Samples) Act 1995 (after line 2 on page 27), the following items:

**Armed Forces Discipline Act 1971** (1971 No 53)

Omit from section 131A(1)(a)(iv) the words “inducing sexual connection by coercion” and substitute the words “sexual connection with consent induced by certain threats”.

**Bail Act 2000** (2000 No 38)

Repeal section 10(2)(a) and substitute:

“(a) **section 128B** (sexual violation):”.

To omit from the heading of the amendments relating to the Criminal Investigations (Blood Samples) Act 1995 the word “**Blood**” (at line 3 on page 27), and substitute the word “**Bodily**”.

To omit from the first amendment relating to Part A of the Schedule of the Criminal Investigations (Blood Samples) Act 1995 the words “Part A” (at line 5 on page 27), and substitute the words “Part 1”.

To insert in the first amendment relating to Part A of the Schedule of the Criminal Investigations (Blood Samples) Act 1995, after the item relating to section 131(3) of the principal Act (line 39 on page 27), the following item:

Meeting young person under 16 following sexual grooming, etc **section 131B(1)**

To omit from the second amendment relating to the Criminal Investigations (Blood Samples) Act 1995 the words “Part A of the Schedule the items relating to sections 208 to 210” (at lines 15 and 16 on page 28), and substitute the words “Part 1 of the Schedule the items relating to sections 208 and 209”.

To omit from the second amendment relating to the Criminal Investigations (Blood Samples) Act 1995 the item relating to section 210 of the Crimes Act 1961 (line 19 on page 28).

To insert after the proposed amendments to the Criminal Investigations (Blood Samples) Act 1995 (after line 19 on page 28), the following amendments:

Add to Part 1 of the Schedule after the item relating to section 236 of the Crimes Act:

	<i>Crimes Act 1961 (before commencement of Crimes Amendment Act (No 2) 2004)</i>
Sexual violation	section 128
Attempt to commit sexual violation	section 129
Inducing sexual connection by coercion	section 129A
Incest	section 130
Sexual intercourse with girl under care or protection	section 131
Sexual intercourse with girl under 12	section 132(1)
Attempted sexual intercourse with girl under 12	section 132(2)
Indecency with girl under 12	section 133

*Crimes Act 1961 (before commencement  
of Crimes Amendment Act (No 2) 2004)*

Sexual intercourse with girl between 12 and 16	section 134(1)
Indecency with girl between 12 and 16	section 134(2)
Indecent assault on woman or girl	section 135
Sexual intercourse with severely subnormal woman or girl	section 138
Abduction of woman or girl	section 208
Abduction of child under 16	section 210

Omit from Part 2 of the Schedule the items relating to sections 137 and 139 of the Crimes Act 1961. Omit from Part 2 of the Schedule the item relating to section 144A of the Crimes Act 1961 and substitute the following item:

Sexual conduct with children and young people outside New Zealand	section 144A
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Omit from Part 2 of the Schedule the item relating to section 210 of the Crimes Act 1961 and substitute the following item:

Abduction of young person under 16	section 210
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Insert in Part 2 of the Schedule after the item relating to section 302 of the Crimes Act 1961 the following items:

*Crimes Act 1961 (before commencement  
of Crimes Amendment Act (No 2) 2004)*

Inducing sexual intercourse under presence of marriage	section 137
Indecent act between woman and girl	section 139
Sexual conduct with children outside New Zealand	section 144A
Abduction of child under 16	section 210

To insert, before the amendments relating to the District Courts Act 1947 (before line 20 on page 28), the following item:

**Criminal Records (Clean Slate) Act 2004** (2004 No 36)

Omit from section 4 the definition of **specified offence** and substitute:

“**specified offence** means any of the following offences:

“(a) an offence committed (whether before or after the commencement of the Crimes Amendment Act (No 2) 2004) against any of the following provisions of the Crimes Act 1961:

“(i) section 130 (incest):

“(ii) **section 131B(1)** (meeting a young person under 16 following sexual grooming, etc):

“(iii) section 144C (organising or promoting child sex tours):

“(iv) section 204A (female genital mutilation):

“(v) section 204B (further offences relating to female genital mutilation):

“(b) an offence committed after the commencement of the Crimes Amendment Act (No 2) 2004 against any of the following provisions of the Crimes Act 1961:

- “(i) **section 131** (sexual conduct with a dependent family member):
- “(ii) **section 132** (sexual conduct with a child under 12):
- “(iii) **section 134** (sexual conduct with a young person under 16):
- “(iv) **section 138** (sexual exploitation of a person with a significant impairment):
- “(v) **section 144A** (sexual conduct with children and young people outside New Zealand):
- “(c) an offence committed before the commencement of the Crimes Amendment Act (No 2) **2004** against any of the following provisions of the Crimes Act 1961:
  - “(i) section 131 (sexual intercourse with a girl under care or protection):
  - “(ii) section 132 (sexual intercourse with a girl under 12):
  - “(iii) section 133 (indecenty with a girl under 12):
  - “(iv) section 134 (sexual intercourse or indecenty with a girl between 12 and 16):
  - “(v) section 138 (sexual intercourse with a severely subnormal woman or girl):
  - “(vi) section 139 (indecent act between a woman and a girl):
  - “(vii) section 140 (indecenty with a boy under 12):
  - “(viii) section 140A (indecenty with a boy between 12 and 16):
  - “(ix) section 142 (anal intercourse):
  - “(x) section 144A (sexual conduct with children outside New Zealand):
- “(d) an offence against any of the following provisions of the Crimes Act 1908:
  - “(i) section 153 (unnatural offence):
  - “(ii) section 154 (attempt to commit unnatural offence):
  - “(iii) section 155 (incest):
  - “(iv) section 208 (indecent assault):
  - “(v) section 211 (rape):
  - “(vi) section 213 (attempt to commit rape):
  - “(vii) section 214 (defiling children under 12):
  - “(viii) section 215 (attempting to defile a child under 12):
  - “(ix) section 216 (defiling girls between 12 and 16):
  - “(x) section 217 (defiling idiot or imbecile woman or girl):
  - “(xi) section 218 (procuring defilement of girls):
- “(e) an attempt to commit an offence against a provision listed in any of **paragraphs (a) to (d)**, if—

- “(i) the offence is not itself specified as an attempt;  
and  
“(ii) the provision does not provide that the offence  
may be completed on an attempt:  
“(f) a conspiracy to commit an offence against a provision  
listed in any of **paragraphs (a) to (d)**:  
“(g) being an accessory after the fact in relation to an  
offence against a provision listed in any of **paragraphs (a)  
to (d)**.”

To add to the items to be substituted in Schedule 3 of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (after line 11 on page 32) the following items:

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| 132(1) | Sexual connection with child under 12  |
| 132(2) | Attempted sexual connection with child under 12                                  |
| 132(3) | Indecent act on child under 12   |
| 134(1) | Sexual connection with young person under 16                                     |
| 134(2) | Attempted sexual connection with young person under 16                           |
| 134(3) | Indecent act on young person under 16  |
| 135    | Indecent assault   |
| 138(1) | Exploitative sexual connection with person with significant impairment           |
| 138(2) | Attempted exploitative sexual connection with person with significant impairment |
| 138(4) | Exploitative indecent act with person with significant impairment                |

To omit from the item to be inserted in the Schedule of the Mutual Assistance in Criminal Matters Act 1992 the expression “23” (at line 14 on page 32), and substitute the expression “29”.

To add to the second column of the item to be inserted in the Schedule of the Mutual Assistance in Criminal Matters Act 1992 the following reference:

An offence against the following section of the Prostitution Reform Act 2003	
<i>Section</i>	<i>Subject matter</i>
23(1)	Breach of prohibitions on use in prostitution of people under 18

To insert, after the amendment relating to the Mutual Assistance in Criminal Matters Act 1992 (after line 29 on page 32), the following item:

**Parole Act 2002 (2002 No 10)**

Repeal section 107B(2) and substitute:

- “(2) An offence against any of the following sections of the Crimes Act 1961 is a relevant offence:  
“(a) **section 128B** (sexual violation), but only if the victim of the offence was under the age of 16 at the time of the offence:  
“(b) **section 129(1)** (attempt to commit sexual violation), but only if the victim of the offence was under the age of 16 at the time of the offence:

- “(c) **section 129(2)** (assault with intent to commit sexual violation), but only if the victim of the offence was under the age of 16 at the time of the offence:
- “(d) **section 129A** (sexual conduct with consent induced by certain threats), but only if the victim of the offence was under the age of 16 at the time of the offence:
- “(e) **section 130(2)** (incest), but only if the victim of the offence was under the age of 16 at the time of the offence:
- “(f) **section 131(1)** (sexual connection with dependent family member under 18), but only if the victim of the offence was under the age of 16 at the time of the offence:
- “(g) **section 131(2)** (attempted sexual connection with dependent family member under 18), but only if the victim of the offence was under the age of 16 at the time of the offence:
- “(h) **section 131(3)** (indecent act on dependent family member under 18), but only if the victim of the offence was under the age of 16 at the time of the offence:
- “(i) **section 131B(1)** (meeting young person under 16 following sexual grooming, etc):
- “(j) **section 132(1)** (sexual connection with child under 12):
- “(k) **section 132(2)** (attempted sexual connection with child under 12):
- “(l) **section 132(3)** (indecent act on child under 12):
- “(m) **section 134(1)** (sexual connection with young person under 16):
- “(n) **section 134(2)** (attempted sexual connection with young person under 16):
- “(o) **section 134(3)** (indecent act on young person under 16):
- “(p) **section 138(1)** (exploitative sexual connection with person with significant impairment):
- “(q) **section 138(2)** (attempted exploitative sexual connection with person with significant impairment):
- “(r) **section 138(4)** (indecent act on person with significant impairment):
- “(s) section 139 (indecent act between woman and girl):
- “(t) section 140 (indecency with boy under 12):
- “(u) section 140A (indecency with boy between 12 and 16):
- “(v) section 142 (anal intercourse):
- “(w) **section 144A** (sexual conduct with children and young people outside New Zealand):
- “(x) section 144C (organising or promoting child sex tours):
- “(y) **section 208** (abduction for purposes of marriage or sexual connection), but only if the offence involved a young person under the age of 16 and an intention to have sexual connection with the person:

- “(z) **section 210** (abduction of young person under 16), but only if the offence involved an intention to have sexual connection with the person.
- “(2A) An offence is also a relevant offence if—
- “(a) it is equivalent to an offence against any of the sections of the Crimes Act 1961 referred to in **subsection (2)**; but
- “(b) was committed against a provision of the Crimes Act 1961 that has been repealed.
- “(2B) For the purposes of **subsection (2A)**,—
- “(a) an offence against the former section 133 of the Crimes Act 1961 (indecent act on child under 12) is equivalent to an offence against **section 132(3)** of that Act (indecent act on child under 12):
- “(b) an offence against the former section 139 of the Crimes Act 1961 (indecent act between woman and girl) is equivalent to an offence against **section 134(3)** of that Act (indecent act on young person under 16):
- “(c) an offence against the former section 140 of the Crimes Act 1961 (indecent act on child under 12) is equivalent to an offence against **section 132(3)** of that Act (indecent act on child under 12):
- “(d) an offence against the former section 140A of the Crimes Act 1961 (indecent act on young person under 16) is equivalent to an offence against **section 134(3)** of that Act (indecent act on young person under 16):
- “(e) an offence against the former section 142 of the Crimes Act 1961 (anal intercourse)—
- “(i) if the person upon whom the act of anal intercourse was committed was under the age of 12 years when the act was committed, is equivalent to an offence against **section 132(1)** of that Act (sexual connection with child under 12); and
- “(ii) if the person upon whom the act of anal intercourse was committed was of or over the age of 12 years when the act was committed, is equivalent to an offence against **section 134(1)** of that Act (sexual connection with young person under 16).”

To insert, before the item relating to Part I of the First Schedule of the Summary Proceedings Act 1957 (after line 30 on page 32), the following item:

Omit from section 185B(1)(d) the words “inducing sexual connection by coercion” and substitute the words “sexual connection with consent induced by certain threats”.

To insert in the items to be substituted in Part 1 of the First Schedule of the Summary Proceedings Act 1957, after the item relating to section 131(3) of the Crimes Act 1961 (line 14 on page 33) the following item:



**131B(1)** Meeting young person under 16 following sexual grooming, etc

To add to the items to be substituted in Part I of the First Schedule of the Summary Proceedings Act 1957 (after line 22 on page 33) the following items:

- 133(2)** Attempted exploitative sexual connection with person with significant impairment
- 133(4)** Exploitative indecent act with person with significant impairment

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### Explanatory note

The amendment to *clause 2(3)* postpones until 30 days after assent the commencement of those provisions of the Bill that are at present to come into force on the day after assent. This will give time for any necessary training and other preparation to be undertaken by the New Zealand Police.

The proposed amendment to section 7A of the principal Act has the effect of enabling prosecutions for offences under proposed new *section 131B* to proceed even if some or all of the acts involved took place outside New Zealand, so long as—

- the person to be charged is a New Zealand citizen or ordinarily resident in New Zealand, or has been found in New Zealand and not extradited; or
- any of the acts is alleged to have occurred on board a ship or aircraft connected with New Zealand; or
- the victim is a New Zealand citizen or ordinarily resident in New Zealand.

The amendments to proposed new *section 131A* refine the definition and effect some of the terms used in it.

Proposed new *section 131B* creates a new offence, punishable by imprisonment for up to 7 years, relating to a person's arranging to meet a young person under 16 with the intention of undertaking sexual activity. The offence is committed if the offender, having previously met or communicated with the young person, and with the intention of undertaking sexual activity with the young person,—

- intentionally meets the young person; or
- travels intending to meet the young person; or
- arranges for or persuades the young person to travel to meet the offender.

It will be a defence if the person charged proves that—

- he or she had taken reasonable steps to find out whether the young person was over 16; and
- believed on reasonable grounds that the young person was over 16.

The amendments to the heading and *subsection (1)(b)* of proposed new *section 134A* are minor verbal adjustments.

The omission of *subsections (2) and (3)* of proposed new *section 134A* deletes an exception to the “reasonable steps” defence in *subsection (1)*. That subsection provides that it is a defence to a charge under proposed new *section 134*

(sexual conduct with young person under 16) if the person charged proves that—

- he or she took reasonable steps to find out whether the young person was of or over the age of 16 years, and believed on reasonable grounds that the young person was of or over that age; and
- the young person consented.

In the form in which it was introduced, the Bill provided an exception to that defence where the young person's consent was obtained by a false and fraudulent representation as to the nature and quality of the act concerned. And the Law and Order Select Committee expanded the exception to cover the situation where the young person's consent was obtained by a false and fraudulent representation as to the identity of the person charged.

This exception was thought necessary because—

- the proposed *new section 128A*, which provided that one person does not consent to sexual connection with another person if he or she allows the connection because he or she is mistaken about who the other person is or about the nature and quality of the act concerned, did not extend to sexual conduct other than sexual connection; and
- proposed new section 134 relates to all forms of sexual conduct with young people under 16, not just sexual connection.

At the Law and Order Select Committee, however, proposed *new section 128A* was replaced by a new section, whose provisions, which state various circumstances in which a person is not to be taken as having consented, now extend to sexual activity generally. The specific exception in proposed *new section 134* is no longer necessary.

Given that the “reasonable steps” defence is conditional on the victim's consent, the effect of omitting *subsections (2) and (3)* is that if a young person under 16 allows an act with another person because of a mistake about who the other person is or the nature and quality of the act,—

- the young person will, by virtue of section 128A, be deemed not to have consented; and
- the “reasonable steps” defence will not be available to the other person.

Since this Bill was introduced, the Criminal Records (Clean Slate) Act 2004 has been enacted, the Parole Act 2002 has been amended by the Parole (Extended Supervision) Amendment Act 2004, and the Act previously called the Criminal Investigations (Blood Samples) Act 1995 has been amended and had its Title changed to “the Criminal Investigations (Bodily Samples) Act 1995”. The amendments to *Schedule 1* relating to those Acts amend references to particular provisions of the Crimes Act 1961 so as to take account of the amendments made to the Crimes Act 1961 by this Bill.

The modifications of the proposed amendments in *Schedule 1* to the Injury Prevention, Rehabilitation, and Compensation Act 2001, the Mutual Assistance in Criminal Matters Act 1992, and the Summary Proceedings Act 1957 add necessary references to new provisions of the Crimes Act 1961 being substituted by this Bill.

The new amendments in *Schedule 1* to the Armed Forces Discipline Act 1971 and the Bail Act 2000, and the further amendment to the Summary Proceedings

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Act 1957, amend references in those Acts to new provisions of the Crimes Act 1961 being substituted or inserted by this Bill.

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