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Sentencing Act 2002

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice and the Department of Corrections.

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1 Title

This Act is the Sentencing Act 2002.

2 Commencement

(1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

(2) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 2(1): this Act brought into force, on 30 June 2002, by the Sentencing Act Commencement Order 2002 (SR 2002/176).

Section 2(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 1
Sentencing purposes and principles, and provisions of general application

Preliminary provisions

3 Purposes

The purposes of this Act are—

(a) to set out the purposes for which offenders may be sentenced or otherwise dealt with; and

(b) to promote those purposes, and aid in the public's understanding of sentencing practices, by providing principles and guidelines to be applied by courts in sentencing or otherwise dealing with offenders; and

(c) to provide a sufficient range of sentences and other means of dealing with offenders; and

(d) to provide for the interests of victims of crime.

4 Interpretation

(1) In this Act, unless the context otherwise requires,—

biometric information has the same meaning as in section 2(1) of the Customs and Excise Act 1996

bodily sample, for a person, means—

(a) a sample of the person's blood, breath, hair, or urine; or

(b) any other sample of a similar kind from the person

category 3 offence and **category 4 offence** have the meanings given to them in section 6 of the Criminal Procedure Act 2011

commencement date means the date specified in section 2

community-based sentence has the meaning given to it in section 44

community work centre means a community work centre established under section 30 of the Corrections Act 2004

controlled drug has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

counsel, in relation to any person, means a person enrolled as a barrister and solicitor of the High Court of New Zealand who is representing that person in any proceedings

court means any court exercising jurisdiction in criminal cases

Crown organisation has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002

curfew address means the address, specified by a court, where an offender must remain during the curfew period

curfew period means the periods, specified by a court, during which an offender sentenced to community detention must remain at the curfew address

detention conditions means the standard conditions of a sentence of home detention set out in section 80C and any special conditions imposed by the court on an offender under section 80D

detention end date means the date on which an offender who is subject to a sentence of home detention ceases to be subject to detention conditions

determinate sentence of imprisonment means a sentence of imprisonment for a fixed term

digital communication has the meaning given in section 4 of the Harmful Digital Communications Act 2015

District Court includes the Youth Court

drug or alcohol condition means a condition of a sentence of supervision, intensive supervision, or home detention, or a post-detention or post-imprisonment condition,—

(a) that is imposed under section 52(2)(bb), 54I(3)(ba), 80D(4)(ca), 80N(1) and (2)(b), or 93(1) or (2)(b); and

(b) that prohibits an offender from doing 1 or more of the following:

(i) using (as defined in this section) a controlled drug:

(ii) using a psychoactive substance:

(iii) consuming alcohol

drug or alcohol monitoring device means a device, connected to a person's body, that is able to detect the presence in the person's body of 1 or more of the following:

(a) a controlled drug used by the person:

(b) a psychoactive substance used by the person:

(c) alcohol consumed by the person

epidemic management notice means a notice under section 8(1) of the Epidemic Preparedness Act 2006 stating that the application of this Act is modified in order to deal with the practical effects of the outbreak of the disease referred to in the notice

forfeiture order has the same meaning as in section 5(1) of the Criminal Proceeds (Recovery) Act 2009

guilty plea mitigating factor, in relation to an offender, means the mitigating factor in section 9(2)(b)

health assessor means a health practitioner who—

(a) is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine, and who is a practising psychiatrist; or

(b) is, or is deemed to be, registered with the Psychologists Board continued by section 114(1)(a) of the Health Practitioners Act 2003 as a practitioner of the profession of psychology

home detention residence means the residence, specified by a court, where an offender sentenced to home detention serves that sentence

hospital means a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992

immediate family, in relation to a victim,—

(a) means a member of the victim's family, whanau, or other culturally recognised family group, who is in a close relationship with the victim at the time of the offence; and

(b) to avoid doubt, includes a person who is—

(i) the victim's spouse, civil union partner, or de facto partner; or

(ii) the victim's child or stepchild; or

(iii) the victim's brother or sister or step-brother or step-sister; or

(iv) a parent or step-parent of the victim; or

(v) a grandparent of the victim

incapable, in relation to a person,—

(a) means that the person—

(i) lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare; or

(ii) has the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to his or her personal care and welfare, but wholly lacks the capacity to communicate decisions in respect of matters of that kind; and

(b) includes the person being in a state of continuing unconsciousness

indeterminate sentence of imprisonment means a sentence of imprisonment for life or a sentence of preventive detention

instrument forfeiture order means an instrument forfeiture order made under section 142N

instrument of crime—

(a) means property used (wholly or in part) to commit, or to facilitate the commission of, a qualifying instrument forfeiture offence; and

(b) in relation to a qualifying instrument forfeiture offence that is an offence against section 8(1), (1A), (2A), or (2B) of the Terrorism Suppression Act 2002, includes funds (as defined in section 4(1) of that Act) allocated for the purposes of committing that offence; and

(c) in relation to any property referred to in paragraphs (a) and (b), the proceeds of any disposition of that property or any other property into which that property is converted, after the commission of the qualifying instrument forfeiture offence, except to the extent provided otherwise by any order of a court under this Act or the Criminal Proceeds (Recovery) Act 2009, excluding any severable interest or granting relief

livestream has the meaning given in section 119A of the Films, Videos, and Publications Classification Act 1993

medical laboratory technologist means a health practitioner who is, or is deemed to be, registered with the Medical Sciences Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medical laboratory science

medical officer means—

(a) a person acting in a hospital who, in the normal course of the person's duties, takes blood specimens; or

(b) a nurse; or

(c) a medical laboratory technologist

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

minimum period of imprisonment means the period of imprisonment that the court has, under section 86, 86P(2), 86S(2), 89, or 103, ordered that an offender must serve before he or she can be released under subpart 2 of Part 1 of the Parole Act 2002

mitigating factor means a mitigating factor in relation to the offence, a personal mitigating factor in relation to the offender, or any other mitigating factor,—

(a) in section 9(2); or

(b) under section 9(4)(a)

non-release day means a Saturday, a Sunday, Christmas Day, Boxing Day, New Year's Day, the second day of January, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Mata-

riki Observance Day, Labour Day, and, in respect of a particular place where an offender is serving a sentence of community detention or home detention, the anniversary day of the region in which that place is situated

nurse means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

offender includes a person who is dealt with or is liable to be dealt with for non-payment of a sum of money, disobedience of a court order, or contempt of court

permanent court record has the same meaning as in section 5 of the Criminal Procedure Act 2011

personal mitigating factor, in relation to an offender, means—

(a) a mitigating factor in section 9(2) that is any of the following:

  (i) the age of the offender (section 9(2)(a)):

  (ii) whether and when the offender pleaded guilty (section 9(2)(b)):

  (iii) that the offender has, or had at the time the offence was committed, diminished intellectual capacity or understanding (section 9(2)(e)):

  (iv) any remorse shown by the offender, except to the extent that it relates to anything described in section 10 (section 9(2)(f)):

  (v) that the offender has taken steps during the proceedings (other than steps to comply with procedural requirements) to shorten the proceedings or reduce their cost (section 9(2)(fa)):

  (vi) any evidence of the offender's previous good character (section 9(2)(g)); or

(b) a mitigating factor under section 9(4)(a) that the court considers is personal to the offender

post, in relation to a record of offending, means to upload, transfer, send, publish, share, or otherwise disseminate that record

post-detention conditions means any standard post-detention conditions and special post-detention conditions imposed under section 80N on an offender sentenced to home detention

post-imprisonment condition means a special condition that is imposed under section 93(1) or (2)(b) on an offender sentenced to a short term of imprisonment

prison means a prison established or deemed to be established under the Corrections Act 2004

prison officer means an officer as defined in section 3(1) of the Corrections Act 2004

probation area means an area designated by the chief executive of the Department of Corrections for the administration of release conditions, community-based sentences, sentences of home detention, or orders

probation officer means a person appointed to be, or designated as, a probation officer under section 24 of the Corrections Act 2004; and includes a person exercising only some of the functions or powers of a probation officer under that Act

psychoactive substance has the same meaning as in section 9 of the Psychoactive Substances Act 2013

qualifying instrument forfeiture offence—

(a) means an offence punishable by a maximum term of imprisonment of 5 years or more; and

(b) includes an attempt to commit, conspiring to commit, or being an accessory to an offence if the maximum term of imprisonment for that attempt, conspiracy, or activity is 5 years or more

remorse mitigating factor, in relation to an offender,—

(a) means the mitigating factor in section 9(2)(f); but

(b) excludes anything described in section 10

sentence of imprisonment—

(a) includes a determinate sentence of imprisonment and an indeterminate sentence of imprisonment; but

(b) does not include a term of imprisonment imposed, whether by committal, sentence, or order, for—

(i) non-payment of a sum of money; or

(ii) disobedience of a court order; or

(iii) contempt of court

sentence term, in relation to a sentence of community detention, is the period that the sentence of community detention is in force

short-term sentence has the same meaning as in section 4(1) of the Parole Act 2002

staff member of a prison means a staff member within the meaning of section 3(1) of the Corrections Act 2004

tainted property has the same meaning as in section 5(1) of the Criminal Proceeds (Recovery) Act 2009

testing of a person for a controlled drug, a psychoactive substance, or alcohol includes, without limitation, the person's permitting the collection for analysis of a bodily sample

trial Judge, in relation to the District Court, means a Judge who holds a warrant under section 14 of the District Court Act 2016 to conduct jury trials

using, in relation to a controlled drug and a person, excludes the person using the controlled drug as a prescription medication in accordance with section 8(2)(c) or (d) of the Misuse of Drugs Act 1975

victim—

(a) means—

(i) a person against whom an offence is committed by another person; and

(ii) a person who, through, or by means of, an offence committed by another person, suffers physical injury, or loss of, or damage to, property; and

(iii) a parent or legal guardian of a child, or of a young person, who falls within subparagraph (i) or subparagraph (ii), unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and

(iv) a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and

(b) despite paragraph (a), if an offence is committed by a person, does not include another person charged (whether as a principal or party or accessory after the fact or otherwise) with the commission of, or convicted or found guilty of, or who pleads guilty to,—

(i) that offence; or

(ii) an offence relating to the same incident or series of incidents as that offence

youth mitigating factor, in relation to an offender, means the mitigating factor in section 9(2)(a) to the extent that it relates to the offender's youth.

(2) For the purposes of this Act,—

(a) an offender is subject to a sentence of imprisonment until the sentence expires (in accordance with sections 82 and 83 of the Parole Act 2002):

(ab) an offender is subject to a sentence of home detention from the date the sentence commences in accordance with section 80W, 80X, or 80Y until the sentence ends in accordance with section 80Z, except when the sentence is suspended under section 80ZG(2):

(b) except as provided in paragraph (c), an offender is subject to a sentence of community work from the date that the sentence commences in

accordance with section 75, 75A, or 76 until the date that it expires in accordance with section 75A:

(ba) except as provided in paragraph (c), an offender is subject to a sentence of community detention from the date that the sentence commences in accordance with section 75, 75B, or 76 until the date that it expires:

(c) an offender is not subject to a community-based sentence during any period that the community-based sentence is suspended under section 78(2)(a) or section 78(7).

(3) For the purposes of this Act, **otherwise dealing with an offender** or **other means of dealing with an offender**—

(a) means dealing with the offender in relation to an offence following a finding of guilt or a plea of guilty, instead of imposing a sentence; and

(b) to avoid doubt, does not include dealing with a person for non-payment of a sum of money, disobedience of a court order, or contempt of court.

(4) For the purposes of this Act, the offender, in the case of a Crown organisation that is charged with, or convicted of, an offence against the Building Act 2004, the Health and Safety at Work Act 2015, the Resource Management Act 1991, or Part 3 of the Children's Act 2014, is that Crown organisation and not the Crown.

Section 4(1) **biometric information**: inserted, on 22 August 2017, by section 57 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 4(1) **bodily sample**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **category 3 offence** and **category 4 offence**: inserted, on 29 June 2025, by section 4 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 4(1) **community work centre**: amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 4(1) **controlled drug**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **Crown organisation**: inserted, on 18 October 2002, by section 28(1) of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 4(1) **curfew address**: inserted, on 1 October 2007, by section 4(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **curfew period**: inserted, on 1 October 2007, by section 4(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **detention conditions**: inserted, on 1 October 2007, by section 4(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **detention end date**: inserted, on 1 October 2007, by section 4(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **digital communication**: inserted, on 29 June 2025, by section 4 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 4(1) **District Court**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 4(1) **drug or alcohol condition**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **drug or alcohol monitoring device**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **epidemic management notice**: inserted, on 19 December 2006, by section 4 of the Sentencing Amendment Act (No 2) 2006 (2006 No 89).

Section 4(1) **forfeiture order**: inserted, on 1 December 2009, by section 6 of the Sentencing Amendment Act 2009 (2009 No 10).

Section 4(1) **guilty plea mitigating factor**: inserted, on 29 June 2025, by section 4 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 4(1) **health assessor**: replaced, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 4(1) **home detention**: repealed, on 1 October 2007, by section 4(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **home detention residence**: inserted, on 1 October 2007, by section 4(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **immediate family** paragraph (b): replaced, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 4(1) **incapable** paragraph (b): amended, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

Section 4(1) **instrument forfeiture order**: inserted, on 1 December 2009, by section 6 of the Sentencing Amendment Act 2009 (2009 No 10).

Section 4(1) **instrument of crime**: inserted, on 1 December 2009, by section 6 of the Sentencing Amendment Act 2009 (2009 No 10).

Section 4(1) **instrument of crime** paragraph (b): replaced, on 5 October 2021, by section 57 of the Counter-Terrorism Legislation Act 2021 (2021 No 37).

Section 4(1) **instrument of crime** paragraph (c): inserted, on 7 July 2010, by section 4 of the Sentencing Amendment Act (No 2) 2010 (2010 No 84).

Section 4(1) **livestream**: inserted, on 29 June 2025, by section 4 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 4(1) **medical laboratory technologist**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **medical officer**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **medical practitioner**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **minimum period of imprisonment**: amended, on 17 June 2025, by section 4(1) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Section 4(1) **minimum period of imprisonment**: amended, on 16 August 2022, by section 4 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

Section 4(1) **mitigating factor**: inserted, on 29 June 2025, by section 4 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 4(1) **non-release day**: inserted, on 1 October 2007, by section 4(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **non-release day**: amended, on 12 April 2022, by wehenga 7 o Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/section 7 of the Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14).

Section 4(1) **nurse**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **penal institution**: repealed, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **permanent court record**: inserted, on 17 June 2025, by section 4(2) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Section 4(1) **personal mitigating factor**: inserted, on 29 June 2025, by section 4 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 4(1) **post**: inserted, on 29 June 2025, by section 4 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 4(1) **post-detention conditions**: inserted, on 1 October 2007, by section 4(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **post-imprisonment condition**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **prison**: inserted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **prison officer**: inserted, on 18 September 2012, by section 4 of the Sentencing (Aggravating Factors) Amendment Act 2012 (2012 No 74).

Section 4(1) **probation area**: replaced, on 1 October 2007, by section 4(2) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **probation officer**: amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 4(1) **psychoactive substance**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **qualifying instrument forfeiture offence**: inserted, on 1 December 2009, by section 6 of the Sentencing Amendment Act 2009 (2009 No 10).

Section 4(1) **remorse mitigating factor**: inserted, on 29 June 2025, by section 4 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 4(1) **sentence term**: inserted, on 1 October 2007, by section 4(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **sentencing guidelines**: repealed, on 3 June 2017, by section 4(2) of the Statutes Repeal Act 2017 (2017 No 23).

Section 4(1) **short-term sentence**: inserted, on 1 October 2007, by section 4(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(1) **staff member of a penal institution**: repealed, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **staff member of a prison**: inserted, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 4(1) **tainted property**: inserted, on 1 December 2009, by section 6 of the Sentencing Amendment Act 2009 (2009 No 10).

Section 4(1) **testing**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **trial Judge**: replaced, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 4(1) **trial Judge**: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 4(1) **using**: inserted, on 15 May 2017, by section 4 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 4(1) **victim** paragraph (a): replaced, on 17 December 2002, by section 53 of the Victims' Rights Act 2002 (2002 No 39).

Section 4(1) **youth mitigating factor**: inserted, on 29 June 2025, by section 4 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 4(2)(ab): inserted, on 1 October 2007, by section 4(4) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(2)(b): amended, on 1 October 2007, by section 4(5) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(2)(ba): inserted, on 1 October 2007, by section 4(6) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 4(4): inserted, on 18 October 2002, by section 28(2) of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 4(4): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 4(4): amended, on 21 December 2018, by section 10(1) of the Children's Amendment Act 2018 (2018 No 58).

Section 4(4): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 4(4): amended, on 1 July 2015, by section 43(2) of the Vulnerable Children Act 2014 (2014 No 40).

Section 4(4): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 4A: inserted, on 22 December 2016, by section 4 of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47).

5 Application of this Act

(1) Except as provided in subsection (2), this Act binds the Crown.

(2) This Act does not apply to proceedings under the Armed Forces Discipline Act 1971, or to proceedings on appeal from any decision under that Act, except as expressly provided in that Act.

(3) Subject to section 6 and sections 148 to 160, this Act applies to offences committed before or after the commencement date.

Compare: 1985 No 120 s 3

6 Penal enactments not to have retrospective effect to disadvantage of offender

(1) An offender has the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty.

(2) Subsection (1) applies despite any other enactment or rule of law.

Compare: 1985 No 120 s 4

Purposes and principles of sentencing

7 Purposes of sentencing or otherwise dealing with offenders

(1) The purposes for which a court may sentence or otherwise deal with an offender are—

(a) to hold the offender accountable for harm done to the victim and the community by the offending; or

(b) to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm; or

(c) to provide for the interests of the victim of the offence; or

(d) to provide reparation for harm done by the offending; or

(e) to denounce the conduct in which the offender was involved; or

(f) to deter the offender or other persons from committing the same or a similar offence; or

(g) to protect the community from the offender; or

(h) to assist in the offender's rehabilitation and reintegration; or

(i) a combination of 2 or more of the purposes in paragraphs (a) to (h).

(2) To avoid doubt, nothing about the order in which the purposes appear in this section implies that any purpose referred to must be given greater weight than any other purpose referred to.

8 Principles of sentencing or otherwise dealing with offenders

(1) In sentencing or otherwise dealing with an offender the court—

(a) must take into account the gravity of the offending in the particular case, including the degree of culpability of the offender; and

(b) must take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences; and

(c) must impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and

(d) must impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and

(e) must take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offenders committing similar offences in similar circumstances; and

(f) must take into account any information provided to the court—

(i) to help to recognise the victim's needs in the court's sentencing or otherwise dealing with the offender according to law; and

(ii) concerning the interests of the victim (for example, about the effects of the offending on the victim); and

Example

Information to which paragraph (f) applies

Information in a victim impact statement (*see* sections 17AA, 17AB, and 21 of the Victims' Rights Act 2002) whose purpose is to—

- enable the victim to provide information to the court about the effects of the offending on the victim; and
- assist the court in understanding the victim's views about the offending; and
- inform the offender about the impact of the offending from the victim's perspective.

(g) must impose the least restrictive outcome that is appropriate in the circumstances, in accordance with the hierarchy of sentences and orders set out in section 10A; and

(h) must take into account any particular circumstances of the offender that mean that a sentence or other means of dealing with the offender that would otherwise be appropriate would, in the particular instance, be disproportionately severe; and

(i) must take into account the offender's personal, family, whanau, community, and cultural background in imposing a sentence or other means of dealing with the offender with a partly or wholly rehabilitative purpose; and

(j) must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in relation to the particular case (including, without limitation, anything referred to in section 10).

(2) In addition, in sentencing an offender for a stage-2 offence or a stage-3 offence, the court must, if a manifestly unjust exception applies, nevertheless regard the offence as worthy of a stern sentencing response.

(3) In this section,—

manifestly unjust exception means an exception set out in section 86O(2), 86P(2), 86R(2), (3), or (6), or 86S(2)

stage-2 offence has the same meaning as in section 86J

stage-3 offence has the same meaning as in section 86J.

Section 8(1)(f): replaced, on 29 June 2025, by section 5 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 8(1)(g): amended, on 1 October 2007, by section 6(2) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 8(2): inserted, on 17 June 2025, by section 5 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Section 8(3): inserted, on 17 June 2025, by section 5 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Aggravating and mitigating factors: overview

Heading: inserted, on 29 June 2025, by section 6 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

8A Overview of aggravating and mitigating factors

Aggravating and mitigating factors in cases of any kind

(1) Section 9 is about aggravating and mitigating factors that the court must or may take into account in sentencing or otherwise dealing with an offender.

Aggravating and mitigating factors in some cases involving violence or neglect

(2) Section 9A is about aggravating and mitigating factors that the court must or may take into account in sentencing or otherwise dealing with an offender in a case involving violence against, or neglect of,—

(a) a child under the age of 14 years; or

(b) a young person of or over the age of 14 years but under 18 years.

Sentence reductions under personal mitigating factors in cases of any kind

(3) Sections 9B to 9T are about the following sentence reductions:

(a) sentence of any type reduced under youth mitigating factor (sections 9B to 9F):

(b) specified sentence reduced under guilty plea mitigating factor (sections 9G to 9K):

(c) sentence of any type reduced under remorse mitigating factor (sections 9L to 9P):

(d) sentence of imprisonment reduced under all applicable personal mitigating factors (sections 9Q to 9S).

Section 8A: inserted, on 29 June 2025, by section 6 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Aggravating and mitigating factors in cases of any kind

Heading: inserted, on 29 June 2025, by section 6 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9 Aggravating and mitigating factors

Aggravating factors

(1) In sentencing or otherwise dealing with an offender the court must take into account the following aggravating factors to the extent that they are applicable in the case:

(a) that the offence involved actual or threatened violence or the actual or threatened use of a weapon:

(b) that the offence involved unlawful entry into, or unlawful presence in, a dwelling place:

(c) that the offence was committed while the offender was on bail or still subject to a sentence:

(ca) that the offence was a family violence offence (as defined in section 123A) committed—

(i) while the offender was subject to a protection order (as defined in section 8 of the Family Violence Act 2018, or that was made under section 123B of this Act); and

(ii) against a person who, in relation to the protection order, was a protected person (as so defined):

(cab) that the offence was committed while the offender was subject to a restraining order under the Harassment Act 1997 for the protection of the victim of the offence:

(cac) that the offence was connected to, or followed, persistent or repetitive behaviour by the offender towards the victim over a prolonged duration that caused, or was likely to cause, fear or distress to the victim:

(cb) that the offender was aged 18 years or over when they actually committed, or were a party to (within the meaning of section 66(1)(b), (c), or (d) or (2) of the Crimes Act 1961), the offence, and—

(i) 1 or more other people also actually committed, or also were a party to (within that meaning), the offence; and

(ii) they then were each, or included, a child or a young person (as both those terms are defined in section 2(1) of the Oranga Tamariki Act 1989):

(cc) that the offender did 1 or more of the following in relation to the offending for which they are being sentenced, with no justification in the public interest, and that glorified the offending:

(i) they livestreamed all or part of the offending on an internet site or an online application or similar:

(ii) they posted all or part of a record of the offending on an internet site or an online application or similar:

(iii) they distributed all or part of a record of the offending to others by means of a digital communication:

(d) the extent of any loss, damage, or harm resulting from the offence:

(e) particular cruelty in the commission of the offence:

(f) that the offender was abusing a position of trust or authority in relation to the victim:

(fa) that the victim was a constable, or a prison officer, acting in the course of his or her duty:

(fb) that the victim was an emergency health or fire services provider acting in the course of his or her duty at the scene of an emergency:

(fc) that the victim was a public transport passenger service worker acting in the course of his or her duty:

(fd) that either or both of the following apply to the victim:

(i) the victim was working alone:

(ii) the victim was working in a business that was physically joined to, or that was located next to, the dwelling place of a victim:

(g) that the victim was particularly vulnerable because of his or her age or health or because of any other factor known to the offender:

Example

Any other factor known to offender

That the victim was—

- in State care (as defined in clause 17.3 of the Schedule of the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions Order 2018); or
- in the care of faith-based institutions (as defined in clause 17.4 of that schedule).

(h) that the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability; and

(i) the hostility is because of the common characteristic; and

(ii) the offender believed that the victim has that characteristic:

(ha) that the offence was committed as part of, or involves, a terrorist act (as defined in section 5(1) of the Terrorism Suppression Act 2002):

(hb) that the offender was, at the time of the offending,—

(i) a participant in an organised criminal group (within the meaning of section 98A of the Crimes Act 1961); or

(ii) involved in any other form of organised criminal association:

(i) premeditation on the part of the offender and, if so, the level of premeditation involved:

(j) the number, seriousness, date, relevance, and nature of any previous convictions of the offender and of any convictions for which the offender is being sentenced or otherwise dealt with at the same time:

(k) any failure by the offender personally (or failure by the offender's lawyer arising out of the offender's instructions to, or failure or refusal to co-operate with, his or her lawyer) to comply with a procedural requirement that, in the court's opinion, has done either or both of the following:

(i) caused a delay in the disposition of the proceedings:

(ii) had an adverse effect on a victim or witness.

Mitigating factors

(2) In sentencing or otherwise dealing with an offender the court must take into account the following mitigating factors to the extent that they are applicable in the case:

(a) the age of the offender:

(b) whether and when the offender pleaded guilty:

(c) the conduct of the victim:

(d) that there was a limited involvement in the offence on the offender's part:

(e) that the offender has, or had at the time the offence was committed, diminished intellectual capacity or understanding:

(f) any remorse shown by the offender, or anything described in section 10:

(fa) that the offender has taken steps during the proceedings (other than steps to comply with procedural requirements) to shorten the proceedings or reduce their cost:

(fb) any adverse effects on the offender of a delay in the disposition of the proceedings caused by a failure by the prosecutor to comply with a procedural requirement:

(g) any evidence of the offender's previous good character:

(h) that the offender spent time on bail with an EM condition as defined in section 3 of the Bail Act 2000.

(3) Despite subsection (2)(e), the court must not take into account by way of mitigation the fact that the offender was, at the time of committing the offence,

affected by the voluntary consumption or use of alcohol or any drug or other substance (other than a drug or other substance used for bona fide medical purposes).

(3A) In taking into account that the offender spent time on bail with an EM condition under subsection (2)(h), the court must consider—

(a) the period of time that the offender spent on bail with an EM condition; and

(b) the relative restrictiveness of the EM condition, particularly the frequency and duration of the offender's authorised absences from the electronic monitoring address; and

(c) the offender's compliance with the bail conditions during the period of bail with an EM condition; and

(d) any other relevant matter.

Taking into account other aggravating or mitigating factor

(4) Nothing in subsection (1) or subsection (2)—

(a) prevents the court from taking into account any other aggravating or mitigating factor that the court thinks fit; or

(b) implies that a factor referred to in those subsections must be given greater weight than any other factor that the court might take into account.

Definitions of terms used in this section

(4A) In subsection (1)(fb), **emergency health or fire services provider** means a person who has a legal duty (under any enactment, employment contract, other binding agreement or arrangement, or other source) to, at the scene of an emergency, provide services that are either or both—

(a) ambulance services, first aid, or medical or paramedical care:

(b) services provided by or on behalf of Fire and Emergency New Zealand to save life, prevent serious injury, or avoid damage to property.

(4B) In subsection (1)(fc), **public transport passenger service worker** means a driver, pilot, or crew member in, or a worker who otherwise assists in any way, a service for the carriage of passengers for hire or reward by means of any mode of (air, land, sea or other water, or other) transport available to the public generally.

(5) In this section, **procedural requirement** means a requirement imposed by or under—

(a) the Criminal Procedure Act 2011; or

(b) any rules of court or regulations made under that Act; or

(c) the Criminal Disclosure Act 2008 or any regulations made under that Act.

Compare: 1985 No 120 s 12A

Section 9(1) heading: inserted, on 29 June 2025, by section 7(1) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(1)(ca): inserted, on 1 July 2019, by section 62 of the Family Violence (Amendments) Act 2018 (2018 No 47).

Section 9(1)(cab): inserted, on 26 May 2026, by section 25 of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72).

Section 9(1)(cab): editorial correction made by the PCO, on 16 June 2026, under sections 86(1) and 87(l)(iii) and (iv) of the Legislation Act 2019 (2019 No 58).

Section 9(1)(cac): inserted, on 26 May 2026, by section 25 of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72).

Section 9(1)(cac): editorial correction made by the PCO, on 16 June 2026, under sections 86(1) and 87(l)(iii) and (iv) of the Legislation Act 2019 (2019 No 58).

Section 9(1)(cb): inserted, on 29 June 2025, by section 7(2) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(1)(cc): inserted, on 29 June 2025, by section 7(2) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(1)(fa): inserted, on 18 September 2012, by section 5(1) of the Sentencing (Aggravating Factors) Amendment Act 2012 (2012 No 74).

Section 9(1)(fb): inserted, on 18 September 2012, by section 5(1) of the Sentencing (Aggravating Factors) Amendment Act 2012 (2012 No 74).

Section 9(1)(fc): inserted, on 29 June 2025, by section 7(3) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(1)(fd): inserted, on 29 June 2025, by section 7(3) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(1)(g) example: inserted, on 29 June 2025, by section 7(4) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(1)(ha): inserted, on 31 October 2003, by section 3 of the Sentencing Amendment Act 2003 (2003 No 109).

Section 9(1)(hb): replaced, on 21 November 2024, by section 4 of the Sentencing Amendment Act 2024 (2024 No 37).

Section 9(1)(k): inserted, on 1 July 2013, by section 4(1) of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 9(2) heading: inserted, on 29 June 2025, by section 7(5) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(2)(f): amended, on 29 June 2025, by section 7(6) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(2)(fa): inserted, on 1 July 2013, by section 4(2) of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 9(2)(fb): inserted, on 1 July 2013, by section 4(2) of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 9(2)(g): amended, on 4 September 2013, by section 42(2) of the Bail Amendment Act 2013 (2013 No 66).

Section 9(2)(h): inserted, on 4 September 2013, by section 42(3) of the Bail Amendment Act 2013 (2013 No 66).

Section 9(3A): inserted, on 4 September 2013, by section 42(4) of the Bail Amendment Act 2013 (2013 No 66).

Section 9(4) heading: inserted, on 29 June 2025, by section 7(7) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(4A) heading: inserted, on 29 June 2025, by section 7(8) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(4A): inserted, on 18 September 2012, by section 5(2) of the Sentencing (Aggravating Factors) Amendment Act 2012 (2012 No 74).

Section 9(4A)(b): replaced, on 1 July 2017, by section 197 of the Fire and Emergency New Zealand Act 2017 (2017 No 17).

Section 9(4B): inserted, on 29 June 2025, by section 7(9) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9(5): inserted, on 1 July 2013, by section 4(3) of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Additional aggravating factors in cases involving violence against, or neglect of, child under 14 years, or young person of or over age of 14 years but under 18 years

Heading: inserted, on 17 December 2008, by section 4 of the Sentencing (Offences Against Children) Amendment Act 2008 (2008 No 109).

Heading: amended, on 29 June 2025, by section 8 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9A Cases involving violence against, or neglect of, child under 14 years, or young person of or over age of 14 years but under 18 years

(1) This section applies if the court is sentencing or otherwise dealing with an offender in a case involving violence against, or neglect of, a child under the age of 14 years, or a young person of or over the age of 14 years but under 18 years.

(2) The court must take into account the following aggravating factors to the extent that they are applicable in the case:

(a) the defencelessness of the victim:

(b) in relation to any harm resulting from the offence, any serious or long-term physical or psychological effect on the victim:

(c) the magnitude of the breach of any relationship of trust between the victim and the offender:

(d) threats by the offender to prevent the victim reporting the offending:

(e) deliberate concealment of the offending from authorities.

(3) The factors in subsection (2) are in addition to any factors the court might take into account under section 9.

(4) Nothing in this section implies that a factor referred to in subsection (2) must be given greater weight than any other factor that the court might take into account.

Section 9A: inserted, on 17 December 2008, by section 4 of the Sentencing (Offences Against Children) Amendment Act 2008 (2008 No 109).

Section 9A heading: amended, on 29 June 2025, by section 9(1) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 9A(1): amended, on 29 June 2025, by section 9(2) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Sentence of any type reduced under youth mitigating factor

Heading: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9B General rule: no reduction to sentence

(1) This section applies if—

(a) offending of any kind is committed, in whole, after the commencement of this section, by an offender of or over the age of 18 years; and

(b) the court in a sentencing for the offending—

(i) imposed a sentence of any type on the offender; and

(ii) reduced that sentence under the youth mitigating factor; and

(c) further offending of any kind (whether of a kind that is the same as, or different from, the offending) is committed, in whole, after the sentencing for the offending, by the offender.

(2) In imposing a sentence of any type on the offender for the further offending, the court must not reduce that sentence under the youth mitigating factor.

(3) This section is subject to sections 9C and 9T.

Section 9B: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9C Exception: duty to avoid sentence being manifestly unjust

If the application of the general rule in section 9B would result in a sentence that is manifestly unjust, the court must reduce the sentence under the youth mitigating factor to the extent needed to avoid the sentence being manifestly unjust.

Section 9C: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9D Duty to record sentence reduction

If a sentence of any type for offending of any kind is reduced under the youth mitigating factor, the court must make an entry in the permanent court record, in relation to the offending, to the effect that the offender has had a sentence reduction under the youth mitigating factor.

Section 9D: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9E Duty to inform offender of effect of general rule

If a sentence of any type for offending of any kind is reduced under the youth mitigating factor, the court must inform the offender of the effect of the general rule in section 9B.

Section 9E: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9F Effect of failure to record or inform

(1) A failure by the court to perform either or both of the duties in sections 9D and 9E does not affect the validity of, and is not in itself grounds for an appeal against,—

(a) the sentence for the offending; or

(b) a sentence imposed on the offender later for any other offending.

(2) A failure by the court to perform either or both of the duties in sections 9D and 9E does not limit the court's duty to comply with section 9B.

Section 9F: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Specified sentence reduced under guilty plea mitigating factor

Heading: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9G Specified sentence

Sections 9H to 9K apply only to a sentence (in those sections called **the sentence**) that is—

(a) a sentence of imprisonment for offending of any kind; or

(b) a sentence of any other type for offending of any kind, and to which the court considers it appropriate to apply those sections.

Section 9G: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9H General rule: sliding scale of maximum reductions

(1) A reduction to the sentence under the guilty plea mitigating factor must not exceed the applicable maximum percentage set out in the following table:

Item	When defendant enters plea of guilty or communicates willingness to plead guilty	Maximum reduction
1	At the first reasonable opportunity	25%
2	At the case review hearing (*see* sections 54 to 59 of the Criminal Procedure Act 2011)	20%
3	At or before the first trial callover (if proceedings have been adjourned for a trial callover under that Act)	15%
4	20 or more working days (as defined in section 5 of that Act) before the scheduled start date for the trial	10%

Item	When defendant enters plea of guilty or communicates willingness to plead guilty	Maximum reduction
5	Less than 20 working days (as so defined) before the scheduled start date for the trial, or during the trial	5%

(2) This section is subject to sections 9I and 9T.

Section 9H: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9I Exception: departing from scale up to 25% of sentence

The court may, if it considers it appropriate, make a reduction to the sentence under the guilty plea mitigating factor that—

(a) exceeds the applicable maximum percentage in item 2, 3, 4, or 5 of the table in section 9H; but

(b) does not exceed 25%.

Section 9I: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9J Duty to state certain matters

If the court makes a reduction to the sentence under the guilty plea mitigating factor, the court must state (using any words that it thinks fit)—

(a) how it has applied the sliding scale in section 9H; and

(b) reasons for, and the extent of, a departure under section 9I.

Section 9J: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9K Matters that court may consider if applicable

In making a reduction to the sentence under the guilty plea mitigating factor, the court may consider the following matters to the extent that they are applicable in the case:

(a) whether and when the defendant received information—

(i) as part of criminal disclosure; and

(ii) that helped enable the defendant to plead fully and fairly:

(b) how much the plea prevented, for victims and witnesses, any further trauma, further stress, and further inconvenience:

(c) how much the plea saved public resources (for example, of the court, legal aid, and the prosecution):

(d) any matter outside the defendant's control that prevented the defendant from earlier entering a guilty plea or communicating a willingness to plead guilty:

(e) whether and when the defendant received independent legal advice:

(f) whether and when the defendant pleaded guilty to materially amended charges:

(g) whether the defendant disputed the facts of the case, and the outcome of that dispute:

(h) any other matter that the court thinks fit to consider in making a sentence reduction under the guilty plea mitigating factor.

Section 9K: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Sentence of any type reduced under remorse mitigating factor

Heading: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9L General rule: no reduction to sentence

(1) This section applies if—

(a) offending of any kind is committed, in whole, after the commencement of this section, by an offender; and

(b) the court in a sentencing for the offending—

(i) imposed a sentence of any type on the offender; and

(ii) reduced that sentence under the remorse mitigating factor; and

(c) further offending of any kind (whether of a kind that is the same as, or different from, the offending) is committed, in whole, after the sentencing for the offending, by the offender.

(2) In imposing a sentence of any type on the offender for the further offending, the court must not reduce that sentence under the remorse mitigating factor.

(3) This section is subject to sections 9M and 9T.

Section 9L: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9M Exception: duty to avoid sentence being manifestly unjust

If the application of the general rule in section 9L would result in a sentence that is manifestly unjust, the court must reduce the sentence under the remorse mitigating factor to the extent needed to avoid the sentence being manifestly unjust.

Section 9M: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9N Duty to record sentence reduction

If a sentence of any type for offending of any kind is reduced under the remorse mitigating factor, the court must make an entry in the permanent court record, in relation to the offending, to the effect that the offender has had a sentence reduction under the remorse mitigating factor.

Section 9N: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9O Duty to inform offender of effect of general rule

If a sentence of any type for offending of any kind is reduced under the remorse mitigating factor, the court must inform the offender of the effect of the general rule in section 9L.

Section 9O: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9P Effect of failure to record or inform

(1) A failure by the court to perform either or both of the duties in sections 9N and 9O does not affect the validity of, and is not in itself grounds for an appeal against,—

(a) the sentence for the offending; or

(b) a sentence imposed on the offender later for any other offending.

(2) A failure by the court to perform either or both of the duties in sections 9N and 9O does not limit the court's duty to comply with section 9L.

Section 9P: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Sentence of imprisonment reduced under all applicable personal mitigating factors: 40% cap

Heading: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9Q General rule: total reductions must not exceed 40% of sentence

(1) If a sentence of imprisonment for offending of any kind is reduced under 1 or more personal mitigating factors, total reductions under all those personal mitigating factors must not exceed 40% of the sentence.

(2) This section is subject to sections 9R and 9T.

(3) This section does not apply to the mitigating factor that the offender assisted the authorities to maintain the law in respect of an offence.

Example

Assisting authorities to maintain law in respect of offence

The offender assisted the authorities in relation to the prevention, detection, investigation, prosecution, or punishment of an offence.

(4) However, for the purposes of the 40% cap in this section, total reductions to the sentence under 1 or more personal mitigating factors—

(a) include a youth mitigating factor reduction to it only if one is available under sections 9B to 9F:

(b) include a guilty plea mitigating factor reduction to it only to the extent that one is available under sections 9G to 9K:

(c) include a remorse mitigating factor reduction to it only if one is available under sections 9L to 9P.

Section 9Q: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9R Exception: duty to avoid sentence being manifestly unjust

If the application of the general rule in section 9Q would result in a sentence that is manifestly unjust, the court must make total reductions to the sentence under all personal mitigating factors that exceed 40% of the sentence to the extent needed to avoid the sentence being manifestly unjust.

Section 9R: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9S Duty to state, with reasons, total reductions court would have made

If, but for the application of the general rule in section 9Q, the court would have made total reductions under all personal mitigating factors that exceed 40% of the sentence, the court must state, with reasons, the reductions that it would have made.

Section 9S: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Sentence reductions: general exceptions

Heading: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

9T Discharge, etc, or minimum, or mandatory, sentence or order

Section 9B, 9H, 9L, or 9Q does not apply—

(a) if the court considers that the offending would be more appropriately dealt with by—

(i) discharging the offender without conviction under section 106; or

(ii) convicting and discharging the offender under section 108; or

(iii) convicting the offender and ordering the offender, under section 110, to come up for sentence if called on; or

(b) to the extent that applying that section would be inconsistent with legislation that requires any minimum, or mandatory, sentence to be imposed, or order to be made, for the offending.

Section 9T: inserted, on 29 June 2025, by section 10 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Taking into account offer or agreement to make amends

10 Court must take into account offer, agreement, response, or measure to make amends

(1) In sentencing or otherwise dealing with an offender the court must take into account—

(a) any offer of amends, whether financial or by means of the performance of any work or service, made by or on behalf of the offender to the victim:

(b) any agreement between the offender and the victim as to how the offender may remedy the wrong, loss, or damage caused by the offender or ensure that the offending will not continue or recur:

(c) the response of the offender or the offender's family, whanau, or family group to the offending:

(d) any measures taken or proposed to be taken by the offender or the family, whanau, or family group of the offender to—

(i) make compensation to any victim of the offending or family, whanau, or family group of the victim; or

(ii) apologise to any victim of the offending or family, whanau, or family group of the victim; or

(iii) otherwise make good the harm that has occurred:

(e) any remedial action taken or proposed to be taken by the offender in relation to the circumstances of the offending.

(2) In deciding whether and to what extent any matter referred to in subsection (1) should be taken into account, the court must take into account—

(a) whether or not it was genuine and capable of fulfilment; and

(b) whether or not it has been accepted by the victim as expiating or mitigating the wrong.

(3) If a court determines that, despite an offer, agreement, response, measure, or action referred to in subsection (1), it is appropriate to impose a sentence, it must take that offer, agreement, response, measure, or action into account when determining the appropriate sentence for the offender.

(4) Without limiting any other powers of a court to adjourn, in any case contemplated by this section a court may adjourn the proceedings until—

(a) compensation has been paid; or

(b) the performance of any work or service has been completed; or

(c) any agreement between the victim and the offender has been fulfilled; or

(d) any measure proposed under subsection (1)(d) has been completed; or

(e) any remedial action referred to in subsection (1)(e) has been completed.

Compare: 1985 No 120 s 12

Hierarchy of sentences and orders

Heading: inserted, on 1 October 2007, by section 7 of the Sentencing Amendment Act 2007 (2007 No 27).

10A Hierarchy of sentences and orders

(1) The hierarchy of sentences and orders set out in subsection (2) reflects the relative level of supervision and monitoring of, and restrictions imposed on, an offender under each sentence or order.

(2) The hierarchy of sentences and orders, from the least restrictive to the most restrictive, is as follows:

(a) discharge or order to come up for sentence if called on:

(b) sentences of a fine and reparation:

(c) community-based sentences of community work and supervision:

(d) community-based sentences of intensive supervision and community detention:

(e) sentence of home detention:

(f) sentence of imprisonment.

Section 10A: inserted, on 1 October 2007, by section 7 of the Sentencing Amendment Act 2007 (2007 No 27).

Taking account of instrument forfeiture order or successful application for relief

Heading: inserted, on 1 December 2009, by section 7 of the Sentencing Amendment Act 2009 (2009 No 10).

10B Court must take into account instrument forfeiture order or successful application for relief

(1) In sentencing or otherwise dealing with an offender convicted of a qualifying instrument forfeiture offence, the court must take into account—

(a) any instrument forfeiture order made, or to be made, in respect of property used to commit, or to facilitate the commission of, the qualifying instrument forfeiture offence:

(b) any forfeiture of that property by any other order or means arising from the offender's conviction:

(c) any order for relief made under section 142L or 142M in favour of another person in respect of property used to commit, or to facilitate the commission of, the qualifying instrument forfeiture offence:

(d) the nature of the relationship between that person and the offender:

(e) the likely benefit to the offender of any order referred to in paragraph (c).

(2) In deciding the weight to be given to any matter referred to in subsection (1)(a), (b), or (d), the court must take into account—

(a) the value of the property that is the subject of the instrument forfeiture order or that is otherwise forfeited:

(b) the nature and extent of the offender's interest in that property.

(3) Without limiting any other powers of a court to adjourn, in any case contemplated by this section a court may adjourn the proceedings until—

(a) any property that is the subject of a forfeiture order has been surrendered to the Official Assignee; or

(b) any appeal or application for relief in relation to an instrument forfeiture order or any other proceeding under the Criminal Proceeds (Recovery) Act 2009 has been determined.

Section 10B: inserted, on 1 December 2009, by section 7 of the Sentencing Amendment Act 2009 (2009 No 10).

General provisions about discharge without conviction, etc, and imposition of reparation, fines, community-based sentences, sentences of home detention, and imprisonment

Heading: amended, on 1 October 2007, by section 8 of the Sentencing Amendment Act 2007 (2007 No 27).

11 Discharge or order to come up for sentence if called on

(1) If a person who is charged with an offence is found guilty, or pleads guilty, before entering a conviction and imposing a sentence the court must consider whether the offender would be more appropriately dealt with by—

(a) discharging the offender without conviction under section 106; or

(b) convicting and discharging the offender under section 108; or

(c) convicting the offender and ordering the offender, under section 110, to come up for sentence if called on.

(2) If any provision applicable to the particular offence in this or any other enactment provides a presumption in favour of imposing, on conviction, a sentence of imprisonment, a sentence of home detention, a community-based sentence, or a fine, then—

(a) despite subsection (1), a court is not obliged to consider whether the offender would be more appropriately dealt with in the manner described in any of paragraphs (a), (b), or (c) of that subsection; but

(b) the court is not precluded from dealing with the offender in that manner if the court thinks that it is appropriate in the circumstances.

Section 11(2): amended, on 1 October 2007, by section 9 of the Sentencing Amendment Act 2007 (2007 No 27).

12 Reparation

(1) If a court is lawfully entitled under Part 2 to impose a sentence or order of reparation, it must impose it unless it is satisfied that the sentence or order would result in undue hardship for the offender or the dependants of the offender, or that any other special circumstances would make it inappropriate.

(1A) When considering undue hardship or other special circumstances under subsection (1), a court must not take into account that the offender is required to pay a levy under section 105B.

(2) A sentence of reparation may be imposed, in relation to any particular offence, on its own or in addition to any other sentence.

(3) If a court does not impose a sentence or order of reparation in a case where it is lawfully entitled to do so, it must give reasons for not doing so.

(4) In this section, **order of reparation** means an order under section 106(3)(b), 108(2)(b), or 110(3)(b).

Compare: 1985 No 120 s 11

Section 12(1): amended, on 13 February 2012, by section 4(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 12(1A): inserted, on 1 July 2010, by section 4 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

Section 12(3): amended, on 13 February 2012, by section 4(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 12(4): inserted, on 13 February 2012, by section 4(3) of the Sentencing Amendment Act 2011 (2011 No 47).

13 Sentence of fine

If a court is lawfully entitled under this or any other enactment to impose a fine in addition to, or instead of, any other sentence, the court must regard a fine as the appropriate sentence for the particular offence unless—

(a) the court is satisfied that the purpose or purposes for which sentence is being imposed cannot be achieved by imposing a fine; or

(b) the court is satisfied that the application of any of the principles in section 8 to the particular case make a fine inappropriate; or

(c) any provision applicable to the particular offence in this or any other enactment provides a presumption in favour of imposing any other sentence or requires the court to impose any other sentence; or

(d) the court is satisfied that a fine, on its own or in addition to a sentence of reparation, would otherwise be clearly inadequate in the circumstances.

14 Reparation, fines, and financial capacity of offender

(1) Even if it would be appropriate in accordance with section 13 to impose a fine, a court may nevertheless decide not to impose a fine if it is satisfied that the offender does not or will not have the means to pay it.

(2) If a court considers that it would otherwise be appropriate to impose a sentence of reparation and a sentence of a fine, but it appears to the court that the offender has or will have the means to pay a fine or make reparation, but not both, the court must sentence the offender to make reparation.

15 Community-based sentence

(1) If a court is lawfully entitled under this or any other enactment to impose a community-based sentence or a fine, or both, it may impose a community-based sentence only if—

(a) the court, in accordance with section 13, does not regard a fine as the appropriate sentence; or

(b) the court is not going to impose a fine because of either of the circumstances referred to in section 14.

(2) This section is subject to any provision in this or any other enactment that—

(a) provides a presumption in favour of or against imposing a particular sentence in relation to a particular offence; or

(b) requires a court to impose a particular sentence in relation to a particular offence.

15A Sentence of home detention

(1) If a court is lawfully entitled under this or any other enactment to impose a sentence of home detention, it may impose a sentence of home detention only if—

(a) the court is satisfied that the purpose or purposes for which sentence is being imposed cannot be achieved by any less restrictive sentence or combination of sentences; and

(b) the court would otherwise sentence the offender to a short-term sentence of imprisonment.

(2) This section is subject to any provision in this or any other enactment that—

(a) provides a presumption in favour of or against imposing a sentence of home detention in relation to a particular offence; or

(b) requires a court to impose a sentence of imprisonment in relation to a particular offence.

Section 15A: inserted, on 1 October 2007, by section 10 of the Sentencing Amendment Act 2007 (2007 No 27).

15B Limitation on sentence of home detention for person under 18 years

(1) No court may impose a sentence of home detention on an offender in respect of a particular offence, other than a category 4 offence, or a category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years, if, at the time of the commission of the offence, the offender was under the age of 18 years.

(2) *[Repealed]*

Section 15B: inserted, on 1 October 2007, by section 10 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 15B heading: amended, on 1 July 2019, by section 54(1) of the Oranga Tamariki Legislation Act 2019 (2019 No 30).

Section 15B(1): amended, on 1 July 2019, by section 54(2) of the Oranga Tamariki Legislation Act 2019 (2019 No 30).

Section 15B(1): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 15B(2): repealed, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

16 Sentence of imprisonment

(1) When considering the imposition of a sentence of imprisonment for any particular offence, the court must have regard to the desirability of keeping offenders in the community as far as that is practicable and consonant with the safety of the community.

(2) The court must not impose a sentence of imprisonment unless it is satisfied that,—

(a) a sentence is being imposed for all or any of the purposes in section 7(1)(a) to (c), (e), (f), or (g); and

(b) those purposes cannot be achieved by a sentence other than imprisonment; and

(c) no other sentence would be consistent with the application of the principles in section 8 to the particular case.

(3) This section is subject to any provision in this or any other enactment that—

(a) provides a presumption in favour of or against imposing a sentence of imprisonment in relation to a particular offence; or

(b) requires a court to impose a sentence of imprisonment in relation to a particular offence.

Compare: 1985 No 120 s 7(1)

17 Imprisonment may be imposed if offender unlikely to comply with other sentences

Nothing in this Part limits the discretion of a court to impose a sentence of imprisonment on an offender if the court is satisfied on reasonable grounds that

the offender is unlikely to comply with any other sentence that it could lawfully impose and that would otherwise be appropriate.

Compare: 1985 No 120 s 9

18 Limit on imprisonment of person under 18 years

Offender under age of 18 years when they committed particular offence

(1) The general rule in subsection (2) applies to an offender who, at the time of the commission of an offence, was under the age of 18 years.

General rule: no sentence of imprisonment in respect of offence

(2) No court may impose a sentence of imprisonment on the offender in respect of the offence.

Exception: particular offence is specified serious offence

(3) However, that general rule does not apply if the offence is—

(a) a category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or

(b) a category 4 offence.

Exception: offender is already serving sentence of imprisonment

(4) However, that general rule does not apply if the offender is already serving a sentence of imprisonment for any other offence that they committed, in whole or in part, before, with, or after the offence mentioned in subsection (1).

Section 18: replaced, on 29 June 2025, by section 11 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Permitted combinations of sentences

19 Permitted combinations of sentences

Application

(1) This section applies only if the court is considering imposing a combination of sentences of different types, and imposing the combination—

(a) for 1 or more offences; and

(b) on an offender who is not serving a sentence of imprisonment; and

(c) on a single occasion.

Combination may be imposed only if permitted by this section

(1A) The combination may be imposed only if it is permitted by this section.

Permitted combinations of sentences

(2) A sentence of reparation may be imposed with any sentence.

(3) A sentence of a fine may be imposed with any sentence, but may only be imposed with a sentence of imprisonment in respect of a particular offence if authorised by the enactment specifying the offence.

(4) A sentence of supervision may be combined with any sentence except intensive supervision, home detention, or imprisonment.

(5) A sentence of community work, subject to section 20(2), may be combined with any sentence except imprisonment.

(6) A sentence of community detention may be combined with any sentence except home detention or imprisonment.

(7) A sentence of intensive supervision may be combined with any sentence except supervision, home detention, or imprisonment.

(8) A sentence of home detention may be combined with a sentence of reparation, a fine, or community work.

(9) A sentence of imprisonment may be combined with a sentence of reparation or, subject to subsection (3), a fine.

Section 19: replaced, on 1 October 2007, by section 11 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 19(1) heading: inserted, on 29 June 2025, by section 12 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 19(1): replaced, on 29 June 2025, by section 12 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 19(1A) heading: inserted, on 29 June 2025, by section 12 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 19(1A): inserted, on 29 June 2025, by section 12 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 19(2) heading: inserted, on 29 June 2025, by section 12 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

20 Guidance on use of combinations of sentences

(1) A court may impose a particular combination of sentences on an offender only if satisfied that any of the sentences making up the combination, if imposed alone or in any less restrictive combination, would not be in accordance with—

(a) the purpose or purposes for which sentence is imposed; or

(b) the application of the principles in section 8 to the particular case.

(2) A court may only combine a sentence of community work with a sentence of supervision or intensive supervision if satisfied that—

(a) a sentence of community work is appropriate; but

(b) the offender requires the imposition of standard conditions or any of the special conditions available under a sentence of supervision or intensive supervision to address the causes of his or her offending.

Section 20: replaced, on 1 October 2007, by section 11 of the Sentencing Amendment Act 2007 (2007 No 27).

20A Subsequent community-based sentence or sentence of home detention

(1) This section applies to an offender who, while serving a community-based sentence or sentence of home detention (the **first sentence**), is sentenced to

another community-based sentence or sentence of home detention (the **second sentence**) in respect of another offence.

(2) The court must, when imposing the second sentence,—

(a) impose a sentence that would be permitted in combination with the first sentence under section 19; or

(b) defer the commencement of the second sentence until the first sentence has been served; or

(c) cancel the first sentence; or

(d) cancel the first sentence and substitute any other sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed so that the sentences are a permitted combination of sentences under section 19.

(3) When cancelling the first sentence under subsection (2)(c) or (d), the court must, when imposing the second sentence or substituting the first sentence with another sentence, as the case may be, take into account the portion of the first sentence that remains unserved.

(4) A court—

(a) must not cancel a first sentence under subsection (2)(c) or (d) if that sentence has been imposed by a higher court; and

(b) if it considers the first sentence should be cancelled, must refer the matter to the court that imposed the first sentence.

(5) For the purposes of this section, an offender is to be treated as serving a sentence of home detention until the offender is no longer subject to any post-detention conditions imposed under section 80N (if any).

(6) Sections 54, 54K, 68, 69I, and 80F (which relate to the variation or cancellation of community-based sentences and a sentence of home detention) do not apply to a cancellation under this section.

(7) If the second sentence is a sentence of home detention or community detention and the court defers, under subsection (2)(b), the commencement of that sentence for more than 2 months, a probation officer must—

(a) review the suitability of the home detention residence or curfew address; and

(b) ensure every relevant occupant consents, in accordance with section 26A(3), to the offender resuming the sentence at the home detention residence or curfew address; and

(c) if necessary, apply to the court for a variation or cancellation of the sentence under section 69I or 80F or obtain from the chief executive of the Department of Corrections a variation of the curfew address or home detention residence under section 69JA or 80FA.

(8) In this section, **relevant occupant** has the meaning given to it by section 26A(4)(a).

Section 20A: inserted, on 22 January 2014, by section 13 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

21 Effect of provisions concerning multiple sentences on powers of court

Nothing in sections 19, 20, and 20A—

(a) empowers a court to impose any sentence that it would not otherwise be empowered to impose; or

(b) limits the power of a court to make any order that it is empowered to make on the conviction of any person, whether under this or any other enactment.

Compare: 1985 No 120 s 13(8), (9)

Section 21: amended, on 22 January 2014, by section 14 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Provisions of general application restricting cumulative sentences

22 No sentence may be cumulative on non-association order

No sentence of any kind may be imposed cumulatively on a non-association order.

Compare: 1985 No 120 s 28B(2)

23 No sentence may be cumulative on indeterminate sentence of imprisonment

No sentence of any kind may be imposed cumulatively on an indeterminate sentence of imprisonment.

Proof of facts

24 Proof of facts

(1) In determining a sentence or other disposition of the case, a court—

(a) may accept as proved any fact that was disclosed by evidence at the trial and any facts agreed on by the prosecutor and the offender; and

(b) must accept as proved all facts, express or implied, that are essential to a plea of guilty or a finding of guilt.

(2) If a fact that is relevant to the determination of a sentence or other disposition of the case is asserted by one party and disputed by the other,—

(a) the court must indicate to the parties the weight that it would be likely to attach to the disputed fact if it were found to exist, and its significance to the sentence or other disposition of the case:

(b) if a party wishes the court to rely on that fact, the parties may adduce evidence as to its existence unless the court is satisfied that sufficient evidence was adduced at the trial:

(c) the prosecutor must prove beyond a reasonable doubt the existence of any disputed aggravating fact, and must negate beyond a reasonable doubt any disputed mitigating fact raised by the defence (other than a mitigating fact referred to in paragraph (d)) that is not wholly implausible or manifestly false:

(d) the offender must prove on the balance of probabilities the existence of any disputed mitigating fact that is not related to the nature of the offence or to the offender's part in the offence:

(e) either party may cross-examine any witness called by the other party.

(3) For the purposes of this section,—

aggravating fact means any fact that—

(a) the prosecutor asserts as a fact that justifies a greater penalty or other outcome than might otherwise be appropriate for the offence; and

(b) the court accepts is a fact that may, if established, have that effect on the sentence or other disposition of the case

mitigating fact means any fact that—

(a) the offender asserts as a fact that justifies a lesser penalty or other outcome than might otherwise be appropriate for the offence; and

(b) the court accepts is a fact that may, if established, have that effect on the sentence or other disposition of the case.

Section 24(1)(a): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 24(2)(b): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 24(2)(c): amended, on 7 July 2004, by section 3 of the Sentencing Amendment Act 2004 (2004 No 68).

Sentencing procedure

24A Adjournment for restorative justice process in certain cases

(1) This section applies if—

(a) an offender appears before the District Court at any time before sentencing; and

(b) the offender has pleaded guilty to the offence; and

(c) there are 1 or more victims of the offence; and

(d) no restorative justice process has previously occurred in relation to the offending; and

(e) the Registrar has informed the court that an appropriate restorative justice process can be accessed.

(2) The court must adjourn the proceedings to—

(a) enable inquiries to be made by a suitable person to determine whether a restorative justice process is appropriate in the circumstances of the case, taking into account the wishes of the victims; and

(b) enable a restorative justice process to occur if the inquiries made under paragraph (a) reveal that a restorative justice process is appropriate in the circumstances of the case.

Section 24A: inserted, on 6 December 2014, by section 4 of the Sentencing Amendment Act 2014 (2014 No 38).

Section 24A(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

25 Power of adjournment for inquiries as to suitable punishment

(1) A court may adjourn the proceedings in respect of any offence after the offender has been found guilty or has pleaded guilty and before the offender has been sentenced or otherwise dealt with for any 1 or more of the following purposes:

(a) to enable inquiries to be made or to determine the most suitable method of dealing with the case:

(b) to enable a restorative justice process to occur, or to be completed:

(c) to enable a restorative justice agreement to be fulfilled:

(d) to enable a rehabilitation programme or course of action to be undertaken:

(da) to determine whether to impose an instrument forfeiture order and, if so, the terms of that order:

(e) to enable the court to take account of the offender's response to any process, agreement, programme, or course of action referred to in paragraph (b), (c), or (d).

(2) If proceedings are adjourned under this section or under section 10(4) or 24A, a Judge or Justice or Community Magistrate having jurisdiction to deal with offences of the same kind (whether or not the same Judge or Justice or Community Magistrate before whom the case was heard) may, after inquiry into the circumstances of the case, sentence or otherwise deal with the offender for the offence to which the adjournment relates.

Compare: 1985 No 120 s 14(1), (5)

Section 25(1)(b): amended, on 6 December 2014, by section 5(1) of the Sentencing Amendment Act 2014 (2014 No 38).

Section 25(1)(da): inserted, on 1 December 2009, by section 8 of the Sentencing Amendment Act 2009 (2009 No 10).

Section 25(2): amended, on 6 December 2014, by section 5(2) of the Sentencing Amendment Act 2014 (2014 No 38).

26 Pre-sentence reports

(1) Except as provided in section 26A, if an offender who is charged with an offence punishable by imprisonment is found guilty or pleads guilty, the court may direct a probation officer to prepare a report for the court in accordance with subsection (2).

(2) A pre-sentence report may include—

(a) information regarding the personal, family, whanau, community, and cultural background, and social circumstances of the offender:

(b) information regarding the factors contributing to the offence, and the rehabilitative needs of the offender:

(c) information regarding any offer, agreement, response, or measure of a kind referred to in section 10(1) or the outcome of any other restorative justice processes that have occurred in relation to the case:

(d) recommendations on the appropriate sentence or other disposition of the case, taking into account the risk of further offending by the offender:

(e) in the case of a proposed sentence of supervision, intensive supervision, or home detention, recommendations on the appropriate conditions of that sentence:

(f) in the case of a proposed sentence of supervision, intensive supervision, or home detention involving 1 or more programmes,—

(i) a report on the programme or programmes, including a general description of the conditions that the offender will have to abide by; and

(ii) confirmation that the report has been made available to the offender:

(g) in the case of a proposed sentence of supervision, intensive supervision, or home detention involving a special condition requiring the offender to take prescription medication, confirmation that the offender—

(i) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of the medication and any known risks; and

(ii) consents to taking the prescription medication:

(h) in the case of a proposed sentence of community work,—

(i) information regarding the availability of community work of a kind referred to in section 63 in the area in which the offender will reside; and

(ii) recommendations on whether the court should authorise, under section 66A, hours of work to be spent undertaking training in basic work and living skills:

(i) in the case of a proposed sentence of intensive supervision or possible release conditions for a proposed sentence of imprisonment for 24 months or less, the opinion of the chief executive of the Department of Corrections as to whether—

(i) a condition that prohibits the offender from entering or remaining in specified places or areas at specified times or at all times (a **whereabouts condition** in this paragraph) would facilitate or promote the objective of reducing the risk of the offender reoffending while subject to the sentence or release conditions; and

(ii) a whereabouts condition would facilitate or promote the objective of rehabilitating and reintegrating the offender; and

(iii) a further condition requiring the offender to submit to electronic monitoring of his or her compliance with a whereabouts condition is warranted, having regard to the likelihood of non-compliance with the whereabouts condition.

(3) The court must not direct the preparation of a report under subsection (1) on any aspects of the personal characteristics or personal history of an offender if a report covering those aspects is readily available to the court and there is no reason to believe that there has been any change of significance to the court since the report was prepared.

(4) On directing the preparation of a report under subsection (1), the court may indicate to the probation officer the type of sentence or other mode of disposition that the court is considering, and may also give any other guidance to the probation officer that will assist the officer to prepare the report.

(5) If a court has directed the preparation of a report under subsection (1), the probation officer charged with the preparation of the report may seek the further directions of the court on—

(a) any particular item of information sought by the court; or

(b) any alternative sentence or other mode of disposition that may be considered by the court if it appears that the sentence or other mode of disposition under consideration is inappropriate.

Compare: 1985 No 120 s 15

Section 26(1): replaced, on 22 January 2014, by section 15 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 26(2)(e): replaced, on 1 October 2007, by section 13(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 26(2)(f): amended, on 1 October 2007, by section 13(2) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 26(2)(g): amended, on 1 October 2007, by section 13(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 26(2)(h): replaced, on 1 October 2007, by section 13(4) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 26(2)(i): inserted, on 22 December 2016, by section 5 of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47).

26A Pre-sentence reports when considering sentence of community detention or home detention

(1) If the court is considering a sentence of community detention or home detention, the court must direct a probation officer to prepare a pre-sentence report for the court in accordance with subsection (2).

(1A) If a probation officer intends to recommend to the court a sentence of community detention or home detention, the probation officer must prepare a pre-sentence report in accordance with subsection (2) and provide it to the court.

(2) A pre-sentence report to which subsection (1) or (1A) applies may include any of the matters outlined in section 26(2), and must include—

(a) information regarding the suitability of the proposed curfew address or home detention residence, including the safety and welfare of the occupants of the proposed curfew address or home detention residence; and

(b) in the case of a sentence of community detention, confirmation that the offender consents to the conditions of the sentence and the proposed curfew period; and

(c) in the case of a sentence of home detention, confirmation that the offender consents to the standard detention conditions and any special conditions recommended by the probation officer or that the court has indicated it is considering imposing.

(3) Before completing a report that covers the matters in subsection (2), the probation officer must—

(a) ensure that every relevant occupant of the proposed curfew address or home detention residence, as the case may be, is aware of the nature of the offender's past and current offending; and

(b) tell every relevant occupant that the reason for giving that information is to enable the occupant to make an informed decision about whether to consent to the offender remaining at the curfew address during the curfew period, or at the home detention residence while serving the sentence of home detention, as the case may be; and

(c) tell every relevant occupant that the information provided about the offender must not be used for any purpose other than that described in paragraph (b); and

(d) obtain the consent of every relevant occupant to the offender remaining at the curfew address during the curfew period, or at the home detention residence while serving the sentence of home detention, as the case may be; and

(e) inform every relevant occupant that they may withdraw their consent, at any time, to the offender serving the sentence at the curfew address or in the home detention residence, as the case may be.

(4) In subsection (3), **relevant occupant** means,—

(a) in relation to a residence that the probation officer is considering as a home detention residence,—

(i) if the residence is a family residence, every person of or over the age of 16 who ordinarily lives there; and

(ii) in the case of any other residence, every person whom the probation officer identifies as being a relevant occupant for the purposes of subsection (3); or

(b) in relation to an address that the probation officer is considering as a curfew address,—

(i) if the address is a residence, every person referred to in paragraph (a)(i) and (ii); and

(ii) in the case of any other place, the person or persons whom the probation officer identifies as being authorised to give consent for the purposes of subsection (3).

(5) Section 26(3), (4), and (5) apply, with any necessary modifications, to a report prepared under this section.

Section 26A: inserted, on 1 October 2007, by section 14 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 26A heading: amended, on 22 January 2014, by section 16(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 26A(1): replaced, on 22 January 2014, by section 16(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 26A(1A): inserted, on 22 January 2014, by section 16(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 26A(2): amended, on 22 January 2014, by section 16(3) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 26A(5): inserted, on 22 January 2014, by section 16(4) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

27 Offender may request court to hear person on personal, family, whanau, community, and cultural background of offender

(1) If an offender appears before a court for sentencing, the offender may request the court to hear any person or persons called by the offender to speak on—

(a) the personal, family, whanau, community, and cultural background of the offender:

(b) the way in which that background may have related to the commission of the offence:

(c) any processes that have been tried to resolve, or that are available to resolve, issues relating to the offence, involving the offender and his or her family, whanau, or community and the victim or victims of the offence:

(d) how support from the family, whanau, or community may be available to help prevent further offending by the offender:

(e) how the offender's background, or family, whanau, or community support may be relevant in respect of possible sentences.

(2) The court must hear a person or persons called by the offender under this section on any of the matters specified in subsection (1) unless the court is satisfied that there is some special reason that makes this unnecessary or inappropriate.

(3) If the court declines to hear a person called by the offender under this section, the court must give reasons for doing so.

(4) Without limiting any other powers of a court to adjourn, the court may adjourn the proceedings to enable arrangements to be made to hear a person or persons under this section.

(5) If an offender does not make a request under this section, the court may suggest to the offender that it may be of assistance to the court to hear a person or persons called by the offender on any of the matters specified in subsection (1).

Compare: 1985 No 120 s 16

28 Disclosure of reports

(1) If a written report is submitted to a court, whether under section 26 or section 33 or otherwise, a copy of the report must be given,—

(a) except as provided in subsection (2), to the offender; and

(b) if the offender is represented, to the offender's counsel, whether or not an order is made under subsection (2).

(2) The court may order that any part of the report not be disclosed to the offender if it is of the opinion that the disclosure would be likely to prejudice the offender's physical or mental health or endanger the safety of any person.

(3) The offender or his or her counsel may tender evidence on any matter referred to in any report, whether written or oral, that is submitted to a court under section 26 or section 33.

(4) Failure to give a copy of any report in accordance with this section does not affect the validity of the proceedings in a court or of any order made or sentence imposed by a court.

Compare: 1985 No 120 s 17

29 Access to reports

(1) The following persons may have access to any report submitted to a court under section 26 or section 33 or section 142F, and held by the court:

(a) the manager or other person in charge of a prison to which the offender is sent, whether during any proceedings or in accordance with any sentence imposed:

(b) a Director of Area Mental Health Services, or a staff member of a hospital, who requires access to the report for the purposes of his or her official duties:

(ba) a compulsory care co-ordinator, or a staff member of a facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, who requires access to the report for the purposes of his or her official duties:

(c) an officer or employee of the Department of Corrections or the Ministry of Justice, or a staff member of a prison, who requires access to the report for the purposes of his or her official duties:

(d) a member of the New Zealand Parole Board:

(e) the prosecutor appearing on sentence or on appeal against sentence.

(2) Despite anything in the Official Information Act 1982 or the Privacy Act 2020, no person may have access under either of those Acts to a report or any part of a report that a court has ordered under section 28 or section 34 not to be disclosed to that person.

Compare: 1985 No 120 s 18

Section 29(1): amended, on 1 December 2009, by section 9 of the Sentencing Amendment Act 2009 (2009 No 10).

Section 29(1)(a): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 29(1)(b): replaced, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 29(1)(ba): inserted, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 29(1)(c): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 29(1)(c): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 29(2): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

30 No sentence of imprisonment to be imposed without opportunity for legal representation

(1) No court may impose a sentence of imprisonment on an offender who has not been legally represented at the stage of the proceedings at which the offender was at risk of conviction, except as provided in subsection (2).

(2) Subsection (1) does not apply if the court is satisfied that the offender—

(a) was informed of his or her rights relating to legal representation, including, where appropriate, the right to apply for legal aid under the Legal Services Act 2011; and

(b) fully understood those rights; and

(c) had the opportunity to exercise those rights; and

(d) refused or failed to exercise those rights, or engaged counsel but subsequently dismissed him or her.

(3) If, on any appeal against sentence, a court finds that a sentence was imposed in contravention of subsection (1), the court must either—

(a) quash the sentence imposed and impose in substitution for it any other lawful sentence that the court thinks ought to have been imposed; or

(b) quash the conviction and direct a new trial, or make any other order that justice requires.

(4) For the purposes of this section, an offender refuses or fails to exercise his or her rights relating to legal representation if the offender—

(a) refuses or fails to apply for legal aid under the Legal Services Act 2011 or applies for it unsuccessfully; and

(b) refuses or fails to engage counsel by other means.

Compare: 1985 No 120 s 10

Section 30(2)(a): amended, on 17 December 2016, by section 95(1) of the Statutes Amendment Act 2016 (2016 No 104).

Section 30(3)(b): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 30(4)(a): amended, on 17 December 2016, by section 95(2) of the Statutes Amendment Act 2016 (2016 No 104).

31 General requirement to give reasons

(1) A court must give reasons in open court—

(a) for the imposition of a sentence or for any other means of dealing with the offender; and

(b) for the making of an order under Part 2.

(2) The reasons may be given under this section with whatever level of particularity is appropriate to the particular case.

(3) Nothing in this section limits any other provision of this or any other enactment that requires a court to give reasons.

(4) The fact that a court, in giving reasons in a particular case, does not mention a particular principle in section 8 or a particular factor in section 9 or 9A or a consideration under section 10 or section 11 is not in itself grounds for an appeal against a sentence imposed or an order made in that case.

Section 31(4): amended, on 29 June 2025, by section 13 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Part 2
Sentences, orders, and related matters

Subpart 1—Monetary penalties

Reparation

32 Sentence of reparation

(1) A court may impose a sentence of reparation if an offender has, through or by means of an offence of which the offender is convicted, caused a person to suffer—

(a) loss of or damage to property; or

(b) emotional harm; or

(c) loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.

(2) Despite subsection (1), a court must not impose a sentence of reparation in respect of emotional harm, or loss or damage consequential on emotional harm, unless the person who suffered the emotional harm is a person described in paragraph (a) of the definition of victim in section 4.

(3) In determining whether a sentence of reparation is appropriate or the amount of reparation to be made for any consequential loss or damage described in subsection (1)(c), the court must take into account whether there is or may be, under the provisions of any enactment or rule of law, a right available to the person who suffered the loss or damage to bring proceedings or to make any application in relation to that loss or damage.

(4) Subsection (3) applies whether or not the right to bring proceedings or make the application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired.

(5) Despite subsections (1) and (3), the court must not order the making of reparation in respect of any consequential loss or damage described in subsection (1)(c) for which compensation has been, or is to be, paid under the Accident Compensation Act 2001.

(6) When determining the amount of reparation to be made, the court must take into account any offer, agreement, response, measure, or action as described in section 10.

(7) The court must not impose as part of a sentence of reparation an obligation on the offender to perform any form of work or service for the person who suffered the harm, loss, or damage.

(8) Nothing in section 320 of the Accident Compensation Act 2001 applies to sentencing proceedings.

Compare: 1985 No 120 s 22(1)

Section 32(5): replaced, on 6 December 2014, by section 6 of the Sentencing Amendment Act 2014 (2014 No 38).

Section 32(8): amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

33 Court may order reparation report

(1) If the court considers that a sentence of reparation may be appropriate, the court may order a probation officer, or any other person designated by the court for the purpose, to prepare a reparation report for the court in accordance with section 34 on all or any of the following matters:

(a) in the case of loss of or damage to property, the value of that loss or damage and any consequential loss or damage:

(b) in the case of emotional harm, the nature of that harm and the value of any consequential loss or damage:

(c) in the case of any loss or damage consequential on physical harm,—

(i) the nature and value of the loss or damage; and

(ii) the amount or extent of compensation paid or payable under the Accident Compensation Act 2001 to the person who suffered the loss or damage in respect of that loss or damage:

(d) the financial capacity of the offender:

(e) the maximum amount that the offender is likely to be able to pay under a sentence of reparation:

(f) the frequency and magnitude of any payments that should be required under a sentence of reparation, if provision for payment by instalments is thought desirable.

(2) The court may decline to seek a report under subsection (1) and impose a sentence of reparation without further inquiry if—

(a) the court is satisfied as to the amount of reparation that the offender should pay; or

(b) the type of information referred to in a reparation report is available through other means (including, without limitation, a declaration made following a direction under section 41); or

(c) in all the circumstances the court considers that a report is unnecessary.

(3) For the purposes of the preparation of a reparation report, a court may direct the offender to make a declaration as to his or her financial capacity in accordance with section 42.

Compare: 1985 No 120 s 22(3)

Section 33(1): amended, on 7 July 2004, by section 4(1) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 33(1)(b): amended, on 7 July 2004, by section 4(2)(a) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 33(1)(c)(i): amended, on 7 July 2004, by section 4(2)(b) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 33(1)(c)(ii): replaced, on 6 December 2014, by section 7 of the Sentencing Amendment Act 2014 (2014 No 38).

34 Reparation reports

(1) A probation officer or other person who is required by a court to prepare a report under section 33 must attempt to gain agreement between the offender and the person who suffered the harm, loss, or damage on the amount that the offender should be required to pay by way of reparation.

(2) If agreement is reached, the probation officer or other person must report the terms of the agreement to the court (in addition to any other matters on which the court has required a report).

(3) If no agreement is reached, the probation officer or other person must,—

(a) in respect of emotional harm, state in the report the respective positions of the offender and the person who suffered the harm, and that the matter is unresolved; and

(b) in respect of loss of, or damage to, property, either—

(i) determine the value of the loss or damage and the consequential loss or damage on the evidence available, and include that value in the report; or

(ii) state in the report that the matter is unresolved; and

(c) in respect of loss or damage consequential on emotional or physical harm, either—

(i) determine the value of the loss or damage on the evidence available, and include that value in the report; or

(ii) state in the report the respective positions of the offender and the person who suffered the loss or damage, and that the matter is unresolved.

(4) Despite subsections (1) to (3), the person who suffered the harm, loss, or damage is not obliged to meet with the offender or otherwise participate in the preparation of the report.

(5) The person who prepared a report under this section must give a copy to the person who suffered the harm, loss, or damage unless the court orders otherwise.

(6) Failure to give a copy of any report in accordance with subsection (5) does not affect the validity of the proceedings in a court or of any order made or sentence imposed by a court.

Compare: 1985 No 120 s 23

35 Taking into account financial capacity of offender

(1) If the offender has insufficient means to pay the total value of the loss, damage, or harm, the court may sentence the offender to make—

(a) reparation for any amount that is less than the value of the loss, damage, or harm; or

(b) payment by instalments in respect of the loss, damage, or harm; or

(c) both (a) and (b).

(2) Subsection (3) applies if the court is considering whether to impose—

(a) more than 1 sentence of reparation on an offender; or

(b) a sentence of reparation and a sentence of a fine on an offender; or

(c) a sentence of reparation on an offender who is subject to an earlier sentence or order of reparation or an earlier sentence of a fine, or a combination of any of those.

(3) The court must take into account that any payments received from the offender must be applied in the order of priority set out in sections 86E to 86G of the Summary Proceedings Act 1957.

Compare: 1985 No 120 s 22(6), (8)

Section 35(2): replaced, on 13 February 2012, by section 5 of the Sentencing Amendment Act 2011 (2011 No 47).

Section 35(3): replaced, on 13 February 2012, by section 5 of the Sentencing Amendment Act 2011 (2011 No 47).

36 Payment conditions of sentence of reparation

(1) If a court sentences an offender to make reparation, the court may—

(a) make an order, under section 81(1)(a) of the Summary Proceedings Act 1957, allowing the offender greater time to pay or allowing the offender to pay by instalments, or both; or

(b) make an order, under section 83(1) of the Summary Proceedings Act 1957, requiring the offender to pay immediately; or

(c) direct the Registrar to determine the conditions of payment of the reparation, including whether to—

(i) require the offender to pay the reparation immediately under section 83(1) of the Summary Proceedings Act 1957 (which applies with any necessary modifications); or

(ii) enter into an arrangement with the offender allowing the offender greater time to pay or allowing the offender to pay by instalments, or both, under section 86 of the Summary Proceedings Act 1957.

(2) If the court does not make an order or give a direction under subsection (1), the reparation must be paid in 1 lump sum within the time allowed for the payment of fines generally by section 80 of the Summary Proceedings Act 1957.

Section 36: replaced, on 13 February 2012, by section 6 of the Sentencing Amendment Act 2011 (2011 No 47).

37 Copy of conditions of reparation to be given to person who suffered harm, loss, or damage

(1) A copy of the conditions of a sentence of reparation must be given to the person who suffered the harm, loss, or damage.

(2) Failure to give a copy of the conditions of the sentence in accordance with this section does not affect the validity of the proceedings in the court or of the sentence imposed by the court.

Compare: 1985 No 120 s 24(c), (d)

38 Payment of sums to person who suffered harm, loss, or damage

(1) Every sum payable under a sentence of reparation must be paid to the person who suffered the harm, loss, or damage, or, with that person's consent, to that person's insurer.

(2) A sentence of reparation does not affect any right that the person who suffered the harm, loss, or damage has to recover by civil proceedings any damages in excess of the amount recovered under the sentence.

Compare: 1985 No 120 s 24(e), (f)

38A Cancellation of sentence of reparation

(1) A court may, on an application under subsection (2) or (3) or on its own initiative,—

(a) cancel a sentence of reparation; or

(b) cancel a sentence of reparation and substitute any other sentence (including another sentence of reparation) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(2) An offender who is subject to a sentence of reparation or a Registrar may apply in accordance with section 72 for an order under subsection (1) on the ground that the reparation is unaffordable because the offender's financial position has changed significantly since the sentence was imposed.

(3) A Registrar may apply in accordance with section 72 for an order under subsection (1) on the ground that the Registrar reasonably believes that the sentence is unenforceable because the offender provided false or misleading information about the offender's financial position that the court relied on in imposing the sentence or because of any other reason.

(4) The court may make an order under subsection (1) (whether on application or on its own initiative) only if—

(a) the person to whom the offender is required to pay the reparation—

(i) has been informed and has been given the opportunity to be heard about the matter; or

(ii) is unable to be found despite reasonable efforts made by the Registrar; and

(b) the court is satisfied that—

(i) the ground in subsection (2) or (3) has been established; and

(ii) enforcement of the original sentence of reparation under Part 3 of the Summary Proceedings Act 1957 (or, if applicable, under section 19 of the Crimes Act 1961) is unlikely to be effective.

(5) If the court is considering a substitute sentence,—

(a) the court must take the following matters into account:

(i) the amount of the original sentence of reparation that has been paid and the amount outstanding:

(ii) any other sentences or orders imposed on the offender for the offending for which the original reparation was imposed and the extent to which the reparation was taken into account in imposing those sentences or orders; and

(b) if the offender provided false or misleading information about the offender's financial position, the court may take the following matters into account:

(i) the extent to which the information was false or misleading:

(ii) the offender's culpability in providing the information, including whether, in the court's opinion, the offender intended to mislead the court.

(6) If the court cancels a sentence of reparation, the amount of reparation outstanding is deemed to be remitted from the date the order is made or any other date that the court may specify.

Section 38A: inserted, on 1 August 2012, by section 7 of the Sentencing Amendment Act 2011 (2011 No 47).

Section 38A(4)(b)(ii): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Fines

39 Power to impose fine instead of imprisonment, sentence of home detention, or community-based sentence

(1) If an enactment provides that a court may sentence an offender to imprisonment but does not prescribe a fine, the court may sentence the offender to pay a fine instead of sentencing the offender to imprisonment.

(2) If an enactment provides that a court may sentence an offender to a community-based sentence but does not prescribe a fine, the court may sentence the offender to pay a fine instead of imposing a community-based sentence.

(2A) If an enactment provides that a court may sentence an offender to a sentence of home detention but does not provide for a fine, the court may sentence the offender to pay a fine instead of imposing a sentence of home detention.

(3) Subsections (1), (2), and (2A) are subject to any express provision to the contrary in the relevant enactment.

(4) *[Repealed]*

Compare: 1985 No 120 s 26(1), (3)

Section 39 heading: amended, on 1 October 2007, by section 16(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 39(2A): inserted, on 1 October 2007, by section 16(2) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 39(3): amended, on 1 October 2007, by section 16(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 39(4): repealed, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

40 Determining amount of fine

(1) In determining the amount of a fine, the court must take into account, in addition to the provisions of sections 7 to 10, the financial capacity of the offender.

(2) Subsection (1) applies whether taking into account the financial capacity of the offender has the effect of increasing or reducing the amount of the fine.

(3) If under an enactment an offender is liable to a fine of a specified amount, the offender may be sentenced to pay a fine of any less amount, unless a minimum fine is expressly provided for by that enactment.

(4) Subsection (4A) applies if a court imposes a fine—

(a) in addition to a sentence of reparation; or

(b) on an offender who is subject to an earlier sentence or order of reparation.

(4A) In fixing the amount of the fine, the court must take into account—

(a) the amount of reparation payable; and

(b) that any payments received from the offender must be applied in the order of priority set out in sections 86E to 86G of the Summary Proceedings Act 1957.

(5) When considering the financial capacity of the offender under subsection (1), the court must not take into account that the offender is required to pay a levy under section 105B.

Compare: 1985 No 120 ss 26(4), 27; Criminal Justice Act 1991 s 18 (UK)

Section 40(4): replaced, on 13 February 2012, by section 8 of the Sentencing Amendment Act 2011 (2011 No 47).

Section 40(4A): inserted, on 13 February 2012, by section 8 of the Sentencing Amendment Act 2011 (2011 No 47).

Section 40(5): inserted, on 1 July 2010, by section 6 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

41 Financial capacity of offender

(1) If the court considers that a fine of less than $100 may be an appropriate sentence, it may assume that the offender has the means to pay the fine unless evidence is presented to the contrary.

(2) If the court considers that a fine of $100 or more may be an appropriate sentence, but it is uncertain about the offender's ability to pay the fine, the court may direct the offender to make a declaration as to his or her financial capacity in accordance with section 42.

(3) The court may decline to give a direction under subsection (2) and impose a fine without further inquiry if—

(a) the type of information referred to in a declaration is available through other means (including, without limitation, a reparation report under section 33); or

(b) in all the circumstances the court considers that a declaration is unnecessary.

Compare: Criminal Justice Act 1991 s 20(1) (UK)

Declaration as to financial capacity

42 Declaration as to financial capacity

A declaration as to financial capacity must contain information on all sources of income, assets, liabilities, and outgoings, including, without limitation,—

(a) salary and wages:

(b) benefits and pensions:

(c) commissions:

(d) interest and dividends:

(e) income from rental property:

(f) ownership of real estate:

(g) vehicle ownership:

(h) ownership of other property:

(i) income and realisable assets that the offender does not currently have but which it is anticipated that the offender will receive during the 12 months following the date of giving the declaration:

(j) debts:

(k) essential outgoings of the offender and his or her dependants.

42A Offender may be detained for purpose of making declaration

A court may direct that an offender be detained in the custody of the court for a period not exceeding 2 hours for the purpose of making a declaration of financial capacity in accordance with section 42.

Section 42A: inserted, on 13 February 2012, by section 9 of the Sentencing Amendment Act 2011 (2011 No 47).

43 Offence of providing false or misleading information

Every person is liable on conviction to imprisonment for a period not exceeding 3 months or to a fine not exceeding $1,000 who provides false or misleading information in a declaration of financial capacity provided in accordance with section 42.

Compare: Criminal Justice Act 1991 s 20(3) (UK)

Section 43: amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Subpart 2—Community-based sentences

44 Community-based sentences

(1) In this Act, **community-based sentence** means the following—

(a) a sentence of community work:

(b) a sentence of supervision:

(c) a sentence of intensive supervision:

(d) a sentence of community detention.

(2) In sentencing an offender to a community-based sentence, a court may have regard to the potential effect that a particular sentence may have in contributing to the development of an offender's work and living skills.

Section 44: replaced, on 1 October 2007, by section 17 of the Sentencing Amendment Act 2007 (2007 No 27).

Supervision

45 Sentence of supervision

(1) A court may sentence an offender to supervision if—

(a) the offender is convicted of an offence punishable by imprisonment; or

(ab) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a sentence of home detention may be imposed on conviction; or

(b) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.

(2) The sentence may be for a period, being not less than 6 months and not more than 1 year, that the court thinks fit.

(3) This section is subject to sections 46 and 47.

Section 45(1)(ab): inserted, on 1 October 2007, by section 18(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 45(2): amended, on 1 October 2007, by section 18(2) of the Sentencing Amendment Act 2007 (2007 No 27).

46 Guidance on use of sentence of supervision

A court may impose a sentence of supervision only if the court is satisfied that a sentence of supervision would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

47 Sentences of supervision in respect of 2 or more offences must be served concurrently

If a court imposes a sentence of supervision in respect of each of 2 or more offences (whether on the same occasion or on different occasions), the sentences must be served concurrently.

48 Conditions of sentence of supervision

An offender who is sentenced to supervision is subject to—

(a) the standard conditions in section 49; and

(b) any special conditions imposed by the court under section 50 or section 52 or both.

49 Standard conditions of supervision

(1) If an offender is sentenced to supervision, the following standard conditions apply:

(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 sentence is imposed unless the start date of the sentence has been deferred under section 20A(2)(b), in which case the offender must report not later than 72 hours after that date:

(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:

(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:

(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:

(f) the offender must not reside at any address at which a probation officer has directed the offender not to reside:

(fa) the offender must, if a probation officer directs, allow the collection of biometric information:

(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:

(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.

(2) The conditions in subsection (1)(c) to (f) do not apply to the extent that they are inconsistent with—

(a) any special conditions imposed by the court; or

(b) in the case of an offender who is also subject to a sentence of community detention, any condition of that sentence.

Compare: 1985 No 120 s 49

Section 49(1)(a): replaced, on 22 January 2014, by section 17 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 49(1)(fa): inserted, on 22 August 2017, by section 58 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 49(2): replaced, on 1 October 2007, by section 19 of the Sentencing Amendment Act 2007 (2007 No 27).

50 Special conditions related to programme

A court may impose any special condition or conditions related to a programme if the court is satisfied that—

(a) there is a significant risk of further offending by the offender; and

(b) standard conditions alone would not adequately reduce that risk; and

(c) the offender requires a programme to reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

51 Programmes

For the purposes of section 50, **programme** means any of the following that is not residential in nature:

(a) any psychiatric or other counselling or assessment:

(b) attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative, or reintegrative programme:

(c) placement in the care of any appropriate person, persons, or agency, approved by the chief executive of the Department of Corrections, such as, without limitation,—

(i) an iwi, hapu, or whanau:

(ii) a marae:

(iii) an ethnic or cultural group:

(iv) a religious group, such as a church or religious order:

(v) members or particular members of any of the above.

Section 51: amended, on 1 October 2007, by section 20 of the Sentencing Amendment Act 2007 (2007 No 27).

52 Other special conditions

(1) A court may impose any of the special conditions described in subsection (2) if the court is satisfied that—

(a) there is a significant risk of further offending by the offender; and

(b) standard conditions alone would not adequately reduce that risk; and

(c) the imposition of special conditions would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

(2) The conditions referred to in subsection (1) are—

(a) any conditions that the court thinks fit relating to the offender's place of residence (which may include a condition that the offender not move residence), finances, or earnings:

(b) conditions requiring the offender to take prescription medication:

(ba) conditions requiring the offender to undertake training in basic work and living skills:

(bb) conditions prohibiting the offender from doing 1 or more of the following:

(i) using (as defined in section 4(1)) a controlled drug:

(ii) using a psychoactive substance:

(iii) consuming alcohol:

(c) any other conditions that the court thinks fit to reduce the likelihood of further offending by the offender.

(3) No court may impose a condition under this section that the offender pay any fine, reparation, or other sum ordered to be paid on conviction, or that the offender perform any service that he or she could have been required to perform if he or she had been sentenced to community work.

(3A) No court may impose a condition under this section that the offender submit to electronic monitoring.

(3B) However, subsection (3A) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under section 80ZO(2)(b), to submit to continuous monitoring.

(4) No offender may be made subject to a special condition that requires the offender to take prescription medication unless the offender—

(a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and

(b) consents to taking the prescription medication.

(5) An offender does not breach his or her conditions for the purposes of section 70 if he or she withdraws consent to taking prescription medication; but the failure to take the medication may give rise to a ground for variation or cancellation of the sentence of supervision under section 54.

Section 52(2)(ba): inserted, on 1 October 2007, by section 21(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 52(2)(bb): inserted, on 15 May 2017, by section 6(1) of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 52(3A): inserted, on 1 October 2007, by section 21(2) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 52(3B): inserted, on 15 May 2017, by section 6(2) of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 52(5): amended, on 1 October 2007, by section 21(3) of the Sentencing Amendment Act 2007 (2007 No 27).

53 Offender to be under supervision of probation officer

An offender who is subject to a sentence of supervision must be under the supervision of a probation officer in the probation area in which the offender

resides for the time being, or of any other probation officer that the chief executive of the Department of Corrections may direct.

Compare: 1985 No 120 s 48

54 Variation or cancellation of sentence of supervision

(1) An offender who is subject to a sentence of supervision, or a probation officer, may apply in accordance with section 72 for an order under subsection (3) of this section on the grounds that—

(a) the offender is unable to comply, or has failed to comply, with any of the conditions of the sentence:

(b) any programme to which the offender is subject is no longer available or suitable for the offender:

(c) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence,—

(i) the rehabilitation and reintegration of the offender would be advanced by the remission, suspension, or variation of special conditions, or the imposition of additional special conditions; or

(ii) the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) A probation officer may apply in accordance with section 72 for an order under subsection (3) of this section if an offender who is subject to a sentence of supervision is convicted of an offence punishable by imprisonment.

(3) On an application under subsection (1) or subsection (2), the court may, if it is satisfied that the grounds on which the application is based have been established,—

(a) remit, suspend, or vary any special conditions imposed by the court, or impose additional special conditions:

(b) cancel the sentence:

(c) cancel the sentence and substitute any other sentence (including another sentence of supervision) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) The court must not vary any existing condition or impose any new condition of a kind referred to in section 52(2)(b) without the consent of the offender.

(5) When determining a substitute sentence under subsection (3)(c), the court must take into account the portion of the original sentence that remains unserved at the time of the order.

(6) If the court cancels a sentence under this section, the sentence expires on the date that the order is made, or on any other date that the court may specify.

(7) If an application is made under this section for the remission, suspension, or variation of any condition imposed by the court, a probation officer may suspend the condition until the application has been heard and disposed of.

Section 54(1)(c)(i): replaced, on 1 October 2007, by section 22(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 54(3)(a): replaced, on 1 October 2007, by section 22(2) of the Sentencing Amendment Act 2007 (2007 No 27).

54AA When time ceases to run on sentence of supervision

For the purpose of calculating how much time an offender has served on a sentence of supervision,—

(a) time ceases to run on the sentence during any period between the date on which an application under section 54(1)(a) is lodged and the date on which the application is determined by the court; but

(b) some or all of the period between those dates may be regarded by the court as time served, as the court thinks appropriate in the circumstances, after taking into account—

(i) the extent (if any) to which the offender has complied with any conditions of the sentence; and

(ii) the amount of time (if any) that the offender has spent in custody.

Section 54AA: inserted, on 22 January 2014, by section 18 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

54A Application of section 54 during epidemic

(1) While an epidemic management notice is in force,—

(a) a probation officer who has applied in accordance with section 72 for an order under section 54(3) varying the special conditions subject to which a sentence of supervision was imposed by the court on an offender may himself or herself vary those conditions; and

(b) any probation officer may himself or herself vary the special conditions subject to which a sentence of supervision was imposed by the court on an offender if the offender has applied in accordance with section 72 for an order under section 54(3) varying those conditions; and

(c) a probation officer may vary or suspend any standard conditions of a sentence of supervision.

(2) A variation under subsection (1)(a) or (b) has effect until the application concerned has been heard and disposed of.

(3) Any variation or suspension of a standard condition under subsection (1)(c) has effect until the earlier of—

(a) the revocation of the epidemic management notice; or

(b) the date on which a probation officer rescinds the variation or suspension.

Section 54A: inserted, on 19 December 2006, by section 5 of the Sentencing Amendment Act (No 2) 2006 (2006 No 89).

Section 54A(1)(a): amended, on 1 October 2007, by section 23(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 54A(1)(b): amended, on 1 October 2007, by section 23(2) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 54A(1)(b): amended, on 1 October 2007, by section 23(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 54A(1)(c): inserted, on 1 October 2007, by section 23(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 54A(2): amended, on 1 October 2007, by section 23(4) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 54A(3): inserted, on 1 October 2007, by section 23(5) of the Sentencing Amendment Act 2007 (2007 No 27).

Intensive supervision

Heading: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

54B Sentence of intensive supervision

(1) A court may sentence an offender to intensive supervision if—

(a) the offender is convicted of an offence punishable by imprisonment; or

(b) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a sentence of home detention may be imposed on conviction; or

(c) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.

(2) The sentence may be for a period, being not less than 6 months and not more than 2 years, that the court thinks fit.

Section 54B: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

54C Guidance on use of sentence of intensive supervision

A court may impose a sentence of intensive supervision only if it is satisfied that—

(a) a sentence of intensive supervision would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender; and

(b) the nature of the offender's rehabilitative or other needs requires the imposition of conditions—

(i) for a period longer than 12 months; or

(ii) that are not available through the sentence of supervision.

Section 54C: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

54D Sentences of intensive supervision in respect of 2 or more offences must be served concurrently

If a court imposes a sentence of intensive supervision in respect of each of 2 or more offences (whether on the same occasion or on different occasions), the sentences must be served concurrently.

Section 54D: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

54E Conditions of sentence of intensive supervision

An offender who is sentenced to intensive supervision is subject to—

(a) the standard conditions in section 54F; and

(b) any special conditions imposed by the court under section 54G or 54I.

Section 54E: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

54F Standard conditions of intensive supervision

(1) If an offender is sentenced to intensive supervision, the following standard conditions apply:

(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 sentence is imposed unless the start date of the sentence has been deferred under section 20A(2)(b), in which case the offender must report not later than 72 hours after that date:

(b) the offender must report to a probation officer—

(i) at least once in each week during the first 3 months of the sentence and at least once in each month during the remainder of the sentence; and

(ii) as and when required to do so by a probation officer:

(c) the offender must notify a probation officer of his or her residential address and the nature and place of his or her employment when asked to do so:

(d) the offender must not move to a new residential address in another probation area without the prior written consent of a probation officer:

(e) if consent is given under paragraph (d), 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:

(f) 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:

(g) the offender must not reside at any address at which a probation officer has directed the offender not to reside:

(ga) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:

(gb) the offender must, if a probation officer directs, allow the collection of biometric information:

(h) 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:

(i) 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:

(j) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by a probation officer.

(2) The conditions in subsection (1)(d) to (g) do not apply if, and to the extent that, they are inconsistent with—

(a) any special condition imposed by the court; or

(b) in the case of an offender who is also subject to a sentence of community detention, any condition of that sentence.

Section 54F: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 54F(1)(a): replaced, on 22 January 2014, by section 19 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 54F(1)(ga): inserted, on 22 August 2017, by section 59 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 54F(1)(gb): inserted, on 22 August 2017, by section 59 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

54G Special conditions related to programmes

A court may impose any special condition or conditions related to a programme if the court is satisfied that—

(a) there is a significant risk of further offending by the offender; and

(b) standard conditions alone would not adequately reduce that risk; and

(c) the offender requires a programme to reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

Section 54G: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

54H Programmes

For the purposes of section 54G, **programme** means any of the following (whether residential or non-residential in nature):

(a) any psychiatric or other counselling or assessment:

(b) attendance at any medical, psychological, social, therapeutic, cultural, educational, employment-related, rehabilitative, or reintegrative programme:

(c) placement in the care of any appropriate person, persons, or agency approved by the chief executive of the Department of Corrections, such as, and without limitation,—

(i) an iwi, hapū, or whānau:

(ii) a marae:

(iii) an ethnic or cultural group:

(iv) a religious group, such as a church or religious order:

(v) members or particular members of any of the above.

Section 54H: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

54I Other special conditions

(1) A court may impose any of the special conditions described in subsection (3) if the court is satisfied that—

(a) there is a significant risk of further offending by the offender; and

(b) standard conditions alone would not adequately reduce that risk; and

(c) the imposition of special conditions would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

(2) A court may only impose a condition of the kind described in subsection (3)(d) (which relates to judicial monitoring) if it is also satisfied that, because of the special circumstances of the offender, this is necessary to assist the offender's compliance with the sentence.

(3) The conditions referred to in subsections (1) and (2) comprise—

(a) any conditions that the court thinks fit relating to the offender's place of residence (which may include a condition that the offender not move residence), finances, or earnings:

(b) conditions requiring the offender to take prescription medication:

(ba) conditions prohibiting the offender from doing 1 or more of the following:

(i) using (as defined in section 4(1)) a controlled drug:

(ii) using a psychoactive substance:

(iii) consuming alcohol:

(c) conditions requiring the offender to undertake training in basic work and living skills:

(d) a condition requiring the offender to comply with the requirements of judicial monitoring under subpart 2B as directed by a probation officer or the sentencing Judge:

(e) any other conditions that the court thinks fit to reduce the likelihood of further offending by the offender:

(f) a condition that the offender must, when required to do so by a probation officer, submit to the electronic monitoring of compliance with any conditions of his or her sentence imposed under paragraph (e) that prohibit the offender from entering or remaining in specified places or areas at specified times or at all times.

(4) No court may impose a condition under this section that—

(a) the offender pay any fine, reparation, or other sum ordered to be paid on conviction; or

(b) the offender perform any service that he or she could have been required to perform if he or she had been sentenced to community work.

(c) *[Repealed]*

(5) No offender may be made subject to a special condition that requires the offender to take prescription medication unless the offender—

(a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and

(b) consents to taking the prescription medication.

(6) An offender does not breach his or her conditions for the purposes of section 70A if he or she withdraws consent to taking prescription medication, but the failure to take the medication may give rise to a ground for variation or cancellation of the sentence of intensive supervision under section 54K.

Section 54I: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 54I(3)(ba): inserted, on 15 May 2017, by section 7(1) of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 54I(3)(f): inserted, on 22 December 2016, by section 6(1) of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47).

Section 54I(4)(b): amended, on 22 December 2016, by section 6(2) of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47).

Section 54I(4)(c): repealed, on 22 December 2016, by section 6(3) of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47).

54IA Electronic monitoring

(1) This section applies to electronic monitoring imposed as a condition under section 54I(3)(f).

(2) The purposes of an electronic monitoring condition are—

(a) to deter the offender from breaching a whereabouts condition; and

(b) to monitor compliance with a whereabouts condition.

(3) The court must not impose an electronic monitoring condition unless it has had regard to the opinion of the chief executive of the Department of Corrections in a pre-sentence report provided under section 26.

(4) Information about an offender that is obtained through an electronic monitoring condition may be used both for the purposes referred to in subsection (2) and for the following purposes:

(a) to verify compliance with a whereabouts condition:

(b) to detect non-compliance with a whereabouts condition and the commission of offences:

(c) to provide evidence of non-compliance with a whereabouts condition and the commission of offences:

(d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.

(5) An offender who is subject to an electronic monitoring condition—

(a) may be required to have electronic monitoring equipment attached to his or her body; and

(b) must comply with written instructions from a probation officer that are reasonably necessary for the effective administration of the electronic monitoring (for example, an instruction to regularly charge the equipment); and

(c) fails to comply with the electronic monitoring condition if he or she does not comply with those written instructions.

(6) The annual report of the Department of Corrections must include the following information about the use of electronic monitoring in the year reported on:

(a) the number of offenders who were at any time subject to an electronic monitoring condition:

(b) the average number of offenders who were subject to an electronic monitoring condition and the average duration of the condition:

(c) the percentage of offenders who, while subject to an electronic condition, were—

(i) convicted for failing to comply with the condition; or

(ii) convicted of any other offence:

(d) a description of the processes and systems that relate to electronic monitoring and that were in place during the year reported on.

(7) In this section, **whereabouts condition** means a condition imposed under section 54I(3)(e) that prohibits an offender from entering or remaining in specified places or areas at specified times or at all times.

Section 54IA: inserted, on 22 December 2016, by section 7 of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47).

54J Offender to be under supervision of probation officer

An offender who is subject to a sentence of intensive supervision is under the supervision of a probation officer in the probation area in which the offender resides for the time being, or of any other probation officer that the chief executive of the Department of Corrections may direct.

Section 54J: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

54K Variation or cancellation of sentence of intensive supervision

(1) An offender who is subject to a sentence of intensive supervision, or a probation officer, may apply, in accordance with section 72, for an order under subsection (3) of this section on the grounds that—

(a) the offender is unable to comply, or has failed to comply, with any of the conditions of the sentence:

(b) any programme to which the offender is subject is no longer available or suitable for the offender:

(c) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence,—

(i) the rehabilitation and reintegration of the offender would be advanced by the remission, suspension, or variation of any special conditions, or the imposition of additional special conditions; or

(ii) the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) A probation officer may apply, in accordance with section 72, for an order under subsection (3) of this section if an offender who is subject to a sentence of intensive supervision is convicted of an offence punishable by imprisonment.

(3) On an application under subsection (1) or (2), the court may, if it is satisfied that the grounds on which the application is based have been established,—

(a) remit, suspend, or vary any special conditions imposed by the court, or impose additional special conditions:

(b) cancel the sentence:

(c) cancel the sentence and substitute any other sentence (including another sentence of intensive supervision) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) If the court varies a special condition or imposes an additional special condition under subsection (3)(a), section 54I applies.

(5) When determining a substitute sentence under subsection (3)(c), the court must take into account the portion of the original sentence that remains unserved at the time of the order.

(6) If the court cancels a sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.

(7) If an application is made under this section for the remission, suspension, or variation of any special condition imposed by the court, a probation officer may suspend the special condition until the application has been heard and disposed of.

Section 54K: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

54KA When time ceases to run on sentence of intensive supervision

For the purpose of calculating how much time the offender has served on a sentence of intensive supervision,—

(a) time ceases to run on the sentence during any period between the date on which an application under section 54K(1)(a) is lodged and the date on which the application is determined by the court; but

(b) some or all of the period between those dates may be regarded by the court as time served, as the court thinks appropriate in the circumstances, after taking into account—

(i) the extent (if any) to which the offender has complied with any conditions of the sentence; and

(ii) the amount of time (if any) that the offender has spent in custody.

Section 54KA: inserted, on 22 January 2014, by section 20 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

54L Application of section 54K during epidemic

(1) While an epidemic management notice is in force,—

(a) a probation officer who has applied in accordance with section 72 for an order under section 54K(3) varying the special conditions subject to which a sentence of intensive supervision was imposed by the court on an offender may himself or herself vary those conditions; and

(b) any probation officer may himself or herself vary the special conditions subject to which a sentence of intensive supervision was imposed by the court on an offender if the offender has applied in accordance with

section 72 for an order under section 54K(3) varying those conditions; and

(c) a probation officer may vary or suspend any standard conditions of a sentence of intensive supervision.

(2) A variation under subsection (1)(a) or (b) has effect until the application concerned has been heard or disposed of.

(3) Any variation or suspension of a standard condition under subsection (1)(c) has effect until the earlier of—

(a) the revocation of the epidemic management notice; or

(b) the date on which a probation officer rescinds the variation or suspension.

Section 54L: inserted, on 1 October 2007, by section 24 of the Sentencing Amendment Act 2007 (2007 No 27).

Community work

55 Sentence of community work

(1) A court may sentence an offender to community work—

(a) if the offender is convicted of an offence punishable by imprisonment; or

(ab) if the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a sentence of home detention may be imposed on conviction; or

(b) if the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.

(2) The sentence may be for the number of hours, being not less than 40 or more than 400, that the court thinks fit.

(3) This section is subject to sections 56 and 57.

Section 55(1)(ab): inserted, on 1 October 2007, by section 25 of the Sentencing Amendment Act 2007 (2007 No 27).

56 Guidance on use of sentence of community work

(1) In considering whether to impose a sentence of community work, the court must give particular consideration to—

(a) whether the nature and circumstances of the offending make it appropriate for the offender to be held accountable to the community by making compensation to it in the form of work, in addition to, or instead of, making reparation to any person in respect of the offending; and

(b) whether the sentence is appropriate having regard to the offender's character and personal history, and to any other relevant circumstances.

(2) A sentence of community work is inappropriate if the court is satisfied that—

(a) the offender has alcohol, drug, psychiatric, or intellectual problems that indicate that it is unlikely that he or she would complete a sentence of community work; or

(b) for any other reason it is unlikely that the offender would complete a sentence of community work.

(3) The court may assume that suitable work is available for the offender to perform under the sentence unless the court is advised otherwise by a probation officer.

Section 56(1)(a): amended, on 1 October 2007, by section 26 of the Sentencing Amendment Act 2007 (2007 No 27).

57 Concurrent and cumulative sentences of community work

(1) If a court imposes a sentence of community work on an offender who is already subject to a sentence of community work, the sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(2) If a court imposes a sentence of community work in respect of each of 2 or more offences, the sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(2A) If a court directs that sentences of community work be served cumulatively or concurrently (whether or not the sentences are imposed at the same time), the total term of the sentences must not be more than 400 hours.

(3) A sentence of community work must be served concurrently with any sentence of supervision, intensive supervision, community detention, or home detention, whether or not the sentences are imposed at the same time.

Section 57(2A): inserted, on 1 October 2007, by section 27(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 57(2A): amended, on 22 January 2014, by section 21 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 57(3): replaced, on 1 October 2007, by section 27(2) of the Sentencing Amendment Act 2007 (2007 No 27).

57A Court may defer commencement date of sentence of community work

If a court imposes both a sentence of community work and a sentence of either intensive supervision or home detention, the court may defer the commencement of the sentence of community work for a specified period if, in its opinion, deferral is necessary to enable the offender to comply with—

(a) in the case of a sentence of intensive supervision, any conditions imposed under section 54F, 54G, or 54I:

(b) in the case of a sentence of home detention, any conditions imposed under section 80C or 80D.

Section 57A: inserted, on 1 October 2007, by section 28 of the Sentencing Amendment Act 2007 (2007 No 27).

58 Length of sentence of community work

(1) If the court imposes a sentence of community work of 100 hours or less, that sentence must be served within 6 months of the date that it commences under section 75, 75A, or 76.

(2) If the court imposes a sentence of community work of more than 100 hours, the offender must serve at least 100 hours in every 6-month period from the date on which the sentence commences until the number of hours imposed under the sentence has been served.

(3) Any work done by an offender under a sentence of community work must be treated as having been done under that sentence and under any and each other concurrent sentence of community work that the offender was subject to at the time that the work was done.

Section 58: replaced, on 1 October 2007, by section 29 of the Sentencing Amendment Act 2007 (2007 No 27).

59 Offender must report to probation officer

An offender who is subject to a sentence of community work must report in person to a probation officer in the probation area in which the offender resides—

(a) as soon as practicable, and not later than 72 hours, after the sentence is imposed or, if the start date of the sentence has been deferred under section 20A(2)(b) or 57A, within 72 hours of the specified start date; and

(b) as directed at any other time during the sentence for the purpose of monitoring the sentence.

Section 59(a): amended, on 22 January 2014, by section 22 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

59A Offender must allow collection of biometric information

An offender who is subject to a sentence of community work must, if a probation officer directs, allow the collection of biometric information.

Section 59A: inserted, on 22 August 2017, by section 60 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

60 Offender must notify probation officer if offender changes residential address

If an offender who is subject to a sentence of community work moves to a new residential address, the offender must, within 72 hours, notify a probation officer of the offender's new residential address.

61 Probation officer must determine placement of offender for community work

As soon as practicable after a sentence of community work is imposed, and at any other time during the sentence if the probation officer thinks fit, a proba-

tion officer must determine in accordance with sections 62 and 63 whether the community work will be done—

(a) on placement at a community work centre; or

(b) on placement with another agency; or

(c) on placement at a community work centre for a certain number of the hours of work and on placement with another agency for a certain number of the hours of work, as specified by the probation officer.

62 Guidance to probation officer in determining placement of offender for community work

For the purposes of section 61, the probation officer must take into account—

(a) the circumstances of the offending; and

(b) how the offender could benefit from learning work habits or skills through the sentence; and

(c) the offender's character and personal history; and

(d) the offender's physical and mental capabilities; and

(e) the outcome of any restorative justice processes that have occurred in the case; and

(f) whether there is a community work centre within a reasonable distance of the offender's place of residence; and

(g) whether there is any agency within a reasonable distance of the offender's place of residence that has sufficient suitable work available for the offender; and

(h) any other relevant circumstances.

63 Authorised work for person sentenced to community work

(1) The type of work that an offender may be required to perform for the purposes of a sentence of community work is work—

(a) at or for any hospital or church or at or for any charitable, educational, cultural, or recreational institution or organisation (including a marae); or

(b) at or for any other institution or organisation for old, infirm, or disabled persons, or at the home of any old, infirm, or disabled person; or

(c) on any land of which the Crown or any public body is the owner or lessee or occupier, or any land that is administered by the Crown or any public body; or

(d) at or for any local authority (within the meaning of the Local Government Act 2002).

(2) No offender may be directed for the purposes of a sentence of community work to do any work if, in doing so, the offender would take the place of any person

who would otherwise be employed in doing that work in the ordinary course of that person's paid employment.

Compare: 1985 No 120 s 60

Section 63(1)(c): amended, on 1 October 2007, by section 30 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 63(1)(d): inserted, on 1 October 2007, by section 30 of the Sentencing Amendment Act 2007 (2007 No 27).

64 When community work must be done

(1) If community work is to be done on placement with an agency other than a community work centre, the days on which and the times at which the offender does the work must be fixed by agreement between a probation officer and the agency and notified in writing to the offender.

(2) If the community work is to be done on placement at a community work centre, the days on which and the times at which the offender performs the work must be determined by a probation officer and notified in writing to the offender.

(3) It is not necessary for all the periods of work to be of the same duration, but no period may be longer than 10 hours and no offender may be required to do more than 40 hours of community work per week.

(4) The times at which the offender is required to report, and the periods during which he or she is required to do community work, must be such as to avoid interference, so far as practicable, with the offender's attendance at any place of education or employment, or with his or her religious observances.

65 Supervision of offender while doing community work

(1) An offender who is directed to do community work on placement at a community work centre is subject to the control, direction, and supervision of a probation officer—

(a) while the offender is at a community work centre; and

(b) while the offender is at any other place at the direction, or with the permission, of a probation officer; and

(c) while the offender is travelling between a community work centre and any other place referred to in paragraph (b), or between any 2 such places.

(2) An offender who is directed to do community work on placement with an agency other than a community work centre is subject to the control, direction, and supervision of a probation officer at all times while the offender is doing work or is required to be doing work under the sentence.

66 Offender excused from reporting in certain circumstances

(1) An offender who is subject to a sentence of community work may be excused from reporting during any period when the community work centre or other agency at which the offender is required to report is closed.

(2) In special circumstances, a probation officer may excuse an offender from reporting on any day or during any period.

(3) Without limiting subsection (2), if an offender is unable to report on any day or during any period because of illness or injury, a probation officer must, on being satisfied (whether before or after the failure to report) with the circumstances of the case, excuse the offender from the requirement to report on that day or during that period.

(4) For the purpose of determining whether or not to excuse an offender under subsection (3), the probation officer may require that the offender obtain a certificate from a registered medical practitioner as to whether the offender is, will be, or was unfit to report on the day or during the period.

(5) A certificate obtained in accordance with subsection (4) is not conclusive as to whether the offender is, will be, or was unfit to report.

(6) To avoid doubt, if an offender is excused under this section from reporting, that does not have the effect of remitting any of the hours of community work required to be done under the sentence.

Compare: 1985 No 120 s 41

66A Probation officer may direct hours of work to be converted to training

(1) This section applies to sentences of community work of at least 80 hours.

(2) A probation officer may direct that a specified number of hours of work, not exceeding 20% of the total number of hours of work ordered by the court to be undertaken, be spent in training in basic work and living skills.

(3) In determining whether to give a direction under this section, the probation officer must take account of—

(a) the benefits of skill development to the offender for reducing the likelihood of reoffending; and

(b) the need to hold the offender accountable to the community by making compensation to it.

(4) A probation officer must not give a direction under this section unless—

(a) it is reasonably practicable for the offender to undertake training in basic work and living skills (having regard to the availability of that training in the place where the offender lives); and

(b) the offender consents to undertake that training.

(5) Any hours spent by the offender training in basic work and living skills under a direction given under this section must, for all legal purposes, be treated as

hours of authorised community work undertaken by the offender under his or her sentence.

(6) Subsection (5) is subject to section 66C.

Section 66A: replaced, on 22 January 2014, by section 23 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

66B Some hours of work may be converted to training

[Repealed]

Section 66B: repealed, on 22 January 2014, by section 23 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

66C Consequences of failing without excuse to complete training

If an offender fails, without reasonable excuse, to complete the number of hours training in basic work and living skills directed under section 66A,—

(a) any hours spent by the offender undertaking that training are not to be treated as hours of authorised community work undertaken by the offender under his or her sentence:

(b) the offender must, in addition to the period spent in training, but subject to section 67, undertake community work for the total number of hours ordered under the sentence.

Section 66C: inserted, on 1 October 2007, by section 31 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 66C: amended, on 22 January 2014, by section 24 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

66D When hours of community work not counted

(1) If an offender fails to carry out any work under a sentence of community work to the satisfaction of the probation officer, the probation officer may, subject to subsection (2), refuse to treat that work as work undertaken under the sentence.

(2) The number of hours that the probation officer may refuse to treat as work undertaken under the sentence must not exceed 10% of the total number of hours under the sentence.

Section 66D: inserted, on 1 October 2007, by section 31 of the Sentencing Amendment Act 2007 (2007 No 27).

67 Remission of sentence of community work

If a probation officer is satisfied that the offender has a good record of compliance with a sentence of community work, the probation officer may remit up to 10% from the number of hours of community work imposed by the court.

67A Remission of community work hours during epidemic

(1) While an epidemic management notice is in force, the chief executive of the Department of Corrections may authorise probation officers to remit the hours

of community work imposed by the court on offenders, for periods (in any individual case)—

(a) of not more than 8 hours in any week; and

(b) of not more in total than the lesser of 48 hours and one-third of the sentence imposed.

(2) This section does not give any offender a right to a remission.

Section 67A: inserted, on 19 December 2006, by section 6 of the Sentencing Amendment Act (No 2) 2006 (2006 No 89).

68 Variation or cancellation of sentence of community work

(1) An offender who is subject to a sentence of community work, or a probation officer, may apply in accordance with section 72 for an order under subsection (3) of this section on the grounds that—

(a) there has been a change of circumstances since the sentence was imposed that would justify the variation or cancellation of the sentence; or

(b) having regard to any change in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence, the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) A probation officer may apply in accordance with section 72 for an order under subsection (3) of this section—

(a) if an offender who is subject to a sentence of community work is convicted of an offence punishable by imprisonment; or

(b) on the grounds that the offender has behaved in a manner described in any of paragraphs (a) to (j) of section 71(1).

(3) On an application under subsection (1) or subsection (2), the court may, if it is satisfied that the grounds on which the application is based have been established,—

(a) vary the sentence by reducing the number of hours of work to be done; or

(b) cancel the sentence; or

(c) cancel the sentence and substitute any other sentence (including another sentence of community work) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) When determining a substitute sentence under subsection (3)(c), the court must take into account the portion of the original sentence that remains unserved at the time of the order.

(5) If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.

69 Extension of period within which community work must be done

(1) An offender who is subject to a sentence of community work, or a probation officer, may apply in accordance with section 72 for an extension of the period within which the work must be done on the grounds that—

(a) because of incapacity or any humanitarian or other reasons, it will be impossible for the offender to do the work during a certain period; or

(b) it would be unreasonable to require the offender to do the work during that period.

(2) On an application under subsection (1), the court may, if it is satisfied that the grounds in subsection (1) have been established, extend the period within which the work must be done by the amount that the court thinks fit.

69A Extension during epidemic of period within which community work must be done

(1) While an epidemic management notice is in force, the chief executive of the Department of Corrections may authorise probation officers to extend by not more than 12 months the total period during which the community work of offenders, or the community work of offenders of any kind or description, must be done.

(2) This section does not give any offender a right to an extension.

Section 69A: inserted, on 19 December 2006, by section 7 of the Sentencing Amendment Act (No 2) 2006 (2006 No 89).

Section 69A(1): amended, on 1 October 2007, by section 32 of the Sentencing Amendment Act 2007 (2007 No 27).

Community detention

Heading: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

69B Sentence of community detention

(1) A court may sentence an offender to community detention if—

(a) the offender is convicted of an offence punishable by imprisonment; or

(b) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a sentence of home detention may be imposed on conviction; or

(c) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a community-based sentence may be imposed on conviction.

(2) The sentence term may be for a period, being no more than 6 months, that the court thinks fit.

(3) The court must specify the curfew period and the curfew address when sentencing the offender to a sentence of community detention.

(4) Every curfew period specified under subsection (3) must not be for a period of less than 2 hours, and the total of every curfew period for any week must not be more than 84 hours.

(5) An offender is not in custody during the curfew period.

Section 69B: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

69C Guidance on use of sentence of community detention

(1) A court may impose a sentence of community detention if the court is satisfied—

(a) that a sentence of community detention—

(i) would reduce the likelihood of further offending by restricting the offender's movements during specified periods, including, but not limited to, offending of a particular type or at a particular time; or

(ii) would achieve 1 or more of the purposes set out in section 7(1)(a), (b), (e), or (f); and

(b) that an electronically monitored curfew is appropriate, taking into account the nature and the seriousness of the offence and the circumstances and the background of the offender.

(2) A court may sentence an offender to community detention if—

(a) the court is satisfied that—

(i) the proposed curfew address is suitable; and

(ii) the relevant occupants (as defined in section 26A(4)) of the proposed curfew address—

(A) understand the conditions of the curfew that will apply to the offender; and

(B) consent to the offender remaining at the address in accordance with the curfew; and

(C) have been informed that they may withdraw their consent, at any time, to the offender serving the sentence at the curfew address; and

(iii) the offender has been made aware of and understands all the conditions that will apply during the sentence and he or she agrees to comply with them; and

(b) the proposed curfew address is in an area in which a community detention scheme is operated by the chief executive of the Department of Corrections.

(3) Before imposing a sentence of community detention on an offender, a court must consider the pre-sentence report prepared by a probation officer in accordance with section 26A.

Section 69C: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 69C(3): inserted, on 22 January 2014, by section 25 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

69D Concurrent and cumulative sentences of community detention

(1) If a court imposes a sentence of community detention on an offender who is already subject to a sentence of community detention, the sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(2) If a court imposes cumulative sentences of community detention or imposes 1 or more sentences of community detention on an offender who is already serving a sentence of community detention, the total term of the sentences of community detention must not be more than 6 months.

(3) If a court imposes a sentence of community work and a sentence of community detention, or imposes one of them on an offender who is already subject to the other, the sentences must be served concurrently.

Section 69D: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

69E Conditions of community detention during sentence term

(1) An offender sentenced to community detention is subject to the following conditions during the sentence term:

(a) during the curfew period—

(i) the offender must not, at any time, leave the curfew address except in the circumstances set out in subsection (2):

(ii) the offender is under the supervision of a probation officer and must co-operate with the probation officer and comply with any lawful direction given by that probation officer:

(b) the offender must report in person to a probation officer in the probation area in which the offender resides—

(i) as soon as practicable and not later than 24 hours after the sentence is imposed unless the 24 hours elapses on a weekend or a public holiday, in which case the offender must report on the next working day; or

(ii) not later than 24 hours after the start date of the sentence if the sentence has been deferred under section 20A(2)(b) unless the 24 hours elapses on a weekend or a public holiday, in which case the offender must report on the next working day:

(c) the offender must report to a probation officer as and when required to do so by the probation officer, and must notify the probation officer of his or her residential address, any change to that address, and the nature and place of his or her employment when asked to do so:

(d) the offender must keep in his or her possession the curfew order drawn up under section 74 and, if requested to do so by a constable or a probation officer, must produce the order for inspection:

(da) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:

(db) the offender must, if a probation officer directs, allow the collection of biometric information:

(e) the offender must, when required to do so by a probation officer, submit to the electronic monitoring of compliance with the conditions of his or her sentence, which may require the offender to be connected to electronic monitoring equipment throughout the sentence term and not just throughout the curfew period:

(f) the offender must, if required to submit to the electronic monitoring of his or her sentence, remain during the curfew period within the area defined by the probation officer.

(2) An offender may leave the curfew address during the curfew period only—

(a) to seek urgent medical or dental treatment; or

(b) to avoid or minimise a serious risk of death or injury to the offender or any other person; or

(c) with the approval of a probation officer—

(i) to seek or engage in employment; or

(ii) to attend training or other rehabilitative or reintegrative activities or programmes; or

(iii) to attend a restorative justice conference or other process relating to the offender's offending; or

(iv) to carry out any undertaking arising from any restorative justice process; or

(d) with the approval of a probation officer and subject to any conditions imposed by the probation officer, on humanitarian grounds.

(3) A probation officer may only give an approval under subsection (2)(c) if the offender is serving a sentence of supervision or intensive supervision together with the sentence of community detention.

(3A) A probation officer must define the area within which an offender subject to electronic monitoring is required to remain at the curfew address during the curfew period and show that area to the offender and advise the relevant occupants (as defined in section 26A(4)(b)) of that area.

(4) A probation officer may approve an alternative curfew address under section 69K, pending determination of an application to vary the curfew address under section 69I.

Section 69E: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 69E(1)(b): replaced, on 22 January 2014, by section 26(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 69E(1)(d): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 69E(1)(da): inserted, on 22 August 2017, by section 61 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 69E(1)(db): inserted, on 22 August 2017, by section 61 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 69E(1)(f): inserted, on 22 January 2014, by section 26(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 69E(3A): inserted, on 22 January 2014, by section 26(3) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

69F Electronic monitoring

(1) The purpose of an electronic monitoring condition imposed as a condition under section 69E(1)(e) is to deter the offender from breaching the condition that the offender remain at the curfew address during the curfew period and to monitor compliance with that condition.

(2) Information about an offender that is obtained through electronic monitoring, may be used only for the purposes referred to in subsection (1) and for the following purposes:

(a) to verify compliance with the condition that the offender remain at the curfew address during the curfew period:

(b) to detect non-compliance with that condition:

(c) to provide evidence of non-compliance with that condition and the commission of offences during the curfew period:

(d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.

(3) Information may be collected during the whole of the sentence term but may be used only if it was collected for 1 or more of the purposes set out in this section and, except for information collected for the purpose in subsection (2)(d), was collected during the curfew period.

(4) Any information obtained by electronic monitoring outside the curfew period must be destroyed as soon as practicable.

Section 69F: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

69G Offence to breach conditions of community detention

An offender commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding $1,500, who—

(a) fails, without reasonable excuse, to comply with any condition of a sentence of community detention; or

(b) fails, without reasonable excuse, to report when required to do so under section 78 or 80.

Section 69G: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 69G: amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

69H Offence to refuse entry to community detention curfew address

(1) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $5,000, who refuses or fails, without reasonable excuse, to allow a probation officer, who has identified himself or herself, to enter into the curfew address if the offender is required to be at the address at the time that the probation officer seeks entry.

(2) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $5,000, who refuses or fails, without reasonable excuse, to allow an authorised person to enter into the curfew address for the purpose of servicing or inspecting any equipment used in the electronic monitoring of the offender's compliance with the condition that the offender remain at the curfew address during the curfew period (whether or not the offender is required to be at the curfew address at the time).

(3) For the purposes of subsection (2), an **authorised person** is a person who—

(a) is a probation officer and has identified himself or herself; or

(b) accompanies a person described in paragraph (a); or

(c) is authorised in writing by a probation officer and has produced that written authority to an occupant of the residence.

Section 69H: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 69H(1): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 69H(2): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

69I Variation or cancellation of sentence of community detention

(1) An offender who is subject to a sentence of community detention, or a probation officer, may apply, in accordance with section 72, for an order under subsection (3) on the grounds that—

(a) the offender is unable to comply, or has failed to comply, with any conditions of the sentence; or

(b) the curfew address is no longer available or suitable because of a change in circumstances; or

(c) having regard to any changes in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence,—

(i) the rehabilitation and reintegration of the offender would be advanced by the suspension or variation of the curfew period; or

(ii) the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) A probation officer may apply for an order under subsection (3) if an offender, who is subject to a sentence of community detention, is convicted of an offence punishable by imprisonment.

(3) On an application under subsection (1) or (2), the court may, if it is satisfied that the grounds on which the application is based have been established,—

(a) suspend or vary the curfew period; or

(b) vary the curfew address; or

(c) cancel the sentence; or

(d) cancel the sentence and substitute any other sentence (including another sentence of community detention) that could have been imposed on the offender at the time that the offender was convicted of the offence for which the sentence was imposed.

(3A) When an application is made under this section on the ground specified in subsection (1)(b) and there is no suitable alternative curfew address available, the court may do either or both of the following things:

(a) issue to a constable a warrant for the offender's arrest:

(b) bail the offender or remand the offender in custody if the application cannot be determined immediately.

(4) When determining a substitute sentence to be imposed under subsection (3)(d), the court must take into account the portion of the original sentence that remains unserved at the time of the order.

(5) If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.

(6) If an application is made under this section for the suspension or variation of the curfew period, a probation officer may suspend the curfew period until the application has been heard and disposed of.

Section 69I: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 69I(3A): inserted, on 22 January 2014, by section 27 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 69I(3A): amended, on 17 December 2016, by section 96 of the Statutes Amendment Act 2016 (2016 No 104).

69IA When time ceases to run on sentence of community detention

For the purpose of calculating how much time an offender has served on a sentence of community detention,—

(a) time ceases to run on the sentence during any period between the date on which an application under section 69I(1)(a) is lodged and the date on which the application is determined by the court; but

(b) some or all of the period between those dates may be regarded by the court as time served, as the court thinks appropriate in the circumstances, after taking into account—

(i) the extent (if any) to which the offender has complied with any conditions of the sentence; and

(ii) the amount of time (if any) that the offender has spent in custody.

Section 69IA: inserted, on 22 January 2014, by section 28 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

69J Application of section 69I during epidemic

(1) While an epidemic management notice is in force,—

(a) a probation officer who has applied in accordance with section 72 for an order under section 69I(3) varying the curfew period subject to which a sentence of community detention was imposed by the court on an offender may himself or herself vary the curfew period; and

(b) any probation officer may himself or herself vary the curfew period subject to which a sentence of community detention was imposed by the court on an offender if the offender has applied in accordance with section 72 for an order under section 69I(3) to vary the curfew period; and

(c) a probation officer may vary or suspend any conditions of a sentence of community detention.

(2) A variation under subsection (1)(a) or (b) has effect until the application concerned has been heard or disposed of.

(3) Any variation or suspension of a condition under subsection (1)(c) has effect until the earlier of—

(a) the revocation of the epidemic management notice; or

(b) the date on which a probation officer rescinds the variation or suspension.

Section 69J: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

69JA Chief executive of Department of Corrections may vary offender's curfew address

(1) The chief executive of the Department of Corrections may vary an offender's curfew address if—

(a) the curfew address is no longer available or suitable because of a change in circumstances; and

(b) an alternative address is suitable; and

(c) every relevant occupant (as defined in section 26A(4)(b)) at the alternative address has given their informed consent to the offender remaining at that address during the curfew period; and

(d) the alternative address is in an area in which a community detention scheme is administered by the Department of Corrections; and

(e) the offender has given written consent to the change in address.

(2) A probation officer may, subject to subsection (3), approve a provisional curfew address at which the offender must remain during the curfew period pending a decision by the chief executive under subsection (1).

(3) If the chief executive does not vary a curfew address within 10 days after a provisional curfew address is approved under subsection (2),—

(a) a probation officer must approve another provisional curfew address at which the offender must remain during the curfew period pending a decision by the chief executive under subsection (1); or

(b) a probation officer must apply to the court for an order under section 69I(3) at the earliest opportunity and the offender must, unless the probation officer directs otherwise, remain at the provisional curfew address approved under subsection (2) during the curfew period pending the decision of the court.

(4) If the chief executive does not vary a curfew address within 10 days after the probation officer has approved a provisional curfew address under subsection (3)(a),—

(a) the probation officer must apply to the court for an order under section 69I(3) at the earliest opportunity; and

(b) the offender must, unless the probation officer directs otherwise, remain at the provisional curfew address approved under subsection (3)(a) during the curfew period pending the decision of the court.

Section 69JA: inserted, on 22 January 2014, by section 29 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

69K Alternative curfew address pending determination of application under section 69I

[Repealed]

Section 69K: repealed, on 22 January 2014, by section 30 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

69L When sentence ends on non-release day

If the last day of an offender's sentence of community detention falls on a non-release day, the offender ceases to be subject to the sentence on the nearest preceding day that is not a non-release day.

Section 69L: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

69M Community detention does not affect entitlements under Social Security Act 2018

The fact that a person is serving a sentence of community detention does not, of itself, affect any entitlement the person may have under the Social Security Act 2018.

Section 69M: inserted, on 1 October 2007, by section 33 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 69M heading: amended, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

Section 69M: amended, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

Offences related to community-based sentences

70 Offences related to breach of conditions of supervision

An offender commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000, who—

(a) fails, without reasonable excuse, to comply with any condition of a sentence of supervision; or

(b) fails, without reasonable excuse, to report when required to do so under section 78 or section 80.

Compare: 1985 No 120 s 52(1)

Section 70: amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

70AA Offences related to sentences of supervision with drug or alcohol conditions

An offender who is subject to a sentence of supervision with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000, if the offender—

(a) refuses or fails, without reasonable excuse,—

(i) to undergo a testing procedure when required to do so under sections 80ZO(2)(a) and 80ZQ; or

(ii) to submit to continuous monitoring when required to do so under section 80ZO(2)(b); or

(iii) to comply with instructions specified in a notice given under section 80ZO(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or

(iv) to accompany an authorised person, when required to do so under section 80ZQ(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or

(v) to contact a specified automated system when required to do so under section 80ZO(2)(c); or

(vi) to report, at any time or times when required to do so under section 80ZQ(5), to a specified testing facility to undergo testing; or

(vii) to undergo a testing procedure when required to do so under sections 80ZO(2)(c) and 80ZQ; or

(b) does anything with the intention of diluting or contaminating a bodily sample required under section 80ZO(2)(a) or (c) for the purposes of a prescribed testing procedure; or

(c) tampers with a drug or alcohol monitoring device required under section 80ZO(2)(b) or does anything with the intention of interfering with the functioning of that device.

Section 70AA: inserted, on 15 May 2017, by section 8 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

70A Offence to breach conditions of intensive supervision

An offender commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding $1,500, who—

(a) fails, without reasonable excuse, to comply with any condition of a sentence of intensive supervision; or

(b) fails, without reasonable excuse, to report when required to do so under section 78 or 80.

Section 70A: inserted, on 1 October 2007, by section 34 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 70A: amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

70B Offences related to sentences of intensive supervision with drug or alcohol conditions

An offender who is subject to a sentence of intensive supervision with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding $1,500, if the offender—

(a) refuses or fails, without reasonable excuse,—

(i) to undergo a testing procedure when required to do so under sections 80ZO(2)(a) and 80ZQ; or

(ii) to submit to continuous monitoring when required to do so under section 80ZO(2)(b); or

(iii) to comply with instructions specified in a notice given under section 80ZO(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or

(iv) to accompany an authorised person, when required to do so under section 80ZQ(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or

(v) to contact a specified automated system when required to do so under section 80ZO(2)(c); or

(vi) to report, at any time or times when required to do so under section 80ZQ(5), to a specified testing facility to undergo testing; or

(vii) to undergo a testing procedure when required to do so under sections 80ZO(2)(c) and 80ZQ; or

(b) does anything with the intention of diluting or contaminating a bodily sample required under section 80ZO(2)(a) or (c) for the purposes of a prescribed testing procedure; or

(c) tampers with a drug or alcohol monitoring device required under section 80ZO(2)(b) or does anything with the intention of interfering with the functioning of that device.

Section 70B: inserted, on 15 May 2017, by section 9 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

71 Offences relating to breach of sentence of community work

(1) An offender who is sentenced to community work commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000, who—

(a) fails, without reasonable excuse, to report to a probation officer in accordance with section 59 or section 78 or section 80; or

(ab) fails, without reasonable excuse, to allow the collection of biometric information in accordance with section 59A; or

(b) fails, without reasonable excuse, to notify a probation officer of any new residential address in accordance with section 60; or

(c) fails, without reasonable excuse, to—

(i) do any work satisfactorily in accordance with the sentence; or

(ii) comply with the terms of any agreement entered into for the purposes of section 64(1); or

(d) fails, without reasonable excuse, to complete the required number of hours of work within the period prescribed under section 58 or within any extended period granted under section 69 or 69A; or

(e) accepts remuneration, whether by way of gift or otherwise, for any work that the offender is required to do for the purposes of the sentence; or

(f) fails, without reasonable excuse, to report or to remain at any place as required by or under this subpart; or

(g) fails, without reasonable excuse, to obey any rules governing a community work centre; or

(h) fails, without reasonable excuse, to obey any directions lawfully given regarding the manner in which his or her time must be spent while under the supervision of a probation officer under section 65; or

(i) refuses to work, or fails to work in the manner reasonably required of the offender, or neglects or intentionally mismanages his or her work, while under the supervision of a probation officer under section 65; or

(j) behaves in an offensive, threatening, insolent, insulting, disorderly, or indecent manner while under the supervision of a probation officer under section 65.

(2) A person commits an offence, and is liable on conviction to a fine not exceeding $500, who, without lawful justification or excuse, loiters about any community work centre or any place where persons sentenced to community work are placed, and refuses or neglects to depart after being warned by a constable or by a probation officer.

Compare: 1985 No 120 ss 36, 45

Section 71(1): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 71(1)(ab): inserted, on 22 August 2017, by section 62 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 71(1)(d): amended, on 1 October 2007, by section 35 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 71(2): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 71(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Review of community-based sentences and cancellation of sentences of reparation

Heading: amended, on 1 August 2012, by section 10(1) of the Sentencing Amendment Act 2011 (2011 No 47).

72 Jurisdiction and procedure

(1) Every application under section 38A, 54, 54K, 68, or 69I must be made—

(a) to the High Court, if the sentence was passed—

(ia) by the Supreme Court on appeal against a sentence imposed by the High Court, or imposed by the Court of Appeal on appeal from the High Court; or

(i) by the Court of Appeal on appeal from the High Court; or

(ii) by the High Court otherwise than on appeal from the District Court; or

(b) to the District Court presided over by a trial Judge, if the sentence was passed—

(ia) by the Supreme Court on appeal against a sentence imposed by the District Court presided over by a trial Judge, or imposed by the Court of Appeal on appeal from the District Court presided over by a trial Judge; or

(i) by the Court of Appeal on appeal from the District Court presided over by a trial Judge; or

(ii) by a District Court Judge on conviction following a jury trial; or

(c) to the District Court presided over by a Judge or Community Magistrate if the sentence was imposed by a Community Magistrate; or

(d) to the District Court presided over by any Judge, in any other case.

(2) A copy of the application must, either before or as soon as practicable after the application is lodged in the office of the court, be served—

(a) on the offender, if the offender is not the applicant; or

(b) on the chief executive of the Ministry of Justice, if a Registrar is not the applicant under section 38A; or

(c) on the chief executive of the Department of Corrections, if a probation officer is not the applicant under section 54, 54K, 68, or 69I.

(2A) An application under section 38A must be served in accordance with section 79A or 79B of the Summary Proceedings Act 1957.

(2B) If an application under section 38A has been lodged in a court by a Registrar, the Registrar may, for the purpose of having the offender brought before the court dealing with the application, issue a warrant for the arrest of the offender.

(2C) Sections 88AA and 88AC of the Summary Proceedings Act 1957 apply with any necessary modifications to a warrant to arrest issued under subsection (2B).

(2D) For the purposes of section 310 of the Customs and Excise Act 2018 and section 295 of the Immigration Act 2009, a warrant for the arrest of the offender issued under subsection (2B) is to be treated as a warrant for arrest that has been issued in respect of the non-payment of the whole, or of any part, of a fine.

(3) If an application under section 54, 54K, 68, or 69I has been lodged in a court by a probation officer, a probation officer or a constable may, for the purpose of having the offender brought before the court dealing with the application, apply to a court or a Registrar for the issue of a warrant to arrest the offender and the court or Registrar may issue a warrant for arrest.

(4) No warrant issued under subsection (3) may be executed otherwise than by a constable.

(5) If an offender is arrested under a warrant issued under subsection (3), sections 167 to 170, 206, and 385 of the Criminal Procedure Act 2011, so far as they are applicable and with any necessary modifications, apply as if the application were a charging document.

Compare: 1985 No 120 s 65

Section 72(1): amended, on 1 August 2012, by section 10(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 72(1): amended, on 1 October 2007, by section 36(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 72(1)(a)(ia): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 72(1)(a)(ii): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 72(1)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 72(1)(b)(ia): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 72(1)(b)(ia): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 72(1)(b)(i): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 72(1)(b)(ii): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 72(1)(c): replaced, on 22 January 2014, by section 31(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 72(1)(c): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 72(1)(d): inserted, on 22 January 2014, by section 31(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 72(1)(d): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 72(2)(b): replaced, on 1 August 2012, by section 10(3) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 72(2)(c): inserted, on 1 August 2012, by section 10(3) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 72(2A): inserted, on 1 August 2012, by section 10(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 72(2B): inserted, on 1 August 2012, by section 10(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 72(2C): inserted, on 1 August 2012, by section 10(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 72(2D): inserted, on 1 August 2012, by section 10(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 72(2D): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 72(3): replaced, on 22 January 2014, by section 31(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 72(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 72(5): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

73 Appeal in respect of substituted sentence

For the purposes of any appeal or application for leave to appeal, a sentence substituted for a community-based sentence imposed on the conviction of the offender on a charge is deemed to be a sentence imposed on the conviction of the offender on that charge.

Section 73: replaced, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Miscellaneous provisions

74 Order must be drawn up and copy given to offender, etc

(1) If a court imposes a community-based sentence on an offender, the particulars of the sentence must be drawn up in the form of an order.

(2) Wherever practicable, a copy of the order must be given to the offender before he or she leaves the court.

(3) The order must include information regarding—

(a) the nature of the sentence; and

(b) the initial reporting obligations; and

(c) the date on which the sentence commences; and

(d) the obligations to comply with the instructions of a probation officer and the terms of the sentence; and

(e) the consequences of non-compliance with the terms of the sentence; and

(f) the statutory provisions under which the sentence may be varied or cancelled.

(3A) If the community-based sentence is a sentence of community detention, then, in addition to the information required to be included in the order under subsection (3), the order must also include—

(a) the sentence term; and

(b) the curfew period; and

(c) the conditions that apply, including those that apply for the duration of the sentence term and those that only apply during the curfew period.

(4) For the purposes of subsection (1), a court may direct that the offender be detained in the custody of the court for a period, not exceeding 2 hours, that may be necessary to enable the order to be drawn up and a copy given to the offender.

(5) If it is not practicable to give a copy of the order to the offender before the offender leaves the court, a copy must be given to the offender in person as soon as practicable after the offender leaves the court.

(6) A copy of the order must be given to the chief executive of the Department of Corrections as soon as possible after it is drawn up.

Compare: 1985 No 120 s 58

Section 74(3A): inserted, on 1 October 2007, by section 37 of the Sentencing Amendment Act 2007 (2007 No 27).

75 Commencement of community-based sentences

(1) A community-based sentence commences on the day on which it is imposed.

(2) Subsection (1) applies—

(a) subject to this section and sections 75A and 75B and to sections 345 and 346 of the Criminal Procedure Act 2011; and

(b) regardless of whether or not the sentence is imposed in substitution for another sentence.

(2A) If the commencement date of a sentence of community work is deferred under section 57A, the sentence commences on the date specified in the order of the court.

(3) If a community-based sentence is imposed as a second sentence and deferred under section 20A(2)(b),—

(a) the community-based sentence commences on the date that the first sentence is completed; or

(b) if the offender is subject to post-detention conditions imposed in respect of the first sentence, the community-based sentence commences on the date that the offender is no longer subject to those conditions.

(4) *[Repealed]*

(5) *[Repealed]*

(6) *[Repealed]*

(7) *[Repealed]*

(8) *[Repealed]*

Section 75(2)(a): amended, on 22 January 2014, by section 32(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 75(2)(a): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 75(2)(a): amended, on 1 October 2007, by section 38(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 75(2A): inserted, on 1 October 2007, by section 38(2) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 75(3): replaced, on 22 January 2014, by section 32(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 75(4): repealed, on 1 October 2007, by section 38(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 75(5): repealed, on 1 October 2007, by section 38(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 75(6): repealed, on 1 October 2007, by section 38(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 75(7): repealed, on 1 October 2007, by section 38(3) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 75(8): repealed, on 1 October 2007, by section 38(3) of the Sentencing Amendment Act 2007 (2007 No 27).

75A Commencement of cumulative sentences of community work

(1) If a sentence of community work is imposed cumulatively on another sentence of community work imposed at the same time,—

(a) at least 1 of the sentences must commence on the day that sentence is imposed; and

(b) the commencement date for the subsequent sentence is the date of the completion of the hours of community work under the first sentence of community work to be served.

(2) If a sentence of community work is imposed cumulatively on another sentence of community work to which the offender is already subject, the commencement date for the subsequent sentence is the date of the completion of the hours of community work under the first sentence of community work to be served.

(3) To avoid doubt, if a sentence of community work is imposed cumulatively on another sentence of community work, hours of work done under either of the sentences on the date referred to in subsections (1)(b) or (2) are not counted towards the hours of work required to be done under the other sentence.

(4) If a sentence of community work is imposed cumulatively on another sentence of community work (the **first sentence**), whether or not imposed at the same time, and the first sentence is subsequently quashed,—

(a) the commencement date for the subsequent sentence is the date on which the subsequent sentence was imposed; and

(b) any hours of work completed under the quashed sentence must be treated as having been done under the subsequent sentence.

(5) If a sentence of community work is imposed cumulatively on another sentence of community work (the **first sentence**), whether or not imposed at the same time, and the first sentence is subsequently cancelled,—

(a) the commencement date for the subsequent sentence is the date on which the first sentence was cancelled; and

(b) to avoid doubt, any hours of work completed under the cancelled sentence must not be treated as having been done under the subsequent sentence.

(6) A sentence of community work expires on the date that the offender completes the hours of work required under the sentence (taking into account any hours remitted under section 67), whether or not the period of time allowed under section 58 or any extended period granted under section 69 or 69A has expired.

Section 75A: inserted, on 1 October 2007, by section 39 of the Sentencing Amendment Act 2007 (2007 No 27).

75B Commencement of cumulative sentences of community detention

(1) If a sentence of community detention is imposed cumulatively on another sentence of community detention imposed at the same time,—

(a) at least 1 of the sentences must commence on the day that sentence is imposed; and

(b) the commencement date for the subsequent sentence is the date of the completion of the term of community detention under the first sentence of community detention to be served.

(2) If a sentence of community detention is imposed cumulatively on another sentence of community detention to which the offender is already subject, the commencement date for the subsequent sentence is the date of the completion of the term of community detention under the first sentence of community detention to be served.

(3) To avoid doubt, if a sentence of community detention is imposed cumulatively on another sentence of community detention, any period during which the offender was subject to either of the sentences referred to in subsections (1)(b) or (2) is not counted towards the term of the other sentence.

(4) If a sentence of community detention is imposed cumulatively on another sentence of community detention (the **first sentence**), whether or not imposed at the same time, and the first sentence is subsequently quashed,—

(a) the commencement date for the subsequent sentence is the date on which the subsequent sentence was imposed; and

(b) any period during which the offender was subject to the quashed sentence must be treated as having been served under the subsequent sentence.

(5) If a sentence of community detention is imposed cumulatively on another sentence of community detention (the **first sentence**), whether or not imposed at the same time, and the first sentence is subsequently cancelled,—

(a) the commencement date for the subsequent sentence is the date on which the first sentence was cancelled; and

(b) to avoid doubt, any period during which the offender was subject to the cancelled sentence must not be treated as having been served under the subsequent sentence.

Section 75B: inserted, on 1 October 2007, by section 39 of the Sentencing Amendment Act 2007 (2007 No 27).

76 Commencement of community-based sentence after temporary surrender under Extradition Act 1999

(1) This section applies if an offender is temporarily surrendered to New Zealand under the Extradition Act 1999 and—

(a) is convicted and sentenced under this Act to a community-based sentence; and

(b) is required to be returned in accordance with section 66(2) of the Extradition Act 1999 to the country from where the offender was surrendered on completion of the proceedings to which the extradition related.

(2) Unless the court otherwise directs, the sentence imposed does not commence until the offender has reported to a probation officer after being returned to New Zealand.

(3) Except as provided in subsection (3A), an offender to whom this section applies must report to a probation officer within 72 hours of the offender's arrival in New Zealand.

(3A) An offender who is sentenced to community detention must report within 24 hours, unless the 24 hours elapses on a weekend or public holiday, in which case the offender must report on the next working day.

(4) This section applies despite any other provisions in this Act.

Compare: 1985 No 120 s 59A

Section 76(3): replaced, on 1 October 2007, by section 40 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 76(3A): inserted, on 1 October 2007, by section 40 of the Sentencing Amendment Act 2007 (2007 No 27).

77 Application of Accident Compensation Act 2001 to persons serving community-based sentence

When an offender performs any service or does any work or attends any course or programme for the purposes of a community-based sentence, the following provisions apply:

(a) if the offender suffers any personal injury for which he or she has cover under the Accident Compensation Act 2001 arising out of and in the course of performing the activities described above,—

(i) the personal injury is deemed, for the purposes of section 97 of that Act only, to be a work-related personal injury; and

(ii) the Crown is liable to pay compensation to which the offender is entitled under that section:

(b) the cost of all other entitlements of the offender under that Act must be met from the Earners' Account in the case of an offender who is an earner and from the Non-Earners' Account in all other cases.

Compare: 1985 No 120 s 62

Section 77 heading: amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 77(a): amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

78 Effect of subsequent sentence of imprisonment

(1) Subsection (2) applies if an offender who is subject to a community-based sentence is subsequently sentenced to—

(a) a term of imprisonment of not more than 12 months; or

(b) 2 or more terms of imprisonment to be served concurrently, each term of which is not more than 12 months; or

(c) 2 or more terms of imprisonment that are cumulative, the total term of which is not more than 12 months.

(2) If this subsection applies, the court must either—

(a) order that the community-based sentence be suspended; or

(b) order that the community-based sentence be suspended for the duration of the period in which the offender is detained under the sentence or sentences of imprisonment.

(3) If the court suspends the community-based sentence under subsection (2)(b), it may, if it thinks fit, remit, suspend, or vary any conditions of the sentence imposed by the court, or impose additional conditions.

(4) The court must not vary any existing condition or impose any new condition of a kind referred to in section 52(2)(b) or 54I(3)(b) (which involves prescription medication) unless the offender—

(a) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of any variation or new condition in relation to the medication and any known risks; and

(b) consents to taking the prescription medication.

(5) If a community-based sentence is suspended under subsection (2)(b),—

(a) except as provided in paragraph (b), the offender must report to a probation officer as soon as practicable, and not later than 72 hours, after being released from detention; and

(b) an offender who is sentenced to community detention must report within 24 hours after being released from detention, unless the 24 hours elapses on a weekend or public holiday, in which case the offender must report on the next working day; and

(c) the sentence does not resume until the offender has reported to a probation officer as required by paragraphs (a) or (b).

(6) Subsection (7) applies if an offender who is subject to a community-based sentence is subsequently sentenced to—

(a) a term of imprisonment of more than 12 months; or

(b) 2 or more terms of imprisonment to be served concurrently, each term of which is more than 12 months; or

(c) 2 or more terms of imprisonment that are cumulative, the total term of which is more than 12 months.

(7) If this subsection applies, the community-based sentence is suspended.

Section 78(4): amended, on 1 October 2007, by section 41(1) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 78(5)(a): replaced, on 1 October 2007, by section 41(2) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 78(5)(b): replaced, on 1 October 2007, by section 41(2) of the Sentencing Amendment Act 2007 (2007 No 27).

Section 78(5)(c): inserted, on 1 October 2007, by section 41(2) of the Sentencing Amendment Act 2007 (2007 No 27).

79 Period of suspension not counted towards sentence

(1) No period during which a sentence of supervision is suspended under section 78(2) or (7) is counted towards the period under section 45(2).

(2) No period during which a sentence of community work is suspended under section 78(2) or (7) is counted towards the periods referred to in section 58(1) and (2).

(3) No period during which a sentence of intensive supervision is suspended under section 78(2) or (7) is counted towards the period under section 54B(2).

(4) No period during which a sentence of community detention is suspended under section 78(2) or (7) is counted towards the period under section 69B(2).

Section 79(3): inserted, on 1 October 2007, by section 42 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 79(4): inserted, on 1 October 2007, by section 42 of the Sentencing Amendment Act 2007 (2007 No 27).

80 Resumption of community-based sentence if sentence of imprisonment quashed

(1) This section applies to a community-based sentence that is suspended under section 78(2)(a) or section 78(7).

(2) The community-based sentence is suspended until the earlier of the following events:

(a) it resumes under subsection (3); or

(b) it is cancelled under subsection (5).

(3) If the sentence or sentences of imprisonment based on which the community-based sentence was suspended are quashed and that results in the offender no longer being detained under a sentence of imprisonment,—

(a) except as provided in paragraph (b), the offender must report to a probation officer as soon as practicable, and not later than 72 hours, after being released from detention; and

(b) an offender who is sentenced to community detention must report within 24 hours after being released from detention, unless the 24 hours elapses on a weekend or public holiday, in which case the offender must report on the next working day; and

(c) the sentence resumes when the offender has reported as required by paragraphs (a) or (b).

(4) The Registrar of the court in which the sentence or sentences of imprisonment are quashed must notify the chief executive of the Department of Corrections.

(5) If the community-based sentence never resumes under subsection (3), it is cancelled when the offender ceases to be detained under the sentence or sentences of imprisonment.

Section 80(3)(a): replaced, on 1 October 2007, by section 43 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80(3)(b): replaced, on 1 October 2007, by section 43 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80(3)(c): inserted, on 1 October 2007, by section 43 of the Sentencing Amendment Act 2007 (2007 No 27).

Subpart 2A—Home detention

Subpart 2A: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80A Sentence of home detention

(1) A court may sentence an offender to a sentence of home detention if—

(a) the offender is convicted of an offence punishable by imprisonment; or

(b) the offender is convicted of an offence and the enactment prescribing the offence expressly provides that a sentence of home detention may be imposed on conviction.

(2) A court may sentence an offender to home detention under subsection (1) if—

(a) the court is satisfied that—

(i) the proposed home detention residence is suitable; and

(ii) the relevant occupants (as defined in section 26A(4)) of the proposed home detention residence—

(A) understand the conditions of home detention that will apply to the offender; and

(B) consent to the offender serving the sentence in the residence in accordance with those conditions; and

(C) have been informed that they may withdraw their consent to the offender serving the sentence in the residence at any time; and

(iii) the offender has been made aware of and understands the conditions that will apply during home detention, and he or she agrees to comply with them; and

(b) the proposed home detention residence is in an area in which a home detention scheme is operated by the chief executive of the Department of Corrections.

(2A) Before imposing a sentence of home detention on an offender, a court must consider the pre-sentence report prepared by a probation officer in accordance with section 26A.

(3) A sentence of home detention may be for such period as the court thinks fit, but must not be for less than 14 days or more than 12 months.

(4) The court must specify the home detention residence when sentencing the offender to a sentence of home detention.

(5) An offender sentenced to home detention is not in custody while serving the sentence.

(6) This section is subject to section 80B.

Section 80A: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80A(2A): inserted, on 22 January 2014, by section 33 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80B Concurrent and cumulative sentences of home detention

(1) If a court imposes a sentence of home detention on an offender who is already subject to a sentence of home detention, the sentences must be served concurrently unless the court directs that they are to be served cumulatively.

(2) If a court imposes cumulative sentences of home detention or imposes 1 or more sentences of home detention on an offender who is already serving a sentence of home detention, the total term of the sentences of home detention must not be more than 12 months.

(3) Before deciding to impose 2 or more sentences of home detention cumulatively or concurrently, the court must consider the guidance under sections 84 and 85 as if it applied to sentences of home detention.

(4) Subject to section 57A, if a court imposes a sentence of community work and a sentence of home detention, or imposes one of them on an offender who is already subject to the other, the sentences must be served concurrently.

Section 80B: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80C Detention conditions applying to offender sentenced to home detention

(1) An offender who is serving a sentence of home detention is subject to detention conditions comprising—

(a) the standard conditions set out in subsection (2); and

(b) any special conditions that may be imposed by the court under section 80D.

(2) The standard conditions for a sentence of home detention are that—

(a) the offender is under the supervision of a probation officer and must cooperate with the probation officer and comply with any lawful direction given by that probation officer; and

(b) the offender must not leave the home detention residence at any time except in the circumstances set out in subsections (3), (4), and (5); and

(c) the offender must keep in his or her possession the order drawn up under section 80ZC and, if requested to do so by a constable or a probation officer, must produce the order for inspection; and

(ca) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:

(cb) the offender must, if a probation officer directs, allow the collection of biometric information:

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

(da) the offender must, if required to submit to the electronic monitoring of his or her sentence, remain within the area defined by the probation officer; and

(e) 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; and

(f) 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; and

(g) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by a probation officer.

(3) An offender may leave the home detention residence only—

(a) to seek urgent medical or dental treatment; or

(b) to avoid or minimise a serious risk of death or injury to the offender or any other person; or

(c) with the approval of a probation officer—

(i) to comply with any special condition; or

(ii) to seek or engage in employment; or

(iii) to attend training or other rehabilitative or reintegrative activities or programmes; or

(iv) to attend a restorative justice conference or other process relating to the offender's offending; or

(v) to carry out any undertaking arising from any restorative justice process; or

(vi) for any other purpose specifically approved by the probation officer.

(4) A probation officer may approve an alternative residence under section 80H pending determination of an application to vary the residence under section 80F.

(5) In addition to absences authorised under subsection (3), a probation officer may authorise an offender, who has served at least three quarters of a sentence of home detention of 6 months or more, to be absent from the home detention residence for up to 4 hours a day without a specified purpose for any or all days remaining to be served under the sentence.

(5A) A probation officer must define the area within which an offender subject to electronic monitoring is required to remain at the home detention residence and show that area to the offender and advise the relevant occupants (as defined in section 26A(4)(a)) of that area.

(6) For the purposes of subsection (5), an offender who is subject to 2 or more sentences of home detention is eligible when he or she has served the longer of—

(a) three quarters of the longest of any concurrent sentences of home detention imposed on the offender; or

(b) three quarters of the notional single sentence of home detention that is created when sentences of home detention are ordered to be served concurrently or cumulatively.

Section 80C: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80C(2)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 80C(2)(ca): inserted, on 22 August 2017, by section 63 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 80C(2)(cb): inserted, on 22 August 2017, by section 63 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 80C(2)(da): inserted, on 22 January 2014, by section 34(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 80C(5A): inserted, on 22 January 2014, by section 34(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80D Special conditions of sentence of home detention

(1) In addition to the standard conditions that apply under section 80C, the court may, subject to subsections (2), (3), and (7), impose 1 or more special conditions described in subsection (4).

(2) A court may impose any of the special conditions described in subsection (4) if the court is satisfied that—

(a) there is a significant risk of further offending by the offender; and

(b) standard conditions alone would not adequately reduce the risk; and

(c) the imposition of special conditions would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

(3) A court may only impose a condition of the kind described in subsection (4)(d) (which relates to judicial monitoring) if it is also satisfied that, because of the special circumstances of the offender, this is necessary to assist the offender's compliance with the sentence.

(4) The special conditions referred to in subsection (1) or (2) are—

(a) any conditions that the court thinks fit relating to the offender's finances or earnings:

(b) conditions requiring the offender to take prescription medication:

(c) conditions relating to a programme:

(ca) conditions prohibiting the offender from doing 1 or more of the following:

(i) using (as defined in section 4(1)) a controlled drug:

(ii) using a psychoactive substance:

(iii) consuming alcohol:

(d) a condition requiring the offender to comply with the requirements of judicial monitoring under subpart 2B as directed by a probation officer or the sentencing Judge:

(e) any other conditions that the court thinks fit to reduce the likelihood of further offending by the offender.

(5) For the purposes of subsection (4), **programme** has the same meaning as in section 54H.

(6) No court may impose a condition under this section that—

(a) the offender pay any fine, reparation, or other sum ordered to be paid on conviction; or

(b) the offender perform any service that he or she could have been required to perform if he or she had been sentenced to community work.

(7) No offender may be made subject to a special condition that requires the offender to take prescription medication unless the offender—

(a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and

(b) consents to taking the prescription medication.

(8) An offender does not breach his or her detention conditions for the purposes of section 80S if he or she withdraws consent to taking prescription medication; but the failure to take the medication may give rise to a ground for variation or cancellation of the sentence of home detention under section 80F.

Section 80D: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80D(4)(ca): inserted, on 15 May 2017, by section 10 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80E Electronic monitoring

(1) The purpose of an electronic monitoring condition imposed as a condition under section 80C(2)(d) is to deter the offender from breaching conditions that relate to his or her whereabouts, and to monitor compliance with those conditions.

(2) Information about an offender that is obtained through electronic monitoring may be used both for the purposes referred to in subsection (1) and for the following purposes:

(a) to verify compliance with any detention conditions:

(b) to detect non-compliance with any detention conditions and the commission of offences:

(c) to provide evidence of non-compliance with detention conditions and the commission of offences:

(d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.

Section 80E: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80E(1): amended, on 22 December 2016, by section 8 of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47).

80F Application for variation or cancellation of sentence of home detention

(1) An offender who is subject to a sentence of home detention, or a probation officer, may apply for an order under subsection (4) on the grounds that—

(a) the offender is unable to comply, or has failed to comply, with any detention conditions:

(b) any programme to which the offender is subject is no longer available or suitable for the offender:

(c) the home detention residence is no longer available or suitable because of a change in circumstances:

(d) having regard to any changes in circumstances since the sentence was imposed and to the manner in which the offender has responded to the sentence,—

(i) the rehabilitation and reintegration of the offender would be advanced by the remission, suspension, or variation of any special conditions, or the imposition of additional special conditions; or

(ii) the continuation of the sentence is no longer necessary in the interests of the community or the offender.

(2) A probation officer may apply for an order under subsection (4) if an offender, who is subject to a sentence of home detention, is convicted of an offence punishable by imprisonment.

(3) If an offender is subject to special detention conditions in relation to 2 or more sentences of home detention at the same time, a probation officer must apply for an order under subsection (4)(a) if he or she is satisfied that—

(a) any of the special conditions are incompatible with each other; or

(b) in light of all the conditions to which the offender is subject under the sentences, it is unreasonable to expect the offender to comply with 1 or more of the special conditions.

(4) On an application under subsection (1), (2), or (3), the court may, if it is satisfied that the grounds on which the application is based have been established,—

(a) remit, suspend, or vary any special conditions imposed by the court, or impose additional special conditions; or

(b) vary the home detention residence; or

(c) cancel the sentence; or

(d) cancel the sentence and substitute any other sentence (including another sentence of home detention) that could have been imposed on the offender at the time that the offender was convicted of the offence for which the sentence was imposed.

(4A) When an application is made under this section on the ground specified in subsection (1)(c) and there is no suitable alternative residence available, the court may do either or both of the following things:

(a) issue to a constable a warrant for the offender's arrest:

(b) bail the offender or remand the offender in custody if the application cannot be determined immediately.

(5) An application under subsection (1), (2), or (3) may be made at any time before or after the sentence commences.

(6) Section 72 applies, with any necessary modifications, to an application under this section.

Section 80F: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80F(4A): inserted, on 22 January 2014, by section 35 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 80F(4A): amended, on 17 December 2016, by section 97 of the Statutes Amendment Act 2016 (2016 No 104).

80FA Chief executive of Department of Corrections may vary offender's home detention residence

(1) The chief executive of the Department of Corrections may vary an offender's home detention residence if—

(a) the home detention residence is no longer available or suitable because of a change in circumstances; and

(b) an alternative residence is suitable; and

(c) every relevant occupant (as defined in section 26A(4)(a)) at the alternative residence has given their informed consent to the offender remaining at that residence while serving his or her home detention sentence; and

(d) the alternative residence is in an area in which a home detention scheme is administered by the Department of Corrections; and

(e) the offender has given written consent to the change in residence.

(2) A probation officer may, subject to subsection (3), approve a provisional home detention residence at which the offender must remain pending a decision by the chief executive under subsection (1).

(3) If the chief executive does not vary a home detention residence within 10 working days after a provisional home detention residence is approved under subsection (2),—

(a) the probation officer must approve another provisional home detention residence at which the offender must remain pending a decision by the chief executive under subsection (1); or

(b) the probation officer must apply to the court for an order under section 80F(4) at the earliest opportunity and the offender must, unless the probation officer directs otherwise, remain at the provisional home detention residence approved under subsection (2) pending the decision of the court.

(4) If the chief executive does not vary a home detention residence within 10 days after the probation officer has approved a provisional home detention residence under subsection (3)(a),—

(a) the probation officer must apply to the court for an order under section 80F(4) at the earliest opportunity; and

(b) the offender must, unless the probation officer directs otherwise, remain at the provisional home detention residence approved under subsection (3)(a) pending the decision of the court.

Section 80FA: inserted, on 22 January 2014, by section 36 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 80FA heading: amended, on 17 December 2016, by section 98(1) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(1): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(1)(a): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(1)(b): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(1)(c): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(1)(d): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(1)(e): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(2): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(3): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(3)(a): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(3)(b): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(4): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

Section 80FA(4)(b): amended, on 17 December 2016, by section 98(2) of the Statutes Amendment Act 2016 (2016 No 104).

80G Matters relating to orders under section 80F

(1) If the court cancels a sentence of home detention under section 80F(4)(d), the court may at the same time cancel any sentence of community work that the offender is serving concurrently with the sentence of home detention.

(2) When determining a substitute sentence under section 80F(4)(d), the court must take into account the portion of the original sentence that remains unserved at the time of the order.

(3) If the court varies a special condition or imposes a new special condition under section 80F(4)(a), section 80D applies.

(4) If the court cancels the sentence, the sentence expires on the date that the order is made or on any other date that the court may specify.

(5) If an application is made under section 80F for the remission, suspension, or variation of any special condition of a sentence of home detention, a probation officer may suspend the condition until the application has been heard and disposed of.

Section 80G: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80GA Arrest without warrant if home detention residence no longer available or suitable

Power to arrest without warrant

(1) Any constable or probation officer may arrest, without warrant, an offender if the constable or officer believes on reasonable grounds that—

(a) the offender's home detention residence is no longer available or suitable because of a change in circumstances; and

(b) a suitable alternative residence has not been decided under section 80FA(1); and

(c) a suitable provisional home detention residence has not been approved under section 80FA(2) or (3)(a); and

(d) subsection (2), (3), or (4) applies to the offender.

Offenders to whom section applies

(2) This subsection applies to the offender if—

(a) an application for an order under section 80F(4) has been made in respect of the offender; and

(b) it is not practicable to obtain promptly a warrant to arrest the offender under section 72(2B) (*see* section 80F(6)) or 80F(4A); and

(c) a risk to any person's safety exists because of the offender remaining at, leaving, or returning to the offender's home detention residence that is no longer available or suitable because of a change in circumstances.

(3) This subsection applies to the offender if—

(a) an application for an order under section 80F(4) has not been made in respect of the offender; and

(b) it is not practicable for a probation officer to make promptly an application of that kind; and

(c) a risk to any person's safety exists because of the offender remaining at, leaving, or returning to the offender's home detention residence that is no longer available or suitable because of a change in circumstances.

(4) This subsection applies to the offender if—

(a) neither subsection (2) nor subsection (3) applies to the offender; and

(b) a risk to any person's safety exists because of the offender remaining at, leaving, or returning to the offender's home detention residence that is no longer available or suitable because of a change in circumstances.

Offender to be brought before court, which may bail or remand in custody

(5) An offender arrested under this section must be brought as soon as possible before the court, which may under section 80F(4A)(b) (if it applies) or this subsection (if section 80F(4A)(b) does not apply) bail the offender, or remand them in custody, until whichever of the following occurs first:

(a) an application for an order under section 80F(4) in respect of the offender has been made and determined:

(b) a suitable alternative residence is decided under section 80FA(1):

(c) a suitable provisional home detention residence is approved under section 80FA(2) or (3)(a).

Offender may be released as soon as possible if suitable residence available

(6) Despite subsection (5), an offender arrested under this section need not be detained in order to be brought as soon as possible before the court, and may instead be released as soon as possible, if—

(a) a suitable residence is decided under section 80FA(1); or

(b) a suitable provisional home detention residence is approved under section 80FA(2) or (3)(a).

Meaning of application for order under section 80F(4)

(7) In this section, an **application for an order under section 80F(4)** means an application—

(a) made under section 80F(1) by the offender or a probation officer; and

(b) based on grounds that are, or include, the grounds stated in section 80F(1)(c) (namely, that the home detention residence is no longer available or suitable because of a change in circumstances); and

(c) on which the court may, if satisfied that the grounds on which it is based have been established, make an order under section 80F(4).

Section 80GA: inserted, on 29 June 2025, by section 14 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

80H Alternative residence pending determination of application under section 80F

[Repealed]

Section 80H: repealed, on 22 January 2014, by section 37 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80I Leave to apply for cancellation of sentence of imprisonment and substitution of sentence of home detention in certain cases

(1) This section applies if—

(a) a court has sentenced an offender to a short-term sentence of imprisonment; and

(b) at the time of sentencing, the court would have sentenced the offender to a sentence of home detention if a suitable residence had been available.

(2) At the time of sentencing, the court must make an order granting the offender leave to apply to the court of first instance for cancellation of the sentence of imprisonment and substitution of a sentence of home detention if the offender finds a suitable residence at a later date.

Section 80I: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80J Appeal against order granting leave to apply for cancellation of sentence of imprisonment and substitution of sentence of home detention

(1) This section applies for the purposes of filing and determining any appeal against an order granting leave, or a refusal of the court to grant leave, under section 80I or 80K(7).

(2) For the purposes of Part 6 of the Criminal Procedure Act 2011, an order under section 80I or 80K(7) is a sentence.

Section 80J: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80J(2): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

80K Application for cancellation of sentence of imprisonment and substitution of sentence of home detention

(1) An offender who is subject to a short-term sentence of imprisonment and who has leave to apply for cancellation of a sentence of imprisonment and substitution of a sentence of home detention under section 80I may apply to the court at any time.

(2) An application must be served as soon as practicable on the chief executive of the Department of Corrections.

(3) An application must be accompanied by a pre-sentence report updated in accordance with section 80L.

(4) On application under subsection (1), the court may, if satisfied of the matters in section 80A(2), cancel the sentence of imprisonment and substitute a sentence of home detention.

(5) A sentence of home detention substituted under subsection (4) may be for any period the court thinks fit, but must not be less than 14 days or more than 12 months.

(6) When substituting a sentence of home detention, the court must take into account the portion of the original sentence that remains unserved at the time of the order.

(7) If the court does not substitute a sentence of home detention, the court—

(a) must reconsider the issue of leave to apply for cancellation of the sentence of imprisonment and substitution of a sentence of home detention; and

(b) may make a further order granting the offender leave to apply to the court at any time for cancellation of the sentence of imprisonment and substitution of a sentence of home detention.

(8) A sentence of imprisonment that is cancelled under this section is a custodial sentence for the purposes of any other enactment.

Section 80K: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80L Updated pre-sentence report

(1) An offender subject to a sentence of imprisonment who makes an application for substitution of a sentence of home detention under section 80K must agree to a probation officer updating the offender's pre-sentence report with any new information.

(2) If an offender agrees to a probation officer updating the offender's pre-sentence report under subsection (1), the probation officer must update the report in accordance with section 26A.

Section 80L: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80M Appeals in respect of substituted sentences

(1) This section applies if a court orders—

(a) cancellation of a sentence of home detention and substitution of another sentence under section 80F; or

(b) cancellation of a sentence of imprisonment and substitution of a sentence of home detention under section 80K.

(2) For the purposes of any appeal or application for leave to appeal against the substituted sentence, a sentence substituted for a sentence imposed on the conviction of the offender on a charge is deemed to be a sentence imposed on the conviction of the offender on that charge.

Section 80M: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80M(2): replaced, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

80MA Registrar must notify controlling officer and offender of resumption of sentence

If the outcome of an offender's appeal against a sentence of home detention is unsuccessful and the offender has been granted bail under section 53, or 54 of the Bail Act 2000, the Registrar of the appeal court must—

(a) notify the controlling officer (within the meaning of section 27 of the Corrections Act 2004) of the probation area in which the sentence is to be served of the date on which the sentence is to resume; and

(b) notify the offender of that date if he or she is not present in court at the time the appeal is disposed of.

Section 80MA: inserted, on 23 October 2013, by section 38 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 80MA: amended, on 14 November 2018, by section 99(1) of the Courts Matters Act 2018 (2018 No 50).

80N Imposition of post-detention conditions on offender

(1) A court that sentences an offender to a term of home detention of 6 months or less may impose the standard post-detention conditions and any special post-detention conditions on the offender and, if it does so, must specify when the conditions expire.

(2) If a court sentences an offender to a term of home detention of more than 6 months,—

(a) the standard post-detention conditions apply to the offender for a period of 12 months from the detention end date, unless the court specifies a different period; and sections 80Q, 80R, 80U, and 80ZG apply as if the standard conditions had been imposed by order of the court; and

(b) the court may, at the same time, impose any special post-detention conditions on the offender and, if it does so, must specify when the conditions expire.

(3) The court may specify that post-detention conditions imposed under this section expire on a date that is a specified period of at least 6 months, but no more than 12 months, from the detention end date.

(4) If the court imposes special post-detention conditions on the offender, the special post-detention conditions may apply for as long as, but not longer than, the standard post-detention conditions that apply to the offender.

(5) If the court sentences the offender to more than 1 sentence of home detention on the same occasion,—

(a) only 1 order under this section may be made; and

(b) that order applies in respect of all the sentences of home detention imposed on that occasion.

(6) If the court imposes a home detention sentence cumulatively on an existing sentence, or imposes a concurrent sentence of home detention, any post-detention conditions imposed with the first home detention sentence commence only after both sentences have been completed.

Section 80N: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80N(2)(a): amended, on 17 December 2016, by section 99 of the Statutes Amendment Act 2016 (2016 No 104).

Section 80N(2)(a): amended, on 22 January 2014, by section 39(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 80N(6): inserted, on 22 January 2014, by section 39(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80O Standard post-detention conditions

The standard post-detention conditions of a sentence of home detention are the following:

(a) the offender must report to a probation officer as and when required to do so by a probation officer and must notify the probation officer of his or her residential address and the nature and place of his or her employment when asked to do so:

(b) the offender must not move to a new residential address in another probation area without the prior written consent of the probation officer:

(c) if consent is given under paragraph (b), 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:

(d) if an offender intends to change his or her residential address within a probation area, the offender must give the 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:

(e) the offender must not reside at any address at which a probation officer has directed the offender not to reside:

(ea) the offender must not leave or attempt to leave New Zealand without the prior written consent of a probation officer:

(eb) the offender must, if a probation officer directs, allow the collection of biometric information:

(f) the offender must not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the offender not to engage or continue to engage:

(g) the offender must not associate with any specified person, or with persons of any specified class, with whom the probation officer has, in writing, directed the offender not to associate:

(h) the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by a probation officer.

Section 80O: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80O(ea): inserted, on 22 August 2017, by section 64 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 80O(eb): inserted, on 22 August 2017, by section 64 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

80P Special post-detention conditions

(1) A court may impose any of the special post-detention conditions described in subsection (2) if the court is satisfied that—

(a) there is a significant risk of further offending by the offender; and

(b) standard conditions alone would not adequately reduce that risk; and

(c) the imposition of special conditions would reduce the likelihood of further offending by the offender through the rehabilitation and reintegration of the offender.

(2) The special post-detention conditions are the following—

(a) any conditions that the court thinks fit relating to the offender's place of residence (which may include a condition that the offender not move residence), finances, or earnings:

(b) conditions requiring the offender to take prescription medication:

(ba) conditions prohibiting the offender from doing 1 or more of the following:

(i) using (as defined in section 4(1)) a controlled drug:

(ii) using a psychoactive substance:

(iii) consuming alcohol:

(c) conditions relating to a programme:

(d) any other conditions that the court thinks fit to reduce the likelihood of further offending by the offender.

(3) For the purposes of subsection (2), **programme** has the same meaning as in section 54H.

(4) No court may impose a special post-detention condition that the offender submit to electronic monitoring.

(4A) However, subsection (4) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under section 80ZO(2)(b), to submit to continuous monitoring.

(5) No offender may be made subject to a special post-detention condition that requires the offender to take prescription medication unless the offender—

(a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and

(b) consents to taking the prescription medication.

Section 80P: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80P(2)(ba): inserted, on 15 May 2017, by section 11(1) of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 80P(4A): inserted, on 15 May 2017, by section 11(2) of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80Q Review of post-detention conditions if conditions incompatible

(1) This section applies if—

(a) an offender is, at the same time, subject to post-detention conditions imposed under 2 or more orders made under section 80N; and

(b) a probation officer is satisfied that—

(i) any special condition to which the offender is subject under any of the orders is incompatible with any other special condition to which the offender is subject under any other of the orders; or

(ii) in light of all the conditions to which the offender is subject under the orders, it is unreasonable to expect the offender to comply with 1 or more of the special conditions.

(2) The probation officer must apply for a review of the conditions to which the offender is subject under the orders made under section 80N.

(3) Section 80R applies with any necessary modifications to an application made under this section.

Section 80Q: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80R Variation or discharge of post-detention conditions

(1) An offender who is subject to post-detention conditions imposed under section 80N, or a probation officer, may apply for an order under subsection (3).

(2) Section 72 applies, with any necessary modifications, to an application under this section.

(3) On an application under subsection (1), the court may, if it thinks fit,—

(a) suspend or vary any condition, or impose any additional conditions described in section 80N, that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed; or

(b) discharge a condition and substitute any other condition described in section 80N that could have been imposed on the offender at the time that the offender was convicted of the offence for which the sentence was imposed.

(4) If the court varies a special condition or imposes an additional special condition under subsection (3), section 80P applies.

(5) If an application is made under this section for the suspension, variation, or discharge of any condition, a probation officer may suspend the condition until the application has been heard and disposed of.

Section 80R: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80S Offence to breach detention conditions

An offender commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding $2,000, who—

(a) breaches, without reasonable excuse, any detention conditions of a sentence of home detention; or

(b) fails to return to a home detention residence when required to do so under section 80ZG(6)(b); or

(c) fails to report when required to do so under section 80ZGC(3)(a) or 80ZGD(2).

Section 80S: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80S: amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 80S(b): replaced, on 22 January 2014, by section 40 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 80S(c): inserted, on 22 January 2014, by section 40 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80SA Offences related to sentences of home detention with drug or alcohol conditions

An offender who is subject to a sentence of home detention with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding $2,000, if the offender—

(a) refuses or fails, without reasonable excuse,—

(i) to undergo a testing procedure when required to do so under sections 80ZO(2)(a) and 80ZQ; or

(ii) to submit to continuous monitoring when required to do so under section 80ZO(2)(b); or

(iii) to comply with instructions specified in a notice given under section 80ZO(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or

(iv) to accompany an authorised person, when required to do so under section 80ZQ(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or

(v) to contact a specified automated system when required to do so under section 80ZO(2)(c); or

(vi) to report, at any time or times when required to do so under section 80ZQ(5), to a specified testing facility to undergo testing; or

(vii) to undergo a testing procedure when required to do so under sections 80ZO(2)(c) and 80ZQ; or

(b) does anything with the intention of diluting or contaminating a bodily sample required under section 80ZO(2)(a) or (c) for the purposes of a prescribed testing procedure; or

(c) tampers with a drug or alcohol monitoring device required under section 80ZO(2)(b) or does anything with the intention of interfering with the functioning of that device.

Section 80SA: inserted, on 15 May 2017, by section 12 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80T Offence to refuse entry to home detention residence

(1) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $5,000, who refuses or fails, without reasonable excuse, to allow a probation officer, who has identified himself or herself, to enter into the home detention residence if the offender is required to be at the residence at the time that the probation officer seeks entry.

(2) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $5,000, who refuses or fails, without reasonable excuse, to allow an authorised person to enter into the home detention residence for the purpose of servicing or inspecting any equipment used in the electronic monitoring of the offender's compliance with the sentence of home detention (whether or not the offender is required to be at the home detention residence at the time).

(3) For the purposes of subsection (2), an **authorised person** is a person who—

(a) is a probation officer and has identified himself or herself; or

(b) accompanies a person described in paragraph (a); or

(c) is authorised in writing by a probation officer and has produced that written authority to an occupant of the residence.

Section 80T: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80T(1): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 80T(2): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

80U Offence to breach post-detention conditions

(1) An offender commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding $1,500, who breaches, without reasonable excuse, any post-detention conditions imposed under section 80N or 80R.

(2) In the case of a condition of the kind referred to in section 80P(2)(b) (which involves prescription medication), an offender does not breach his or her conditions for the purposes of this section if he or she withdraws consent to taking prescription medication.

Section 80U: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80U(1): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

80UA Offences related to post-detention conditions that are drug or alcohol conditions

An offender who is subject to a post-detention condition that is a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding $1,500, if the offender—

(a) refuses or fails, without reasonable excuse,—

(i) to undergo a testing procedure when required to do so under sections 80ZO(2)(a) and 80ZQ; or

(ii) to submit to continuous monitoring when required to do so under section 80ZO(2)(b); or

(iii) to comply with instructions specified in a notice given under section 80ZO(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or

(iv) to accompany an authorised person, when required to do so under section 80ZQ(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or

(v) to contact a specified automated system when required to do so under section 80ZO(2)(c); or

(vi) to report, at any time or times when required to do so under section 80ZQ(5), to a specified testing facility to undergo testing; or

(vii) to undergo a testing procedure when required to do so under sections 80ZO(2)(c) and 80ZQ; or

(b) does anything with the intention of diluting or contaminating a bodily sample required under section 80ZO(2)(a) or (c) for the purposes of a prescribed testing procedure; or

(c) tampers with a drug or alcohol monitoring device required under section 80ZO(2)(b) or does anything with the intention of interfering with the functioning of that device.

Section 80UA: inserted, on 15 May 2017, by section 13 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80V Arrest without warrant for breach of detention or post-detention conditions

Any constable or any probation officer may arrest, without warrant, an offender who the constable or officer has reasonable grounds to believe has breached any of his or her detention conditions or post-detention conditions.

Section 80V: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80V: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

80W Court may defer start date of sentence of home detention

(1) The court may defer the start date of a sentence of home detention for a specified period of up to 2 months—

(a) on humanitarian grounds; or

(b) if the court is satisfied that it is in the interests of justice to defer the start of the sentence of home detention.

(2) If a sentence of home detention is deferred in accordance with subsection (1), the sentence of home detention starts on the date to which the court has ordered that the sentence be deferred.

(3) Despite subsection (1), no court may defer the start date of a sentence of home detention if—

(a) the sentence of home detention is imposed cumulatively on any other sentence of home detention; or

(b) the sentence of home detention is imposed in substitution for a sentence of home detention or imprisonment that has been quashed or set aside; or

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

(d) the offender has already commenced serving the sentence or is detained under any other sentence or order.

Section 80W: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80X Commencement of sentence of home detention

(1) A sentence of home detention commences on the day it is imposed unless the start date of the sentence is deferred under section 20A(2)(b) or 80W.

(2) Subsection (1) applies—

(a) subject to the remainder of this section; and

(b) regardless of whether or not the sentence is imposed in substitution for another sentence.

(3) If a sentence of home detention is imposed cumulatively on another sentence of home detention imposed at the same time,—

(a) at least 1 of the sentences must commence on the day that the sentence is imposed or to which the start date has been deferred under section 20A(2)(b) or 80W; and

(b) the commencement date for the subsequent sentence is the detention end date of the first sentence.

(4) If a sentence of home detention is imposed cumulatively on another sentence of home detention (the **first sentence**) to which the offender is already subject, the commencement date of the subsequent sentence is the detention end date of the first sentence.

(5) If a sentence of home detention is imposed cumulatively on another sentence of home detention (the **first sentence**), whether or not imposed at the same time, and the first sentence is subsequently quashed,—

(a) the commencement date for the subsequent sentence is the date on which the subsequent sentence was imposed; and

(b) any time served under the quashed sentence must be treated as having been served under the subsequent sentence.

(6) If a sentence of home detention is imposed cumulatively on another sentence of home detention (the **first sentence**), whether or not imposed at the same time, and the first sentence is subsequently cancelled,—

(a) the commencement date for the subsequent sentence is the date on which the first sentence was cancelled; and

(b) any time served under the cancelled sentence must not be treated as having been served under the subsequent sentence.

Section 80X: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80X(1): amended, on 22 January 2014, by section 41(1) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 80X(3)(a): amended, on 22 January 2014, by section 41(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80Y Commencement of sentence of home detention after temporary surrender under Extradition Act 1999

(1) This section applies if an offender is temporarily surrendered to New Zealand under the Extradition Act 1999 and—

(a) is convicted and sentenced under this Act to a sentence of home detention; and

(b) is required to be returned in accordance with section 66(2) of the Extradition Act 1999 to the country from where the offender was surrendered on completion of the proceedings to which the extradition related.

(2) Unless the court otherwise directs, the sentence imposed does not commence until the offender has reported to a probation officer after being returned to New Zealand.

(3) An offender to whom this section applies must—

(a) advise a probation officer as soon as possible of any change in circumstances affecting the availability or suitability of the home detention residence before he or she commences the sentence; and

(b) report to a probation officer within 72 hours of the offender's arrival in New Zealand.

(4) This section applies despite any other provisions in this Act.

Section 80Y: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80Z When home detention ends

(1) An offender ceases to be subject to a sentence of home detention when—

(a) the offender reaches his or her detention end date; or

(b) a court cancels the sentence of home detention.

(2) If the offender's detention end date falls on a non-release day, the offender ceases to be subject to detention conditions on the nearest preceding day that is not a non-release day.

Section 80Z: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80ZA When detention conditions suspended

The detention conditions of an offender serving a sentence of home detention are suspended during any period that the offender spends in custody under a court order (for example, on remand), but time continues to run during any period that they are suspended.

Section 80ZA: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80ZB Time ceases to run in certain circumstances

For the purpose of calculating how much time an offender who is subject to a sentence of home detention has served,—

(a) time ceases to run on the sentence during any period between the date on which an application under section 80F(1)(a) is lodged and the date on which the application is determined by the court; but

(b) some or all of the period between those dates may be regarded by the court as time served, as the court thinks appropriate in the circumstances, after taking into account—

(i) the extent (if any) to which the offender has complied with any detention conditions; and

(ii) the amount of time (if any) that the offender has spent in custody.

Section 80ZB: replaced, on 22 January 2014, by section 42 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80ZC Order must be drawn up

(1) If a court imposes a sentence of home detention on an offender, the particulars of the sentence must be drawn up in the form of an order.

(2) A copy of the order must be given to the offender before he or she leaves the court wherever practicable.

(3) The order must include information regarding—

(a) the nature of the sentence; and

(b) the start date and the term of the sentence; and

(c) the detention conditions that apply to the offender while he or she is serving the sentence; and

(d) the post-detention conditions (if any) that apply and the period for which those conditions apply; and

(e) the obligations to comply with the instructions of a probation officer and the terms of the sentence; and

(f) the consequences of non-compliance with the terms of the sentence; and

(g) the statutory provisions under which the sentence may be varied or cancelled.

(4) For the purposes of subsection (1), a court may direct that the offender be detained in the custody of the court for a period, not exceeding 2 hours, that may be necessary to enable the order to be drawn up and a copy given to the offender.

(5) If it is not practicable to give a copy of the order to the offender before the offender leaves the court, a copy must be given to the offender in person as soon as practicable after the offender leaves the court.

(6) A copy of the order must be given to the chief executive of the Department of Corrections as soon as possible, but no later than 24 hours, after it has been drawn up.

Section 80ZC: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80ZD Offender must be given copy of new or amended order

If an offender's detention conditions or post-detention conditions are varied or discharged, the offender must be given a copy of the new or amended order that shows the conditions as varied or discharged, and the provisions of this section and section 80ZC apply.

Section 80ZD: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80ZE Home detention does not affect entitlements under Social Security Act 2018

The fact that a person is serving a sentence of home detention does not, of itself, affect any entitlement the person may have under the Social Security Act 2018.

Section 80ZE: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80ZE heading: amended, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

Section 80ZE: amended, on 26 November 2018, by section 459 of the Social Security Act 2018 (2018 No 32).

80ZF Application of Accident Compensation Act 2001 to persons serving home detention sentence

When an offender performs any service or does any work or attends any assessment, course, or programme for the purposes of a home detention sentence, the following provisions apply:

(a) if the offender suffers any personal injury for which he or she has cover under the Accident Compensation Act 2001 arising out of and in the course of performing the activities described above,—

(i) the personal injury is deemed, for the purposes of section 97 of that Act only, to be a work-related personal injury; and

(ii) the Crown is liable to pay compensation to which the offender is entitled under that section:

(b) the cost of all other entitlements of the offender under that Act must be met from the Earners' Account in the case of an offender who is an earner and from the Non-Earners' Account in all other cases.

Section 80ZF: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 80ZF heading: amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 80ZF(a): amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

80ZG Effect of subsequent sentence of imprisonment of not more than 12 months

(1) This section applies if an offender who is subject to a sentence of home detention is subsequently sentenced to—

(a) a term of imprisonment of not more than 12 months; or

(b) 2 or more terms of imprisonment to be served concurrently, the total term of which is not more than 12 months; or

(c) 2 or more terms of imprisonment that are cumulative, the total term of which is not more than 12 months.

(2) If this section applies, the court must either—

(a) order that the sentence of home detention be suspended; or

(b) order that the sentence of home detention be suspended for the duration of the period in which the offender is detained under the sentence or sentences of imprisonment.

(3) If the court suspends the sentence of home detention under subsection (2)(b), it may, if it thinks fit and subject to subsection (4), remit, suspend, or vary any detention or post-detention conditions of the sentence imposed by the court, or impose additional detention or post-detention conditions.

(4) The court may not impose post-detention conditions on an offender under subsection (3) unless the court that sentenced the offender to home detention imposed post-detention conditions.

(5) The court must not vary any existing detention or post-detention condition or impose any new detention or post-detention condition of a kind referred to in

section 80D(4)(b) or 80P(2)(b) (which involve prescription medication) unless the offender—

(a) has been fully advised by a person who is qualified to prescribe that medication about the nature and likely or intended effect of any variation or new condition in relation to the medication and any known risks; and

(b) consents to taking the prescription medication.

(6) If the court suspends the sentence of home detention under subsection (2)(b),—

(a) a probation officer must, before the statutory release date of the sentence of imprisonment,—

(i) review the suitability of the home detention residence; and

(ii) ensure every relevant occupant (as defined in section 26A(4)(a)) of the home detention residence consents, in accordance with section 26A(3), to the offender resuming the sentence at the home detention residence; and

(iii) if necessary, apply for a variation or cancellation of the sentence under section 80F or obtain from the chief executive of the Department of Corrections a variation of the home detention residence under section 80FA; and

(b) the offender must go to and remain at the home detention residence after being released from detention, unless absent in accordance with section 80C(3)(a) or (b); and

(c) the sentence of home detention resumes when the offender has arrived at the home detention residence under paragraph (b).

(7) If, for the purpose of subsection (6)(a)(iii), the probation officer makes an application for variation of the sentence under section 80F and approves an alternative residence pending determination of the application—

(a) the offender must go and remain at the alternative address until the application is decided; and

(b) once the application is decided, subsection (6)(b) and (c) apply accordingly.

Section 80ZG: replaced, on 22 January 2014, by section 43 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80ZGA Effect of subsequent sentence of imprisonment of more than 12 months

(1) Subsection (2) applies if an offender who is subject to a sentence of home detention is subsequently sentenced to—

(a) a term of imprisonment of more than 12 months; or

(b) 2 or more terms of imprisonment to be served concurrently, the total term of which is more than 12 months; or

(c) 2 or more terms of imprisonment that are cumulative, the total term of which is more than 12 months.

(2) If this section applies, the sentence of home detention is suspended.

Section 80ZGA: inserted, on 22 January 2014, by section 43 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80ZGB Period of suspension not counted towards sentence

No period during which a sentence of home detention is suspended under section 80ZG(2) or 80ZGA(2) is counted towards the period of home detention imposed under section 80A(3).

Section 80ZGB: inserted, on 22 January 2014, by section 43 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80ZGC Resumption of sentence of home detention

(1) This section applies to a sentence of home detention that is suspended under section 80ZG(2) or 80ZGA(2).

(2) The sentence of home detention is suspended until the earlier of the following events:

(a) it resumes under subsection (3); or

(b) it resumes under section 80ZG(6)(c); or

(c) it is cancelled under subsection (5).

(3) If the sentence or sentences of imprisonment are quashed and that results in the offender no longer being detained under a sentence of imprisonment,—

(a) the offender must report to a probation officer as soon as practicable and not later than 72 hours after being released from detention; and

(b) the sentence of home detention resumes when the offender has reported as required under paragraph (a).

(4) The Registrar of the court in which the sentence or sentences of imprisonment are quashed must notify the chief executive of the Department of Corrections.

(5) If the sentence of home detention does not resume under section 80ZG(6)(c) or subsection (3), it is cancelled when the offender ceases to be detained under the sentence or sentences of imprisonment.

Section 80ZGC: inserted, on 22 January 2014, by section 43 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

80ZGD Effect of appeal on resumption of sentence of home detention

(1) This section applies if—

(a) an offender has, on or after the commencement of this section, lodged an appeal against—

(i) a sentence of home detention imposed before or after that commencement; or

(ii) the conviction on which that sentence is based; or

(iii) both; and

(b) the offender has been granted bail under section 53, or 54 of the Bail Act 2000; and

(c) the outcome of the appeal is that—

(i) the appeal is dismissed; or

(ii) the appeal is deemed pursuant to rules of court to be dismissed; or

(iii) leave to appeal is refused; or

(iv) neither the sentence of home detention nor the conviction on which it was made is set aside when the appeal is determined.

(2) If this section applies,—

(a) the court to which the appeal is made must specify a date on which the offender must report to a probation officer and that date must be not earlier than 10 working days after the outcome of the appeal is determined and must fall on a working day; and

(b) the offender must report to a probation officer on that date; and

(c) the sentence of home detention resumes when the offender has reported to the probation officer on that date.

(3) If the offender has been on bail for more than 2 months, the probation officer must, before the sentence of home detention resumes,—

(a) review the suitability of the home detention residence; and

(b) ensure every relevant occupant consents, in accordance with section 26A(3), to the offender resuming the sentence at the home detention residence; and

(c) if necessary, apply to the court for a variation or cancellation of the sentence under section 80F or obtain from the chief executive of the Department of Corrections a variation of the home detention residence under section 80FA.

(4) This section does not apply if the offender is detained under a sentence of imprisonment.

Section 80ZGD: inserted, on 23 October 2013, by section 43 of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 80ZGD(1)(b): amended, on 14 November 2018, by section 99(2) of the Courts Matters Act 2018 (2018 No 50).

Section 80ZGD(3)(a): amended, on 17 December 2016, by section 100 of the Statutes Amendment Act 2016 (2016 No 104).

80ZH Application of section 80F during epidemic

(1) While an epidemic management notice is in force,—

(a) a probation officer who has applied for an order under section 80F(4) varying the special conditions subject to which a sentence of home detention was imposed by the court on an offender may himself or herself vary those conditions; and

(b) any probation officer may himself or herself vary the special conditions subject to which a sentence of home detention was imposed by the court on an offender if the offender has applied for an order under section 80F(4) varying those conditions; and

(c) a probation officer may vary or suspend any standard conditions of a sentence of home detention.

(2) A variation under subsection (1)(a) or (b) has effect until the application concerned has been heard and disposed of.

(3) Any variation or suspension of a standard condition under subsection (1)(c) has effect until the earlier of—

(a) the revocation of the epidemic management notice; or

(b) the date a probation officer rescinds the variation or suspension.

Section 80ZH: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80ZI Application of section 80R during epidemic

(1) While an epidemic management notice is in force,—

(a) a probation officer who has applied for an order under section 80R(3) varying the post-detention conditions subject to which a sentence of home detention was imposed by the court on an offender may himself or herself vary those conditions; and

(b) any probation officer may himself or herself vary the post-detention conditions subject to which a sentence of home detention was imposed by the court on an offender if the offender has applied for an order under section 80R(3) varying those conditions.

(2) Any variation under subsection (1) has effect until the earlier of—

(a) the revocation of the epidemic management notice; or

(b) the date on which a probation officer rescinds the variation or suspension.

Section 80ZI: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Subpart 2B—Judicial monitoring

Subpart 2B: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80ZJ Progress reports

(1) If the court has imposed a sentence of intensive supervision or home detention and a special condition of that sentence is that the offender be subject to judicial monitoring, the probation officer supervising the offender must give a written progress report to the Judge who sentenced the offender or to any other Judge of that court if for any reason it is impracticable for the sentencing Judge to be given the report.

(2) The progress report must be given to the Judge within 3 months of the date that the sentence commenced under section 75, 76, 80W, 80X, or 80Y (whichever is applicable) or the date at which the offender has served one-third of his or her sentence, whichever is the earlier.

(3) The progress report—

(a) must contain information on the offender's progress and compliance with the sentence; and

(b) may contain any other information that the probation officer considers relevant to the sentence.

(4) The probation officer must prepare and give the Judge further progress reports at specified intervals of not less than 3 months if directed to do so by the Judge.

Section 80ZJ: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80ZK Consideration of progress reports

After considering a progress report, the Judge may order that the offender attend before him or her if the Judge considers it desirable for the administration of the sentence or for the rehabilitation or reintegration of the offender.

Section 80ZK: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80ZL Procedure

(1) A copy of an order under section 80ZK must be given to the offender and the probation officer who filed the progress report.

(2) The order must be accompanied by a notice setting out the time and place of the attendance.

Section 80ZL: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

80ZLA Arrest of offender failing to attend judicial monitoring hearing

The Judge may issue a warrant to arrest an offender and bring them before the Judge if the Judge is satisfied that—

(a) the Judge made an order under section 80ZK that the offender attend before the Judge; and

(b) the order has been given to the offender, as required by section 80ZL(1); and

(c) the order given to the offender was accompanied by a notice setting out the time and place of the attendance, as required by section 80ZL(2); and

(d) the offender has failed to attend at that time and place.

Section 80ZLA: inserted, on 29 June 2025, by section 15 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

80ZM Procedure if possible grounds for variation or cancellation of sentence exist

(1) If, after hearing from the offender and the probation officer, the Judge considers that there may be grounds for variation or cancellation of the sentence of intensive supervision or home detention, he or she may request submissions on whether the sentence should be varied or cancelled.

(2) If the Judge requests further submissions under subsection (1), he or she must set the matter down for a hearing.

(3) After hearing submissions on whether the sentence should be varied or cancelled at the hearing, the Judge may vary or cancel the sentence of intensive supervision or home detention in accordance with section 54K or 80F (whichever is applicable) as if an application had been made under either of those sections.

Section 80ZM: inserted, on 1 October 2007, by section 44 of the Sentencing Amendment Act 2007 (2007 No 27).

Subpart 2BA—Biometric information

Subpart 2BA: inserted, on 22 August 2017, by section 65 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

80ZMA Purpose of collecting biometric information

(1) Biometric information collected under section 49(1)(fa), 54F(1)(gb), 59A, 69E(1)(db), 80C(2)(cb), or 80O(eb) may only be used for the purpose of helping—

(a) to manage offenders to ensure public safety; and

(b) to identify offenders before they leave New Zealand; and

(c) to enforce the conditions specified in sections 54F(1)(ga), 69E(1)(da), 80C(2)(ca), and 80O(ea).

(2) Biometric information may be used only for the purpose referred to in subsection (1).

Section 80ZMA: inserted, on 22 August 2017, by section 65 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Subpart 2C—Drug or alcohol conditions

Subpart 2C: inserted, on 15 May 2017, by section 14 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80ZN Imposition, and effect, of drug or alcohol condition

(1) This section applies if a court imposes a drug or alcohol condition on an offender under section 52(2)(bb), 54I(3)(ba), 80D(4)(ca), 80N(1) and (2)(b), or 93(1) or (2)(b).

(2) The court cannot direct, indicate, or require that the offender undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the offender to comply with all requirements arising from an authorised person giving the offender notice under section 80ZO(2).

(3) The court must advise the offender that the offender must do any 1 or more of the following things if required to do so by notice given by an authorised person under section 80ZO(2):

- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol:
- (b) submit to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the offender's body:
- (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system.

Section 80ZN: inserted, on 15 May 2017, by section 14 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80ZO Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring

(1) This section applies to an offender who is—

- (a) subject to a sentence of supervision, intensive supervision, or home detention with a drug or alcohol condition; or
- (b) subject to a post-detention condition or a post-imprisonment condition that is a drug or alcohol condition.

(2) An authorised person may, by notice given to an offender to whom this section applies, require the offender to do any 1 or more of the following:

- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under section 80ZT(1)(a):
- (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under section 80ZT(1)(d):

(c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under section 80ZT(1)(a).

(3) An authorised person exercising that person's discretion under subsection (2)—

(a) must comply with any rules made under section 80ZT; and

(b) may—

(i) select an offender to do what is specified in subsection (2)(a), (b), or (c) in any manner (including randomly); and

(ii) make a determination in respect of the offender with or without evidence that the offender has breached the condition; and

(c) must, if requiring the offender to do what is specified in subsection (2)(a) or (c), determine the prescribed testing procedure to be used for the testing required under subsection (2)(a), or required if the offender is selected to undergo testing by an automated system that the offender is required to contact under subsection (2)(c).

(4) A notice given to an offender under subsection (2)(b) may include a requirement that the offender comply with instructions specified in the notice that are reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or protect it from events, such as submersion in water, that may damage it or interfere with its functioning).

(5) An automated system specified in a notice given under subsection (2)(c) must include an automated selection method that determines, in any manner consistent with rules made under section 80ZT(1)(b) (including randomly), whether the offender is required to undergo testing.

(6) Only a medical practitioner or medical officer may collect a blood sample from an offender under this section.

(7) In this section and in sections 70AA, 70B, 80SA, 80UA, 80ZP to 80ZR, and 96A, **authorised person** means a person who is—

(a) a constable; or

(b) an employee of the Department of Corrections authorised by the chief executive of that department to require offenders to undergo testing or monitoring.

Section 80ZO: inserted, on 15 May 2017, by section 14 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80ZP How notice of requirement to undergo testing or to submit to continuous monitoring may be given

(1) An authorised person may give an offender a notice under section 80ZO(2) in any of the following ways:

(a) by giving the notice personally and in writing to the offender:

(b) by giving the notice personally and orally to the offender, then, unless the notice requires the offender only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the offender:

(c) if the notice is given under section 80ZO(2)(a), by giving the notice to the offender by telephone or other means of electronic communication (as defined in section 209 of the Contract and Commercial Law Act 2017), then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the offender.

(2) An automated system must, in response to an offender contacting it as required by a notice given under section 80ZO(2)(c) and subsection (1), give the offender a spoken or written response notice specifying whether the offender is required to undergo testing.

(3) A notice given by an authorised person under subsection (1)(c) or a response notice that is given under subsection (2) and that requires an offender to undergo testing must specify the name and location of a testing facility to which the offender is required to report to undergo testing, and the time or times when the offender is required to report, under section 80ZQ.

Section 80ZP: inserted, on 15 May 2017, by section 14 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80ZQ Where prescribed testing procedure may be carried out

(1) An authorised person may require an offender to whom section 80ZO applies to undergo testing at the place where the offender is given notice under section 80ZO(2) personally by the authorised person.

(2) Subsection (1) applies even if the place where the offender is given notice personally by the authorised person is—

(a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or

(b) a place that is wholly or partly outside a dwelling house, or any other building, at the offender's residential address.

(3) However, an offender cannot be required to undergo a prescribed testing procedure in a place specified in subsection (2)(a) or (b) if the testing procedure involves the collection of blood or urine.

(4) An offender given notice personally (in writing or orally) by the authorised person may be required by the authorised person, if subsection (3) applies or if

it is not reasonably practicable to require the offender to undergo testing at the place where the offender is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the offender to undergo testing.

(5) An offender given a notice under section 80ZP(1)(c) or (2) that requires the offender to undergo testing is required to report to the testing facility whose name and location are specified in the notice, at the time or times specified, to undergo testing.

Section 80ZQ: inserted, on 15 May 2017, by section 14 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80ZR Information obtained from drug and alcohol testing or monitoring

(1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under section 80ZO(2)—

(a) may be used for all or any of the following purposes:

(i) verifying compliance by the offender with a drug or alcohol condition:

(ii) detecting non-compliance by an offender with a drug or alcohol condition, and providing evidence of that non-compliance:

(iii) verifying that the offender has not tampered or otherwise interfered with a drug or alcohol monitoring device:

(iv) any purpose for which the offender has requested to use the information or consented to its use; and

(b) must not, except at the request or with the consent of the offender, be used—

(i) as evidence that the offender committed an offence, other than an offence against any of sections 70 to 70B, 80S, 80SA, 80U, 80UA, 96, and 96A; or

(ii) for any other purpose not listed in paragraph (a).

(2) A court may, in the absence of evidence that is available to the court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—

(a) is accurate; and

(b) was obtained in the manner required by sections 80ZO to 80ZQ.

Section 80ZR: inserted, on 15 May 2017, by section 14 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80ZS Offence to refuse authorised person entry to offender's residential address

(1) This section applies to an offender who is—

(a) subject to a sentence of supervision, intensive supervision, or home detention with a drug or alcohol condition, or subject to a post-detention condition or post-imprisonment condition that is a drug or alcohol condition; and

(b) required, under section 80ZO(2)(b), to submit to continuous monitoring of the offender's compliance with the condition.

(2) The offender commits an offence if the offender refuses or fails, without reasonable excuse, to allow an authorised person to enter the offender's residential address for all or any of the following purposes:

(a) attaching a drug or alcohol monitoring device to, or removing the device from, the offender:

(b) servicing or inspecting the device:

(c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.

(3) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $5,000.

(4) In subsection (2), **authorised person** means any of the following:

(a) an authorised person (as defined in section 80ZO(7)) who has produced evidence of that person's identity to the offender:

(b) a person accompanying a person described in paragraph (a):

(c) a person who—

(i) has produced evidence of that person's identity to the offender; and

(ii) is authorised in writing by an authorised person (as defined in section 80ZO(7)) to enter the offender's residential address for all or any of the following purposes:

(A) attaching a drug or alcohol monitoring device to, or removing the device from, the offender:

(B) servicing or inspecting the device:

(C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and

(iii) has produced that written authority to the offender.

Section 80ZS: inserted, on 15 May 2017, by section 14 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80ZT Rules about drug and alcohol testing and monitoring

(1) The chief executive may make rules for all or any of the following purposes:

(a) prescribing, for the purposes of section 80ZO(2)(a) and (c), 1 or more types of testing procedure that an offender to whom section 80ZO applies may be required to undergo:

(b) specifying how often each of the prescribed testing procedures may be carried out:

(c) prohibiting authorised persons from requiring an offender to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances:

(d) prescribing, for the purposes of section 80ZO(2)(b), 1 or more types of drug or alcohol monitoring device that may be connected to an offender to whom section 80ZO applies:

(e) specifying restrictions as to how often, and for how long—

(i) continuous monitoring may be carried out:

(ii) an offender may be required to contact an automated system:

(f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from an offender in order for the sample to be used as evidence that the offender has breached a drug or alcohol condition:

(i) controlled drugs:

(ii) psychoactive substances:

(iii) alcohol.

(2) In this section and in sections 80ZU and 80ZV, **chief executive** means the chief executive of the Department of Corrections.

(3) Rules under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	The maker must: • publish it in the *Gazette* • make it available on an Internet site that is maintained by or on behalf of the Department of Corrections and that is, so far as practicable, publicly available free of charge • make it available for public inspection free of charge • make it available for purchase at a reasonable price	LA19 ss 73, 74(1)(a), Sch 1 cl 14
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 80ZT: inserted, on 15 May 2017, by section 14 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Section 80ZT(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 80ZT(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

80ZU Further provisions concerning rules about drug and alcohol testing and monitoring

(1) Rules made under section 80ZT(1)(a) may, without limitation, prescribe testing procedures that do all or any of the following:

(a) include, as part of the procedure, either or both of the following:

(i) breath screening:

(ii) the collection and analysis of a bodily sample:

(b) require an offender to be supervised by a person of the same sex as the offender during the collection of a bodily sample required for testing:

(c) provide for an offender to elect, if the offender meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.

(2) The chief executive may make rules under section 80ZT(1) only if satisfied that the rules—

(a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and

(b) allow for offenders to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and

(c) ensure that offenders liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.

(3) Subsection (1)(b) overrides subsection (2)(c).

Section 80ZU: inserted, on 15 May 2017, by section 14 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

80ZV Availability of rules about drug and alcohol testing and monitoring, and status under Legislation Act 2012

[Repealed]

Section 80ZV: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 3—Imprisonment

81 Length of sentence of imprisonment

If under any enactment an offender is liable to imprisonment for life or for any specified term, the court may, in accordance with this Act, impose imprisonment for the maximum term provided for the particular offence or any lesser term, unless a minimum term of imprisonment is expressly provided for.

Compare: 1985 No 120 s 72

81B Procedure if offender convicted in District Court and court believes offender could be sentenced to life imprisonment

(1) This section applies if a person is convicted by the District Court of an offence with a maximum penalty of life imprisonment, and the court has reason to believe that a sentence of life imprisonment may be appropriate.

(2) The court must transfer the offender to the High Court for sentence and make an entry in the permanent court record to the effect that the court has declined jurisdiction on the ground that it has reason to believe that the offender should be considered for a sentence of life imprisonment.

Section 81B: inserted, on 1 July 2013, by section 5 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 81B(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 81B(2): amended, on 1 July 2013, by section 4 of the Sentencing Amendment Act 2013 (2013 No 32).

82 Pre-sentence detention must not be taken into account in determining length of sentence

In determining the length of any sentence of imprisonment to be imposed, the court must not take into account any part of the period during which the offender was on pre-sentence detention as defined in section 91 of the Parole Act 2002.

Compare: 1985 No 120 s 81(2)

82A Additional consequences for certain repeated offending must not be taken into account in determining length of sentence

(1) In determining the length of a sentence of imprisonment to be imposed on an offender for a stage-3 offence that is murder, a stage-2 offence, or a stage-1 offence, the court must not take into account the consequences that the offender may face under sections 86K to 86T.

(2) In this section, **stage-1 offence**, **stage-2 offence**, and **stage-3 offence** have the same meanings as in section 86J.

Section 82A: inserted, on 17 June 2025, by section 6 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

83 Cumulative and concurrent sentences of imprisonment

(1) A determinate sentence of imprisonment may be imposed cumulatively on any other determinate sentence of imprisonment that the court directs, whether then imposed or to which the offender is already subject, including any sentence in respect of which a direction of that kind is or has been given.

(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.

(3) For the purposes of subsection (2), a person who is detained under an interim recall order under the Parole Act 2002 is not detained under the sentence to which the interim recall order applies.

(4) An indeterminate sentence of imprisonment must not be imposed cumulatively on any other sentence.

(5) Any sentence of imprisonment may be imposed concurrently with any other sentence of imprisonment.

(6) For the purpose of this section, a term of imprisonment imposed on an offender (whether by committal, sentence, or order) in respect of the non-payment of a sum of money, contempt of court, or disobedience of a court order is deemed to be a determinate sentence of imprisonment.

Compare: 1985 No 120 s 73

Section 83(2): replaced, on 7 July 2004, by section 6 of the Sentencing Amendment Act 2004 (2004 No 68).

84 Guidance on use of cumulative and concurrent sentences of imprisonment

Sentencing for all offences for which offender is being sentenced

(1) Cumulative sentences of imprisonment are generally appropriate if the offences for which an offender is being sentenced are different in kind, whether or not they are a connected series of offences.

(2) Concurrent sentences of imprisonment are generally appropriate if the offences for which an offender is being sentenced are of a similar kind and are a connected series of offences.

Definition of further offence for purposes of this section

(3) In this section, a **further offence**, for an offender, means an offence committed while the offender was—

(a) on bail; or

(b) in custody under a court direction, a court order, or a sentence; or

(c) released on parole.

Sentencing for offences that are, or include, further offences

(4) If the offences for which an offender is being sentenced are, or include, further offences, then—

(a) subsections (1) and (2) apply to all the offences for which the offender is being sentenced; and

(b) subsection (5) applies to the further offences for which an offender is being sentenced.

(5) It is generally appropriate for the further offences for which an offender is being sentenced to be cumulative on the sentences for the offences for which the offender is being, or has been, sentenced that are not further offences.

Considerations in determining if offences are connected series of offences

(6) In determining for the purpose of this section whether 2 or more offences (whether further offences, or offences that are not further offences) committed by 1 offender are a connected series of offences, the court may consider—

(a) the time at which they occurred; or

(b) the overall nature of the offending; or

(c) any other relationship between the offences that the court considers relevant.

Section 84(1) heading: inserted, on 29 June 2025, by section 16(1) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 84(3) heading: inserted, on 29 June 2025, by section 16(2) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 84(3): replaced, on 29 June 2025, by section 16(2) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 84(4) heading: inserted, on 29 June 2025, by section 16(2) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 84(4): inserted, on 29 June 2025, by section 16(2) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 84(5): inserted, on 29 June 2025, by section 16(2) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 84(6) heading: inserted, on 29 June 2025, by section 16(2) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 84(6): inserted, on 29 June 2025, by section 16(2) of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

85 Court to consider totality of offending

(1) Subject to this section, if a court is considering imposing sentences of imprisonment for 2 or more offences, the individual sentences must reflect the seriousness of each offence.

(2) If cumulative sentences of imprisonment are imposed, whether individually or in combination with concurrent sentences, they must not result in a total period of imprisonment wholly out of proportion to the gravity of the overall offending.

(3) If, because of the need to ensure that the total term of cumulative sentences is not disproportionately long, the imposition of cumulative sentences would result in a series of short sentences that individually fail to reflect the seriousness of each offence, then longer concurrent sentences, or a combination of concurrent and cumulative sentences, must be preferred.

(4) If only concurrent sentences are to be imposed,—

(a) the most serious offence must, subject to any maximum penalty provided for that offence, receive the penalty that is appropriate for the totality of the offending; and

(b) each of the lesser offences must receive the penalty appropriate to that offence.

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

86 Imposition of minimum period of imprisonment in relation to determinate sentence of imprisonment

(1) If a court sentences an offender to a determinate sentence of imprisonment of more than 2 years for a particular offence, it may, at the same time as it sentences the offender, order that the offender serve a minimum period of imprisonment in relation to that particular sentence.

(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.

(3) *[Repealed]*

(4) A minimum period of imprisonment imposed under this section must not exceed the lesser of—

(a) two-thirds of the full term of the sentence; or

(b) 10 years.

(5) For the purposes of Part 6 of the Criminal Procedure Act 2011, an order under this section is a sentence.

Section 86(2): replaced, on 7 July 2004, by section 7 of the Sentencing Amendment Act 2004 (2004 No 68).

Section 86(3): repealed, on 7 July 2004, by section 7 of the Sentencing Amendment Act 2004 (2004 No 68).

Section 86(5): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Additional consequences for repeated serious violent offending

[Repealed]

Heading: repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

86A Interpretation

[Repealed]

Section 86A: repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

86B Stage-1 offence: offender given first warning

[Repealed]

Section 86B: repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

86C Stage-2 offence other than murder: offender given final warning and must serve full term of imprisonment

[Repealed]

Section 86C: repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

86D Stage-3 offences other than murder: offender sentenced to maximum term of imprisonment

[Repealed]

Section 86D: repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

86E When murder is a stage-2 or stage-3 offence

[Repealed]

Section 86E: repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

86F Continuing effect of warnings

[Repealed]

Section 86F: repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

86G Consequences of cancellation of record on later sentences

[Repealed]

Section 86G: repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

86H Appeal against orders relating to imprisonment

[Repealed]

Section 86H: repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

86I Sections 86B to 86E prevail over inconsistent provisions

[Repealed]

Section 86I: repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

Additional consequences for certain repeated offending

Heading: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86J Interpretation

In this section and in sections 86K to 86X, unless the context otherwise requires,—

qualifying offence means an offence against any of the provisions of the Crimes Act 1961 listed in Schedule 1AB

qualifying sentence means,—

(a) for a stage-1 offence, a sentence that is—

(i) a determinate sentence of imprisonment of more than 12 months; or

(ii) an indeterminate sentence of imprisonment:

(b) for a stage-2 offence or stage-3 offence, a sentence that is—

(i) a determinate sentence of imprisonment of more than 24 months; or

(ii) an indeterminate sentence of imprisonment

record of first warning, in relation to an offender, means a record of a warning that the offender has under section 86K(4) or 86KA(4) (including, without limitation, a relevant reactivated warning under clause 21 of Schedule 1AA)

record of subsequent warning, in relation to an offender, means a record of a warning that the offender has under section 86L(4) (including, without limitation, a relevant reactivated warning under clause 21 of Schedule 1AA)

stage-1 offence means a qualifying offence committed by an offender when the offender—

(a) did not have a record of first warning; and

(b) was at least 18 years old

stage-2 offence means a qualifying offence committed by an offender when the offender—

(a) had a record of first warning (in relation to 1 or more offences); but

(b) did not have a record of subsequent warning

stage-3 offence means a qualifying offence committed by an offender when the offender had a record of subsequent warning (in relation to 1 or more offences).

Section 86J: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86K Warnings: first warning to be given if qualifying sentence imposed for stage-1 offence

(1) This section applies if—

(a) a court imposes a qualifying sentence on an offender for a stage-1 offence (including on an appeal, but only if the offender does not have a record of first warning in relation to the offence); and

(b) the offender is before the court when it imposes the sentence.

(2) This section also applies if an offender appears before a court under section 86M(2) or (6) in relation to a stage-1 offence.

(3) The court must—

(a) warn the offender of the possible consequences if the offender receives a further qualifying sentence for any qualifying offence committed after that warning (whether or not that further qualifying offence is different in kind from any qualifying offence for which a sentence of imprisonment is being, or has been, imposed on the offender); and

(b) make an entry in the permanent court record, in relation to the stage-1 offence, to the effect that the offender has been warned under paragraph (a).

(4) On and after the making of the entry under subsection (3)(b), the offender has, in relation to the stage-1 offence, a record of first warning (subject to section 86U(2)).

Section 86K: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86KA Warnings: first warning to be given if sentence of imprisonment of between 12 and 24 months imposed for stage-2 offence

(1) This section applies if—

(a) a court imposes a determinate sentence of imprisonment of more than 12 months but not more than 24 months on an offender for a stage-2 offence (including on an appeal, but only if the offender does not have a record of first warning or a record of subsequent warning in relation to the offence); and

(b) the offender is before the court when it imposes the sentence.

(2) This section also applies if an offender appears before a court under section 86M(2) or (6) in relation to a stage-2 offence for which a determinate sentence of imprisonment of more than 12 months but not more than 24 months has been imposed on the offender.

(3) The court must—

(a) warn the offender of the possible consequences if the offender subsequently receives a qualifying sentence for any qualifying offence committed after that warning (whether or not that qualifying offence is different in kind from any qualifying offence for which a sentence of imprisonment is being, or has been, imposed on the offender); and

(b) make an entry in the permanent court record, in relation to the stage-2 offence, to the effect that the offender has been warned under paragraph (a).

(4) On and after the making of the entry under subsection (3)(b), the offender has, in relation to the stage-2 offence, a record of first warning (subject to section 86U(3)).

Section 86KA: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86L Warnings: subsequent warning to be given if qualifying sentence imposed for stage-2 offence or stage-3 offence

(1) This section applies if—

(a) a court imposes a qualifying sentence on an offender for a stage-2 offence or a stage-3 offence (including on an appeal, but only if the offender does not have a record of subsequent warning in relation to the offence); and

(b) the offender is before the court when it imposes the sentence.

(2) This section also applies if an offender appears before a court under section 86M(2) or (6) in relation to—

(a) a stage-2 offence for which a qualifying sentence has been imposed on the offender; or

(b) a stage-3 offence.

(3) The court must—

(a) warn the offender of the possible consequences if the offender receives a further qualifying sentence for any qualifying offence committed after that warning (whether or not that further qualifying offence is different in kind from any qualifying offence for which a sentence of imprisonment is being, or has been, imposed on the offender); and

(b) make an entry in the permanent court record, in relation to the stage-2 offence or the stage-3 offence, to the effect that the offender has been warned under paragraph (a).

(4) On and after the making of the entry under subsection (3)(b), the offender has, in relation to the stage-2 offence or the stage-3 offence, a record of subsequent warning (subject to section 86U(2)).

Section 86L: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86M Warnings: administration

(1) A warning that a court is required to give to an offender under section 86K, 86KA, or 86L must be given to the offender at the time of sentencing if the offender is before the court at that time.

(2) However, if a court, at the time of sentencing, omits to give a warning required under section 86K, 86KA, or 86L to an offender who was before the court at that time, the court must,—

(a) if the court is the court that first sentenced the offender for the relevant qualifying offence,—

(i) as soon as is reasonably practicable after becoming aware of the omission, issue a summons to bring the offender before the court; and

(ii) if the offender fails to appear before the court in answer to the summons, as soon as is reasonably practicable after that failure, issue a warrant to arrest the offender to bring them before the court; or

(b) if the court is not the court that first sentenced the offender for the relevant qualifying offence, as soon as is reasonably practicable after becoming aware of the omission, remit the proceeding to the court that first sentenced the offender for the relevant qualifying offence for a warning to be given to the offender.

(3) Subsection (5) applies if,—

(a) on an appeal, a court quashes or sets aside a sentence, not being a sentence for which a warning was required to be given under section 86K, 86KA, or 86L, imposed on an offender for a qualifying offence and imposes another sentence in substitution for it; and

(b) the offender is not before the court at the time that it imposes the substituted sentence; and

(c) the substituted sentence is a sentence for which the court would have been required to give the offender a warning under section 86K, 86KA, or 86L if the offender had been before the court at that time.

(4) Subsection (5) also applies if,—

(a) on an appeal, a court quashes or sets aside a determinate sentence of imprisonment of more than 12 months but not more than 24 months imposed on an offender for a stage-2 offence and imposes a qualifying sentence in substitution for it; and

(b) the offender is not before the court at the time that it imposes the substituted sentence.

(5) If this subsection applies, the court that heard the appeal must remit the proceeding to the court that first sentenced the offender for the relevant offence for a warning to be given to the offender.

(6) A court to which a proceeding is remitted under subsection (2) or (5) must,—

(a) as soon as is reasonably practicable after the proceeding is remitted to it, issue a summons to bring the offender before the court; and

(b) if the offender fails to appear before the court in answer to the summons, as soon as is reasonably practicable after that failure, issue a warrant to arrest the offender to bring them before the court.

(7) If an offender appears before a court under subsection (2) or (6), the court must, despite subsection (1), when the offender so appears, give the warning and make the entry required under section 86K, 86KA, or 86L (whichever applies).

(8) A Judge need not use a particular form of words in giving a warning required under section 86K, 86KA, or 86L.

Section 86M: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86N Notice of possible consequences of receiving subsequent qualifying sentence for qualifying offence

(1) A court that gives an offender a warning required under section 86K, 86KA, or 86L must also give the offender a written notice that sets out the possible consequences if the offender subsequently receives a qualifying sentence for any qualifying offence committed after the giving of the warning.

(2) The written notice may be given at the time, or as soon as is reasonably practicable after, the warning is given.

(3) Failure to give a written notice in accordance with this section does not affect the validity of—

(a) any sentence imposed, order made, or warning given by a court; or

(b) any record of first warning or record of subsequent warning.

Section 86N: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86O Stage-2 offences: loss of parole eligibility when determinate sentence of imprisonment of more than 24 months imposed for offence other than murder

(1) This section applies if a court imposes a determinate sentence of imprisonment of more than 24 months on an offender for a stage-2 offence other than murder.

(2) The court must order that the offender serve the sentence without parole unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to make the order (*see* section 86T).

(3) If, but for the application of this section, the court would have ordered under section 86 that the offender serve a minimum period of imprisonment in relation to the sentence imposed for the stage-2 offence, the court must state, with reasons, the minimum period of imprisonment that it would have imposed.

(4) If, but for the application of this section, the court would not have made an order under section 86, the court must state that it would not have made such an order.

Section 86O: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86P Stage-2 offences: imposition of minimum period of imprisonment when life imprisonment imposed for murder

(1) This section applies if—

(a) a court imposes a sentence of imprisonment for life on an offender for a murder that is a stage-2 offence; and

(b) the court does not make an order under section 103(2A) requiring the offender to serve the sentence without parole.

(2) The court must, unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so (*see* section 86T), make an order imposing a minimum period of imprisonment of at least—

(a) 15 years, if the offender pleaded guilty to the murder and none of the circumstances set out in section 104(1A) apply:

(b) 17 years, in any other case.

(3) If the court makes an order under subsection (2), the court must state, with reasons, the minimum period of imprisonment that it would, but for the application of this section, have imposed.

(4) If the court does not make an order under subsection (2), the court must give reasons for not doing so.

Section 86P: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86Q Stage-3 offences: transfer of proceedings to High Court

(1) A proceeding against a defendant charged with a stage-3 offence must be transferred to the High Court when the proceeding is adjourned for trial or

trial callover under section 57 of the Criminal Procedure Act 2011 or, as the case may be, under section 36 of that Act, and the proceeding from that point, including the trial, must be in the High Court.

(2) Only the High Court, or the Court of Appeal or the Supreme Court on an appeal, and no other court, may sentence an offender for a stage-3 offence.

(3) Subsections (1) and (2) override any legislation to the contrary.

Section 86Q: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86R Stage-3 offences: imposition of minimum sentence and loss of parole eligibility for offence other than murder

When this section applies

(1) This section applies if a court would, in the absence of this section, have imposed a qualifying sentence on an offender for a stage-3 offence other than murder.

Minimum term of imprisonment

(2) The court must, unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so (*see* section 86T), sentence the offender to imprisonment for—

Offence other than manslaughter

(a) the maximum term of imprisonment prescribed for the offence, if—

(i) the offence is not manslaughter; and

(ii) the offender did not plead guilty to the offence:

(b) at least 80% of the maximum term of imprisonment prescribed for the offence, if—

(i) the offence is not manslaughter; and

(ii) the offender pleaded guilty to the offence:

Manslaughter

(c) a term of at least 10 years, if—

(i) the offence is manslaughter; and

(ii) the offender did not plead guilty to the offence:

(d) a term of at least 8 years, if—

(i) the offence is manslaughter; and

(ii) the offender pleaded guilty to the offence.

Order to serve sentence without parole

(3) When the court sentences the offender for the offence, the court must order that the offender serve the sentence without parole unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to make the order (*see* section 86T).

Reasons: general

(4) If the court does not make an order under subsection (3), the court must give reasons for not doing so.

(5) If the court sentences the offender to at least the relevant minimum term of imprisonment set out in subsection (2)(a) to (d), the court must state, with reasons, the sentence and the minimum period of imprisonment (if any) that it would, but for the application of this section, have imposed.

Preventive detention not precluded

(6) Despite subsection (2), this section does not preclude the court from imposing, under section 87, a sentence of preventive detention on the offender and, if the court imposes such a sentence on the offender,—

(a) subsections (2) to (4) do not apply; and

(b) the minimum period of imprisonment that the court imposes on the offender under section 89(1) must not be less than the term of imprisonment that the court would have imposed under subsection (2), unless the court is satisfied that, given the circumstances of the offence and the offender, the imposition of that minimum period would be manifestly unjust (*see* section 86T).

Reasons: preventive detention

(7) If, in reliance on subsection (6)(b), the court imposes a minimum period of imprisonment that is less than the term of imprisonment that the court would have imposed under subsection (2), the court must give reasons for doing so.

Section 86R: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86S Stage-3 offences: imposition of minimum period of imprisonment when life imprisonment imposed for murder

(1) This section applies if—

(a) a court imposes a sentence of imprisonment for life on an offender for a murder that is a stage-3 offence; and

(b) the court does not make an order under section 103(2A) requiring the offender to serve the sentence without parole.

(2) When the court sentences the offender for the murder, the court must, unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so (*see* section 86T), make an order imposing a minimum period of imprisonment of at least—

(a) 18 years, if the offender pleaded guilty to the murder:

(b) 20 years, in any other case.

(3) If the court makes an order under subsection (2), the court must state, with reasons, the minimum period of imprisonment that it would, but for the application of this section, have imposed.

(4) If the court does not make an order under subsection (2), the court must give reasons for not doing so.

Section 86S: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86T Guidance on application of manifestly unjust exception in certain provisions

(1) This section applies to a court when determining whether it would be manifestly unjust to impose a sentence, or make an order, under section 86O(2), 86P(2), 86R(2), (3), or (6), or 86S(2).

(2) The court must give particular consideration to—

(a) denouncing the conduct in which the offender was involved; and

(b) deterring the offender or other persons from committing the same or a similar offence; and

(c) protecting the community from the offender.

(3) The court must not determine that imposing the sentence or making the order would be manifestly unjust merely because—

(a) any 1 or more of the mitigating factors listed in section 9(2) are applicable in the case; or

(b) it would be disproportionate, unless it would be grossly disproportionate.

(4) Nothing in subsection (3) prevents the court from taking into account the mitigating factors listed in section 9(2), to the extent that they are applicable in the case, when determining whether imposing the sentence or making the order would be manifestly unjust.

Section 86T: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86U Continuing effect of warnings

(1) An offender continues to have a record of first warning or a record of subsequent warning in relation to an offence regardless of whether the offender has served or otherwise completed the sentence imposed on the offender for the offence to which the record relates.

(2) Despite subsection (1), an offender ceases to have a record of first warning in relation to a stage-1 offence or a record of subsequent warning in relation to a stage-2 offence or a stage-3 offence if—

(a) a court, on an appeal,—

(i) quashes or sets aside the conviction for the offence to which the relevant record relates; or

(ii) quashes or sets aside the sentence imposed for the offence to which the relevant record relates and does not impose a qualifying sentence in substitution for it; or

(b) a court cancels the sentence imposed for the offence to which the relevant record relates and substitutes a sentence of home detention under section 80K(4); or

(c) a court imposes a new sentence under section 180 of the Criminal Procedure Act 2011 (which relates to the correction of erroneous sentences) for the offence to which the relevant record relates and the new sentence is not a qualifying sentence; or

(d) the offender is—

(i) granted a free pardon for the offence to which the relevant record relates; or

(ii) because of having fulfilled the conditions of a conditional pardon, not required to serve a qualifying sentence for the offence to which the relevant record relates.

(3) Despite subsection (1), an offender ceases to have a record of first warning in relation to a stage-2 offence if—

(a) a court, on an appeal,—

(i) quashes or sets aside the conviction for the offence to which the record relates; or

(ii) quashes or sets aside the sentence imposed for the offence to which the record relates and does not impose a determinate sentence of imprisonment of more than 12 months but not more than 24 months in substitution for it; or

(b) a court cancels the sentence imposed for the offence to which the record relates and substitutes a sentence of home detention under section 80K(4); or

(c) a court imposes a new sentence under section 180 of the Criminal Procedure Act 2011 for the offence to which the record relates and the new sentence is not a determinate sentence of imprisonment of more than 12 months but not more than 24 months; or

(d) the offender is—

(i) granted a free pardon for the offence to which the record relates; or

(ii) because of having fulfilled the conditions of a conditional pardon, not required to serve a sentence of imprisonment of more than 12 months for the offence to which the record relates.

(4) If an offender ceases to have a record of subsequent warning in relation to a stage-2 offence because subsection (2)(a)(ii) applies and the court that heard the appeal imposes a determinate sentence of imprisonment of more than 12 months but not more than 24 months in substitution for the quashed or set aside sentence, then—

(a) that court must order that the record of subsequent warning be replaced by a record of first warning; and

(b) the replacement record of first warning is treated as having taken effect on the date on which the record of subsequent warning took effect.

(5) If an offender continues to have 1 (but not more than 1) record of subsequent warning after every record of first warning that the offender had has ceased, then—

(a) the appropriate court must order that the record of subsequent warning be replaced by a record of first warning; and

(b) that replacement record of first warning is treated as having taken effect on the date on which the record of subsequent warning took effect.

(6) If an offender continues to have more than 1 record of subsequent warning after every record of first warning that the offender had has ceased, then—

(a) the appropriate court must order that each record of subsequent warning that took effect on the earliest date on which the offender had a record of subsequent warning be replaced by a record of first warning; and

(b) those replacement records of first warning are treated as having taken effect on that date.

(7) In this section and in section 86V, **appropriate court** means,—

(a) in the case of an offender who ceases, under subsection (2)(a) or (3)(a), to have a record of first warning or a record of subsequent warning in relation to an offence, the court that heard the appeal:

(b) in the case of an offender who ceases, under subsection (2)(b) or (3)(b), to have a record of first warning in relation to an offence, the court that cancelled the sentence and substituted a sentence of home detention:

(c) in the case of an offender who ceases, under subsection (2)(c) or (3)(c), to have a record of first warning or a record of subsequent warning in relation to an offence, the court that imposed the new sentence:

(d) in the case of an offender who ceases, under subsection (2)(d) or (3)(d), to have a record of first warning or a record of subsequent warning in relation to an offence, the court that first sentenced the offender for the offence.

Section 86U: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86V How cessation of record affects later sentences

(1) This section applies if,—

(a) under section 86U, an offender ceases to have a record of first warning or a record of subsequent warning or both (the **previous record**); and

(b) the offender continues to be subject to a qualifying sentence that was imposed on the offender for a qualifying offence committed when the offender had the previous record (a **later qualifying sentence**).

(2) If the appropriate court is the High Court, the appropriate court must—

(a) take the actions described in subsection (5) that are applicable to the case; or

(b) remit the matter to the court that imposed the later qualifying sentence with a direction to take those actions.

(3) If the appropriate court is not the High Court, the appropriate court must, unless the later qualifying sentence was imposed by a higher court than the appropriate court,—

(a) take the actions described in subsection (5) that are applicable to the case; or

(b) remit the matter to the court that imposed the later qualifying sentence with a direction to take those actions.

(4) If the appropriate court is the District Court and the later qualifying sentence was imposed by a higher court, the High Court must, on the application of the offender, take the actions described in subsection (5) that are applicable to the case.

(5) The actions are as follows:

(a) if the later qualifying sentence would not have been imposed but for the previous record, the court must set aside the later qualifying sentence and replace it with a sentence that the court would have imposed had the offender not been subject to the previous record:

(b) if any order relating to the later qualifying sentence would not have been made but for the previous record, the court must cancel the order and, where appropriate, replace it with an order that the court would have made had the offender not been subject to the previous record:

(c) if the court considers it just to make any consequential orders, the court must make those orders.

Section 86V: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86W Appeal against orders relating to imprisonment

For the purposes of Part 6 of the Criminal Procedure Act 2011, an order under section 86O(2), 86P(2), 86R(3), or 86S(2) is a sentence.

Section 86W: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

86X Sections 86K to 86T prevail over inconsistent provisions

(1) This section applies to a provision—

(a) in sections 86K to 86T; and

(b) that is inconsistent with another provision in this Act or in the Parole Act 2002.

(2) The provision prevails over the other provision, to the extent of the inconsistency.

Section 86X: inserted, on 17 June 2025, by section 7 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Preventive detention

87 Sentence of preventive detention

(1) The purpose of preventive detention is to protect the community from those who pose a significant and ongoing risk to the safety of its members.

(2) This section applies if—

(a) a person is convicted of a qualifying sexual or violent offence (as that term is defined in subsection (5)); and

(b) the person was 18 years of age or over at the time of committing the offence; and

(c) the court is satisfied that the person is likely to commit another qualifying sexual or violent offence if the person is released at the sentence expiry date (as specified in subpart 3 of Part 1 of the Parole Act 2002) of any sentence, other than a sentence under this section, that the court is able to impose.

(3) The High Court may, on the application of the prosecutor or on its own motion, impose a sentence of preventive detention on the offender.

(4) When considering whether to impose a sentence of preventive detention, the court must take into account—

(a) any pattern of serious offending disclosed by the offender's history; and

(b) the seriousness of the harm to the community caused by the offending; and

(c) information indicating a tendency to commit serious offences in future; and

(d) the absence of, or failure of, efforts by the offender to address the cause or causes of the offending; and

(e) the principle that a lengthy determinate sentence is preferable if this provides adequate protection for society.

(5) In this section and in sections 88 and 90, **qualifying sexual or violent offence** means—

(a) a sexual crime under Part 7 of the Crimes Act 1961 punishable by 7 or more years' imprisonment; and includes a crime under section 144A or section 144C of that Act; or

(b) an offence against any of sections 171, 171A, 173 to 176, 188, 188A, 189(1), 191, 198 to 199, 208 to 210, 234, 235, or 236 of the Crimes Act 1961.

Section 87(5)(b): amended, on 8 August 2026, by section 40 of the Crimes Amendment Act 2026 (2026 No 50).

Section 87(5)(b): amended, on 7 July 2004, by section 8 of the Sentencing Amendment Act 2004 (2004 No 68).

88 Offender must be notified that sentence of preventive detention will be considered, and reports must be obtained

(1) A sentence of preventive detention must not be imposed unless—

(a) the offender has been notified that a sentence of preventive detention will be considered, and has been given sufficient time to prepare submissions on the sentence; and

(b) the court has considered reports from at least 2 appropriate health assessors about the likelihood of the offender committing a further qualifying sexual or violent offence.

(2) Despite anything in section 38(1) and (5) of the Criminal Procedure (Mentally Impaired Persons) Act 2003,—

(a) the court may, for the purposes of obtaining the report referred to in subsection (1)(b), exercise all or any of the powers conferred by section 38(2) of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and

(b) section 38(4) and sections 40 to 46 of that Act apply, so far as they are applicable and with any necessary modifications, to the offender and any report so obtained.

(3) To avoid doubt, a health assessor's report under subsection (1)(b) may take into account any statement of the offender or any other person concerning any conduct of the offender, whether or not that conduct constitutes an offence and whether or not the offender has been charged with, or convicted of, an offence in respect of that conduct.

Section 88(2): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 88(2)(a): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 88(2)(b): amended, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

Section 88(3): inserted, on 1 October 2007, by section 47 of the Sentencing Amendment Act 2007 (2007 No 27).

89 Imposition of minimum period of imprisonment

(1) If a court sentences an offender to preventive detention, it must also order that the offender serve a minimum period of imprisonment, which in no case may be less than 5 years.

(2) The minimum period of imprisonment imposed under this section must be the longer of—

(a) the minimum period of imprisonment required to reflect the gravity of the offence; or

(b) the minimum period of imprisonment required for the purposes of the safety of the community in the light of the offender's age and the risk posed by the offender to that safety at the time of sentencing.

(2A) If a sentence of preventive detention is imposed for a stage-3 offence (as defined in section 86J), subsections (1) and (2) are subject to section 86R(6).

(2A) *[Repealed]*

(3) For the purposes of Part 6 of the Criminal Procedure Act 2011, an order under subsection (1) is a sentence.

Section 89(2A): inserted, on 17 June 2025, by section 8 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Section 89(2A): repealed, on 16 August 2022, by section 6 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

Section 89(3): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

90 Procedure if offender convicted in District Court and court believes offender could be sentenced to preventive detention

(1) This section applies if a person is convicted by the District Court of a qualifying sexual or violent offence, and the court has reason to believe, from a report of a probation officer or otherwise, that a sentence of preventive detention may be appropriate.

(2) The court must transfer the offender to the High Court for sentence and make an entry in the permanent court record to the effect that the court has declined jurisdiction on the ground that it has reason to believe that the offender should be considered for a sentence of preventive detention.

Section 90(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 90(2): replaced, on 1 July 2013, by section 5 of the Sentencing Amendment Act 2013 (2013 No 32).

Warrant of commitment for sentence of imprisonment

91 Warrant of commitment for sentence of imprisonment

(1) If a court imposes a sentence of imprisonment, a warrant must be issued stating briefly the particulars of the offence and directing the detention of the offender in accordance with the sentence.

(2) A warrant issued under this section must include a statement as to whether the offender was or was not legally represented as contemplated by section 30(1).

(3) If the offender was not legally represented, the warrant must state the way in which the requirements of that section have been satisfied.

(4) *[Repealed]*

(5) *[Repealed]*

(6) If the sentence is imposed by the District Court, any District Court Judge may sign the warrant.

(7) If the sentence is imposed by the High Court, any Judge of that court may sign the warrant.

(8) If the sentence is imposed by the Court of Appeal, any Judge of that court may sign the warrant.

(8A) If the sentence is imposed by the Supreme Court, any Judge of that court may sign the warrant.

(9) A warrant under this section may be issued in respect of any number of sentences imposed in respect of the same offender at the same sitting of the court.

Compare: 1985 No 120 s 143

Section 91(4): repealed, on 1 October 2007, by section 48 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 91(5): repealed, on 1 October 2007, by section 48 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 91(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 91(8A): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Interpretation provision relating to references to offender being sentenced to imprisonment for particular period

92 References to period of imprisonment for purposes of section 93

(1) For the purposes of section 93, a court sentences an offender to imprisonment for a particular period if,—

(a) in a case where the offender was not already subject to a sentence or sentences of imprisonment, it sentences the offender to 1 sentence of imprisonment, the term of which is equal to that period; or

(b) in a case where the offender was not already subject to a sentence or sentences of imprisonment, it sentences the offender to 2 or more sentences of imprisonment, the total term of which is equal to that period; or

(c) in a case where the offender was already subject to a sentence or sentences of imprisonment, it sentences the offender to 1 or more sentences of imprisonment the total term of which, including the existing sentences of imprisonment, is equal to that period.

(2) For the purposes of this section, the total term of 2 or more sentences of imprisonment is a term beginning with the commencement date of the first of the sentences to commence and ending with the sentence expiry date (as specified in subpart 3 of Part 1 of the Parole Act 2002) of the sentence last to expire.

Conditions on release of offender sentenced to imprisonment for short term

93 Imposition of conditions on release of offender sentenced to imprisonment for short term

(1) A court that sentences an offender to a term of imprisonment of 12 months or less may impose the standard conditions and any special conditions on the offender and, if it does so, must specify when the conditions expire.

(2) If a court sentences an offender to a term of imprisonment of more than 12 months but not more than 24 months,—

(a) the standard conditions apply to the offender until the sentence expiry date, unless the court specifies a different date; and sections 94, 95, and 96 apply as if the standard conditions had been imposed by order of the court; and

(b) the court may at the same time impose any special conditions on the offender and, if it does so, must specify when the conditions expire.

(2A) The court may specify that conditions imposed under this section expire on—

(a) the sentence expiry date; or

(b) the date that is a specified period before the sentence expiry date; or

(c) the date that is a specified period of up to 6 months after the sentence expiry date.

(2AB) If the court imposes special conditions on an offender, the special conditions may apply for as long as, but no longer than, the standard conditions apply to the offender.

(2B) In this section,—

sentence expiry date has the meaning given to it in section 4 of the Parole Act 2002

special conditions includes, without limitation, conditions of a kind described in section 15(3) of the Parole Act 2002, other than a residential restriction condition referred to in section 15(3)(ab) of that Act

standard conditions means the conditions set out in section 14(1) of the Parole Act 2002.

(3) A special condition must not be imposed unless it is designed to—

(a) reduce the risk of reoffending by the offender; or

(b) facilitate or promote the rehabilitation and reintegration of the offender; or

(c) provide for the reasonable concerns of victims of the offender.

(3A) The court must not impose an electronic monitoring condition described in section 15(3)(f) of the Parole Act 2002 unless it has had regard to the opinion of the chief executive of the Department of Corrections in a pre-sentence report provided under section 26.

(4) No offender may be made subject to a special condition that requires the offender to take prescription medication unless the offender—

(a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and

(b) consents to taking the prescription medication.

(5) If a court sentences an offender to a term of imprisonment of more than 24 months, it must not impose conditions on the offender's release from imprisonment (and section 18(2) of the Parole Act 2002 applies).

(6) A court must not impose conditions on an offender's release from imprisonment if—

(a) the court sentences an offender to an indeterminate sentence of imprisonment; or

(b) the court sentences an offender to imprisonment who is already subject to an indeterminate sentence of imprisonment.

(7) *[Repealed]*

(8) If the court sentences the offender to more than 1 term of imprisonment on the same occasion,—

(a) only 1 order under this section may be made; and

(b) that order applies in respect of all the sentences of imprisonment imposed on that occasion.

Section 93(1): replaced, on 7 July 2004, by section 9(1) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 93(2): replaced, on 7 July 2004, by section 9(1) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 93(2)(a): amended, on 17 December 2016, by section 101 of the Statutes Amendment Act 2016 (2016 No 104).

Section 93(2A): inserted, on 7 July 2004, by section 9(1) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 93(2AB): inserted, on 22 January 2014, by section 45(2) of the Administration of Community Sentences and Orders Act 2013 (2013 No 88).

Section 93(2B): inserted, on 7 July 2004, by section 9(1) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 93(2B) **special conditions**: replaced, on 22 December 2016, by section 9(1) of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47).

Section 93(3A): inserted, on 22 December 2016, by section 9(2) of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47).

Section 93(7): repealed, on 7 July 2004, by section 9(2) of the Sentencing Amendment Act 2004 (2004 No 68).

94 Variation of release conditions

(1) An offender who is subject to conditions imposed under section 93, or a probation officer, may apply for an order under subsection (3) of this section.

(2) Section 72 applies with any necessary modifications to an application under this section.

(3) On an application under subsection (1), the court may, if it thinks fit,—

(a) suspend any condition or vary the duration of any condition, or impose additional conditions; or

(b) discharge a condition and substitute any other condition described in section 93 that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.

(4) The court must not vary any existing condition, or impose any new condition, of a kind referred to in section 93(4) (which involves prescription medication) unless the offender—

(a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of any variation or new condition in relation to the medication and any known risks; and

(b) consents to taking the prescription medication.

(5) If an application is made under this section for the suspension, variation, or discharge of any condition, a probation officer may suspend the condition until the application has been heard and disposed of.

95 Review of conditions if conditions incompatible

(1) This section applies if—

(a) an offender is, at the same time, subject to conditions imposed under 2 or more orders made under section 93; and

(b) a probation officer is satisfied that—

(i) any condition to which the offender is subject under any of the orders is incompatible with any other condition to which the offender is subject under any other of the orders; or

(ii) in light of all the conditions to which the offender is subject under the orders, it is unreasonable to expect the offender to comply with any 1 or more of the conditions.

(2) The probation officer must apply for a review of the conditions to which the offender is subject under the orders made under section 93.

(3) Section 94 applies with any necessary modifications to an application made under this section.

96 Offence to breach conditions

(1) Every offender commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding $2,000, who breaches, without reasonable excuse, any conditions imposed under section 93 or section 94.

(2) In the case of a condition of a kind referred to in section 93(4) (which involves prescription medication) an offender does not breach his or her conditions for the purposes of this section if he or she withdraws consent to taking prescription medication.

Section 96(1): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

96A Offences related to post-imprisonment conditions that are drug or alcohol conditions

An offender who is subject to a post-imprisonment condition that is a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding $2,000, if the offender—

(a) refuses or fails, without reasonable excuse,—

(i) to undergo a testing procedure when required to do so under sections 80ZO(2)(a) and 80ZQ; or

(ii) to submit to continuous monitoring when required to do so under section 80ZO(2)(b); or

(iii) to comply with instructions specified in a notice given under section 80ZO(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or

(iv) to accompany an authorised person, when required to do so under section 80ZQ(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or

(v) to contact a specified automated system when required to do so under section 80ZO(2)(c); or

(vi) to report, at any time or times when required to do so under section 80ZQ(5), to a specified testing facility to undergo testing; or

(vii) to undergo a testing procedure when required to do so under sections 80ZO(2)(c) and 80ZQ; or

(b) does anything with the intention of diluting or contaminating a bodily sample required under section 80ZO(2)(a) or (c) for the purposes of a prescribed testing procedure; or

(c) tampers with a drug or alcohol monitoring device required under section 80ZO(2)(b) or does anything with the intention of interfering with the functioning of that device.

Section 96A: inserted, on 15 May 2017, by section 16 of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

Home detention

[Repealed]

Heading: repealed, on 1 October 2007, by section 50 of the Sentencing Amendment Act 2007 (2007 No 27).

97 Court must consider granting offender leave to apply for home detention in certain cases

[Repealed]

Section 97: repealed, on 1 October 2007, by section 50 of the Sentencing Amendment Act 2007 (2007 No 27).

98 Appeal against order granting or declining leave to apply for home detention

[Repealed]

Section 98: repealed, on 1 October 2007, by section 50 of the Sentencing Amendment Act 2007 (2007 No 27).

99 Effect of subsequent conviction on home detention

[Repealed]

Section 99: repealed, on 1 October 2007, by section 50 of the Sentencing Amendment Act 2007 (2007 No 27).

Provisions about start date of sentence of imprisonment

100 Court may defer start date of sentence of imprisonment

(1) The court may defer the start date of a sentence of imprisonment for a specified period of up to 2 months on humanitarian grounds.

(2) *[Repealed]*

(3) The sentence of imprisonment starts on the date specified in section 78 of the Parole Act 2002.

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

(4) Despite subsection (1), no court may defer the start date of a sentence of imprisonment if—

(a) the sentence of imprisonment is imposed cumulatively on any other sentence of imprisonment; or

(b) the sentence of imprisonment is imposed in substitution for a sentence of imprisonment that has been quashed or set aside; or

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

(d) the offender has already commenced serving the sentence or is detained under any other sentence or order.

(5) For the purpose of this section, a term of imprisonment imposed on an offender (whether by committal, sentence, or order) in respect of the non-payment of a sum of money, contempt of court, or disobedience of a court order is deemed to be a determinate sentence of imprisonment.

Compare: 1985 No 120 s 78(2)

Section 100(2): repealed, on 1 October 2007, by section 51 of the Sentencing Amendment Act 2007 (2007 No 27).

Section 100(3A): inserted, on 7 July 2004, by section 11(2) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 100(4)(b): amended, on 7 July 2004, by section 11(3) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 100(4)(c): inserted, on 7 July 2004, by section 11(3) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 100(4)(d): inserted, on 7 July 2004, by section 11(3) of the Sentencing Amendment Act 2004 (2004 No 68).

101 Start date of sentence of imprisonment

(1) Except as provided in section 100, the start date of a sentence of imprisonment is that set out in section 76 of the Parole Act 2002.

(2) For the purpose of this section, a term of imprisonment imposed on an offender (whether by committal, sentence, or order) in respect of the non-payment of a sum of money, contempt of court, or disobedience of a court order is deemed to be a determinate sentence of imprisonment.

Subpart 4—Sentencing for murder

Presumption in relation to sentence for murder

102 Presumption in favour of life imprisonment for murder

(1) An offender who is convicted of murder must be sentenced to imprisonment for life unless, given the circumstances of the offence and the offender, a sentence of imprisonment for life would be manifestly unjust.

(2) If a court does not impose a sentence of imprisonment for life on an offender convicted of murder, it must give written reasons for not doing so.

(3) *[Repealed]*

Section 102(3): repealed, on 16 August 2022, by section 7 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

Imposition of minimum period of imprisonment or imprisonment without parole

Heading: amended, on 1 June 2010, by section 9 of the Sentencing and Parole Reform Act 2010 (2010 No 33).

103 Imposition of minimum period of imprisonment or imprisonment without parole if life imprisonment imposed for murder

(1) If a court sentences an offender convicted of murder to imprisonment for life, it must—

(a) order that the offender serve a minimum period of imprisonment under that sentence; or

(b) if subsection (2A) applies, make an order under that subsection.

(2) The minimum term of imprisonment ordered may not be less than 10 years, and must be the minimum term of imprisonment that the court considers necessary to satisfy all or any of the following purposes:

(a) holding the offender accountable for the harm done to the victim and the community by the offending:

(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.

(2A) If the court that sentences an offender convicted of murder to imprisonment for life is satisfied that no minimum term of imprisonment would be sufficient to satisfy 1 or more of the purposes stated in subsection (2), the court may order that the offender serve the sentence without parole.

(2B) The court may not make an order under subsection (2A) unless the offender was 18 years of age or over at the time that the offender committed the murder.

(3) *[Repealed]*

(4) *[Repealed]*

(5) *[Repealed]*

(6) *[Repealed]*

(7) Subsection (2) is subject to sections 86P, 86S, and 104.

Section 103 heading: amended, on 1 June 2010, by section 10(1) of the Sentencing and Parole Reform Act 2010 (2010 No 33).

Section 103(1): replaced, on 16 August 2022, by section 8 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

Section 103(2): replaced, on 7 July 2004, by section 12 of the Sentencing Amendment Act 2004 (2004 No 68).

Section 103(2A): inserted, on 1 June 2010, by section 10(3) of the Sentencing and Parole Reform Act 2010 (2010 No 33).

Section 103(2B): inserted, on 1 June 2010, by section 10(3) of the Sentencing and Parole Reform Act 2010 (2010 No 33).

Section 103(3): repealed, on 7 July 2004, by section 12 of the Sentencing Amendment Act 2004 (2004 No 68).

Section 103(4): repealed, on 7 July 2004, by section 12 of the Sentencing Amendment Act 2004 (2004 No 68).

Section 103(5): repealed, on 7 July 2004, by section 12 of the Sentencing Amendment Act 2004 (2004 No 68).

Section 103(6): repealed, on 7 July 2004, by section 12 of the Sentencing Amendment Act 2004 (2004 No 68).

Section 103(7): amended, on 17 June 2025, by section 9 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Section 103(7): amended, on 1 June 2010, by section 10(4) of the Sentencing and Parole Reform Act 2010 (2010 No 33).

104 Imposition of minimum period of imprisonment of 17 years or more

(1) The court must make an order under section 103 imposing a minimum period of imprisonment of at least 17 years if any 1 or more of the circumstances set out in subsection (1A) apply, unless the court is satisfied that it would be manifestly unjust to do so.

(1A) The circumstances are as follows:

(a) the murder was committed in an attempt to avoid the detection, prosecution, or conviction of any person for any offence or in any other way to attempt to subvert the course of justice:

(b) the murder involved calculated or lengthy planning, including making an arrangement under which money or anything of value passes (or is intended to pass) from one person to another:

(c) the murder involved the unlawful entry into, or unlawful presence in, a dwelling place:

(d) the murder was committed in the course of another serious offence:

(e) the murder was committed with a high level of brutality, cruelty, depravity, or callousness:

(f) the murder was committed as part of a terrorist act (as defined in section 5(1) of the Terrorism Suppression Act 2002):

(g) the deceased was a constable or a prison officer acting in the course of their duty:

(h) the deceased was particularly vulnerable because of their age, health, or any other factor:

(i) the offender has been convicted of 2 or more counts of murder, whether or not arising from the same circumstances:

(j) any other exceptional circumstances exist.

(2) This section does not apply to an offender in respect of whom an order under section 86P(2), 86S(2), or 103(2A) is made.

Section 104(1): replaced, on 17 June 2025, by section 10(1) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Section 104(1A): inserted, on 17 June 2025, by section 10(1) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Section 104(2): inserted, on 1 June 2010, by section 11 of the Sentencing and Parole Reform Act 2010 (2010 No 33).

Section 104(2): amended, on 17 June 2025, by section 10(2) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

105 Appeal against imposition of minimum period of imprisonment

For the purposes of Part 6 of the Criminal Procedure Act 2011, an order under section 103 is a sentence.

Section 105: amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Subpart 4A—Offender levy and victims' services bank account

Subpart 4A: inserted, on 1 July 2010, by section 7 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

105A Interpretation

For the purposes of this subpart, unless the context otherwise requires,—

account means the Crown bank account known as the victims' services bank account established under section 105G

approved agency means an organisation for the time being approved by the Secretary under section 105J

Secretary means the Secretary for Justice; and includes a person or body authorised by the Secretary to exercise or perform his or her functions, powers, and duties under this Act.

Section 105A: inserted, on 1 July 2010, by section 7 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

105B Offender to pay levy

(1) This section applies to an offender who has been convicted of an offence.

(2) On being sentenced or otherwise dealt with by a court in relation to 1 or more offences, the offender must pay a levy.

(3) The levy is not a sentence and is in addition to any sentence.

Section 105B: inserted, on 1 July 2010, by section 7 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

105C Priority of payments received from offender

[Repealed]

Section 105C: repealed, on 13 February 2012, by section 11 of the Sentencing Amendment Act 2011 (2011 No 47).

105D Amount of levy

The amount of the levy payable under section 105B is $50 unless regulations made under section 147 prescribe otherwise.

Section 105D: inserted, on 1 July 2010, by section 7 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

Section 105D: $100 is the prescribed levy payable under section 105B, on 1 July 2026, by regulation 3A of the Sentencing Regulations 2002 (SR 2002/178).

105E Payment of levy

An offender must pay the levy to the Secretary, who must pay the levy into the account.

Section 105E: inserted, on 1 July 2010, by section 7 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

105F Distribution of money in account

The Secretary may, from time to time, pay to an approved agency any amount of money from money that is held in the account.

Section 105F: inserted, on 1 July 2010, by section 7 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

105G Victims' services bank account

The Secretary must, for the purposes of this subpart, establish through the Treasury a separate Crown bank account to be known as the victims' services bank account.

Section 105G: inserted, on 1 July 2010, by section 7 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

105H Payments from, and other operation of, account

The Secretary must ensure that money is paid out of the account, and that the account is otherwise operated, only as permitted or required by this subpart or by regulations made under section 105I.

Section 105H: inserted, on 1 July 2010, by section 7 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

105I Regulations on operation of account

(1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) providing for the circumstances and manner in which money may or must be paid out of the account:

(b) providing for the manner in which, and the conditions subject to which, the Secretary may or must otherwise operate the account.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 105I: inserted, on 1 July 2010, by section 7 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

Section 105I(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

105J Approval of agency

(1) The Secretary may approve an organisation as an approved agency for the purposes of this subpart.

(2) Before approving an organisation as an approved agency, the Secretary must be satisfied that—

(a) the organisation has as one of its roles providing services to victims of crime; and

(b) any amount paid to the organisation under section 105F will be applied to provide services to victims of crime; and

(c) the organisation has members with the knowledge, experience, and skills to provide services to victims of crime; and

(d) the organisation has in place administrative arrangements that will enable money received by the organisation to be accounted for.

(3) The Secretary may at any time, by notice in writing to an organisation approved under subsection (1), revoke that approval if the Secretary is no longer satisfied of the matters set out in subsection (2) or of any other matters that the Secretary considers relevant.

Section 105J: inserted, on 1 July 2010, by section 7 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

Subpart 5—Discharge and miscellaneous orders

Discharge

106 Discharge without conviction

(1) If a person who is charged with an offence is found guilty or pleads guilty, the court may discharge the offender without conviction, unless by any enactment applicable to the offence the court is required to impose a minimum sentence.

(2) A discharge under this section is deemed to be an acquittal.

(2A) A court discharging an offender under this section may make a protection order under section 123B.

(2B) A court discharging an offender under this section may make a restraining order under Part 3 of the Harassment Act 1997 in accordance with section 123I.

(2C) A court discharging an offender under this section may make 1 or more orders under section 19(1) of the Harmful Digital Communications Act 2015 in accordance with section 123J.

(3) A court discharging an offender under this section may—

(a) make an order for payment of costs or the restitution of any property; or

(b) make any order for the payment of any sum that the court thinks fair and reasonable to compensate any person who, through, or by means of, the offence, has suffered—

(i) loss of, or damage to, property; or

(ii) emotional harm; or

(iii) loss or damage consequential on any emotional or physical harm or loss of, or damage to, property:

(c) make any order that the court is required to make on conviction.

(3A) Sections 32 to 38A apply, with any necessary modifications, to an order under subsection (3)(b) as they apply to a sentence of reparation.

(4) *[Repealed]*

(5) Despite subsection (3)(b), the court must not order the payment of compensation in respect of any consequential loss or damage described in subsection (3)(b)(iii) for which compensation has been, or is to be, paid under the Accident Compensation Act 2001.

(6) *[Repealed]*

(7) *[Repealed]*

Compare: 1985 No 120 s 19

Section 106(2A): inserted, on 29 June 2025, by section 17 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 106(2B): inserted, on 26 May 2026, by section 26 of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72).

Section 106(2C): inserted, on 26 May 2026, by section 26 of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72).

Section 106(3A): replaced, on 13 February 2012, by section 12(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 106(4): repealed, on 13 February 2012, by section 12(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 106(5): replaced, on 6 December 2014, by section 8 of the Sentencing Amendment Act 2014 (2014 No 38).

Section 106(6): repealed, on 13 February 2012, by section 12(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 106(7): repealed, on 13 February 2012, by section 12(2) of the Sentencing Amendment Act 2011 (2011 No 47).

107 Guidance for discharge without conviction

The court must not discharge an offender without conviction unless the court is satisfied that the direct and indirect consequences of a conviction would be out of all proportion to the gravity of the offence.

108 Conviction and discharge

(1) If a person is convicted of an offence, a court before which the offender appears for sentence may, instead of imposing sentence, direct that the offender be discharged, unless by any enactment applicable to the offence the court is required to impose a minimum sentence.

(2) A court discharging an offender under this section may—

(a) make an order for the payment of costs or for the restitution of any property; or

(b) make any order for the payment of any sum that the court thinks fair and reasonable to compensate any person who, through, or by means of, the offence, has suffered—

(i) loss of, or damage to, property; or

(ii) emotional harm; or

(iii) loss or damage consequential on any emotional or physical harm or loss of, or damage to, property; or

(c) make any order that the court is required to make on conviction.

(2A) Sections 32 to 38A apply, with any necessary modifications, to an order under subsection (2)(b) as they apply to a sentence of reparation.

(3) *[Repealed]*

(4) Despite subsection (2)(b), the court must not order the payment of compensation in respect of any consequential loss or damage described in subsection

(2)(b)(iii) for which compensation has been, or is to be, paid under the Accident Compensation Act 2001.

(5) *[Repealed]*

(6) *[Repealed]*

Compare: 1985 No 120 s 20

Section 108(2A): replaced, on 13 February 2012, by section 13(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 108(3): repealed, on 13 February 2012, by section 13(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 108(4): replaced, on 6 December 2014, by section 9 of the Sentencing Amendment Act 2014 (2014 No 38).

Section 108(5): repealed, on 13 February 2012, by section 13(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 108(6): repealed, on 13 February 2012, by section 13(2) of the Sentencing Amendment Act 2011 (2011 No 47).

109 Guidance on conviction and discharge

The court must not convict and discharge an offender unless it is satisfied that a conviction is sufficient penalty in itself.

Order to come up for sentence if called on

110 Order to come up for sentence if called on

(1) If a person is convicted of an offence, a court before which the offender appears for sentence may, instead of imposing sentence, order the offender to appear for sentence if called on to do so within the period described in subsection (2).

(2) The period referred to in subsection (1) is a period, not exceeding 1 year commencing with the date of conviction, that the court may specify in the order.

(3) A court making an order under this section may—

(a) make an order for the payment of costs or for the restitution of any property; or

(b) make any order for the payment of any sum that the court thinks fair and reasonable to compensate any person who, through, or by means of, the offence, has suffered—

(i) loss of, or damage to, property; or

(ii) emotional harm; or

(iii) loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.

(3A) Sections 32 to 38A apply, with any necessary modifications, to an order under subsection (3)(b) as they apply to a sentence of reparation.

(4) *[Repealed]*

(5) Despite subsection (3)(b), the court must not order the payment of compensation in respect of any consequential loss or damage described in subsection (3)(b)(iii) for which compensation has been, or is to be, paid under the Accident Compensation Act 2001.

(6) *[Repealed]*

(7) *[Repealed]*

Compare: 1985 No 120 s 21(1), (2)

Section 110(3A): replaced, on 13 February 2012, by section 14(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 110(4): repealed, on 13 February 2012, by section 14(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 110(5): replaced, on 6 December 2014, by section 10 of the Sentencing Amendment Act 2014 (2014 No 38).

Section 110(6): repealed, on 13 February 2012, by section 14(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 110(7): repealed, on 13 February 2012, by section 14(2) of the Sentencing Amendment Act 2011 (2011 No 47).

111 Calling offender to come up for sentence

(1) This section applies if an offender in respect of whom an order is made under section 110—

(a) is convicted of a subsequent offence punishable by imprisonment for a term of more than 3 months; or

(b) fails to comply with any other order referred to in section 110(3); or

(c) fails to comply with any agreement or fails to take any measure or action of a kind referred to in section 10(1)(b), (d), or (e) that was brought to the attention of the court at the time the court made the order under section 110.

(2) Any of the following persons may, at any time within the period specified in the order, apply to a court having jurisdiction to deal with the original offence to have the offender brought before the court to be dealt with for that offence:

(a) a constable:

(b) a Crown Prosecutor:

(c) the Solicitor-General:

(d) any person designated by the chief executive of the Ministry of Justice or the chief executive of the Department of Corrections.

(3) On an application under subsection (2), the court may—

(a) issue a summons in the prescribed form requiring the offender to appear at the time and place appointed in the summons to show cause why he or she should not be dealt with for the original offence; or

(b) if the offender fails to appear before the court in answer to the summons issued under paragraph (a), issue a warrant to arrest the offender and bring him or her before the court; or

(c) issue an arrest warrant without first issuing a summons.

(4) If an application is made under subsection (2), sections 167 to 170, 206, and 385 of the Criminal Procedure Act 2011 apply, with any necessary modifications, as if the application were a charging document.

(5) If a person appears before a court under this section and the court is satisfied of any of the matters specified in subsection (1), the court—

(a) must inquire into the circumstances of the original offence and the conduct of the offender since the order was made (including, where appropriate, the circumstances and gravity of the subsequent offence); and

(b) may sentence or otherwise deal with the offender for the original offence.

Compare: 1985 No 120 s 21(3)–(6)

Section 111(2)(a): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 111(2)(d): amended, on 1 October 2003, pursuant to section 14(2) of the State Sector Amendment Act 2003 (2003 No 41).

Section 111(4): replaced, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Firearms prohibition orders

Heading: inserted, on 15 November 2022, by section 21 of the Firearms Prohibition Orders Legislation Act 2022 (2022 No 41).

111A Firearms prohibition order

(1) When sentencing a specified offender, the court may make a firearms prohibition order against the offender under Part 7A of the Arms Act 1983.

(2) In this section, **specified offender** means an offender described in section 39A(1) or (1A) of the Arms Act 1983.

Section 111A: replaced, on 2 March 2025, by section 11 of the Firearms Prohibition Orders Legislation Amendment Act 2024 (2024 No 34).

Non-association orders

112 Non-association order

(1) If an offender is convicted of an offence punishable by imprisonment, the court may make a non-association order in respect of the offender.

(2) Before making a non-association order, the court must be satisfied that the making of the order is reasonably necessary to ensure that the offender does not commit further offences punishable by imprisonment.

(3) Subject to subsection (4), a non-association order may be made in addition to, or instead of, imposing a sentence or making any other order.

(4) If the court makes a non-association order, it must not at the same time impose on the offender a sentence of imprisonment, whether for the offence for which that order was made or for any other offence for which the offender has appeared for sentence.

(5) The court must not make a non-association order if the offender is already detained under a sentence of imprisonment of more than 24 months imposed on an earlier occasion.

(6) Section 202 of the Criminal Procedure Act 2011 applies to a person specified in a non-association order as if that person were connected with the proceedings.

Compare: 1985 No 120 s 28A(1)–(3), (6)

Section 112(6): amended, on 5 March 2012 (applying in relation to a proceeding for an offence that was commenced before that date), by section 393 of the Criminal Procedure Act 2011 (2011 No 81).

113 Effect of non-association order

(1) A non-association order prohibits the offender from associating with—

(a) any person or persons specified in the order; or

(b) any person or persons of any class specified in the order.

(2) A non-association order has effect for the period, not exceeding 12 months, that the court may specify in the order.

Compare: 1985 No 120 s 28A(4), (5)

114 Cumulative orders and sentences

(1) A non-association order must not be cumulative on another non-association order or on a sentence of any kind imposed at the same time as the non-association order.

(2) If the court imposes a non-association order on an offender who is already detained under a sentence of imprisonment of 24 months or less, the non-association order is cumulative on the other sentence.

Compare: 1985 No 120 s 28B(1), (1A)

115 Order must be drawn up and copy given to offender, etc

(1) If a court makes a non-association order, the particulars of non-association must be drawn up in the form of an order.

(2) For the purposes of subsection (1), a court may direct that the offender be detained in the custody of the court for a period, not exceeding 2 hours, that may be necessary to enable the order to be drawn up and a copy given to the offender.

(3) If it is not practicable to give a copy of the order to the offender before the offender leaves the court, a copy must be given to the offender in person as soon as practicable after the offender leaves the court.

(4) A copy of the order must be given to—

(a) the chief executive of the Department of Corrections; and

(b) the constable in charge of the Police station nearest to the court in which the order was made.

Compare: 1985 No 120 s 28C

Section 115(4)(b): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

116 Right of appeal against non-association order

For the purposes of Part 6 of the Criminal Procedure Act 2011, a non-association order is a sentence.

Compare: 1985 No 120 s 28D

Section 116: amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

117 Commencement of period of non-association

(1) Except as provided in subsection (2), the period of non-association specified by a non-association order commences on the day on which the order is made.

(2) If a non-association order is, under section 114(2), cumulative on a sentence of imprisonment, the period of non-association specified by the non-association order commences on the day on which the offender is released from detention under the sentence of imprisonment.

Compare: 1985 No 120 s 28E

118 Breach of non-association order constitutes offence

(1) An offender who is subject to a non-association order commits an offence who, without reasonable excuse, associates with any person in contravention of the order.

(2) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding $1,000.

Compare: 1985 No 120 s 28F

Section 118(2): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

119 Effect of subsequent sentences on non-association order

If an offender who is subject to a non-association order (whether or not it is cumulative on a sentence of imprisonment and whether or not the period of non-association has commenced) is subsequently sentenced for another offence, the following provisions apply:

(a) if the offender is subsequently sentenced to imprisonment for a term of more than 24 months, the non-association order is suspended:

(b) if any other sentence is imposed, the court may make an order suspending the non-association order:

(c) if the offender is sentenced to imprisonment for a term of 24 months or less and the court makes no order under paragraph (b),—

(i) if the non-association order is cumulative on a sentence of imprisonment and the period of non-association specified by the order has not commenced, the period of non-association does not commence until the day on which the offender is released from detention after serving each sentence of imprisonment to which he or she is subject:

(ii) in any other case, the period of non-association continues to run while the offender is detained and, on the offender's release, he or she continues to be subject to the non-association order for any unexpired residue of the period of non-association.

Compare: 1985 No 120 s 28G(1)

120 Resumption of non-association order if sentence of imprisonment quashed

(1) This section applies to a non-association order that is suspended under section 119(a) or (b).

(2) The non-association order is suspended until the earlier of the following events:

(a) it resumes under subsection (3); or

(b) it is cancelled under subsection (5).

(3) The non-association order is resumed if the sentence of imprisonment based on which the non-association order was suspended is quashed and that results in the offender no longer being detained under a sentence of imprisonment.

(4) If a non-association order is resumed under subsection (3), no period during which the order was suspended is counted towards the period under section 113(2).

(5) If the non-association order never resumes under subsection (3), it is cancelled when the offender ceases to be detained under the sentence of imprisonment based on which the non-association order was suspended.

121 Application for review of non-association order

(1) An offender may, at any time after the expiration of half the period of non-association under a non-association order, apply to the court in accordance with section 123 for the variation or cancellation of the order.

(2) If a non-association order is cumulative on a sentence of imprisonment, the offender may, before the period of non-association commences, apply to the

court in accordance with section 123 for the variation or cancellation of the order.

(3) A probation officer may apply to a court in accordance with section 123 for the variation or cancellation of a non-association order if—

(a) the offender who is subject to it is convicted of an offence punishable by imprisonment; or

(b) a probation officer believes on reasonable grounds that the offender has failed or is unable to comply with the order.

(4) Subsection (3) does not apply if the order is cancelled under section 120.

(5) If an application is made under this section by a probation officer, the probation officer may suspend the order until the application has been heard and disposed of.

Compare: 1985 No 120 ss 28H(1), 28I(1), (2), (6)

Section 121(4): amended, on 7 July 2004, by section 16 of the Sentencing Amendment Act 2004 (2004 No 68).

122 Determination of application for variation or cancellation of order

(1) On an application under section 121, the court must have regard to—

(a) any change in circumstances since the non-association order was made; and

(b) if the period of non-association specified by the order has commenced, the manner in which the offender has responded to the order.

(2) The court may—

(a) vary the particulars of non-association; or

(b) cancel the order; or

(c) cancel the order and substitute any other sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the order was made.

(3) When determining any substitute sentence under subsection (2)(c), the court must take into account the portion of the non-association order that remains unserved at the time.

(4) If the court cancels the order,—

(a) in any case where the period of non-association specified by the order has commenced, the period of non-association expires on the date that the court may specify:

(b) in any other case, the period of non-association expires on the date that the order cancelling the non-association order is made.

Compare: 1985 No 120 ss 28H(2), 28I(4), (5)

123 Jurisdiction and procedure

(1) Section 72 applies, with any necessary modifications, to every application under section 121.

(2) Before determining the application, the court may make any inquiries as to the circumstances of the case that the court considers reasonable, and may hear any evidence relevant to those circumstances.

(3) If the court varies or cancels the non-association order, the Registrar must give written notice of the decision to the chief executive of the Department of Corrections and the constable in charge of the Police station nearest to the court.

Compare: 1985 No 120 ss 28H(4), 28I(7), 28J

Section 123(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Protection orders

Heading: inserted, on 1 July 2010, by section 4 of the Sentencing Amendment Act (No 2) 2009 (2009 No 44).

123A Interpretation of terms used in this section and sections 123B to 123H

In this section and sections 123B to 123H, unless the context otherwise requires,—

child has the meaning given to it by section 8 of the Family Violence Act 2018

family relationship has the meaning given to it by section 12 of the Family Violence Act 2018

family violence offence means an offence—

(a) against any enactment (including the Family Violence Act 2018); and

(b) involving family violence (as defined in section 9 of that Act)

family violence proceedings means proceedings in the Family Court under the Family Violence Act 2018 that relate wholly or partly to an application for a protection order

victim of the offence means the person against whom the offence was committed by the offender.

Section 123A: replaced, on 1 July 2019, by section 63 of the Family Violence (Amendments) Act 2018 (2018 No 47).

123B Protection order

(1) This section applies if—

(a) an offender is convicted of, or is under section 106 discharged without conviction for, a family violence offence; and

Examples

Convicted of family violence offence

The offender is convicted of a family violence offence and is discharged, under section 108.

The offender is convicted of a family violence offence and is ordered to appear for sentence if called on, under section 110.

(b) there is not currently in force a protection order against the offender made under the Family Violence Act 2018 for the protection of the victim of the offence.

(2) The court may make a protection order against the offender if—

(a) it is satisfied that the making of the order is necessary for the protection of the victim of the offence; and

(b) the victim of the offence does not object to the making of the order.

(3) A protection order may be made under this section in addition to imposing a sentence or making any other order.

(4) An order may be made under subsection (2) even though family violence proceedings have been filed by the victim of the offence against the offender, and those proceedings have not yet been determined.

(5) If an order is made under subsection (2) in the circumstances described in subsection (4), the family violence proceedings, in so far as they relate to an application for a protection order against the offender, end.

Section 123B: inserted, on 1 July 2010, by section 4 of the Sentencing Amendment Act (No 2) 2009 (2009 No 44).

Section 123B(1)(a): replaced, on 29 June 2025, by section 18 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Section 123B(1)(b): amended, on 1 July 2019, by section 64(2) of the Family Violence (Amendments) Act 2018 (2018 No 47).

Section 123B(4): amended, on 1 July 2019, by section 64(3) of the Family Violence (Amendments) Act 2018 (2018 No 47).

Section 123B(5): amended, on 1 July 2019, by section 64(4) of the Family Violence (Amendments) Act 2018 (2018 No 47).

123C Provisions applying to protection order made under section 123B

(1) A protection order made under section 123B is subject to the following provisions of the Family Violence Act 2018, and those provisions apply (so far as applicable, and subject to the modifications in subsection (2)) to that order as if it were a final protection order made under the Family Violence Act 2018:

(a) section 86(1):

(b) sections 90 to 96:

(c) sections 98 to 100 (except section 99(1)(a)):

(d) section 103:

(e) section 104 (except for section 97 as applied by section 104(2)):

(f) section 163(3):

(g) section 164(1) (except paragraph (a)):

(h) section 165(1):

(i) Part 7 of that Act.

(2) The modifications are—

(a) every reference to a protection order or a final order must be read as a reference to an order made under section 123B:

(b) every reference to the respondent must be read as a reference to the offender:

(c) every reference to the applicant or protected person must be read as a reference to the victim of the offence:

(d) the court cannot impose a condition relating to the matters set out in section 103(2) of the Family Violence Act 2018.

Section 123C: replaced, on 1 July 2019, by section 65 of the Family Violence (Amendments) Act 2018 (2018 No 47).

123CA Disclosure of documents to assessor and service provider

(1) This section applies to a court that makes—

(a) a protection order under section 123B; and

(b) a direction under section 188 (directions for assessments, non-violence programme, and prescribed standard services) or 198 (about a direction to engage with a prescribed non-standard service) of the Family Violence Act 2018 (as applied by section 123C(1)(i)).

(2) The court, when it makes the order or direction, must consider making under this section a direction requiring disclosure or sharing—

(a) of specified court documents relating to the offender, every protected person for the order, or both (*see* section 123CB); and

(b) to or with relevant assessors and service providers (*see* section 123CC); and

(c) to help those assessors and service providers perform all or any of their functions under the Family Violence Act 2018.

Section 123CA: inserted, on 1 July 2019, by section 65 of the Family Violence (Amendments) Act 2018 (2018 No 47).

123CB Court documents for section 123CA

(1) For the purposes of section 123CA, the specified court documents relating to the offender may be or include copies of the following:

(a) the relevant charging document:

(b) the offender's contact details:

(c) the offender's criminal conviction history:

(d) the court's decision to make the protection order under section 123B:

(e) a copy of that order:

(f) any current notice of bail or bail bond document.

(2) For the purposes of section 123CA, the specified court documents relating to every protected person for the order may be or include copies of the documents specified in subsection (1), except for the offender's contact details.

Section 123CB: inserted, on 1 July 2019, by section 65 of the Family Violence (Amendments) Act 2018 (2018 No 47).

123CC Assessors and service providers for section 123CA

For the purposes of section 123CA, the relevant assessors and service providers include any undertaking or providing all or any of the following assessments, programmes, or services:

(a) a safety programme to a protected person (under section 187 of the Family Violence Act 2018, as applied by section 123C(1)(i)):

(b) an assessment undertaken of the offender (under a direction made under section 188(1)(a) or (3)(a) of the Family Violence Act 2018):

(c) a non-violence programme to the offender (under a direction made under section 188(1)(b) of the Family Violence Act 2018):

(d) a prescribed standard service to the offender (under a direction made under section 188(3)(b) of the Family Violence Act 2018, as so applied):

(e) a prescribed non-standard service to the offender (under a direction made under section 198 of the Family Violence Act 2018, as so applied).

Section 123CC: inserted, on 1 July 2019, by section 65 of the Family Violence (Amendments) Act 2018 (2018 No 47).

123D Explanation of protection order

(1) On making a protection order, the Judge or Registrar must explain to the offender—

(a) the effect of—

(i) the order; and

(ii) any direction to attend a programme or engage with prescribed services made under section 188(1)(b) or (3)(b) of the Family Violence Act 2018 (as applied by section 123C(1)(i)); and

(b) the consequences that may follow if the offender fails to—

(i) comply with the terms of the order; or

(ii) attend any session of a programme that he or she has been directed to attend or engage with any prescribed services that he or she has been directed to engage with; and

(c) the means by which the order can be varied or discharged.

(2) Failure to give the explanation required by subsection (1) does not affect the validity of the order made.

Section 123D: inserted, on 1 July 2010, by section 4 of the Sentencing Amendment Act (No 2) 2009 (2009 No 44).

Section 123D(1)(a)(ii): amended, on 1 July 2019, by section 66(1) of the Family Violence (Amendments) Act 2018 (2018 No 47).

Section 123D(1)(b)(ii): amended, on 1 July 2019, by section 66(2) of the Family Violence (Amendments) Act 2018 (2018 No 47).

123E Protection order to be issued and served on offender

(1) Where the court makes a protection order under section 123B, the Registrar of that court must—

(a) immediately issue the order; and

(b) wherever practicable, serve a copy of the order on the offender before he or she leaves the court.

(2) For the purpose of subsection (1), the court may direct that the offender be detained in the custody of the court for a period, not exceeding 2 hours, that may be necessary to enable the order to be issued and a copy served on the offender.

Section 123E: inserted, on 1 July 2010, by section 4 of the Sentencing Amendment Act (No 2) 2009 (2009 No 44).

123F Protection order to be sent to Family Court

(1) Immediately after the issue of a protection order in accordance with section 123E, the court must send a copy of the order to the Family Court nearest to where the victim of the offence resides.

(2) On receipt of a copy of an order under subsection (1), the Registrar of the Family Court must enter the order in the records of the Family Court.

Section 123F: inserted, on 1 July 2010, by section 4 of the Sentencing Amendment Act (No 2) 2009 (2009 No 44).

123G Protection order treated as if made by Family Court

(1) This section applies to an order entered, as soon as it has been entered, in the records of the Family Court under section 123F(2).

(2) The order is to be treated as if it were a final protection order made by that court under the Family Violence Act 2018 (except that an appeal against the order is, under section 123H of this Act, an appeal against a sentence).

(3) The order is, accordingly, subject to the following provisions of the Family Violence Act 2018 (*see also* section 123H(7) and (8)):

(a) section 107(2):

(b) section 108(1):

(c) section 109(1):

(d) sections 111, 112, and 113:

(e) section 157:

(f) sections 160(1)(b) and 162:

(g) section 169:

(h) section 174:

(i) section 175:

(j) section 176:

(k) sections 177 to 181:

(l) Part 7.

Section 123G: replaced, on 1 July 2019, by section 67 of the Family Violence (Amendments) Act 2018 (2018 No 47).

123H Appeal against decision to make or refuse to make protection order under section 123B is appeal against sentence

(1) An appeal against a decision to make or refuse to make a protection order under section 123B is an appeal under subpart 4 of Part 6 of the Criminal Procedure Act 2011 against the sentence imposed for an offence (and the decision cannot be appealed against under sections 177 to 181 of the Family Violence Act 2018).

(2) If a notice of appeal or notice of an application for leave to appeal under Part 6 of the Criminal Procedure Act 2011 is filed in a court in respect of a protection order made under section 123B, the court must send a copy to the Family Court nearest to where the victim of the offence resides.

(3) No protection order made under section 123B is suspended just because a person files a notice of appeal or notice of an application for leave to appeal under Part 6 of the Criminal Procedure Act 2011, unless the appeal court expressly directs that the protection order be suspended (*see* section 343 of that Act).

(4) If, on an appeal under subpart 4 of Part 6 of the Criminal Procedure Act 2011, a court suspends, varies, or discharges, or makes, a protection order made under section 123B (or the appeal is withdrawn or otherwise finally determined), the court must send a copy of the order (or a notice of the withdrawal or other final determination of the appeal) to the Family Court nearest to where the victim of the offence resides.

(5) Subsection (4) does not prevent the appeal court (whether the appeal is a first, or a further, appeal) remitting the sentence to the court that imposed it, and

directing that court to take any action, under section 251(2)(c) and (3), 257(2), or 259(5)(b) of the Criminal Procedure Act 2011.

(6) On receipt of a copy of an order or a notice under subsection (4), the Registrar of the Family Court must enter the order or notice in the records of the Family Court.

(7) This section does not prevent a protection order made under section 123B from being varied, discharged, or enforced under any of sections 108(1), 109(1), 111, 112, and 113 of the Family Violence Act 2018 (as applied by section 123G(3) of this Act), or a decision made under any of those sections (as so applied) from being appealed against under sections 177 to 181 of that Act (as so applied).

(8) However, a court that varies or discharges under subsection (7) a protection order made under section 123B must copy the variation or discharge to the appeal court under the Criminal Procedure Act 2011 if—

(a) the Family Court has been sent under this section a notice of appeal or notice of an application for leave to appeal under Part 6 of the Criminal Procedure Act 2011 in respect of the order; and

(b) the records of the Family Court contain no entry under this section of a notice of the withdrawal or final determination of the appeal under the Criminal Procedure Act 2011 against the order.

Section 123H: inserted, on 1 July 2019, by section 67 of the Family Violence (Amendments) Act 2018 (2018 No 47).

Restraining orders under Harassment Act 1997

Heading: inserted, on 26 May 2026, by section 27 of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72).

123I Restraining orders under Harassment Act 1997

(1) This section applies if—

(a) an offender is—

(i) convicted of an offence against section 216Q of the Crimes Act 1961; or

(ii) discharged without conviction under section 106 in respect of an offence against that section; and

(b) there is not currently in force a restraining order against the offender made under Part 3 of the Harassment Act 1997 for the protection of the victim of the offence.

(2) The court may make a restraining order against the offender under the Harassment Act 1997 if satisfied that the grounds in section 16(1) of that Act have been met.

(3) The court may make the restraining order in addition to imposing a sentence or making any other order.

Section 123I: inserted, on 26 May 2026, by section 27 of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72).

Orders under Harmful Digital Communications Act 2015

Heading: inserted, on 26 May 2026, by section 27 of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72).

123J Orders under Harmful Digital Communications Act 2015

(1) This section applies if an offender is—

(a) convicted of an offence against section 216Q of the Crimes Act 1961; or

(b) discharged without conviction under section 106 in respect of an offence against that section.

(2) If the offence involves digital communication (within the meaning of section 4 of the Harmful Digital Communications Act 2015), the court may make 1 or more orders under section 19(1) of the Harmful Digital Communications Act 2015 against the offender for the protection of the victim of the offence after taking into account the matters listed in section 19(5) of that Act.

(3) The court may make the order in addition to imposing a sentence or making any other order.

Section 123J: inserted, on 26 May 2026, by section 27 of the Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72).

Disqualification from driving

124 Power of court to disqualify offenders from driving motor vehicles

(1) This section applies if a person is convicted of an offence punishable by imprisonment, not being an offence against the Land Transport Act 1998.

(2) A court may exercise the power in subsection (3) if a person is convicted of an offence referred to in subsection (1) and the court is satisfied that,—

(a) the commission of the offence was facilitated by the use of a motor vehicle by the offender, whether or not the offender was the driver or person in charge; or

(b) a motor vehicle was used by the offender, whether or not the offender was the driver or person in charge, for the purpose of facilitating his or her flight or avoiding his or her detection or arrest after the commission of the offence.

(3) The court may order the offender to be disqualified from holding or obtaining a driver licence within the meaning of the Land Transport Act 1998 for any period in accordance with section 125 that the court thinks fit.

(4) The court may make an order under this section in addition to, or instead of, passing any other sentence or making any other order.

(5) Nothing in this section limits or affects any power of the court under any other enactment to make an order disqualifying any person from holding or obtaining a driver licence.

Compare: 1985 No 120 s 83(1), (2), (6)

Section 124(1): amended, on 10 May 2011, by section 100(3) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

125 Period of disqualification from driving

(1) The period of disqualification ordered under section 124 must not exceed 3 years, except as provided in subsection (2).

(2) If the person is convicted of manslaughter, the court may fix any period of disqualification that it thinks fit.

Compare: 1985 No 120 s 83(3)

126 Provisions of Land Transport Act 1998 apply if offender disqualified under section 124

If an offender is disqualified from holding or obtaining a driver licence by an order made under section 124, the following provisions of the Land Transport Act 1998 apply, so far as they are applicable and with any necessary modifications, as if the order had been made under that Act:

(a) section 82 (effect of disqualification):

(b) section 83 (holder to undergo prescribed tests if disqualified for more than 1 year):

(c) section 84 (new licence or endorsement to be issued if disqualified driver qualifies for specified vehicle classes):

(d) section 85 (when disqualification starts):

(e) section 86 (term of disqualification if person already disqualified):

(f) section 87 (particulars of court orders relating to disqualification to be sent to Director of Land Transport and offender):

(g) section 99 (court may remove disqualification):

(h) section 103 (persons who may apply to court for limited licence):

(i) section 104 (issue of limited licence to be delayed or prohibited in certain cases):

(j) section 105 (court may make order authorising grant of limited licence):

(ja) section 65AC (court must impose alcohol interlock sentence):

(k) section 107 (appeals against court orders relating to disqualification or grant of limited licence, and deferral of disqualification).

Compare: 1985 No 120 s 83(5)

Section 126(f): amended, on 1 April 2021, by section 175(1) of the Land Transport (NZTA) Legislation Amendment Act 2020 (2020 No 48).

Section 126(ja): replaced, on 1 July 2018, by section 110(1) of the Land Transport Amendment Act 2017 (2017 No 34).

Confiscation of motor vehicles

127 Interpretation of terms used in sections 128 to 142

(1) For the purposes of this section and sections 128 to 142, unless the context otherwise requires,—

constable has the meaning given to it in section 4 of the Policing Act 2008

hire purchase agreement means—

(a) an agreement under which goods are let or hired with an option to purchase, however the agreement describes the payments, under which the person who agrees to purchase the goods is given possession of them before the total amount payable has been paid:

(b) an agreement for the purchase of goods by instalment payments, however the agreement describes the payments, under which the person who agrees to purchase the goods is given possession of them before the total amount payable has been paid

impoundment costs, in relation to a motor vehicle that has been confiscated while impounded under the Land Transport Act 1998, means the fees and charges for towage and storage that are prescribed or assessed in the manner specified by regulations made under section 167 of that Act, and, where those fees and charges have already been paid by the chief executive of the Ministry of Justice, means the amount required to reimburse the chief executive for that payment

interest means any proprietary interest, whether legal or equitable, and whether vested or contingent

lease does not include a hire purchase agreement or a rental service agreement to which the holder of a rental service licence under the Land Transport Act 1998 is a party

motor vehicle means a motor vehicle within the meaning of section 2(1) of the Land Transport Act 1998; but does not include a trailer

person who is registered, in relation to a motor vehicle, means the person who is registered under the Land Transport Act 1998 in respect of the vehicle, and where several persons are so registered, means any one of those persons

Police employee has the meaning given to it in section 4 of the Policing Act 2008

secured party has the meaning given to it in section 16 of the Personal Property Securities Act 1999, except that the reference to security interest is a reference to security interest as defined by this subsection

security agreement has the meaning given to it in section 16 of the Personal Property Securities Act 1999, but does not include a lease

security interest has the meaning given to it in section 17 of the Personal Property Securities Act 1999, but does not include a lease

written caution means a caution issued under section 129B.

(2) For the purposes of sections 128 to 142, a motor vehicle is owned by an offender whether the offender owns it solely or as a joint tenant or tenant in common with any other person.

(3) For the purposes of sections 128 to 142, a person is, in relation to an offender, a **substitute for the offender** or a **substitute** if—

(a) the person is served with a written caution, under section 129B, about an offence committed by the offender; and

(b) within 4 years after the date of the commission of the offence for which that written caution was served, the offender commits a further offence specified in section 128(1) involving a motor vehicle that, at the time of the commission of that offence, the person owns or has an interest in.

Compare: 1985 No 120 s 84(1)

Section 127(1) **constable**: inserted, on 1 August 2012, by section 15(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 127(1) **encumbrance**: repealed, on 1 August 2012, by section 15(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 127(1) **hire purchase agreement**: replaced, on 1 August 2012, by section 15(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 127(1) **impoundment costs**: inserted, on 1 December 2009, by section 5(1) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 127(1) **lease**: inserted, on 1 August 2012, by section 15(3) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 127(1) **leasing agreement**: repealed, on 1 August 2012, by section 15(3) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 127(1) **person who is registered**: inserted, on 1 December 2009, by section 5(1) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 127(1) **Police employee**: inserted, on 1 August 2012, by section 15(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 127(1) **secured party**: inserted, on 1 August 2012, by section 15(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 127(1) **security agreement**: inserted, on 1 August 2012, by section 15(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 127(1) **security interest**: inserted, on 1 August 2012, by section 15(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 127(1) **written caution**: inserted, on 1 December 2009, by section 5(1) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 127(3): inserted, on 1 December 2009, by section 5(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

128 Confiscation of motor vehicle

(1) This section applies if a person is convicted of any of the following offences:

(a) an offence punishable by imprisonment for a term of more than 12 months, or by imprisonment for life:

(b) an offence against any of the provisions of sections 35(1)(a), 35(1)(b), 36A(1)(a) or (c), 38(1), 39(1), 52(6), 52A(1)(c), or 56 to 60 of the Land Transport Act 1998 (which relate to driving offences).

(2) A court may exercise the power in subsection (3) if a person is convicted of an offence referred to in subsection (1) and the court by or before which the offender is convicted is satisfied—

(a) that a motor vehicle—

(i) was used to commit or facilitate the commission of the offence, whether or not the offender was the driver or person in charge; or

(ii) in the case of an offence against any of the provisions of sections 35(1)(a) and (b), 36(1)(a), 36AA, 36A(1)(a) and (c), 38(1), 39(1), 52(1)(aa) and (c), and 56 to 62 of the Land Transport Act 1998, was being driven by, or in the charge of, the offender at the material time; or

(iii) was used by the offender, whether or not the offender was the driver or person in charge, to facilitate the offender's flight or avoid his or her detection or arrest after the commission of the offence; and

(b) that, at the time of the conviction, the offender or a substitute for the offender owns the motor vehicle or has an interest in the motor vehicle.

(3) The court may order that the motor vehicle be confiscated.

(3A) The court must not make an order under this section in respect of a motor vehicle that a substitute for an offender owns or has an interest in if satisfied that—

(a) the substitute did not know, and could not reasonably have known, that the offender would commit the offence or offences; or

(b) the substitute took all reasonable steps to prevent the offender from committing the offence or offences.

(4) The court may make an order under this section in addition to, or instead of, passing any other sentence or making any other order.

(5) In deciding whether to make an order under this section, the court must have regard to—

(a) any undue hardship that the making of the order would cause to the offender or, as the case requires, to the substitute for the offender in relation to his or her trade, business, profession, occupation, or employment:

(b) any undue hardship that the making of the order would cause to any other person who would otherwise have the use or benefit of the motor vehicle on a regular basis:

(c) the nature and extent of the offender's interest, or, as the case requires, the interest of the substitute for the offender, in the motor vehicle, and the nature and extent of any other person's interest in it:

(d) any other considerations that the court thinks fit.

Compare: 1985 No 120 s 84(2), (4)

Section 128(1)(b): amended, on 1 March 2024, by section 40 of the Land Transport (Road Safety) Amendment Act 2023 (2023 No 62).

Section 128(1)(b): amended, on 11 August 2017, by section 105(2) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 128(1)(b): amended, on 2 May 2003, by section 11(1) of the Land Transport (Unauthorised Street and Drag Racing) Amendment Act 2003 (2003 No 11).

Section 128(2): replaced, on 1 December 2009, by section 6(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 128(2)(a)(ii): amended, on 10 September 2012, by section 100(2) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Section 128(3A): inserted, on 1 December 2009, by section 6(3) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 128(5)(a): amended, on 1 December 2009, by section 6(4) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 128(5)(c): amended, on 1 December 2009, by section 6(5) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

129 Confiscation of motor vehicle after subsequent offence

(1) This section applies if,—

(a) on or after 26 July 1996, a person commits an offence (the **first offence**) against any of sections 32(1)(a) or (b), 35(1)(a) or (b), 36(1), 36AA, 36A(1)(a) or (c), 39(1), 52(6), 52A(1), 56(1) or (2), 57A(1), 57B(1), 57C(1), 58(1), 60(1), 61(1) or (2), or 62(1) of the Land Transport Act 1998 (which relate to driving offences) or section 171 of the Crimes Act 1961 (but only where the manslaughter involved the use of a motor vehicle); and

(b) within 4 years after the date of the commission of that offence, the person commits a subsequent offence against any of those provisions of the Land Transport Act 1998.

(2) For the purpose of subsection (1), it does not matter whether or not the subsequent offence is of the same kind as the first offence, but it must be an offence that arises from a different incident from the one that gave rise to the first offence.

(3) If the court by or before which the offender is convicted of the subsequent offence is satisfied that any motor vehicle owned by the offender or in which the offender has any interest was being driven by, or in the charge of, the

offender at the material time, the court must order that the motor vehicle be confiscated.

(4) Despite subsection (3), the court must not make an order under that subsection if—

(a) it will result in extreme hardship to the offender or undue hardship to any other person; or

(b) an interlock is or is to be fitted to the motor vehicle.

(4A) Despite subsection (3), if the subsequent offence is against section 52A(1)(a) or (b) of the Land Transport Act 1998, the court must—

(a) make a confiscation order under subsection (3); or

(b) order that the vehicle be forfeited to the Crown under section 142AAB.

(5) For the purposes of this section, a conviction for an offence against a provision of the Transport Act 1962 that corresponds to an offence specified in subsection (1) must be treated as a conviction for an offence specified in that subsection.

Compare: 1985 No 120 s 84(2A), (2AA)

Section 129 heading: amended, on 11 August 2017, by section 105(3) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 129(1)(a): amended, on 11 March 2023, by section 43(2) of the Land Transport (Drug Driving) Amendment Act 2022 (2022 No 5).

Section 129(1)(a): amended, on 11 August 2017, by section 105(4) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 129(1)(a): amended, on 10 September 2012, by section 100(2) of the Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13).

Section 129(1)(a): amended, on 7 July 2004, by section 17(a) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 129(1)(a): amended, on 7 July 2004, by section 17(b) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 129(1)(a): amended, on 7 July 2004, by section 17(c) of the Sentencing Amendment Act 2004 (2004 No 68).

Section 129(1)(a): amended, on 2 May 2003, by section 11(1) of the Land Transport (Unauthorised Street and Drag Racing) Amendment Act 2003 (2003 No 11).

Section 129(1)(b): amended, on 11 August 2017, by section 105(5) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 129(2): amended, on 11 August 2017, by section 105(6) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 129(3): amended, on 11 August 2017, by section 105(7) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 129(4): replaced, on 1 July 2018, by section 110(1) of the Land Transport Amendment Act 2017 (2017 No 34).

Section 129(4A): inserted, on 1 March 2024, by section 41 of the Land Transport (Road Safety) Amendment Act 2023 (2023 No 62).

129A Confiscation and destruction after third illegal street racing offence

(1) This section applies if—

(a) an offender commits an offence against section 36A(1)(a) or (c) of the Land Transport Act 1998 (the **current offence**); and

(b) the offender has previously been convicted of 2 offences (the **previous offences**) against section 36A(1)(a) or (c) of the Land Transport Act 1998 that were each committed within the period of 4 years before the commission of the current offence.

(2) For the purpose of subsection (1), it does not matter whether or not the offences are of the same kind, but the current offence and each of the previous offences must arise from different incidents.

(3) The court by or before which the offender is convicted of the current offence may order the confiscation and destruction of any motor vehicle if satisfied that the offender was driving, or was in charge of, the motor vehicle at the material time and that—

(a) the offender owns or has any interest in the motor vehicle; or

(b) a substitute for the offender owns or has an interest in the motor vehicle if the written caution served on the substitute was issued in respect of an offence specified in subsection (1)(a).

(4) The court must not make an order under subsection (3) if it will result in extreme hardship to the offender or undue hardship to any other person, including, without limitation, to any substitute for the offender.

(5) The court must not make an order under subsection (3) in respect of a motor vehicle that 1 or more persons treated as a substitute have an interest in if it is satisfied that either of the following applies to each substitute:

(a) the substitute did not know, and could not reasonably have known, that the offender would commit the offence or offences; or

(b) the substitute took all reasonable steps to prevent the offender from committing the offence or offences.

Section 129A: inserted, on 1 December 2009, by section 7 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 129A(5): inserted, on 1 August 2012, by section 16 of the Sentencing Amendment Act 2011 (2011 No 47).

129B Written caution to persons with interest in motor vehicles involved in offences

(1) Subsection (2) applies whenever—

(a) a court convicts an offender of an offence specified in section 128(1) involving a motor vehicle; and

(b) the court is satisfied the offence was committed in circumstances that would permit or require the confiscation of the motor vehicle under

section 128, 129, or 129A if the offender owned or had an interest in it at the time of conviction; and

(c) it appears to the court that the offender does not own or have an interest in the motor vehicle.

(2) The court by or before which the offender is convicted must order that a written caution be issued and served on every person (other than the offender) who is registered in respect of the motor vehicle or who the court believes owns or has an interest in the motor vehicle.

(3) Despite subsection (2), a written caution must not be served—

(a) on anyone if the court is satisfied that the motor vehicle—

(i) was stolen or converted at the material time; or

(ii) was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998:

(b) on a person who the court is satisfied—

(i) did not own or have an interest in the motor vehicle at the material time; or

(ii) is a secured party under a security agreement relating to the motor vehicle, or the lessor of the motor vehicle under a lease, but has no relationship of another kind with the offender.

(4) On any one occasion, a court may only order that 1 written caution is to be served on each recipient described in subsection (2), regardless of the number of convictions entered against the offender.

(5) A written caution must provide the following information:

(a) the name and identifying details of the offender:

(b) the relevant convictions against the offender:

(c) the identifying details of the motor vehicle:

(d) that the recipient is believed to own or have an interest in the motor vehicle and that none of the exceptions stated in subsection (3) has been established to the satisfaction of the court:

(e) a warning that if the offender is convicted of a further offence specified in section 128(1) that involves a motor vehicle owned by the recipient or in which the recipient has an interest, the motor vehicle is liable to be confiscated or confiscated and destroyed:

(f) the recipient's right to seek a review of the court's decision to order the service of the written caution on the recipient.

(6) The written caution remains current for 4 years after the date of the commission of the offence for which that written caution is served.

(7) A written caution ordered to be served on a person must be served on the person in one of the following ways:

(a) by being delivered to the person personally or by being brought to the person's notice if the person refuses to accept it:

(b) by being left for the person at the person's place of residence with another person (other than the offender) who appears to be of or over the age of 14 years:

(c) by being left for the person at the person's place of business with another person (other than the offender).

(8) A written caution may be served by one of the following persons:

(aa) a constable:

(a) a Police employee authorised by the Commissioner of Police to serve documents under this Act:

(b) an officer of the court:

(c) any person who is authorised to serve the written caution under a general or particular authority given by a District Court Judge or Registrar:

(d) any officer or employee of a corporation that is authorised by the Secretary for Justice to serve the written caution.

(9) An endorsement on a copy of a written caution stating the fact, date, time, and mode of service and purporting to be signed by a person of a kind described in subsection (8) is, in the absence of evidence to the contrary, sufficient proof of service of the written caution in accordance with this section.

Section 129B: inserted, on 1 December 2009, by section 7 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 129B(2): amended, on 1 August 2012, by section 17(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129B(3)(b)(ii): replaced, on 1 August 2012, by section 17(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129B(7)(c): inserted, on 1 August 2012, by section 17(3) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129B(8)(aa): inserted, on 1 August 2012, by section 17(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129B(8)(a): amended, on 1 August 2012, by section 17(5) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129B(9): amended, on 1 August 2012, by section 17(6) of the Sentencing Amendment Act 2011 (2011 No 47).

129C Review of written caution

(1) A person served with a written caution may, within 20 working days after the date of service, apply to the court that ordered the service of the written caution for a review of the decision to serve the applicant on 1 or more of the following grounds:

(a) the motor vehicle was stolen or converted at the material time:

(b) the applicant did not own or have an interest in the motor vehicle at the material time:

(c) the applicant is a secured party under a security agreement relating to the motor vehicle, or the lessor of the motor vehicle under a lease, but has no relationship of another kind with the offender:

(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998.

(2) Every application must include a statutory declaration that specifies a ground stated in subsection (1) and why that ground applies.

(3) The Registrar must promptly forward a copy of the application to the prosecuting agency in the proceeding that resulted in the relevant conviction.

(4) The prosecuting agency may, within 10 working days after the day on which the copy of the application is forwarded to the agency, make a written submission to the court.

(5) The court must conduct the review on the papers, unless the court considers a hearing necessary.

(6) If satisfied that a ground stated in subsection (1) applies, the following provisions apply:

(a) the court must cancel the written caution served on the applicant:

(b) if the ground for cancelling the applicant's written caution is that stated in subsection (1)(a) or (d), the court must also cancel the written caution served on any other person under the same order that required service of the written caution on the applicant:

(c) the Registrar must advise, by ordinary post, facsimile, email, or other electronic means, every person (including the applicant) whose written caution is cancelled of that outcome:

(d) if a written caution served on a person is cancelled, the written caution is deemed not to have been served on the person.

Section 129C: inserted, on 1 December 2009, by section 7 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 129C(1)(c): replaced, on 1 August 2012, by section 18 of the Sentencing Amendment Act 2011 (2011 No 47).

129D Written caution of no effect if conviction quashed

(1) If all of the convictions in respect of which a written caution has been served on a person are quashed, and no convictions for offences qualifying for confiscation under section 128, 129, or 129A are substituted, the written caution ceases to have effect and is deemed not to have been served.

(2) If a written caution ceases to have effect under subsection (1), the Registrar must, by ordinary post, facsimile, email, or other electronic means, advise every person served with the written caution of that outcome.

Section 129D: inserted, on 1 December 2009, by section 7 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

129E Appeal against confiscation by persons treated as substitutes

(1) If the court orders, under section 128 or 129A, the confiscation of a motor vehicle on the basis that the person who owns it, or has an interest in it, is a substitute for the offender, that person may, within 20 working days after the date of the order, or within any further time that the appropriate court allows, appeal to the appropriate court against the order on 1 or more of the following grounds:

(a) the motor vehicle was stolen or converted at the material time:

(b) the appellant did not own or have an interest in the motor vehicle at the material time:

(c) the appellant is a secured party under a security agreement relating to the motor vehicle, or the lessor of the motor vehicle under a lease, but has no relationship of another kind with the offender:

(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998:

(e) the appellant took all reasonable steps to prevent the offender from committing the offence or offences:

(f) the appellant had not, before the commission of the offence or offences, been served with a written caution under section 129B in relation to the offender:

(g) the appellant did not know, and could not reasonably have known, that the offender would commit the offence or offences:

(h) confiscation of the motor vehicle is causing, or will cause, undue hardship to the appellant or any other person (other than the offender).

(2) The appellant must serve the notice of appeal on—

(a) the prosecuting agency in the proceeding that resulted in the relevant conviction; and

(b) any other person treated as a substitute or who owns or has an interest in the motor vehicle.

(3) The persons described in subsection (2) are parties to the appeal.

(4) The right of appeal under subsection (1) is independent of the offender's right of appeal against conviction and sentence for the relevant offence or offences.

(5) The court must set aside the confiscation of the motor vehicle if satisfied that—

(a) a ground stated in subsection (1)(a), (d), or (h) applies; or

(b) another ground stated in that subsection applies to the appellant and to every other person who is treated as a substitute for the offender.

(6) For the purposes of subsection (1),—

(a) if the order was made in the District Court, the appeal must be brought in the High Court in accordance with the High Court Rules 2016:

(b) if the order was made in the High Court, the appeal must be brought in the Court of Appeal in accordance with the rules of court governing civil appeals to that court.

Section 129E: inserted, on 1 December 2009, by section 7 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 129E(1)(a): replaced, on 1 August 2012, by section 19(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129E(1)(b): replaced, on 1 August 2012, by section 19(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129E(1)(c): replaced, on 1 August 2012, by section 19(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129E(1)(d): replaced, on 1 August 2012, by section 19(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129E(1)(e): replaced, on 1 August 2012, by section 19(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129E(1)(f): replaced, on 1 August 2012, by section 19(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129E(1)(g): replaced, on 1 August 2012, by section 19(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129E(1)(h): inserted, on 1 August 2012, by section 19(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129E(2)(b): amended, on 1 August 2012, by section 19(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129E(5)(a): amended, on 1 August 2012, by section 19(3) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129E(6)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 129E(6)(a): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

129EA Appeal against confiscation by third party

(1) If the court orders the confiscation of a motor vehicle under section 128, 129, or 129A, a person (other than the offender or, as the case may be, the substitute for the offender) may, within 20 working days after the date of the order, or within any further time that the appropriate court allows, appeal to the appropriate court against the order on the ground that the confiscation is causing, or will cause, undue hardship to the appellant or any other person (other than the offender or, as the case may be, the substitute for the offender).

(2) The appellant must serve the notice of appeal on—

(a) the prosecuting agency in the proceeding that resulted in the relevant conviction; and

(b) any person (other than the offender or, as the case may be, the substitute for the offender) who owns or has an interest in the vehicle.

(3) The persons described in subsection (2) are parties to the appeal.

(4) The right of appeal under subsection (1) is independent of the offender's right of appeal against conviction and sentence for the relevant offence or offences.

(5) The court must set aside the confiscation of the motor vehicle if satisfied that the ground of appeal stated in subsection (1) applies.

(6) For the purposes of subsection (1),—

(a) if the order was made in the District Court, the appeal must be brought in the High Court in accordance with the High Court Rules 2016:

(b) if the order was made in the High Court, the appeal must be brought in the Court of Appeal in accordance with the rules of court governing civil appeals to that court.

Section 129EA: inserted, on 1 August 2012, by section 20 of the Sentencing Amendment Act 2011 (2011 No 47).

Section 129EA(6)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 129EA(6)(a): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

129F Warning notice to secured parties if confiscation not ordered for second illegal street racing offence

(1) This section applies if—

(a) an offender commits an offence against section 36A(1)(a) or (c) of the Land Transport Act 1998 (the **current offence**); and

(b) the offender has previously been convicted of an offence (the **previous offence**) against section 36A(1)(a) or (c) of the Land Transport Act 1998 committed within the period of 4 years before the commission of the current offence; and

(c) the court by or before which the offender is convicted of the current offence is satisfied that a motor vehicle owned by the offender or by the substitute for the offender or in which the offender or the substitute has any interest was being driven by, or in the charge of, the offender at the material time; and

(d) the court does not order the confiscation of the motor vehicle.

(2) The Registrar must—

(a) check whether a financing statement has been registered in respect of the motor vehicle on the personal property securities register kept under the Personal Property Securities Act 1999; and

(b) issue a warning notice stating that any motor vehicle owned by the offender or by the substitute for the offender or in which the offender or the substitute has an interest is liable to be confiscated and destroyed if the offender commits another offence against section 36A(1)(a) or (c)

of the Land Transport Act 1998 before the expiry of 4 years from the commission of the previous offence; and

(c) send the warning notice, by ordinary post, facsimile, email, or other electronic means to every person (other than the offender or the substitute) who the Registrar believes is a party to a security agreement or lease relating to the motor vehicle.

(3) The jurisdiction of a court to make a confiscation and destruction order under section 129A or 136(4) or the validity of any order made under those sections is not affected by a failure to comply with subsection (2).

Section 129F: inserted, on 1 December 2009, by section 7 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 129F(2)(c): amended, on 1 August 2012, by section 21 of the Sentencing Amendment Act 2011 (2011 No 47).

130 Court may order declaration of ownership to be completed

(1) If a court is considering whether to order the confiscation of a motor vehicle under section 128, 129, or 129A, the court may order that the offender complete a declaration of ownership before ordering the confiscation.

(2) The declaration of ownership must specify—

(a) whether the offender owns, or has any interest in, the motor vehicle at the date of conviction; and

(b) whether any other person owns, or has any interest (including any security interest or lease) in, the motor vehicle at the date of conviction and, if so, the name of that person and the nature of that interest; and

(c) whether the offender has ceased to be the owner of, or to have any interest in, the motor vehicle at any time subsequent to the commission of the offence but before the date of his or her conviction; and

(d) if the offender has disposed of his or her interest in the motor vehicle during the period referred to in paragraph (c), to whom the ownership or interest in the motor vehicle was disposed, the relationship of that person to the offender, and the consideration received by the offender.

(3) For the purposes of having a declaration of ownership completed by the offender, the court may direct that the offender be detained in the custody of the court for a period, not exceeding 2 hours, that may be necessary to complete the declaration of ownership.

(4) If a court does not make an order under this section, that does not affect the validity of any other order of the court.

Compare: 1985 No 120 s 84(2B)–(2E)

Section 130(1): amended, on 1 December 2009, by section 8(1) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 130(2)(b): amended, on 1 August 2012, by section 22 of the Sentencing Amendment Act 2011 (2011 No 47).

Section 130(2)(b): amended, on 1 December 2009, by section 8(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

130A Court may disregard disposal of motor vehicle by person after written caution

(1) This section applies if—

(a) a person has been served with a written caution under section 129B in respect of an offender; and

(b) after being served with the written caution, the person purports to dispose of his or her ownership interest or other interest in the motor vehicle described in the written caution; and

(c) following that disposition, the offender is convicted of a further offence specified in section 128(1) involving that motor vehicle; and

(d) it appears to the court that the offender does not own or have an interest in the motor vehicle.

(2) If the circumstances of the further offence described in subsection (1)(c) would, but for that disposition, enable the court to order the confiscation of the motor vehicle under section 128 or 129A on the basis that the person is a substitute for the offender, and the court is not satisfied that the disposition was made with a bona fide intention to dispose permanently of the person's ownership or interest in the motor vehicle,—

(a) the court may, if it thinks fit, set the disposition aside; and

(b) section 128 or 129A, as the case may be, applies as if the disposition by the person had not occurred.

(3) Before making an order under subsection (2), the court must give any person to whom the disposition of the motor vehicle was made an opportunity to be heard.

Section 130A: inserted, on 1 December 2009, by section 9 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

131 If motor vehicle has been disposed of, court may prohibit offender from acquiring another motor vehicle

(1) This section applies if, in any case to which any of section 128, 129, or 129A would otherwise apply, the offender or any substitute for the offender has, before the date of the offender's conviction, ceased to be the owner of the motor vehicle or to have any interest in it.

(2) The court may—

(a) make an order prohibiting the offender from acquiring any interest in any motor vehicle within 12 months after the date of the order; and

(b) if the offender or the substitute for the offender has, at any time after the commission of the offence but before the date of his or her conviction,

become the owner of any motor vehicle or acquired any interest in any motor vehicle, order that that motor vehicle be confiscated.

(3) If the court is not satisfied that the disposition of the motor vehicle was made by the offender or the substitute for the offender with a bona fide intention to dispose permanently of his or her ownership or interest in the vehicle,—

(a) the court may, if it thinks fit, set the disposition aside; and

(b) section 128, 129, or 129A, as the case may be, applies as if the disposition by the offender or by the substitute for the offender had not occurred.

(4) Before making an order under subsection (3), the court must give any person to whom the disposition of the motor vehicle was made an opportunity to be heard.

Compare: 1985 No 120 s 84(3), (3A), (3B)

Section 131(1): replaced, on 1 December 2009, by section 10(1) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 131(2)(b): amended, on 1 December 2009, by section 10(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 131(3): amended, on 1 December 2009, by section 10(3) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 131(3)(b): replaced, on 1 December 2009, by section 10(4) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

132 Enforcement of confiscation order

(1) If a court makes a confiscation order under any of sections 128, 129, and 129A, it must specify in that order the time and place at which the offender or the substitute for the offender must surrender the motor vehicle to the Registrar or to a bailiff or constable.

(2) If the offender or the substitute for the offender fails to surrender the motor vehicle in accordance with the order, the court must issue a warrant in the prescribed form authorising the Registrar or any bailiff or constable to confiscate the motor vehicle.

(3) For the purpose of executing a warrant of confiscation issued under this section, the Registrar or bailiff or constable executing it may enter on any premises, by force if necessary, if that officer has reasonable cause to believe that the motor vehicle in respect of which the warrant is issued is on those premises.

(4) If any person is in actual occupation of the premises, the Registrar or bailiff or constable must, on entering, produce the warrant to that person.

(5) *[Repealed]*

(6) If a motor vehicle is surrendered to or seized by any bailiff or constable under this section, that officer must, as soon as practicable, deliver it into the custody of the Registrar of the court.

Compare: 1985 No 120 s 84(5)–(8), (10)

Section 132(1): replaced, on 1 December 2009, by section 11(1) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 132(2): amended, on 1 December 2009, by section 11(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 132(5): repealed, on 1 August 2012, by section 23 of the Sentencing Amendment Act 2011 (2011 No 47).

132A Offence to sell or dispose of motor vehicle subject to confiscation order

(1) This section applies in any case where a motor vehicle—

(a) is subject to an order under any of sections 128(3), 129(3), 129A(3), and 136(4); but

(b) has not yet been surrendered to, or seized by, a Registrar, bailiff, or constable.

(2) Every person commits an offence, and is liable on conviction to a fine not exceeding $2,000, who sells or disposes of the motor vehicle or any part of the motor vehicle.

Section 132A: inserted, on 1 December 2009, by section 12 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 132A(2): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

133 Offence to remove confiscated vehicle

(1) A person commits an offence who removes or attempts to remove any motor vehicle surrendered to or seized by any bailiff or constable under section 132 from the custody of that bailiff or constable, or from the custody of the Registrar of the court, without the approval of the Registrar.

(2) A person who commits an offence under this section is liable on conviction to a fine not exceeding $200.

Compare: 1985 No 120 s 84(11)

Section 133(2): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

134 Defect in warrant does not make action unlawful

(1) No confiscation made under the authority of section 132 is unlawful, and no person making a confiscation under the authority of section 132 is a trespasser, because of any defect or want of form in the warrant of confiscation.

(2) No person making a confiscation under the authority of section 132 is a trespasser from the beginning because of any irregularity afterwards committed by that person.

(3) Despite subsections (1) and (2), a person aggrieved by a defect or irregularity referred to in those subsections may recover satisfaction for the special damage by action at law.

Compare: 1985 No 120 s 84(9)

135 Registrar may direct order to be enforced in another office of District Court

(1) Despite anything in section 132, if a Registrar considers that an order for the confiscation of a motor vehicle made in one office of the District Court may be more effectively enforced in another office of the District Court, the Registrar may direct that the order be enforced in that other office.

(2) If the Registrar makes a direction under subsection (1), sections 132 to 134 and sections 137 to 141 apply accordingly.

Compare: 1985 No 120 s 84(12)

Section 135 heading: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 135(1): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

136 Offender must not acquire new interest in motor vehicle for 12 months

(1) This section applies if—

(a) a court makes an order for the confiscation of a motor vehicle under any of sections 128, 129, and 129A; or

(b) a court has made an order under section 131(2)(a) prohibiting an offender from acquiring a motor vehicle for 12 months.

(2) The offender must not, within 12 months after the date of the order, acquire any interest in any motor vehicle.

(3) A person commits an offence and is liable on conviction to a fine not exceeding $500 who acquires any interest in a motor vehicle in contravention of subsection (2).

(4) If a court convicts a person of an offence against this section, then instead of, or in addition to, imposing a fine, the court may order that the motor vehicle concerned be confiscated and, where this section applies because of an order under section 129A, may also order that the motor vehicle be destroyed.

(5) If a court orders the confiscation, or the confiscation and destruction, of a motor vehicle under subsection (4), sections 129EA, 130, 131 to 135, this section, and sections 136A to 142 apply accordingly.

Compare: 1985 No 120 s 85

Section 136(1)(a): amended, on 1 December 2009, by section 13(1) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 136(3): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 136(4): replaced, on 1 December 2009, by section 13(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 136(5): replaced, on 1 December 2009, by section 13(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 136(5): amended, on 1 August 2012, by section 25 of the Sentencing Amendment Act 2011 (2011 No 47).

136A Registrar must apply for deregistration of motor vehicle subject to confiscation and destruction order

If, under section 129A or 136(4), the court orders a motor vehicle to be confiscated and destroyed, the Registrar—

(a) is, for the purposes of the Land Transport Act 1998 and any regulations made under it, entitled to apply for the cancellation of the registration of the motor vehicle; and

(b) must make that application before the motor vehicle is sold or disposed of.

Section 136A: replaced, on 1 August 2012, by section 26 of the Sentencing Amendment Act 2011 (2011 No 47).

137 Sale of confiscated motor vehicles

(1) Subject to section 138, as soon as practicable after a motor vehicle is delivered into a Registrar's custody under section 132, the Registrar must arrange for the sale of the motor vehicle by public auction or in any other manner that the Registrar, subject to any direction by the court, thinks fit.

(2) *[Repealed]*

(3) Subject to subsection (4), the proceeds of the sale must be applied in the following manner and order of priority:

(a) if the motor vehicle has been impounded under the Land Transport Act 1998, in paying any impoundment costs:

(b) in payment of the costs of the sale (including all costs incurred in seizing the motor vehicle, towing and storing the vehicle, and complying with the provisions of this subpart preliminary to sale):

(c) if 1 or more security agreements have been brought to the notice of the Registrar before the proceeds of sale are fully applied, and have been established to the Registrar's satisfaction, in payment to each secured party of the amount to which the secured party would, but for the extinguishment of the security interest concerned, have been entitled under that agreement (and which has not already been recovered):

(d) in payment of any sentence or order of reparation payable by the offender:

(e) in payment of any levy payable by the offender under section 105B of this Act:

(f) in payment of any fine or court costs payable by the offender:

(fa) in payment of any fees and accident insurance levies prescribed under section 242(2)(b) of the Land Transport Act 1998 that are outstanding in respect of the vehicle:

(fb) in payment of any road user charges under the Road User Charges Act 2012 that are outstanding in respect of the vehicle:

(g) to the offender or, as the case requires, the substitute for the offender.

(3A) If any proceeds of sale are required to be applied to 2 or more security interests under subsection (3)(c), those proceeds must be applied in the order of priority determined for those security interests by Part 7 or 8 of the Personal Property Securities Act 1999.

(4) If the proceeds arise out of the sale of a motor vehicle owned by a substitute for the offender or in which the substitute had an interest, the proceeds must be applied in the manner and order of priority specified in subsection (3), except that the payment described in paragraphs (d) to (f) of that subsection are limited to sums imposed in respect of offences committed by the offender in a motor vehicle that, at the material time, was owned by the substitute or in which the substitute had an interest.

(5) A motor vehicle may be sold under this section even though it fails to comply in any respect with section 242 of the Land Transport Act 1998, and the purchaser of that motor vehicle—

(a) is, despite that Act or any other enactment, entitled to tow the motor vehicle to any appropriate place; and

(b) in so towing the vehicle, is under no criminal or civil liability merely because of the failure of the vehicle to comply with that section; and

(c) must comply in all respects with that Act as soon as the motor vehicle has been towed to that place.

(6) If the Registrar considers that a motor vehicle is not roadworthy and that it would be uneconomic to render it roadworthy, the Registrar must, before the motor vehicle is sold under this section, apply, under the Land Transport Act 1998, to have the registration of the motor vehicle cancelled as if the Registrar were the person who, under that Act, is entitled to apply for that cancellation.

(7) The person to whom a motor vehicle is sold under this section obtains, by virtue of this section, good title to the motor vehicle free of all ownership interests and other proprietary interests held in the motor vehicle before that sale.

Compare: 1985 No 120 s 87(1)–(3)

Section 137(1): amended, on 1 December 2009, by section 15(1) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 137(2): repealed, on 18 December 2013, by section 27 of the Auctioneers Act 2013 (2013 No 148).

Section 137(3): replaced, on 1 December 2009, by section 15(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 137(3)(c): replaced, on 1 August 2012, by section 27(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 137(3)(c): amended, on 14 November 2018, by section 164 of the Courts Matters Act 2018 (2018 No 50).

Section 137(3)(e): amended, on 1 August 2012, by section 27(3) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 137(3)(fa): inserted, on 1 August 2012, by section 27(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 137(3)(fb): inserted, on 1 August 2012, by section 27(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 137(3A): inserted, on 1 August 2012, by section 27(5) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 137(4): inserted, on 1 December 2009, by section 15(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 137(4): amended, on 1 August 2012, by section 27(6) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 137(5): inserted, on 1 August 2012, by section 27(7) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 137(6): inserted, on 1 August 2012, by section 27(7) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 137(7): inserted, on 1 August 2012, by section 27(7) of the Sentencing Amendment Act 2011 (2011 No 47).

137A Certain sales conditional on dismantling and destruction

(1) This section applies if any motor vehicle sold under section 137 is subject to a confiscation and destruction order under section 129A or 136(4).

(2) The sale of the motor vehicle is subject to a condition that the purchaser dismantle the motor vehicle for any saleable parts and destroy the remainder of the motor vehicle, to the satisfaction of the Registrar.

(3) The condition imposed by subsection (2) must be fulfilled within 30 working days after the date of the sale, or within any longer period that the Registrar specifies in writing.

(4) Despite section 137(7), the property in the motor vehicle does not pass to the purchaser until the condition imposed by subsection (2) has been fulfilled.

Section 137A: inserted, on 1 December 2009, by section 16 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 137A(4): amended, on 1 August 2012, by section 28 of the Sentencing Amendment Act 2011 (2011 No 47).

137B Failure to comply with condition to dismantle and destroy

(1) Where the sale of a motor vehicle is subject to a condition imposed by section 137A(2) and that condition is not fulfilled within the appropriate time, the Registrar may require any person in possession of the motor vehicle to surrender it to the Registrar, or a bailiff or constable, at a specified time and place.

(2) If the person in possession of the motor vehicle fails to surrender the motor vehicle at the time and place specified by the Registrar, the court may issue a warrant in the prescribed form authorising the Registrar or any bailiff or constable to recover the motor vehicle.

(3) For the purpose of executing a warrant issued under subsection (2), the Registrar or bailiff or constable executing it may enter on any premises, by force if necessary, if that officer has reasonable cause to believe that the motor vehicle in respect of which the warrant is issued is on those premises.

(4) If any person is in actual occupation of the premises, the Registrar or bailiff or constable must, on entering, produce the warrant to that person.

(5) If a motor vehicle is surrendered to or recovered by any bailiff or constable under this section, that officer must, as soon as practicable, deliver it into the custody of the Registrar of the court.

(6) Sections 133 and 134 apply, with any necessary modifications, in respect of a motor vehicle surrendered or recovered under this section and to a warrant issued under this section.

Section 137B: inserted, on 1 December 2009, by section 16 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

137C Sale of motor vehicle surrendered or recovered under section 137B

(1) As soon as practicable after a motor vehicle is delivered into a Registrar's custody under section 137B, the Registrar must arrange for the sale of the motor vehicle, and sections 137(1), (2), (5), and (7), 137A, and 137B apply to that sale with any necessary modifications.

(2) The proceeds of the sale must be applied in the following manner and order of priority:

(a) in payment of the costs of the sale (including all costs incurred in recovering the motor vehicle, and towing and storing the vehicle):

(b) in payment of the purchase price to the purchaser to whom the motor vehicle was sold under section 137:

(c) in payment of any unsatisfied amounts described in section 137(3) in accordance with that section and with all necessary modifications.

Section 137C: inserted, on 1 December 2009, by section 16 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 137C(1): amended, on 1 August 2012, by section 29 of the Sentencing Amendment Act 2011 (2011 No 47).

138 Disposal of unsaleable confiscated vehicle

(1) If the Registrar has reasonable grounds to believe that a motor vehicle that is delivered into his or her custody under section 132 or 137B is unsaleable, the Registrar may dispose of the vehicle in any manner he or she thinks fit.

(2) If the Registrar proposes to dispose of a motor vehicle under subsection (1), the Registrar—

(a) is, for the purposes of the Land Transport Act 1998 and any regulations made under it, entitled to apply for the cancellation of the registration of the motor vehicle; and

(b) must make that application before the disposal of the motor vehicle.

(3) The person to whom a motor vehicle is disposed of under this section obtains, by virtue of this section, good title to the motor vehicle free of all ownership interests and other proprietary interests held in the motor vehicle before that disposition.

Section 138(1): amended, on 1 December 2009, by section 17 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 138(2): inserted, on 1 August 2012, by section 30 of the Sentencing Amendment Act 2011 (2011 No 47).

Section 138(3): inserted, on 1 August 2012, by section 30 of the Sentencing Amendment Act 2011 (2011 No 47).

138A Offender liable for outstanding costs of seizure, storage, and sale

(1) If the amount realised from the sale of a motor vehicle under section 137 or its disposal under section 138 is less than the costs described in subsection (2), the offender is liable for the shortfall between that amount and those costs.

(2) The costs are,—

(a) if the motor vehicle has been impounded under the Land Transport Act 1998, any impoundment costs; and

(b) the costs of the sale (including all costs incurred in seizing the motor vehicle, towing and storing the vehicle, and complying with the provisions of this subpart preliminary to sale).

(3) Subsection (1) applies regardless of whether the offender owned or had an interest in the motor vehicle.

(4) Part 3 (except section 84) of the Summary Proceedings Act 1957 (or, if applicable, section 19 of the Crimes Act 1961) applies with any necessary modifications to any amount the offender is liable to pay under subsection (1) as if it were a fine.

(5) A certificate issued by the Registrar that, following the sale or disposal of a motor vehicle, the offender is liable to pay a sum under subsection (1) is, in the absence of proof to the contrary, sufficient evidence of the facts certified.

Section 138A: inserted, on 1 December 2009, by section 18 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 138A(4): replaced, on 13 February 2012, by section 31(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 138A(4): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 138A(5): amended, on 13 February 2012, by section 31(2)(a) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 138A(5): amended, on 13 February 2012, by section 31(2)(b) of the Sentencing Amendment Act 2011 (2011 No 47).

139 Procedure if notice given that vehicle subject to security agreement

(1) If notice is given to the Registrar before the proceeds of sale are fully applied under section 137 that the confiscated motor vehicle is subject to a security agreement and the claim is not established to the Registrar's satisfaction, the Registrar must issue a summons calling before the court the party making the claim.

(2) The following provisions apply to every summons issued under subsection (1) so far as they are applicable and with the necessary modifications:

(a) the provisions of the High Court Rules 2016 relating to interpleader by an officer executing a writ or other order; or

(b) as the case may require, section 179 of the District Court Act 2016.

Compare: 1985 No 120 s 87(4)

Section 139 heading: amended, on 1 August 2012, by section 32(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 139(1): amended, on 1 August 2012, by section 32(2)(a) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 139(1): amended, on 1 August 2012, by section 32(2)(b) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 139(2)(a): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Section 139(2)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

140 Lessor may apply to Registrar

(1) The lessor (not being the offender or a substitute for the offender whose motor vehicle has been confiscated) under a lease of a confiscated motor vehicle (not being a motor vehicle that is to be destroyed under section 129A or 136(4)) may apply to the Registrar, at any time before the Registrar has sold or disposed of the motor vehicle, for the transfer of the motor vehicle to the lessor as if the offender or the substitute had breached the terms of the lease.

(2) If subsection (1) applies, the Registrar may transfer the motor vehicle to the lessor accordingly.

(2A) On the transfer of the motor vehicle under subsection (2) to the lessor, the lease is cancelled.

(3) This section is subject to section 141A.

Section 140: replaced, on 1 December 2009, by section 19 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 140 heading: amended, on 1 August 2012, by section 33(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 140(1): amended, on 1 August 2012, by section 33(2)(a) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 140(1): amended, on 1 August 2012, by section 33(2)(b) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 140(1): amended, on 1 August 2012, by section 33(2)(c) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 140(2A): inserted, on 1 August 2012, by section 33(3) of the Sentencing Amendment Act 2011 (2011 No 47).

140A What happens if lessor does not apply to Registrar before motor vehicle sold or disposed of

(1) This section applies if—

(a) section 140 applies; but

(b) the lessor does not apply to the court for the transfer of the motor vehicle under section 140(1) before it is sold or disposed of; and

(c) the vehicle is sold; and

(d) the proceeds of the sale have not been fully applied.

(2) The lessor may apply to the court for the release of the proceeds of the sale of the motor vehicle that have not been applied.

(3) On an application under subsection (2), the Registrar or a District Court Judge may release the proceeds of the sale of the motor vehicle in accordance with subsections (4) and (5).

(4) The proceeds of the sale of the motor vehicle must be applied in accordance with section 137 as if the lease were a security agreement as defined in section 127(1) and the lessor were a secured party as defined in that subsection.

(5) However, despite subsection (4), section 137 applies subject to the following modifications:

(a) the proceeds of the sale of the motor vehicle must be applied in payment to the lessor of the amount to which the lessor would, but for the sale, have been entitled to under the lease; and

(b) the proceeds of the sale of the motor vehicle must be applied in the manner and order of priority set out in section 137, except that,—

(i) in the case of a lease for a term of 1 year or less, those proceeds must be applied for the payment to the lessor described in paragraph (a) after they are applied for the payments described in section 137(3)(a) and (b), but before they are applied for the remainder of the payments described in section 137(3)(c) to (g); and

(ii) in the case of a lease for a term of more than 1 year, those proceeds must be applied for the payment to the lessor described in paragraph (a) as if they were payments described in section 137(3)(c), and section 137(3)(c) and (3A) applied.

(6) On the release of the proceeds of the sale of the motor vehicle to the lessor, the lease is cancelled.

Section 140A: inserted, on 1 August 2012, by section 34 of the Sentencing Amendment Act 2011 (2011 No 47).

Section 140A(5)(b)(i): amended, on 26 March 2015, by section 4 of the Sentencing Amendment Act 2015 (2015 No 34).

141 Secured party may apply to court

(1) Any party (not being the offender or a substitute for the offender whose motor vehicle has been confiscated) to a security agreement over a confiscated motor vehicle may apply to the court, at any time before the Registrar has sold or disposed of the motor vehicle, for an order under subsection (3).

(2) Subsection (1) does not apply to a motor vehicle that is to be destroyed under section 129A or 136(4).

(3) The court may, if it thinks fit, make an order—

(a) directing the Registrar to transfer the motor vehicle to that other party; and

(b) directing that party to sell the motor vehicle and account for the proceeds of sale in accordance with section 141B.

(3A) If 2 or more secured parties have applied for an order under subsection (3), then the court must transfer the motor vehicle to the secured party with the highest-ranking security interest under the order of priority determined by Part 7 or 8 of the Personal Property Securities Act 1999.

(4) Subsection (3) is subject to section 141A.

(5) The person to whom a motor vehicle is sold under a direction given under subsection (3)(b) obtains, by virtue of this section, good title to the motor vehicle free of all ownership interests and other proprietary interests held in the motor vehicle before that sale.

Section 141: replaced, on 1 December 2009, by section 19 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 141(1): amended, on 1 August 2012, by section 35(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 141(1): amended, on 1 August 2012, by section 35(2) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 141(3A): inserted, on 1 August 2012, by section 35(4) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 141(4): amended, on 1 August 2012, by section 35(3) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 141(5): inserted, on 1 August 2012, by section 35(5) of the Sentencing Amendment Act 2011 (2011 No 47).

141A Certain payments required before transfers take effect

(1) An order for the transfer of a motor vehicle under section 140 or 141 does not take effect unless the following costs have been paid into court:

(a) if the motor vehicle has been impounded under the Land Transport Act 1998, any impoundment costs:

(b) any costs incurred in seizing, towing, and storing the motor vehicle.

(2) Any costs required to be paid by subsection (1) must be paid within 10 working days after the day on which the lessor or the secured party is notified of the decision to transfer the vehicle, or within any longer period specified by the Registrar in writing.

(3) If the costs specified in subsection (1) are not paid within the time required by or under subsection (2), the Registrar may proceed with the sale of the vehicle under section 137 or its disposal under section 138.

Section 141A: inserted, on 1 December 2009, by section 19 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 141A(3): amended, on 1 August 2012, by section 36 of the Sentencing Amendment Act 2011 (2011 No 47).

141B Application of proceeds of sale by secured party

(1) Every person to whom a motor vehicle is transferred under section 141 must, on disposing of the motor vehicle,—

(a) account to the Registrar for the proceeds of the sale:

(b) pay into court the proceeds of the sale, less—

(i) any costs paid under section 141A; and

(ii) the amount of the costs and expenses of, and incidental to, the sale; and

(iii) the amount to which the secured party would, but for the extinguishment of the security interest concerned, have been entitled under the relevant security agreement (and that has not already been recovered).

(2) The Registrar must then apply the balance remaining in accordance with section 137(3)(c) to (g) and (3A) with all necessary modifications.

Section 141B: inserted, on 1 December 2009, by section 19 of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 141B(1)(b): replaced, on 1 August 2012, by section 37(1) of the Sentencing Amendment Act 2011 (2011 No 47).

Section 141B(1)(b)(ii): amended, on 14 November 2018, by section 165(1) of the Courts Matters Act 2018 (2018 No 50).

Section 141B(1)(b)(iii): inserted, on 14 November 2018, by section 165(2) of the Courts Matters Act 2018 (2018 No 50).

Section 141B(2): amended, on 1 August 2012, by section 37(2) of the Sentencing Amendment Act 2011 (2011 No 47).

141C Failure by secured party to sell or account for proceeds

(1) If the court has directed a secured party under section 141(3)(b) to sell a motor vehicle and the secured party fails to do so within a reasonable time, the

Registrar may require any person in possession of the vehicle to surrender it to the Registrar, or a bailiff or constable, at a specified time and place.

(2) If the person in possession of the motor vehicle fails to surrender the motor vehicle at the time and place specified by the Registrar, the court may issue a warrant in the prescribed form authorising the Registrar or any bailiff or constable to recover the motor vehicle.

(3) For the purpose of executing a warrant issued under subsection (2), the Registrar or bailiff or constable executing it may enter on any premises, by force if necessary, if the Registrar, bailiff, or constable has reasonable cause to believe that the motor vehicle in respect of which the warrant is issued is on those premises.

(4) If any person is in actual occupation of the premises, the Registrar or bailiff or constable must, on entering, produce the warrant to that person.

(5) If a motor vehicle is surrendered to or recovered by any bailiff or constable under this section, that officer must, as soon as practicable, deliver it into the custody of the Registrar.

(6) Sections 133 and 134 apply, with any necessary modifications, in respect of a motor vehicle surrendered or recovered under this section and to a warrant issued under this section.

(7) As soon as practicable after the motor vehicle is delivered into the Registrar's custody under subsection (5), the Registrar must arrange for its sale under section 137 or its disposal under section 138.

(8) A secured party who fails, in whole or in part, to pay into court the money required under section 141B(1)(b) is liable to the Crown for any amount not paid, and that amount may be recovered from the secured party as a debt due to the Crown.

Section 141C: inserted, on 1 August 2012, by section 38 of the Sentencing Amendment Act 2011 (2011 No 47).

142 Order may be cancelled on application by bona fide purchaser

(1) On application to it by any person, the court must cancel a confiscation order (including a confiscation and destruction order under section 129A or 136(4)) made in respect of a motor vehicle if it is satisfied that, at any time after the conviction of the offender, that person purchased the motor vehicle in good faith without knowledge of the conviction.

(2) In the circumstances described in subsection (1), the court—

(a) must make an order prohibiting the offender from acquiring any interest in a motor vehicle within 12 months after the date of the confiscation order or confiscation and destruction order:

(b) may make any other consequential order or orders that it thinks just and reasonable.

(3) Section 136 applies with any necessary modifications to an order made under subsection (2)(a).

Compare: 1985 No 120 s 88

Section 142(1): amended, on 1 December 2009, by section 20(1) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 142(2): replaced, on 1 December 2009, by section 20(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Section 142(3): inserted, on 1 December 2009, by section 20(2) of the Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37).

Forfeiture of vehicles used in offence of failing to stop, etc

Heading: inserted, on 1 March 2024, by section 42 of the Land Transport (Road Safety) Amendment Act 2023 (2023 No 62).

142AAA Interpretation of terms used in sections 142AAB to 142AAF

Section 127 applies, with all necessary modifications, to sections 142AAB to 142AAF.

Section 142AAA: inserted, on 1 March 2024, by section 42 of the Land Transport (Road Safety) Amendment Act 2023 (2023 No 62).

142AAB Forfeiture of vehicle used in offence of failing to stop, etc

(1) This section applies if a person is convicted of an offence against section 52A(1)(a) or (b) of the Land Transport Act 1998.

(2) The court may make an order under subsection (3) if satisfied that, at the time of the conviction, the offender or a substitute for the offender owns or has an interest in the motor vehicle that was used in the commission of the offence.

(3) The court may order that the motor vehicle be forfeited to the Crown.

(4) Section 128(3A) to (5) applies, with any necessary modifications, to the making of a forfeiture order under this section.

Section 142AAB: inserted, on 1 March 2024, by section 42 of the Land Transport (Road Safety) Amendment Act 2023 (2023 No 62).

142AAC Offence to sell or dispose of motor vehicle subject to forfeiture order

(1) This section applies if a motor vehicle—

(a) is subject to a forfeiture order under section 142AAB(3) or a confiscation order under section 142AAE(4); and

(b) has not yet been surrendered to, or seized by, a Registrar, bailiff, or constable.

(2) A person who sells or disposes of the motor vehicle or any part of the motor vehicle commits an offence and is liable on conviction to a fine not exceeding $2,000.

Section 142AAC: inserted, on 1 March 2024, by section 42 of the Land Transport (Road Safety) Amendment Act 2023 (2023 No 62).

142AAD Offence to remove forfeited vehicle

A person who removes or attempts to remove a motor vehicle surrendered to or seized by a bailiff or constable under section 132 (as modified by section 142AAF) from the custody of that bailiff or constable, or from the custody of the Registrar of the court (without the approval of the Registrar), commits an offence and is liable on conviction to a fine not exceeding $200.

Section 142AAD: inserted, on 1 March 2024, by section 42 of the Land Transport (Road Safety) Amendment Act 2023 (2023 No 62).

142AAE Offender must not acquire new interest in motor vehicle for 12 months

(1) This section applies if—

(a) a court makes an order for the forfeiture of a motor vehicle under section 142AAB; or

(b) a court has made an order under section 131(2)(a) (as applied by section 142AAF) prohibiting an offender from acquiring a motor vehicle for 12 months.

(2) The offender must not, within 12 months after the date of the order, acquire any interest in any motor vehicle.

(3) A person who acquires any interest in a motor vehicle in contravention of subsection (2) commits an offence and is liable on conviction to a fine not exceeding $500.

(4) If a court convicts a person of an offence against this section, then instead of, or in addition to, imposing a fine, the court may order that the motor vehicle concerned be confiscated.

(5) If a court orders the confiscation of a motor vehicle under subsection (4), sections 129EA, 130, 131 to 135, 136A, 137 (except section 137(3)(g)), and 138 to 142 (as applied and modified by section 142AAF) apply accordingly.

Section 142AAE: inserted, on 1 March 2024, by section 42 of the Land Transport (Road Safety) Amendment Act 2023 (2023 No 62).

142AAF Modified application of confiscation scheme to forfeiture

(1) If a court orders the forfeiture of a motor vehicle under section 142AAB, the provisions specified in subsection (2) apply, with all necessary modifications, to the order, the motor vehicle, the offender and other persons, and in all other respects, in the same way as they apply if a court orders the confiscation of a vehicle under section 128 or 129.

(2) The following provisions apply:

(a) sections 129B to 129D (relating to written cautions given to persons with interest in motor vehicles involved in offences):

(b) sections 129E and 129EA (relating to appeals against confiscation):

(c) section 130 (court may order declaration of ownership to be completed):

(d) sections 130A and 131 (relating to the effect of any disposal of a motor vehicle or ownership or other interest in it):

(e) sections 132, 134, and 135 (relating to the enforcement of a confiscation order):

(f) section 136A (Registrar must apply for deregistration of motor vehicle subject to confiscation and destruction order):

(g) section 137 (except section 137(3)(g)) and sections 138 to 141C (relating to the sale of confiscated motor vehicles):

(h) section 142 (order may be cancelled on application by bona fide purchaser).

(3) Modifications to the application of the provisions specified in subsection (2) include the following:

(a) a reference to the confiscation of a motor vehicle, or an order for the confiscation of a motor vehicle, under section 128 must be read as a reference to the forfeiture of a motor vehicle, or an order for the forfeiture of a motor vehicle, under section 142AAB:

(b) any other reference to the confiscation of a motor vehicle must be read as a reference to the forfeiture of a motor vehicle:

(c) a reference to an offence specified in section 128(1) must be read as a reference to an offence against section 52A(1)(a) or (b) of the Land Transport Act 1998 (as referred to in section 142AAB(1)):

(d) any reference to an offender in connection with an offence specified in section 128 or 129 must be read as a reference to an offender in connection with an offence against section 52A(1)(a) or (b) of the Land Transport Act 1998 (as referred to in section 142AAB(1)):

(e) any other reference to section 128 must be read as a reference to section 142AAB:

(f) any reference to any section specified in subsection (2) must be read as a reference to that section as applied and modified by this section.

Section 142AAF: inserted, on 1 March 2024, by section 42 of the Land Transport (Road Safety) Amendment Act 2023 (2023 No 62).

Instrument forfeiture orders

Heading: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142A Interpretation of terms used in sections 142B to 142Q

For the purposes of sections 142B to 142Q, unless the context otherwise requires,—

Commissioner means the Commissioner of Police

prosecutor has the same meaning as in section 5(1) of the Criminal Proceeds (Recovery) Act 2009.

Section 142A: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142B Duties of prosecutor if offender guilty of qualifying instrument forfeiture offence

If a person is convicted of a qualifying instrument forfeiture offence and any property was used to commit, or to facilitate the commission of, that offence, the prosecutor must, if in the prosecutor's opinion the court should consider whether to make an instrument forfeiture order in respect of that property, notify the court in writing of—

(a) the details of that property:

(b) the name and identifying details of any person (other than the offender) who, to the knowledge of the prosecutor, has an interest in the property.

Section 142B: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142C Duties of court on notification

On receiving notice under section 142B, the court, if it is of the opinion that it should consider making an instrument forfeiture order,—

(a) must direct the prosecutor to issue and serve any notice required by section 142E:

(b) may direct the prosecutor to report further information to the court under section 142F.

Section 142C: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142D Notice of possible instrument forfeiture order may be recorded on registers

(1) Subsection (2) applies if the court has given a direction under section 142C relating to property of a kind that is covered by a New Zealand enactment that enables the registration of—

(a) title to that property; or

(b) charges over that property.

(2) If this subsection applies, the court may order any authority responsible for administering an enactment of the kind referred to in subsection (1) (an **Authority**) to enter on the register a note of the fact that the court will consider whether an instrument forfeiture order may be made against the property.

(3) The court must order an Authority to cancel an entry made on a register under subsection (2) if—

(a) the matter to which the entry relates is finally determined and the relevant appeal period (defined in section 73(3) and referred to in section 85 of the Criminal Proceeds (Recovery) Act 2009) has expired; or

(b) proceedings to which the entry relates are discontinued for any reason.

Compare: 1991 No 120 s 16(2), (3)

Section 142D: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142E Duties of prosecutor as to service

(1) If a court gives a direction under section 142C, the prosecutor must take all reasonable steps to notify every person (other than the offender) whose name was included in the notice given to the court under section 142B, any other person whom the prosecutor believes has an interest in the property in question, and the Commissioner—

(a) that the property may be made the subject of an instrument forfeiture order:

(b) that the person may, within 10 working days of the date of the notice, apply to the court for relief:

(c) of the grounds set out in section 77(1) of the Criminal Proceeds (Recovery) Act 2009 on which an application for relief may be made.

(2) A notice given under subsection (1) must be given as soon as practicable after the court gives a direction under section 142C and in any event not later than 5 working days after the giving of that direction.

Section 142E: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142F Court may require further information

The court may, for the purposes of determining whether to make an instrument forfeiture order or an order for relief from an instrument forfeiture order, or for the purposes of determining the terms of an instrument forfeiture order or an order for relief from an instrument forfeiture order, direct the prosecutor, the offender, or any person who applies for relief to provide further information to the court about—

(a) the value of the property that comprises the instrument of crime:

(b) the nature, extent, and value of the offender's interest in the property that comprises the instrument of crime:

(c) the name of any other person with an interest in the instrument of crime, the nature and extent of that person's interest, and whether or not that person has been notified of the proceedings:

(d) the name of any person who may suffer undue hardship if the property is confiscated and the nature of that hardship:

(e) any other matter specified by the court.

Section 142F: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142G Independent valuation of property

For the purposes of determining the value of an instrument of crime, a court may, at its own discretion or at the request of either party to the proceedings or any person who claims to have an interest in the property, seek an independent valuation as to the value of the property or any interest in the property.

Section 142G: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142H Court may order declaration of ownership to be completed

(1) If a court is considering whether or not to make an instrument forfeiture order, the court may order that the offender, or any other person, complete a declaration of ownership before making the order.

(2) The declaration of ownership must specify—

(a) whether the offender owns, or has any interest in, the property in question at the relevant date; and

(b) whether any other person owns, or has any interest in, the property at the relevant date, and, if so, the name of that person and the nature of that interest; and

(c) whether the offender has ceased to be the owner of, or to have any interest in, the property in question at any time subsequent to the commission of the offence but before the date of his or her conviction; and

(d) if the offender has disposed of his or her interest in the property in question during the period referred to in paragraph (c), to whom the ownership or interest in the property was disposed, the relationship of that person to the offender, and the consideration received by the offender.

(3) If a court does not make an order under this section that does not affect the validity of any other order of the court.

(4) In this section, **relevant date** means the date on which the offender was convicted of the qualifying instrument forfeiture offence.

Section 142H: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142I Determining ownership of property

For the purpose of determining the nature and extent of any person's interest in an instrument of crime, the court may apply the provisions of section 17A of the Criminal Proceeds (Recovery) Act 2009, which applies with all necessary modifications.

Section 142I: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

Section 142I: amended, on 27 July 2023, by section 53 of the Criminal Proceeds (Recovery) Amendment Act 2023 (2023 No 6).

142J Applications for relief from instrument forfeiture order

(1) Any person (other than the offender) may make an application for relief from an instrument forfeiture order.

(2) An application by any person for relief must be made to the court that convicted the offender—

(a) on either of the grounds set out in section 77(1) of the Criminal Proceeds (Recovery) Act 2009; and

(b) in the prescribed form (if any); and

(c) within—

(i) the time specified in the notice served on the person under section 142E; or

(ii) if no notice is served on the person, 15 working days after the day on which the offender was convicted of the qualifying instrument forfeiture offence; or

(iii) the time allowed by the court, if the court grants an application by the person to make an application for relief after the time by which such an application must be made under subparagraph (i) or (ii).

(3) An applicant for relief from an instrument forfeiture order must serve notice of that application on—

(a) the prosecutor:

(b) the offender:

(c) the Commissioner:

(d) the Official Assignee:

(e) any other person whom the applicant has reason to believe may—

(i) have an interest in the property that is the subject of the application; or

(ii) suffer undue hardship as a consequence of the forfeiture of the property:

(f) any specified person or class of persons in respect of whom the court directs the applicant to serve notice of the application.

(4) An applicant for relief must provide the court and the prosecutor with a list of persons on whom notice of the application has been served.

Section 142J: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142K Hearings concerning instrument forfeiture orders

(1) If a court issues a direction under section 142C, it may convene a hearing to determine whether to make an instrument forfeiture order or to grant an application made for relief from an instrument forfeiture order under section 142J.

(2) At the hearing, the prosecutor, the offender, any person making an application for relief from an instrument forfeiture order, and any other person who claims to have an interest in the property that may be the subject of the instrument forfeiture order or who believes that he or she may suffer undue hardship if the property is forfeited, may be heard.

(3) If a hearing is not held under subsection (1), the matters referred to in that subsection and subsection (2) may occur during the sentencing hearing.

Section 142K: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142L Court may grant relief from instrument forfeiture order to applicant who establishes interest in property

(1) This section applies if—

(a) a person applies to the court under section 142J for relief from an instrument forfeiture order in respect of an interest in property on the ground set out in section 77(1)(a) of the Criminal Proceeds (Recovery) Act 2009; and

(b) the court is satisfied, following a hearing under section 142K, that the applicant has established on the balance of probabilities that the applicant—

(i) has an interest in the property to which the instrument forfeiture order relates; and

(ii) was not involved in the qualifying instrument forfeiture offence to which the order relates.

(2) If this section applies, the court must make an order—

(a) declaring the nature, extent, and value of the applicant's interest in the property; and

(b) either—

(i) directing the Crown to transfer the interest to the applicant; or

(ii) declaring that there is payable by the Crown to the applicant an amount equal to the value of the interest declared by the court; or

(iii) directing that the interest not be included in an instrument forfeiture order made in respect of the proceedings that gave rise to the application; or

(iv) determining, in accordance with section 142N, not to make an instrument forfeiture order.

(3) Despite subsection (2), the court may, but is not required to, refuse to make an order under subsection (2) if it is satisfied that—

(a) the applicant was, in any respect, involved in the commission of the offence in respect of which forfeiture of the property is or was under consideration; or

(b) if the applicant acquired the interest at the time of or after the commission of the offence, the applicant did not acquire the interest in the property in good faith and for value.

(4) The court must not make an order under subsection (2)(b)(ii) unless it is satisfied that it cannot reasonably make an order under subsection (2)(b)(i) or (iii) (for example, because the interest of the applicant is not severable from the other property in question).

Section 142L: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142M Court may grant relief from instrument forfeiture order to applicant on grounds of undue hardship

(1) This section applies if a person applies to the court under section 142J for relief from an instrument forfeiture order on the ground set out in section 77(1)(b) of the Criminal Proceeds (Recovery) Act 2009.

(2) If the court is satisfied that, having regard to all the circumstances, undue hardship is likely to be caused to the person making the application or to another person (other than the offender), by the operation of an instrument forfeiture order, the court—

(a) may order that the person is entitled to be paid a specified amount out of the proceeds of sale of the property, being an amount that the court thinks is necessary to prevent undue hardship to that person; and

(b) if the person is under 18 years, may make additional orders for the purpose of ensuring the proper application of an amount to be paid to that person.

(3) The circumstances a court may have regard to under subsection (2) include, without limitation,—

(a) the use that is ordinarily made, or was intended to be made, of the property that would be the subject of the instrument forfeiture order; and

(b) the nature and extent of any person's interest in the property; and

(c) any other matter relating to the nature and circumstances of the qualifying instrument forfeiture offence to which the property relates.

Compare: 1991 No 120 ss 15(2), 18

Section 142M: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142N Instrument forfeiture orders

(1) Following a hearing under section 142K, the court may, if it is satisfied that the property described in the notice given under section 142B is an instrument of crime, order that the instrument of crime or any part of it specified by the court be forfeited to the Crown.

(2) In considering whether or not to make an instrument forfeiture order under subsection (1) in respect of particular property, the court may have regard to—

(a) any matter raised in an application for relief under section 142J; and

(b) the use that is ordinarily made, or was intended to be made, of the instrument of crime; and

(c) any undue hardship that is reasonably likely to be caused to any person by the operation of such an order; and

(d) the nature and extent of the offender's interest in the instrument of crime (if any), and the nature and extent of any other person's interest in it (if any); and

(e) in addition to the matters referred to in section 77(1) of the Criminal Proceeds (Recovery) Act 2009, any other matter relating to the nature and circumstances of the qualifying instrument forfeiture offence or the offender, including the gravity of the qualifying instrument forfeiture offence.

(3) A court that makes an instrument forfeiture order may, if it considers that it is appropriate to do so, by order,—

(a) declare the nature, extent, and value of any person's interest in an instrument of crime; and

(b) declare that the instrument forfeiture order may, to the extent to which it relates to the interest, be discharged under section 85 of the Criminal Proceeds (Recovery) Act 2009.

(4) If the court orders that property (other than money) be forfeited to the Crown, the court must specify in the order the amount that it considers to be the value of the property at the time the order is made.

(5) If a court makes an instrument forfeiture order, the court may give any directions that are necessary or convenient for giving effect to the order.

Section 142N: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142O Offence of providing false or misleading information under section 142F

Every person is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000 who provides false or misleading information to a court in response to a direction under section 142F.

Section 142O: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

Section 142O: amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

142P Evidence in instrument forfeiture order proceedings

In determining whether or not to make an instrument forfeiture order under section 142N as a result of a person's conviction, the court may take into account evidence given in the proceedings taken against that person for the offence, including, without limitation,—

(a) documents, exhibits, or other things connected with the proceedings that the court considers relevant; and

(b) notes or transcripts of evidence admitted in the proceedings.

Compare: 1991 No 120 s 14(1)

Section 142P: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

142Q Relationship with other provisions in Act

Nothing in sections 142A to 142P affects sections 127 to 142.

Section 142Q: inserted, on 1 December 2009, by section 10 of the Sentencing Amendment Act 2009 (2009 No 10).

Forfeiture of weapons

Heading: inserted, on 29 June 2025, by section 19 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

142R Forfeiture of weapons

(1) This section applies to a weapon that the court is satisfied that an offender used in committing, or in facilitating the commission of, an offence.

(2) The court may order that a weapon to which this section applies—

(a) is forfeited to the Crown; or

(b) must be destroyed, or otherwise disposed of, as the court directs.

(3) This section does not affect duties or powers of the court, or any person, under any other law, about the forfeiture, destruction, or other disposal of any weapon, or any other thing of any kind, used in committing, or in facilitating the commission of, an offence.

Section 142R: inserted, on 29 June 2025, by section 19 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Subpart 6—Miscellaneous, transitional, and savings provisions

Miscellaneous provisions

143 Sentence not invalidated by mistake in age of offender

(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.

(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.

(3) An application under this section must be made—

(a) to the High Court, if the sentence was passed—

(ia) by the Supreme Court on appeal against a sentence imposed by the High Court, or imposed by the Court of Appeal on appeal from the High Court; or

(i) by the Court of Appeal on appeal from the High Court; or

(ii) by the High Court otherwise than on appeal from the District Court; or

(b) to the District Court presided over by a trial Judge, if the sentence was passed—

(ia) by the Supreme Court on appeal against a sentence imposed by the District Court presided over by a trial Judge, or imposed by the Court of Appeal on appeal from the District Court presided over by a trial Judge; or

(i) by the Court of Appeal on appeal from the District Court presided over by a trial Judge; or

(ii) by a District Court Judge upon conviction following a jury trial; or

(c) to the District Court presided over by any Judge, in any other case.

(4) The Judge to whom the application is made, after inquiry into the circumstances of the case, may impose in substitution for the original sentence any sentence that could have been imposed on the offender at the time of conviction.

(5) For the purposes of an appeal or application for leave to appeal against the substituted sentence,—

(a) the substituted sentence is deemed to be a sentence passed on the conviction of the offender; but

(b) the time allowed for giving notice of the appeal or application runs from the date on which the substituted sentence was in fact imposed.

Compare: 1985 No 120 s 137

Section 143(1): replaced, on 7 July 2004, by section 18 of the Sentencing Amendment Act 2004 (2004 No 68).

Section 143(2): replaced, on 7 July 2004, by section 18 of the Sentencing Amendment Act 2004 (2004 No 68).

Section 143(3)(a)(ia): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 143(3)(a)(ii): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 143(3)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 143(3)(b)(ia): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 143(3)(b)(ia): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 143(3)(b)(i): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 143(3)(b)(ii): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

Section 143(3)(c): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

143A Sentencing following finding or verdict of guilt on more than 1 charge

If 1 sentence is imposed following a finding of guilt or verdict of guilty on more than 1 charge, the sentence is lawful if any of those charges would have justified the sentence.

Compare: 1961 No 43 s 340(7)

Section 143A: inserted, on 1 July 2013, by section 6 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

144 Royal prerogative not affected

Nothing in this Act limits or affects the Royal prerogative of mercy.

Compare: 1985 No 120 s 146

145 Maximum period of detention for administrative tasks

(1) The purpose of this section is to provide for the maximum period for which an offender may be detained in the custody of the court, on any one occasion, to allow any administrative tasks to be completed if—

(a) 2 or more of those tasks apply or relate to the offender; and

(b) they have to be completed at the same time.

(2) An offender may be detained in the custody of the court for a period not exceeding 3 hours if the offender is required, at any time before sentencing, to complete both of the following:

(a) make a declaration of financial capacity in accordance with section 42:

(b) make a declaration of ownership of a motor vehicle in accordance with section 130.

(3) An offender may be detained in the custody of the court for a period specified in subsection (4) if, at any time after sentencing, 2 or more of the following are required to be completed:

(a) the offender to make a declaration of financial capacity in accordance with section 42:

(b) an order for a community-based sentence to be drawn up and a copy given to the offender under section 74:

(c) an order for a sentence of home detention to be drawn up and a copy given to the offender under section 80ZC:

(d) a non-association order to be drawn up and a copy given to the offender under section 115:

(e) a protection order to be drawn up and served on the offender under section 123E.

(4) The period referred to in subsection (3) is—

(a) a period not exceeding 3 hours if any 2 administrative tasks are required to be completed; or

(b) a period not exceeding 4 hours if any 3 or more administrative tasks are required to be completed.

(5) If an offender is detained in the custody of the court for 2 or more orders for community-based sentences to be drawn up under section 74, each order is a separate administrative task for the purposes of subsection (4).

(6) Nothing in this section limits or affects sections 42A, 74(4), 80ZC(4), 115(2), 123E(2), and 130(3) if the administrative task described in each of those sections is undertaken separately on any one occasion, rather than in conjunction with other administrative tasks.

(7) In this section, **administrative task** means a task of a kind specified in subsection (2) or, as the case may be, subsection (3).

Section 145: replaced, on 13 February 2012, by section 39 of the Sentencing Amendment Act 2011 (2011 No 47).

145A Manner in which amounts of reparation must be applied in cases involving same offence

[Repealed]

Section 145A: repealed, on 13 February 2012, by section 40 of the Sentencing Amendment Act 2011 (2011 No 47).

145B Manner in which amounts of reparation must be applied in cases involving different offences

[Repealed]

Section 145B: repealed, on 13 February 2012, by section 40 of the Sentencing Amendment Act 2011 (2011 No 47).

145C No Crown liability for error, etc, in applying payments of amounts of reparation

[Repealed]

Section 145C: repealed, on 13 February 2012, by section 40 of the Sentencing Amendment Act 2011 (2011 No 47).

145D Definitions for sections 145A to 145C

[Repealed]

Section 145D: repealed, on 13 February 2012, by section 40 of the Sentencing Amendment Act 2011 (2011 No 47).

146 Consent to treatment, etc, not affected

(1) No sentence or condition imposed or order made under this Act limits or affects in any way any enactment or rule of law relating to consent to any medical or psychiatric treatment.

(2) Subsection (1) applies except as expressly provided by any other enactment.

Compare: 1985 No 120 s 148

146A A certificate of conviction for succession purposes

(1) On or at any time after sentencing a person for an offence against any Act of unlawfully killing another person or child that has not become a person, a court may certify that for the purposes of the Succession (Homicide) Act 2007 the person convicted is guilty of homicide of that other person or child that has not become a person.

(2) A court may issue a certificate under this section on the application of the prosecutor, any interested person, or on its own initiative.

Section 146A: inserted, on 17 November 2007, by section 17 of the Succession (Homicide) Act 2007 (2007 No 95).

Section 146A(2): amended, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

147 Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing forms for the purposes of this Act:

(b) prescribing the procedure for recording changes to registration details of a motor vehicle when an order for confiscation of a vehicle is made:

(c) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this Act and the amounts of fines that may be imposed in respect of those offences, which fines must not exceed $500:

(ca) prescribing the amount of the levy payable under section 105B:

(d) generally providing for any other matters that are contemplated by, or necessary for giving full effect to, this Act, and for its due administration.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1985 No 120 s 149

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 147(1)(ca): inserted, on 1 July 2010, by section 9 of the Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42).

Section 147(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Transitional and savings provisions

148 Reparation or fine for offence committed before commencement date

(1) This section applies if an offender is sentenced on or after the commencement date for an offence committed before that date.

(2) Sections 11 and 22 to 28 of the Criminal Justice Act 1985 apply as if those sections had not been repealed.

(3) Despite subsection (2), unless the particular enactment expressly provides otherwise, no court may sentence an offender referred to in subsection (1) to both a sentence of imprisonment and a fine for a particular offence.

149 Community-based sentence for offence committed before commencement date

(1) This section applies if an offender is sentenced on or after the commencement date for an offence committed before that date.

(2) The court may, subject to section 19,—

(a) sentence the offender to community work under subpart 2 if, had it been dealing with the offender immediately before the commencement date, it would have sentenced him or her to community service or periodic

detention under section 29 or section 37 of the Criminal Justice Act 1985; or

(b) sentence the offender to supervision under subpart 2 if, had it been dealing with the offender immediately before the commencement date, it would have sentenced him or her to supervision or a community programme under section 46 or section 53 of the Criminal Justice Act 1985.

(3) When determining the length of, or number of hours of work to be done under, a sentence imposed in accordance with this section, the court—

(a) must take into account the length of the sentence or the number of hours of work or service that it could have imposed had it dealt with the offender immediately before the commencement date; and

(b) must not impose a greater number of hours or a longer sentence than it would have imposed had it sentenced the offender immediately before the commencement date.

150 Community-based sentences imposed under Criminal Justice Act 1985

[Repealed]

Section 150: repealed, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

151 Offender subject to community-based sentence under Criminal Justice Act 1985 sentenced to further community-based sentence after commencement date

[Repealed]

Section 151: repealed, on 1 July 2013, by section 7 of the Sentencing Amendment Act (No 2) 2011 (2011 No 93).

152 Section 86 not to apply to offender convicted of offence committed before commencement date except for serious violent offender

(1) Except as provided in subsection (2), nothing in section 86 applies to an offender who is sentenced on or after the commencement date for an offence committed before that date.

(2) If an offender is sentenced on or after the commencement date for an offence committed before that date that is a serious violent offence as defined in section 2 of the Criminal Justice Act 1985, section 86 applies.

153 Offender convicted of specified offence committed before commencement date

(1) This section applies if—

(a) an offender is sentenced on or after the commencement date for an offence committed before that date that is a specified offence as defined in section 75(4) of the Criminal Justice Act 1985; and

(b) had the court been dealing with the offender immediately before the commencement date, the court would have sentenced the offender to preventive detention under section 75 of the Criminal Justice Act 1985 or committed the offender to the High Court in accordance with section 75(3) of that Act.

(2) The court may deal with the offender under sections 87 to 90.

154 Offender convicted of murder committed before commencement date

(1) This section applies if an offender is sentenced on or after the commencement date for the crime of murder committed before that date.

(2) Except as provided in subsection (3), the offender must be sentenced under this Act.

(3) Section 104 does not apply to the sentencing of an offender to whom this section applies.

155 Suspended sentences of imprisonment

(1) This section applies to an offender who, immediately before the commencement date, was subject to a suspended sentence of imprisonment imposed under the Criminal Justice Act 1985.

(2) The offender continues to be subject to that sentence on and after the commencement date, and the provisions of the Criminal Justice Act 1985 (as modified by subsection (3)), and any other enactment, relating to suspended sentences apply as if they had not been amended or repealed by this Act.

(3) Section 21A of the Criminal Justice Act 1985 must be read as if for subsection (5) of that section there were substituted subsection (4) of this section.

(4) If a court decides that a suspended sentence is not to take effect for the period specified in the order, the court must either—

(a) order that the suspended sentence—

(i) take effect with the substitution of a lesser term of imprisonment; or

(ii) be cancelled and replaced by any sentence of reparation or a fine that could have been imposed on the offender at the time when the offender was convicted of the offence for which the suspended sentence was imposed, or a community-based sentence under subpart 2 of the Sentencing Act 2002; or

(iii) be cancelled; or

(b) decline to make any order referred to in paragraph (a) concerning the suspended sentence.

156 Corrective training

(1) This section applies to an offender who, immediately before the commencement date, was subject to a sentence of corrective training imposed under section 68 of the Criminal Justice Act 1985.

(2) The offender must continue to serve that sentence as if this Act had not been passed, and the provisions of the Criminal Justice Act 1985 and any other enactment relating to corrective training apply as if they had not been amended or repealed by this Act.

157 Offenders liable to come up for sentence if called on

(1) This section applies to every order made under section 21 of the Criminal Justice Act 1985 requiring an offender to appear for sentence if called upon to do so that was still in force immediately before the commencement date.

(2) The order—

(a) continues in force as if it were an order made under section 110; and

(b) ceases to have effect on the date on which it would have ceased to have effect had this Act not been enacted.

158 Non-association orders and confiscation of vehicles for offence committed before commencement date

(1) This section applies if an offender is sentenced on or after the commencement date for an offence committed before that date.

(2) The court may make a non-association order or order for the confiscation of a vehicle under subpart 5 if it would have had the power to do so under the Criminal Justice Act 1985 had it been dealing with the offender immediately before the commencement date.

159 Non-association orders, disqualification from driving, and confiscation of vehicles imposed under Criminal Justice Act 1985

Every non-association order, disqualification from driving order, or order for the confiscation of a vehicle made under the Criminal Justice Act 1985 that is in force immediately before the commencement date continues in force as if it had been made under subpart 5.

160 Person under 17 years of age imprisoned

(1) This section applies if, immediately before the commencement date,—

(a) an offender was subject to a sentence of imprisonment imposed for any offence other than a purely indictable offence within the meaning of section 18; and

(b) at the time of the commission of that offence the offender had not attained the age of 17 years.

(2) The offender continues to be subject to the sentence despite the fact that at the time of the commission of the offence the offender had not attained the age of 17 years.

(3) Nothing in section 143(2) applies in respect of the offender.

Subpart 7—Amendments to other enactments

Amendments to Children, Young Persons, and Their Families Act 1989

161 Custody of child or young person pending hearing

Amendment(s) incorporated in the Act(s).

162 Restrictions on power of court to order child or young person to be detained in custody

Amendment(s) incorporated in the Act(s).

163 New section 239A inserted

Amendment(s) incorporated in the Act(s).

Amendments to Crimes Act 1961

164 Repeal of home invasion provisions in Crimes Act 1961

Amendment(s) incorporated in the Act(s).

165 New section 172 substituted

Amendment(s) incorporated in the Act(s).

Amendments to Criminal Justice Act 1985

166 Certain provisions in Criminal Justice Act 1985 repealed

Amendment(s) incorporated in the Act(s).

167 Appeal against acquittal on account of insanity

[Repealed]

Section 167: repealed, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

168 Order to be made if person under disability or insane

[Repealed]

Section 168: repealed, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

169 Power of court to commit to institution on conviction

[Repealed]

Section 169: repealed, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

170 Power of court to require psychiatric report

[Repealed]

Section 170: repealed, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

171 Access to psychiatric reports

[Repealed]

Section 171: repealed, on 1 September 2004, by section 51 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115).

172 Probation officers

Amendment(s) incorporated in the Act(s).

173 New section 124A inserted

Amendment(s) incorporated in the Act(s).

174 Duties of probation officers

Amendment(s) incorporated in the Act(s).

175 New sections 126 and 127 substituted

Amendment(s) incorporated in the Act(s).

176 New section 129 substituted

Amendment(s) incorporated in the Act(s).

177 Special provisions as to young persons remanded or committed for trial or sentence

Amendment(s) incorporated in the Act(s).

178 New sections 142AA and 142AB inserted into Criminal Justice Act 1985

Amendment(s) incorporated in the Act(s).

179 Detention of children or young persons serving sentence of imprisonment

Amendment(s) incorporated in the Act(s).

Amendment to District Courts Act 1947

[Repealed]

Heading: repealed, on 20 May 2004, pursuant to section 3(3) of the District Courts Amendment Act 2004 (2004 No 42).

180 Appointment and qualifications

[Repealed]

Section 180: repealed, on 20 May 2004, by section 3(3) of the District Courts Amendment Act 2004 (2004 No 42).

Amendment to Judicature Act 1908

[Repealed]

Heading: repealed, on 20 May 2004, pursuant to section 3(3) of the Judicature Amendment Act 2004 (2004 No 45).

181 Judges of the High Court

[Repealed]

Section 181: repealed, on 20 May 2004, by section 3(3) of the Judicature Amendment Act 2004 (2004 No 45).

Amendments to Misuse of Drugs Amendment Act 1978

182 Parole

Amendment(s) incorporated in the Act(s).

Amendments to Summary Proceedings Act 1957

183 Extension of time to pay

Amendment(s) incorporated in the Act(s).

184 Bailiff may arrange extension of time to pay

Amendment(s) incorporated in the Act(s).

185 Operation of attachment order

Amendment(s) incorporated in the Act(s).

Other amendments and repeals

186 Acts amended

The Acts set out in Schedule 1 are amended in the manner set out in that schedule.

187 Enactments repealed

The enactments set out in Schedule 2 are repealed.

Schedule 1AA
Transitional, savings, and related provisions

s 4A

Schedule 1AA: inserted, on 22 December 2016, by section 10 of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47).

Part 1
Provisions relating to Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016

1 Interpretation

In this Part, **commencement date** means the date on which the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force.

2 Varying special conditions for sentence of intensive supervision imposed before commencement date

(1) This clause applies to a sentence of intensive supervision imposed before the commencement date.

(2) An electronic monitoring condition may be imposed in the circumstances specified in subclause (3) even though such a condition—

(a) was not available as a special condition before the commencement date; and

(b) could not have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence of intensive supervision was imposed.

(3) The circumstances are as follows:

(a) if the court imposes additional special conditions under section 54K(3)(a):

(b) if the court cancels a sentence and substitutes a sentence of intensive supervision (that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed).

3 Varying release conditions for sentence of imprisonment of not more than 24 months imposed before commencement date

(1) This clause applies to a sentence of imprisonment of not more than 24 months imposed before the commencement date.

(2) An electronic monitoring condition may be imposed in the circumstances specified in subclause (3) even though such a condition—

(a) was not available before the commencement date; and

(b) could not have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence of imprisonment of not more than 24 months was imposed.

(3) The circumstances are as follows:

(a) if the court imposes an additional release condition under section 94(3)(a):

(b) if the court discharges a release condition and substitutes another release condition under section 94(3)(b).

Part 2
Provisions relating to Sentencing (Drug and Alcohol Testing) Amendment Act 2016

Schedule 1AA Part 2: inserted, on 15 May 2017, by section 18(3) of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85).

4 Interpretation

In this Part,—

commencement date means the date on which the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 comes into force

pre-commencement drug or alcohol condition means a condition of a sentence of supervision, intensive supervision, or home detention, or a post-detention or post-imprisonment condition,—

(a) that is imposed before the commencement date under section 52(2)(c), 54I(3)(e), 80D(4)(e), 80N(1) and (2)(b), or 93(1) or (2)(b); and

(b) that prohibits an offender from doing 1 or more of the following:

(i) using (as defined in section 4(1)) a controlled drug:

(ii) using a psychoactive substance:

(iii) consuming alcohol.

5 Testing and monitoring of offender subject to sentence of supervision with pre-commencement drug or alcohol condition

(1) This clause applies if an offender is subject to a sentence of supervision with a pre-commencement drug or alcohol condition.

(2) On and from the commencement date, sections 70AA and 80ZO to 80ZU, and any rules made under section 80ZT, apply in respect of the offender—

(a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and

(b) as if the court had complied with section 80ZN(3) in respect of the condition.

6 Testing and monitoring of offender subject to sentence of intensive supervision with pre-commencement drug or alcohol condition

(1) This clause applies if an offender is subject to a sentence of intensive supervision with a pre-commencement drug or alcohol condition.

(2) On and from the commencement date, sections 70B and 80ZO to 80ZU, and any rules made under section 80ZT, apply in respect of the offender—

(a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and

(b) as if the court had complied with section 80ZN(3) in respect of the condition.

7 Testing and monitoring of offender subject to sentence of home detention with pre-commencement drug or alcohol condition

(1) This clause applies if an offender is subject to a sentence of home detention with a pre-commencement drug or alcohol condition.

(2) On and from the commencement date, sections 80SA and 80ZO to 80ZU, and any rules made under section 80ZT, apply in respect of the offender—

(a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and

(b) as if the court had complied with section 80ZN(3) in respect of the condition.

8 Testing and monitoring of offender subject to post-detention condition that is a pre-commencement drug or alcohol condition

(1) This clause applies if an offender is subject to a post-detention condition that is a pre-commencement drug or alcohol condition.

(2) On and from the commencement date, sections 80UA and 80ZO to 80ZU, and any rules made under section 80ZT, apply in respect of the offender—

(a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and

(b) as if the court had complied with section 80ZN(3) in respect of the condition.

9 Testing and monitoring of offender subject to post-imprisonment condition that is a pre-commencement drug or alcohol condition

(1) This clause applies if an offender is subject to a post-imprisonment condition that is a pre-commencement drug or alcohol condition.

(2) On and from the commencement date, sections 80ZO to 80ZU and 96A, and any rules made under section 80ZT, apply in respect of the offender—

(a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and

(b) as if the court had complied with section 80ZN(3) in respect of the condition.

Part 3
Provisions relating to Oranga Tamariki Legislation Act 2019

Schedule 1AA Part 3: inserted, on 1 July 2019, by section 56 of the Oranga Tamariki Legislation Act 2019 (2019 No 30).

10 Interpretation

In this Part,—

2019 Act means the Oranga Tamariki Legislation Act 2019

commencement date means the date on which sections 54 and 55 of the 2019 Act come into force

proceeding—

(a) means a proceeding that has been commenced by—

(i) the filing of a charging document; or

(ii) the filing of a notice of hearing under, or in accordance with, section 21(8) of the Summary Proceedings Act 1957; and

(b) includes an appeal against conviction or sentence.

Schedule 1AA clause 10: inserted, on 1 July 2019, by section 56 of the Oranga Tamariki Legislation Act 2019 (2019 No 30).

11 Proceeding under way on commencement date against defendant aged 17 years

(1) This clause applies to any defendant aged 17 years in a proceeding that is under way in the District Court or the High Court on the commencement date.

(2) The defendant must be dealt with by the court under this Act as if sections 54 and 55 of the 2019 Act had not come into force.

Schedule 1AA clause 11: inserted, on 1 July 2019, by section 56 of the Oranga Tamariki Legislation Act 2019 (2019 No 30).

12 Proceeding commenced on or after commencement date for offence committed before commencement date

(1) This clause applies to any defendant aged 17 years in a proceeding that—

(a) is commenced on or after the commencement date; and

(b) is for an offence, or an alleged offence, that was committed before the commencement date when the defendant was 17 years of age.

(2) The defendant must be dealt with by the court under this Act as amended by sections 54 and 55 of the 2019 Act.

Schedule 1AA clause 12: inserted, on 1 July 2019, by section 56 of the Oranga Tamariki Legislation Act 2019 (2019 No 30).

Part 4
Provisions relating to Three Strikes Legislation Repeal Act 2022

Schedule 1AA Part 4: inserted, on 16 August 2022, by section 10 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

13AAA Interpretation

In this Part, **stage-2 or stage-3 offence** means a stage-2 offence or a stage-3 offence as those terms were defined in section 86A immediately before that section was repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022.

Schedule 1AA clause 13AAA: inserted, on 17 June 2025, by section 11(1) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

13 Treatment of persons convicted and sentenced before enactment of Three Strikes Legislation Repeal Act 2022

(1) This clause applies to a person who, before the commencement of the Three Strikes Legislation Repeal Act 2022, was convicted of and sentenced for a stage-2 or stage-3 offence.

(2) If this clause applies, the person is not eligible for release or re-sentencing as a consequence of any provision brought into force under the Three Strikes Legislation Repeal Act 2022.

Schedule 1AA clause 13: inserted, on 16 August 2022, by section 10 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

14 Treatment of persons convicted or sentenced after enactment of Three Strikes Legislation Repeal Act 2022

(1) This clause applies to a person who, on or after the commencement of the Three Strikes Legislation Repeal Act 2022, is convicted of or sentenced for an offence that would have been a stage-2 or stage-3 offence if the Three Strikes Legislation Repeal Act 2022 had not been brought into force.

(2) If this clause applies, in the case of a conflict between section 34 of the Legislation Act 2019 and—

(a) section 6 of the Sentencing Act 2002, section 6 prevails; or

(b) section 25(g) of the New Zealand Bill of Rights Act 1990, section 25(g) prevails.

Schedule 1AA clause 14: inserted, on 16 August 2022, by section 10 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

15 No entitlement to compensation

(1) A person is not entitled to compensation of any kind, on account of any alteration of sentencing rules as a consequence of any provision brought into force under the Sentencing and Parole Reform Act 2010, in respect of the fact that the person—

(a) was charged with, or prosecuted for, the offence; or

(b) admitted committing or pleaded guilty to, or was found to have committed, was convicted of, was sentenced for, or had an order or a direction made against the person for, the offence; or

(c) served a sentence for, or complied with an order or a direction made against the person because of committing, the offence; or

(d) was required to pay a fine or other money (including costs or any amount by way of restitution or compensation) on account of committing, or being convicted of, or sentenced for, the offence; or

(e) incurred any loss, or suffered any consequence (including being sentenced, or otherwise dealt with, as an offender, or as a repeat offender, of any kind), as a result of any circumstance referred to in paragraph (a), (b), (c), or (d).

(2) Nothing in subclause (1) prevents a person from—

(a) being entitled to compensation in respect of anything that occurred while the person was serving a sentence or complying with an order or a direction:

(b) bringing a claim for a breach of their rights under the New Zealand Bill of Rights Act 1990 in respect of being convicted of or sentenced for an offence specified in clause 13(1).

(3) Nothing in subclause (2)(b) is, or implies, an acknowledgement or a denial that relief (monetary or otherwise) may be available for a breach of the New Zealand Bill of Rights Act 1990 in respect of being convicted of or sentenced for an offence specified in clause 13(1).

Compare: 2010 No 24 s 90(1)(b); 2018 No 7 s 23

Schedule 1AA clause 15: inserted, on 16 August 2022, by section 10 of the Three Strikes Legislation Repeal Act 2022 (2022 No 40).

Part 5
Provisions relating to Sentencing Amendment Act 2024

Schedule 1AA Part 5: inserted, on 21 November 2024, by section 5(a) of the Sentencing Amendment Act 2024 (2024 No 37).

16 Interpretation

In this Part,—

amendment Act means the Sentencing Amendment Act 2024

commencement date means the date on which section 4 of the amendment Act comes into force.

Schedule 1AA clause 16: inserted, on 21 November 2024, by section 5(a) of the Sentencing Amendment Act 2024 (2024 No 37).

17 Application to proceedings on or after commencement date

Section 9(1)(hb) of this Act (as replaced by the amendment Act) applies only to proceedings commenced on or after the commencement date.

Schedule 1AA clause 17: inserted, on 21 November 2024, by section 5(a) of the Sentencing Amendment Act 2024 (2024 No 37).

Part 6
Provisions relating to Sentencing (Reinstating Three Strikes) Amendment Act 2024

Schedule 1AA Part 6: inserted, on 17 June 2025, by section 11(2)(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

18 Interpretation

In this Part,—

amendment Act means the Sentencing (Reinstating Three Strikes) Amendment Act 2024

commencement date means the date on which the amendment Act, other than sections 21(2), 23(2), and 24, comes into force

current, for a warning under the old regime, means that the record—

(a) has not ceased, or been cancelled, under section 86F of the old regime, when that section was in force; and

(b) would not have ceased, or have been cancelled, under that section if it were in force—

  (i) on and after 16 August 2022; and

  (ii) until the commencement date

new regime means sections 86J to 86X (additional consequences for certain repeated offending), and related legislation, as in force on and after the commencement date

old regime means sections 86A to 86I (additional consequences for repeated serious violent offending), and related legislation, as in force—

(a) on and after 1 June 2010; and

(b) until immediately before 16 August 2022

reactivated warning means a warning under the old regime that under clause 21 is taken to be the equivalent warning under the new regime

warning under the new regime, in relation to an offender, means a record under the new regime that is—

(a) a record of first warning (as defined in section 86J of the new regime); or

(b) a record of subsequent warning (as defined in section 86J of the new regime)

warning under the old regime, in relation to an offender, means a record under the old regime that, immediately before the commencement date, is current (as defined in this clause), and is—

(a) a record of first warning (as defined in section 86A of the old regime); or

(b) a record of final warning (as defined in section 86A of the old regime).

Schedule 1AA clause 18: inserted, on 17 June 2025, by section 11(2)(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

19 Offences affected by amendments

General rule: new regime applies only to new offences

(1) The amendments made to this Act by the amendment Act do not apply to any offence committed, whether in whole or in part, before the commencement date.

Exception: old regime warnings reactivated under new regime

(2) However, subclause (1) is subject to clauses 21 to 24.

Schedule 1AA clause 19: inserted, on 17 June 2025, by section 11(2)(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

20 No entitlement to compensation

A person is not entitled to compensation of any kind on account of any difference between—

(a) this Act as in force immediately before 16 August 2022; and

(b) this Act as in force on the commencement date.

Schedule 1AA clause 20: inserted, on 17 June 2025, by section 11(2)(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Warnings under old regime reactivated under new regime

Heading: inserted, on 17 June 2025, by section 11(2)(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

21 Warning under old regime reactivated unless exception applies

General rule

(1) A warning under the old regime is taken to be the equivalent warning under the new regime (*see* clause 22).

Exception: for stage-1 offence without qualifying sentence

(2) Subclause (1) does not apply if the warning under the old regime is for a stage-1 offence for which the sentence imposed is not a qualifying sentence as defined in paragraph (a) of the definition of that term in section 86J of the new regime.

Exception: for stage-2 offence without qualifying sentence

(3) Subclause (1) does not apply if the warning under the old regime is for a stage-2 offence for which the sentence imposed is not a qualifying sentence as defined in paragraph (b) of the definition of that term in section 86J of the new regime.

Exception: for stage-2 offence with qualifying sentence for stage-1 offence

(4) Subclause (3) is subject to the exception in subclause (5).

(5) Subclause (1) does apply to the warning under the old regime (*see also* clause 22(2) and (3)) if that warning is for a stage-2 offence and the offender has both of the following warnings under the old regime:

(a) a warning for a stage-1 offence to which subclause (2) applies; and

(b) a warning for a stage-2 offence for which the sentence imposed is—

(i) a determinate sentence of imprisonment of more than 12 months; or

(ii) an indeterminate sentence of imprisonment.

Schedule 1AA clause 21: inserted, on 17 June 2025, by section 11(2)(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

22 Equivalent warning under new regime

General rule: for stage-1 offence, or stage-2 offence, with qualifying sentence

(1) The equivalent warning under the new regime is set out in the following table:

Item	Warning and sentence under old regime	Equivalent under new regime
1	Record of first warning under section 86B(3) of the old regime for a stage-1 offence for which the sentence imposed is a qualifying sentence under paragraph (a) of the definition of that term in section 86J of the new regime	Record of first warning under section 86K(4)
2	Record of final warning under section 86C(3) or 86E(8) of the old regime for a stage-2 offence	Record of subsequent warning under section 86L(4)

Item	Warning and sentence under old regime	Equivalent under new regime
	for which the sentence imposed is a qualifying sentence under paragraph (b) of the definition of that term in section 86J of the new regime	

Exception: for stage-2 offence with qualifying sentence for stage-1 offence

(2) Subclause (1) is subject to the exception in subclause (3).

(3) A warning under the old regime that is a record of final warning is taken to be a record of first warning under section 86K(4) of the new regime if the offender has both of the following warnings under the old regime:

(a) a record of first warning that is not a reactivated warning under clause 21(2); and

(b) a record of final warning that is a reactivated warning under clause 21(5).

Schedule 1AA clause 22: inserted, on 17 June 2025, by section 11(2)(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

23 How new regime applies to reactivated warning

(1) The new regime applies, with any necessary modifications, to a reactivated warning.

(2) In particular, the following sections of the new regime apply, with any necessary modifications, to a reactivated warning:

(a) section 86U (continuing effect of warnings); and

(b) section 86V (how cessation of record affects later sentences).

(3) Subclause (2) does not limit the generality of subclause (1).

Schedule 1AA clause 23: inserted, on 17 June 2025, by section 11(2)(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

24 Differences in giving or recording of warnings

Clauses 21 to 23 apply regardless of any difference—

(a) between the old regime and the new regime; and

(b) related to the giving or recording of warnings.

Schedule 1AA clause 24: inserted, on 17 June 2025, by section 11(2)(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Part 7
Provisions relating to Sentencing (Reform) Amendment Act 2025

Schedule 1AA Part 7: inserted, on 29 June 2025, by section 20 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

25 Definitions for this Part

In this Part, unless the context otherwise requires,—

amendment Act means the Sentencing (Reform) Amendment Act 2025

commencement means the amendment Act's commencement.

Schedule 1AA clause 25: inserted, on 29 June 2025, by section 20 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

26 Application of amendments

Amendments apply only to offences committed, in whole, after commencement

(1) An amendment made to this Act by the amendment Act applies only to an offence committed, in whole, on or after commencement.

Other offences remain subject to Act as in force pre-commencement

(2) An offence committed, in whole or in part, before commencement remains subject to this Act as in force before commencement.

Exception (application of new section 18)

(3) However, this clause is subject to clause 27.

Schedule 1AA clause 26: inserted, on 29 June 2025, by section 20 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

27 Application of new section 18

(1) Section 18 (as inserted by the amendment Act) applies only in sentencing an offender for an offence committed, in whole, on or after commencement.

(2) However, in applying subclause (1),—

(a) the other offence mentioned in section 18(4) (as so inserted) may be one committed, in whole or in part, before, on, or after commencement; and

(b) the sentence of imprisonment mentioned in section 18(4) (as so inserted) imposed for that other offence may be one imposed before, on, or after commencement.

Schedule 1AA clause 27: inserted, on 29 June 2025, by section 20 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

28 Validity of sentence imposed after commencement not affected, and grounds for appeal against it do not exist, just because it is subject to new law but wrongly imposed under old law

(1) This clause applies to a sentence that is—

(a) imposed after commencement; and

(b) subject under this Part (*see* clauses 26 and 27) to an amendment made to this Act by the amendment Act; and

(c) wrongly imposed under this Act as in force before commencement, rather than under that amendment.

(2) The validity of the sentence is not affected, and grounds for an appeal against it do not exist, just because it was wrongly imposed under this Act as in force before commencement.

Compare: 2011 No 81 s 401

Schedule 1AA clause 28: inserted, on 29 June 2025, by section 20 of the Sentencing (Reform) Amendment Act 2025 (2025 No 13).

Schedule 1AB
Qualifying offences

s 86J

Schedule 1AB: inserted, on 17 June 2025, by section 12 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Provision of Crimes Act 1961	Subject matter
s 128B	Sexual violation
s 129(1)	Attempted sexual violation
s 129(2)	Assault with intent to commit sexual violation
s 129A(1)	Sexual connection with consent induced by threat
s 131(1)	Sexual connection with dependent family member under 18 years
s 131(2)	Attempted sexual connection with dependent family member under 18 years
s 132(1)	Sexual connection with child
s 132(2)	Attempted sexual connection with child
s 132(3)	Indecent act on child
s 134(1)	Sexual connection with young person
s 134(2)	Attempted sexual connection with young person
s 134(3)	Indecent act on young person
s 135	Indecent assault
s 138(1)	Exploitative sexual connection with person with significant impairment
s 138(2)	Attempted exploitative sexual connection with person with significant impairment
s 142A	Compelling indecent act with animal
s 144A	Sexual conduct with children and young people outside New Zealand
s 171A	Manslaughter by strike to head or neck
s 172	Murder
s 173	Attempted murder
s 174	Counselling or attempting to procure murder
s 175	Conspiracy to murder
s 177	Manslaughter
s 188(1)	Wounding with intent to cause grievous bodily harm
s 188(2)	Wounding with intent to injure
s 188A(1)	Wounding with intent to cause grievous bodily harm by strike to head or neck
s 188A(3)	Wounding with intent to injure by strike to head or neck
s 189(1)	Injuring with intent to cause grievous bodily harm
s 189(3)	Injuring with intent to injure any first responder or front-line corrections worker
s 189A	Strangulation or suffocation

Provision of Crimes Act 1961	Subject matter
s 191(1)	Aggravated wounding
s 191(2)	Aggravated injury
s 198(1)	Discharging firearm or doing dangerous act with intent to do grievous bodily harm
s 198(2)	Discharging firearm or doing dangerous act with intent to injure
s 198A(1)	Using firearm against law enforcement officer, etc
s 198A(2)	Using firearm with intent to resist arrest or detention
s 198B	Commission of crime with firearm
s 200(1)	Poisoning with intent to cause grievous bodily harm
s 201	Infecting with disease
s 208	Abduction for purposes of marriage or civil union or sexual connection
s 209	Kidnapping
s 232(1)	Aggravated burglary
s 234	Robbery
s 235	Aggravated robbery
s 236(1)	Causing grievous bodily harm with intent to rob, or assault with intent to rob in specified circumstances
s 236(2)	Assault with intent to rob

Schedule 1AB: amended, on 8 August 2026, by section 40 of the Crimes Amendment Act 2026 (2026 No 50).

Schedule 1
Amendments to other enactments

s 186

Alcoholism and Drug Addiction Act 1966 (1966 No 97)

Amendment(s) incorporated in the Act(s).

Armed Forces Discipline Act 1971 (1971 No 53)

Amendment(s) incorporated in the Act(s).

Bail Act 2000 (2000 No 38)

Amendment(s) incorporated in the Act(s).

Child Support Act 1991 (1991 No 142)

Amendment(s) incorporated in the Act(s).

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

Amendment(s) incorporated in the Act(s).

Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121)

Amendment(s) incorporated in the Act(s).

Copyright Act 1994 (1994 No 143)

Amendment(s) incorporated in the Act(s).

Costs in Criminal Cases Act 1967 (1967 No 129)

Amendment(s) incorporated in the Act(s).

Crimes Act 1961 (1961 No 43)

Amendment(s) incorporated in the Act(s).

Crown Minerals Act 1991 (1991 No 70)

Amendment(s) incorporated in the Act(s).

Disputes Tribunals Act 1988 (1988 No 110)

Amendment(s) incorporated in the Act(s).

District Courts Act 1947 (1947 No 16)

Amendment(s) incorporated in the Act(s).

Electoral Act 1993 (1993 No 87)

Amendment(s) incorporated in the Act(s).

Extradition Act 1999 (1999 No 55)
Amendment(s) incorporated in the Act(s).

Fisheries Act 1996 (1996 No 88)
Amendment(s) incorporated in the Act(s).

Health Act 1956 (1956 No 65)
Amendment(s) incorporated in the Act(s).

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)
Amendment(s) incorporated in the Act(s).

Insolvency Act 1967 (1967 No 54)
Amendment(s) incorporated in the Act(s).

International Crimes and International Criminal Court Act 2000 (2000 No 26)
Amendment(s) incorporated in the Act(s).

International War Crimes Tribunals Act 1995 (1995 No 27)
Amendment(s) incorporated in the Act(s).

Land Transport Act 1998 (1998 No 110)
Amendment(s) incorporated in the Act(s).

Legal Services Act 2000 (2000 No 42)
Amendment(s) incorporated in the Act(s).

Marine Reserves Act 1971 (1971 No 15)
Amendment(s) incorporated in the Act(s).

Misuse of Drugs Act 1975 (1975 No 116)
Amendment(s) incorporated in the Act(s).

Mutual Assistance in Criminal Matters Act 1992 (1992 No 86)
Amendment(s) incorporated in the Act(s).

Passports Act 1992 (1992 No 92)
Amendment(s) incorporated in the Act(s).

Police Act 1958 (1958 No 109)
Amendment(s) incorporated in the Act(s).

Privacy Act 1993 (1993 No 28)
Amendment(s) incorporated in the Act(s).

Resource Management Act 1991 (1991 No 69)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Act 1957 (1957 No 87)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Amendment Act (No 2) 1996 (1996 No 146)

Amendment(s) incorporated in the Act(s).

Wildlife Act 1953 (1953 No 31)

Amendment(s) incorporated in the Act(s).

Schedule 2
Enactments repealed

s 187

Children, Young Persons, and Their Families Amendment Act 1994 (1994 No 121)

Amendment(s) incorporated in the Act(s).

Crimes Amendment Act (No 3) 1993 (1993 No 62)

Amendment(s) incorporated in the Act(s).

Criminal Justice Amendment Act 1987 (1987 No 25)

Criminal Justice Amendment Act (No 2) 1987 (1987 No 95)

Criminal Justice Amendment Act (No 3) 1987 (1987 No 168)

Criminal Justice Amendment Act 1989 (1989 No 20)

Criminal Justice Amendment Act (No 2) 1989 (1989 No 91)

Amendment(s) incorporated in the Act(s).

Criminal Justice Amendment Act 1993 (1993 No 43)

Amendment(s) incorporated in the Act(s).

Criminal Justice Amendment Act (No 2) 1993 (1993 No 93)

Criminal Justice Amendment Act 1994 (1994 No 28)

Amendment(s) incorporated in the Act(s).

Criminal Justice Amendment Act 1995 (1995 No 69)

Amendment(s) incorporated in the Act(s).

Criminal Justice Amendment Act 1996 (1996 No 81)

Criminal Justice Amendment Act 1997 (1997 No 40)

Criminal Justice Amendment Act (No 2) 1997 (1997 No 94)

Criminal Justice Amendment Act 1998 (1998 No 37)

Criminal Justice Amendment Act (No 2) 1998 (1998 No 78)

Amendment(s) incorporated in the Act(s).

Criminal Justice Amendment Act 1999 (1999 No 9)

Criminal Justice Amendment Act (No 2) 1999 (1999 No 78)

Amendment(s) incorporated in the Act(s).

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)

Amendment(s) incorporated in the Act(s).

Land Transport Act 1998 (1998 No 110)

Amendment(s) incorporated in the Act(s).

Penal Institutions Act 1954 (1954 No 51)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Amendment Act 1973 (1973 No 117)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Amendment Act 1993 (1993 No 47)

Amendment(s) incorporated in the Act(s).

Transport Amendment Act (No 2) 1988 (1988 No 170)

Amendment(s) incorporated in the Act(s).

Sentencing Amendment Act 2007

Public Act	2007 No 27
Date of assent	31 July 2007
Commencement	see section 2

1 Title

This Act is the Sentencing Amendment Act 2007.

2 Commencement

This Act comes into force on a day to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates.

Section 2: sections 1–4, 6(2), 7–11, 13, 14, 16–44, 47, 48, 49(4), 50, 51, 55–58, and the Schedule brought into force, on 1 October 2007, by the Sentencing Amendment Act 2007 Commencement Order 2007 (SR 2007/254).

3 Principal Act amended

This Act amends the Sentencing Act 2002.

Transitional provisions

55 Transitional arrangements for intensive supervision

If an offender is convicted of an offence committed before the commencement of section 54B, the court may sentence the offender to intensive supervision if—

(a) the court would have had the power to sentence the offender to supervision if it were dealing with the offence immediately before that date; and

(b) the requirements of sections 54B and 54C are satisfied; and

(c) the offender consents to the imposition of intensive supervision.

56 Transitional arrangements for community detention

If an offender is convicted of an offence committed before the commencement of section 69B, the court may sentence the offender to community detention if—

(a) the court would have had the power to sentence the offender to a community-based sentence if it were dealing with the offence immediately before that date; and

(b) the requirements of sections 69B and 69C are satisfied; and

(c) the offender consents to the imposition of community detention.

57 Transitional arrangements for home detention

If an offender is convicted of an offence committed before the commencement of section 80A, the court may sentence the offender to home detention if—

(a) the court would have had the power to sentence the offender to imprisonment if it were dealing with the offence immediately before that date; and

(b) the requirements of section 80A are satisfied; and

(c) the offender consents to the imposition of home detention.

Sentencing Amendment Act 2009

Public Act	2009 No 10
Date of assent	21 April 2009
Commencement	see section 2

1 Title

This Act is the Sentencing Amendment Act 2009.

2 Commencement

This Act comes into force on 1 December 2009.

4 Purpose

The purpose of this Act is to establish a regime for the forfeiture of instruments of crime as part of the sentencing process.

5 Application

The amendments made to the Sentencing Act 2002 by this Act apply in respect of qualifying instrument forfeiture offences committed, or believed to have been committed, before, on, or after the commencement of this Act.

Sentencing (Vehicle Confiscation) Amendment Act 2009

Public Act	2009 No 37
Date of assent	27 October 2009
Commencement	see section 2

1 Title

This Act is the Sentencing (Vehicle Confiscation) Amendment Act 2009.

2 Commencement

This Act comes into force on 1 December 2009.

4 Purpose

The purpose of this Act is to reduce traffic offending by—

(a) strengthening the powers of the courts to order the confiscation of motor vehicles:

(b) empowering the courts to order the destruction of motor vehicles used by persistent illegal street racing offenders.

21 Transitional provisions

(1) Sections 129A, 129B, and 129F of the principal Act, as inserted by section 7 of this Act, do not apply in respect of any offence (whether described in those sections as a first offence, second offence, current offence, previous offence, or in any other way) committed before the commencement of section 7.

(2) Sections 140 to 142 of the principal Act, as in force before the commencement of section 19 of this Act, continue to apply to any motor vehicle confiscated before that commencement.

(3) In the period commencing on the commencement of this Act and ending immediately before the commencement of section 32(2) of the Land Transport Amendment Act 2009—

(a) any reference to a person who is registered in respect of a motor vehicle in sections 129B and 136A of the principal Act (as inserted by this Act) must (despite the definition of that term in section 127(1) of the principal Act) be read as a reference to a registered owner within the meaning of the Transport (Vehicle and Driver Registration and Licensing) Act 1986:

(b) the reference in section 136A of the principal Act (as inserted by this Act) to the Land Transport Act 1998 is taken to be a reference to the Transport (Vehicle and Driver Registration and Licensing) Act 1986.

Sentencing and Parole Reform Act 2010

Public Act	2010 No 33
Date of assent	31 May 2010
Commencement	see section 2

1 Title

This Act is the Sentencing and Parole Reform Act 2010.

2 Commencement

(1) This Act comes into force on the day after the date on which it receives the Royal assent.

(2) Despite subsection (1), section 17(2) comes into force on the commencement of section 49 of the Parole Amendment Act 2007.

3 Purpose

The purpose of this Act is to—

(a) deny parole to certain repeat offenders and to offenders guilty of the worst murders:

(b) impose maximum terms of imprisonment on persistent repeat offenders who continue to commit serious violent offences.

Part 1
Amendments to Sentencing Act 2002

12 Transitional provision

(1) Sections 86A to 86I of the principal Act (as inserted by section 6) do not apply to any offence committed, whether in whole or in part, before the commencement of this Act.

(2) Section 103(2A) of the principal Act (as inserted by section 10) does not apply to any murder committed, whether in whole or in part, before the commencement of this Act.

Notes

1 General

This is a consolidation of the Sentencing Act 2002 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Crimes Amendment Act 2026 (2026 No 50): section 40

Crimes Legislation (Stalking and Harassment) Amendment Act 2025 (2025 No 72): Part 2 subpart 6

Sentencing (Reform) Amendment Act 2025 (2025 No 13): Part 1

Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54): Part 1

Sentencing Amendment Act 2024 (2024 No 37)

Firearms Prohibition Orders Legislation Amendment Act 2024 (2024 No 34): section 10

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68): section 6

Land Transport (Road Safety) Amendment Act 2023 (2023 No 62): Part 2 subpart 1

Criminal Proceeds (Recovery) Amendment Act 2023 (2023 No 6): section 53

Firearms Prohibition Orders Legislation Act 2022 (2022 No 41): section 21

Three Strikes Legislation Repeal Act 2022 (2022 No 40): Part 1

Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14): wehenga 7/section 7

Land Transport (Drug Driving) Amendment Act 2022 (2022 No 5): section 43

Counter-Terrorism Legislation Act 2021 (2021 No 37): section 57

Secondary Legislation Act 2021 (2021 No 7): section 3

Land Transport (NZTA) Legislation Amendment Act 2020 (2020 No 48): section 175(1)

Privacy Act 2020 (2020 No 31): section 217

Oranga Tamariki Legislation Act 2019 (2019 No 30): Part 2 subpart 8

Children's Amendment Act 2018 (2018 No 58): section 10(1)

Courts Matters Act 2018 (2018 No 50): section 99, Part 4 subpart 12

Family Violence (Amendments) Act 2018 (2018 No 47): Part 6

Social Security Act 2018 (2018 No 32): section 459

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42): sections 57–65

Land Transport Amendment Act 2017 (2017 No 34): sections 105, 110(1)

Statutes Repeal Act 2017 (2017 No 23): section 4(2)

Fire and Emergency New Zealand Act 2017 (2017 No 17): section 197

Statutes Amendment Act 2016 (2016 No 104): Part 26

Sentencing (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 85)

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(c)

Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 (2016 No 47)

Health and Safety at Work Act 2015 (2015 No 70): section 232

Sentencing Amendment Act 2015 (2015 No 34)

Vulnerable Children Act 2014 (2014 No 40): section 43

Sentencing Amendment Act 2014 (2014 No 38)

Auctioneers Act 2013 (2013 No 148): section 27

Administration of Community Sentences and Orders Act 2013 (2013 No 88): Part 3

Bail Amendment Act 2013 (2013 No 66): section 42

Sentencing Amendment Act 2013 (2013 No 32)

Sentencing (Aggravating Factors) Amendment Act 2012 (2012 No 74)

Sentencing Amendment Act (No 2) 2011 (2011 No 93)

Criminal Procedure Act 2011 (2011 No 81): section 393

Sentencing Amendment Act 2011 (2011 No 47)

Land Transport (Road Safety and Other Matters) Amendment Act 2011 (2011 No 13): section 100(2), (3)

Sentencing Amendment Act (No 2) 2010 (2010 No 84)

Sentencing and Parole Reform Act 2010 (2010 No 33): Part 1

Accident Compensation Amendment Act 2010 (2010 No 1): section 5(1)(b)

Sentencing Amendment Act (No 2) 2009 (2009 No 44)

Sentencing (Offender Levy) Amendment Act 2009 (2009 No 42)

Sentencing (Vehicle Confiscation) Amendment Act 2009 (2009 No 37)

Sentencing Amendment Act 2009 (2009 No 10)

Sentencing (Offences Against Children) Amendment Act 2008 (2008 No 109)

Policing Act 2008 (2008 No 72): section 116(a)(ii), (iv)

Succession (Homicide) Act 2007 (2007 No 95): section 17

Sentencing Amendment Act 2007 (2007 No 27)

Sentencing Amendment Act (No 2) 2006 (2006 No 89)

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

Building Act 2004 (2004 No 72): section 414

Sentencing Amendment Act 2004 (2004 No 68)

Corrections Act 2004 (2004 No 50): section 206

Judicature Amendment Act 2004 (2004 No 45): section 3(3)

District Courts Amendment Act 2004 (2004 No 42): section 3(3)

Criminal Procedure (Mentally Impaired Persons) Act 2003 (2003 No 115): section 51

Sentencing Amendment Act 2003 (2003 No 109)

Supreme Court Act 2003 (2003 No 53): section 48(1)

Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)

State Sector Amendment Act 2003 (2003 No 41): section 14

Land Transport (Unauthorised Street and Drag Racing) Amendment Act 2003 (2003 No 11): section 11(1)

Victims' Rights Act 2002 (2002 No 39): section 53

Crown Organisations (Criminal Liability) Act 2002 (2002 No 37): section 28

Sentencing Regulations 2002 (SR 2002/178): regulation 3A

Sentencing Act Commencement Order 2002 (SR 2002/176)

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