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Criminal Procedure (Mentally Impaired Persons) Act 2003

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Commencement	see section 2

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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.

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1 Title

This Act is the Criminal Procedure (Mentally Impaired Persons) Act 2003.

Part 1
Preliminary provisions

2 Commencement

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

(2) Despite subsection (1), if the date appointed under that subsection is prior to the commencement of section 4A of the Criminal Investigations (Bodily Samples) Act 1995, section 50 comes into force on that commencement.

(3) 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): Criminal Procedure (Mentally Impaired Persons) Act 2003 brought into force, on 1 September 2004, by clause 2 of the Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147).

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

3 Purpose

The purpose of this Act is to restate the law formerly set out in Part 7 of the Criminal Justice Act 1985 and to make a number of changes to that law, including changes to—

(a) provide the courts with appropriate options for the detention, assessment, and care of defendants and offenders with an intellectual disability:

(b) provide that a defendant found unfit to stand trial for an offence must be the subject of an inquiry to determine whether the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence:

(c) provide for a number of related matters.

Section 3(b): replaced, on 14 November 2018, by section 121 of the Courts Matters Act 2018 (2018 No 50).

4 Interpretation

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

act proven but not criminally responsible on account of insanity, in respect of a defendant charged with an offence, means—

(a) the defendant is found to have caused the act or omission that forms the basis of the offence with which the defendant is charged; and

(b) the defendant was insane at the time that the defendant caused that act or omission

care recipient has the same meaning as that given to the expression care recipient no longer subject to the criminal justice system in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

compulsory care order has the same meaning as in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

compulsory treatment order means a compulsory treatment order made under Part 2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992

co-ordinator means a compulsory care co-ordinator appointed under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

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

court means any court exercising jurisdiction in criminal proceedings

facility and **secure facility** have the same meanings as in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

guardian includes a welfare guardian appointed under section 12 of the Protection of Personal and Property Rights Act 1988

health assessor means—

(a) a practising psychiatrist who is registered as a medical practitioner; or

(b) a psychologist; or

(c) a specialist assessor under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

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

imprisonable offence means any offence punishable by imprisonment, regardless of any restriction imposed by an enactment on the jurisdiction or power of the court dealing with a particular case

intellectual disability has the same meaning as in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

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

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

special care recipient has the same meaning as in the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

unfit to stand trial, in relation to a defendant,—

(a) means a defendant who is unable, due to mental impairment, to conduct a defence or to instruct counsel to do so; and

(b) includes a defendant who, due to mental impairment, is unable—

(i) to plead:

(ii) to adequately understand the nature or purpose or possible consequences of the proceedings:

(iii) to communicate adequately with counsel for the purposes of conducting a defence

victim has the same meaning as in section 2(1) of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

(2) If this Act comes into force before the commencement of section 114(1) of the Health Practitioners Competence Assurance Act 2003, then, until that commencement, subsection (1) must be read as if, for the definitions of **medical practitioner** and **psychologist**, there were substituted the following definitions:

medical practitioner means a medical practitioner registered under the Medical Practitioners Act 1995

psychologist means a psychologist registered under the Psychologists Act 1981

Compare: 1985 No 120 ss 2(1), (2), 108

Section 4(1) **acquittal on account of insanity**: repealed, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 4(1) **act proven but not criminally responsible on account of insanity**: inserted, on 13 December 2022, by section 4 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 4(1) **victim**: inserted, on 13 December 2022, by section 4 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

5 Application

(1) This Act applies only to criminal proceedings in which a defendant is charged with an imprisonable offence.

(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.

Compare: 1985 No 120 s 3(2)

5A Transitional, savings, and related provisions

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

Section 5A: inserted, on 14 November 2018, by section 122 of the Courts Matters Act 2018 (2018 No 50).

6 Act binds the Crown

This Act binds the Crown.

Part 2
Substantive provisions

Subpart 1—Findings of unfitness to stand trial and involvement in offence

Heading: replaced, on 14 November 2018, by section 123 of the Courts Matters Act 2018 (2018 No 50).

7 When finding of unfitness to stand trial may be made

(1) A court may make a finding under this subpart that a defendant is unfit to stand trial at any stage after the commencement of the proceedings and until all the evidence is concluded.

(2) *[Repealed]*

Compare: 1985 No 120 s 109

Section 7(2): repealed, on 14 November 2018, by section 124 of the Courts Matters Act 2018 (2018 No 50).

8 Postponement of finding

(1) A court may, if it thinks it is in the interests of the defendant to do so, postpone the determination of the question whether a defendant is unfit to stand trial.

(2) However, at a trial, a court may not postpone the determination of that question beyond the stage at which all the evidence is concluded.

(3) When a court postpones the determination of the question whether a defendant is unfit to stand trial, the court may not determine the question if—

(a) the defendant is acquitted; or

(b) the charge is dismissed.

Compare: 1985 No 120 s 110

Section 8(2): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 8(3)(b): replaced, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

8A Determining if defendant unfit to stand trial

(1) The court must receive the evidence of 2 health assessors as to whether the defendant is mentally impaired.

(2) If the court is satisfied on the evidence given under subsection (1) that the defendant is mentally impaired, the court must record a finding to that effect and—

(a) give each party an opportunity to be heard and to present evidence as to whether the defendant is unfit to stand trial; and

(b) find whether or not the defendant is unfit to stand trial; and

(c) record the finding made under paragraph (b).

(3) The standard of proof required for a finding under subsection (2) is the balance of probabilities.

(4) If the court records a finding under subsection (2) that the defendant is fit to stand trial, the court must continue the proceedings.

(5) If the court records a finding under subsection (2) that the defendant is unfit to stand trial, the court must inquire into the defendant's involvement in the offence under section 10, 11, or 12, as the case requires.

Section 8A: inserted, on 14 November 2018, by section 125 of the Courts Matters Act 2018 (2018 No 50).

9 Court must be satisfied of defendant's involvement in offence

[Repealed]

Section 9: repealed, on 14 November 2018, by section 126 of the Courts Matters Act 2018 (2018 No 50).

10 Inquiry before trial into defendant's involvement in the offence

(1) This section applies if, before trial, the defendant is found unfit to stand trial.

(2) The court must decide whether the court is satisfied, on the balance of probabilities, that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.

(3) For the purposes of subsection (2), the court may consider—

(a) any formal statements that have been filed under section 85 of the Criminal Procedure Act 2011:

(b) any oral evidence that has been taken in accordance with an order made under section 92 of the Criminal Procedure Act 2011:

(c) any other evidence that is submitted by the prosecutor or defendant.

Section 10: replaced, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 10(1): replaced, on 14 November 2018, by section 127 of the Courts Matters Act 2018 (2018 No 50).

Section 10(2): replaced, on 14 November 2018, by section 127 of the Courts Matters Act 2018 (2018 No 50).

11 Inquiry during Judge-alone trial into defendant's involvement in offence

(1) This section applies if, during a Judge-alone trial, the defendant is found unfit to stand trial.

(2) The court must decide whether the court is satisfied, on the balance of probabilities, that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.

(3) For the purposes of subsection (2), the court may (whether on the application of a party or on the court's own initiative) do either or both of the following:

(a) consider any evidence presented at the trial:

(b) hear any new evidence.

Section 11: replaced, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 11 heading: amended, on 14 November 2018, by section 128(1) of the Courts Matters Act 2018 (2018 No 50).

Section 11(1): replaced, on 14 November 2018, by section 128(2) of the Courts Matters Act 2018 (2018 No 50).

Section 11(2): replaced, on 14 November 2018, by section 128(2) of the Courts Matters Act 2018 (2018 No 50).

12 Inquiry during jury trial into defendant's involvement in offence

(1) This section applies if, during a jury trial, the defendant is found unfit to stand trial.

(2) The court must decide whether the court is satisfied, on the balance of probabilities, that the evidence against the defendant is sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.

(3) For the purposes of subsection (2), the court may do 1 or more of the following:

(a) consider any formal statements that have been filed under section 85 of the Criminal Procedure Act 2011:

(b) consider any oral evidence that has been taken in accordance with an order made under section 92 of the Criminal Procedure Act 2011:

(c) consider any evidence presented at the trial:

(d) hear any new evidence at any stage before the commencement of the closing addresses.

Section 12: replaced, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 12 heading: amended, on 14 November 2018, by section 129(1) of the Courts Matters Act 2018 (2018 No 50).

Section 12(1): replaced, on 14 November 2018, by section 129(2) of the Courts Matters Act 2018 (2018 No 50).

Section 12(2): replaced, on 14 November 2018, by section 129(2) of the Courts Matters Act 2018 (2018 No 50).

13 Outcome of consideration of defendant's involvement in offence

(1) When the court has ascertained, in accordance with any of sections 10 to 12, whether the court is satisfied of the matter specified in section 10(2), 11(2), or 12(2), as the case requires, the court must record its finding on the matter.

(2) If the court is not satisfied of the matter specified in section 10(2), 11(2), or 12(2),—

(a) the court must dismiss the charge against the defendant under section 147 of the Criminal Procedure Act 2011; and

(b) the finding that the defendant is unfit to stand trial is deemed, for all legal purposes, to have been quashed; and

(c) the court must not deal with the defendant under subpart 3.

(3) *[Repealed]*

(4) If the court is satisfied of the matter specified in section 10(2), 11(2), or 12(2), as the case requires, the court must deal with the defendant under subpart 3.

Section 13 heading: amended, on 14 November 2018, by section 130(1) of the Courts Matters Act 2018 (2018 No 50).

Section 13(1): amended, on 14 November 2018, by section 130(2) of the Courts Matters Act 2018 (2018 No 50).

Section 13(2): replaced, on 14 November 2018, by section 130(3) of the Courts Matters Act 2018 (2018 No 50).

Section 13(3): repealed, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 13(4): replaced, on 14 November 2018, by section 130(4) of the Courts Matters Act 2018 (2018 No 50).

14 Determining if defendant unfit to stand trial

[Repealed]

Section 14: repealed, on 14 November 2018, by section 131 of the Courts Matters Act 2018 (2018 No 50).

15 Jurisdiction may be exercised in absence of defendant

The jurisdiction under any of sections 8A and 10 to 13 may be exercised in the absence of the defendant if the court is satisfied that the defendant is too mentally impaired to come to court.

Compare: 1985 No 120 s 111(3)

Section 15: amended, on 14 November 2018, by section 132 of the Courts Matters Act 2018 (2018 No 50).

16 Appeal by defendant against finding relating to fitness to stand trial or sufficiency of evidence

(1) A defendant may appeal against the finding under section 8A(2)(b) that the defendant is unfit to stand trial or, as the case may be, fit to stand trial.

(1A) A defendant may appeal against a finding under section 10(2), 11(2), or 12(2) that there is sufficient evidence to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged.

(2) For the purposes of an appeal under this section,—

(a) the finding appealed against is to be regarded as a conviction; and

(b) the provisions of Part 6 of the Criminal Procedure Act 2011 relating to appeals against conviction, so far as they are applicable and with any necessary modifications, apply to the appeal.

Compare: 1985 No 120 s 112(1)

Section 16 heading: amended, on 14 November 2018, by section 133(1) of the Courts Matters Act 2018 (2018 No 50).

Section 16(1): replaced, on 14 November 2018, by section 133(2) of the Courts Matters Act 2018 (2018 No 50).

Section 16(1A): inserted, on 14 November 2018, by section 133(2) of the Courts Matters Act 2018 (2018 No 50).

Section 16(2)(b): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

17 Matters for appellate court on appeal under section 16

(1) If, on an appeal under section 16(1A), the court is satisfied that the evidence against the defendant is not sufficient to establish that the appellant caused the act or omission that forms the basis of the offence with which the appellant is charged, the court must quash the finding appealed against and dismiss the charge against the appellant.

(2) *[Repealed]*

(3) In the case of an appeal under section 16(1) against a finding relating to the appellant's fitness to stand trial, the court must (except where the charge against the appellant has been dismissed under subsection (1)) consider the evidence of 2 health assessors, and confirm or quash the finding relating to the appellant's mental impairment.

(4) If the court is satisfied that the appellant is mentally impaired, the court must—

(a) give the appellant and the respondent an opportunity to be heard and to present evidence as to whether the appellant is unfit to stand trial; and

(b) confirm or quash the finding relating to the appellant's fitness to stand trial.

(5) If the result of the appeal is that the appellant is fit to stand trial, the court must remit the case to the High Court or the District Court, as the case may require.

Compare: 1985 No 120 s 112(2)–(4)

Section 17(1): amended, on 14 November 2018, by section 134(1) of the Courts Matters Act 2018 (2018 No 50).

Section 17(1): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 17(2): repealed, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 17(3): amended, on 14 November 2018, by section 134(2) of the Courts Matters Act 2018 (2018 No 50).

Section 17(3): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

18 Release on bail or detention of appellant pending appeal

(1) An appellant under section 16 in respect of whom an order of detention has been made under any of sections 23, 24, and 25 may be granted bail in the same manner as if he or she had been convicted and sentenced to imprisonment.

(2) If the appellant is not released on bail, the appellant must be detained in accordance with the order of detention while his or her appeal is pending.

(3) A Judge of the High Court, or the District Court Judge who presided over the court whose decision is appealed against, may make any other order that may be thought fit for the custody of the appellant if the appellant is not released on bail while his or her appeal is pending.

Compare: 1985 No 120 s 112(5)–(7)

19 Appeals by prosecution

(1) The prosecution may appeal on a question of law against 1 or more of the following findings under this subpart:

(a) that the evidence against the defendant is not sufficient to establish that the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged:

(b) that the defendant is mentally impaired:

(c) that the defendant is unfit to stand trial.

(2) The provisions of Part 6 of the Criminal Procedure Act 2011 relating to appeals, so far as they are applicable and with any necessary modifications, apply to an appeal under subsection (1).

Section 19(2): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Subpart 2—Acquittals on account of insanity

20 Finding of act proven but not criminally responsible on account of insanity

(1) If, at a trial, the defendant gives evidence as to the defendant's insanity and the jury or (if there is no jury) the Judge makes a finding of act proven but not criminally responsible on account of insanity, the Judge must—

(a) record a finding of act proven but not criminally responsible on account of insanity; and

(b) explain the meaning of that finding to the defendant; and

(c) acquit the defendant on account of the defendant's insanity.

(2) Before or at a trial, the Judge must do the things specified in subsection (1) if—

(a) the defendant indicates an intention to raise the defence of insanity; and

(b) the prosecution agrees that the only reasonable verdict is a finding of act proven but not criminally responsible on account of insanity; and

(c) the Judge is satisfied, on the basis of expert evidence, that the defendant was insane within the meaning of section 23 of the Crimes Act 1961 at the time of the act or omission that forms the basis of the offence with which the defendant is charged.

(3) If, at a trial before a jury, the defendant gives evidence as to the defendant's insanity and the jury finds the defendant not guilty, the Judge must ask the jury whether it has acquitted the defendant on account of the defendant's insanity.

(4) The Judge must do the things specified in subsection (1) if—

(a) the Judge asks the jury under subsection (3) whether it has acquitted the defendant on account of the defendant's insanity; and

(b) the jury responds that it has acquitted the defendant on that basis.

(5) If it appears from the evidence that the defendant may have been insane at the time of the act or omission that forms the basis of the offence with which the defendant is charged, the Judge may ask the jury to find whether the defendant was insane within the meaning of section 23 of the Crimes Act 1961, even though the defendant has not given evidence as to the defendant's insanity or put the question of the defendant's sanity in issue.

Compare: 1985 No 120 s 113

Section 20: replaced, on 13 December 2022, by section 5 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

21 Appeal against acquittal on account of insanity

(1) A defendant who is acquitted on account of his or her insanity may appeal against the verdict or decision, and, for the purposes of such an appeal,—

(a) the verdict or decision is to be regarded as a conviction; and

(b) the provisions of Part 6 of the Criminal Procedure Act 2011 relating to appeals against conviction, so far as they are applicable and with any necessary modifications, apply to the appeal.

(2) On such an appeal, the court may—

(a) allow the appeal, and direct that a verdict of acquittal or a decision to dismiss the charge be substituted for the verdict or decision given at the trial:

(b) dismiss the appeal:

(c) exercise a power, whether to direct a new trial or otherwise, that it could have exercised if the appeal were an appeal against conviction.

(3) If the court thinks that (except for the appellant's insanity) the proper verdict or decision would have been that the appellant was guilty of an offence other than the offence charged, the court—

(a) may not allow the appeal merely because the appellant ought to have been acquitted of the offence charged; and

(b) may direct that the other offence be substituted for the offence charged.

(4) If, on such an appeal, the appellate court is satisfied that the finding of insanity ought not to stand, and is satisfied that, in the absence of such a finding, the proper verdict or decision would have been that the appellant was guilty of an offence (whether of the offence charged or any other offence of which the appellant could have been found guilty at the trial), the appellate court—

(a) must substitute for the verdict or decision given a verdict of guilty of the offence or a conviction for the offence; and

(b) may exercise a power in relation to the appellant (such as sentencing the appellant) that is available to the court where the verdict or decision appealed against was given.

(5) Unless the appellate court otherwise directs, the term of any sentence of imprisonment passed by it under subsection (4) begins to run as if passed on the date on which the verdict or decision appealed against was given.

Compare: 1985 No 120 s 114(1)–(5)

Section 21(1)(b): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 21(2)(a): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 21(2)(c): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Section 21(4): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

22 Release on bail or detention of appellant pending appeal

(1) An appellant under section 21 in respect of whom an order of detention has been made under any of sections 23, 24, and 25 may be granted bail in the same manner as if he or she had been convicted and sentenced to a term of imprisonment.

(2) If the appellant is not released on bail, the appellant must be detained in accordance with the order of detention while his or her appeal is pending.

(3) The court hearing the appeal, or the Judge who presided at the trial, may make any other order that may be thought fit for the custody of the appellant if the appellant is not released on bail while his or her appeal is pending.

Compare: 1985 No 120 s 114(6)–(8)

Section 22(3): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Subpart 3—Detention, treatment, and care of persons found unfit to stand trial or acquitted on account of insanity

Court orders

23 Inquiries about persons found unfit to stand trial or insane

(1) When a person is found unfit to stand trial or is acquitted on account of his or her insanity, the court must order that inquiries be made to determine the most suitable method of dealing with the person under section 24 or section 25.

(2) For the purposes of the inquiries under subsection (1), the court must either—

(a) make it a condition of a grant of bail that the person go to a place approved by the court for the purpose of the inquiries; or

(b) remand the person to a hospital or a secure facility.

(3) Despite any provision in the Bail Act 2000, in deciding whether or not to grant bail for the purposes of subsection (2)(a), the need to protect the public is the paramount consideration.

(4) The inquiries under subsection (1) must be completed as quickly as practicable and, in any event, within 30 days after the date of the order under which the inquiries are made.

(5) A person who has an intellectual disability must, during the period in which the inquiries are made under subsection (1), be assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

Compare: 1985 No 120 s 115(4)

24 Detention of defendant found unfit to stand trial or insane as special patient or special care recipient

(1) When the court has sufficient information on the condition of a defendant found unfit to stand trial or acquitted on account of his or her insanity, the court must—

(a) consider all the circumstances of the case; and

(b) consider the evidence of 1 or more health assessors as to whether the detention of the defendant in accordance with one of the orders specified in subsection (2) is necessary; and

(c) make one of the orders referred to in paragraph (b) if it is satisfied that the making of the order is necessary in the interests of the public or any person or class of person who may be affected by the court's decision.

(2) The orders referred to in subsection (1) are that the defendant be detained—

(a) in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

(b) in a secure facility as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

(3) Before the court makes an order specified in subsection (2)(a), the court must have received evidence, under subsection (1)(b), about the defendant from at least 1 health assessor who is a psychiatrist.

Compare: 1985 No 120 s 115(1)

25 Alternative decisions in respect of defendant unfit to stand trial or insane

(1) If, after considering the matters specified in section 24(1)(a) and (b) concerning a defendant found unfit to stand trial or acquitted on account of his or her insanity, the court is not satisfied that an order under section 24(2) is necessary, the court must deal with the defendant—

(a) by ordering that the defendant be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

(b) by ordering that the defendant be cared for as a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or

(c) if the person is liable to be detained under a sentence of imprisonment, by deciding not to make an order; or

(d) by ordering the immediate release of the defendant.

(2) Before the court makes an order under subsection (1)(a), the court must be satisfied on the evidence of 1 or more health assessors (at least 1 of whom must be a psychiatrist) that the defendant is mentally disordered.

(3) Before the court makes an order under subsection (1)(b), the court must be satisfied on the evidence of 1 or more health assessors that the defendant—

(a) has an intellectual disability; and

(b) has been assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; and

(c) is to receive care under a care programme completed under section 26 of that Act.

(4) In the exercise of its powers under subsection (1), the court may take into account any undertaking given by, or on behalf of, the defendant that the defendant will undergo or continue to undergo a particular programme or course of treatment.

Compare: 1985 No 120 s 115(2), (3)

26 Effect of alternative orders

(1) An order made under section 25(1)(a) is to be regarded as a compulsory treatment order for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and, in making the order, the court must specify whether, for the purposes of that Act, the order takes effect as a community treatment order or as an inpatient order.

(2) An order made under section 25(1)(b) is to be regarded as a compulsory care order for the purposes of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and, in making the order, the court must—

(a) direct whether the defendant is to be detained in a secure facility; and

(b) specify the term of the order in accordance with section 46 of that Act.

Compare: 1985 No 120 s 115(4A)

27 Court may stay proceedings when alternative decision made in respect of defendant unfit to stand trial

(1) When the court makes an order under section 25, or a decision under section 25(1)(c), in respect of a defendant who has been found unfit to stand trial, the court may order that the proceedings in which that finding was made are stayed.

(2) While a stay of proceedings ordered under subsection (1) is in force, the defendant in the proceedings may not be charged again with an offence with which he or she was charged in those proceedings.

Compare: 1985 No 120 s 115(5)

28 Effect of orders under section 24 on prison sentences

(1) When a sentence of imprisonment is imposed on an offender who is, or subsequently becomes, subject to an order of detention under section 24, the sentence runs during the currency of the order and any period during which the offender is a patient or care recipient.

(2) Subsection (1) does not apply while the offender is absent without authority from the hospital or facility in which he or she is required to be detained.

(3) If the offender is still liable to be detained under a sentence of imprisonment when the offender is discharged from the hospital or facility in which the offender is detained in accordance with an order under section 24 or as a patient or care recipient, the chief executive of the Department of Corrections must arrange for the offender to be taken to a prison or other appropriate place to serve the remainder of the sentence.

Compare: 1985 No 120 s 115(6)

Section 28(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

29 Appeals against orders under section 24 or section 25 or section 27

(1) If the court makes an order or a decision under section 24 or section 25 or section 27, the defendant and the prosecution have the same right of appeal against the order or decision as the defendant or, as the case requires, the prosecution would have if the order or decision were a sentence.

(2) The provisions of Part 6 of the Criminal Procedure Act 2011 relating to appeals, so far as they are applicable and with any necessary modifications, apply to the appeal.

(3) On such an appeal, the court may—

(a) dismiss the appeal:

(b) vary the order appealed against:

(c) cancel the order or decision appealed against and substitute another order or decision under section 24 or section 25 or section 27.

Section 29(2): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

Change of status, and discharge, of persons detained as special patients or special care recipients

30 Duration of detention as special patient or special care recipient where person unfit to stand trial

(1) The maximum period for which a defendant who has been found unfit to stand trial can be detained under section 24 as a special patient or a special care recipient is—

(a) 10 years from the date of the making of the order under section 24 if the defendant was charged with an offence that was punishable by imprisonment for life; or

(b) if paragraph (a) does not apply, a period from the date of the order under section 24 equal to half the maximum term of imprisonment to which the defendant would have been liable if he or she had been convicted of the offence charged.

(2) If the defendant was charged with more than 1 offence, the relevant offence for the purposes of subsection (1)(b) is the offence punishable by the longest term of imprisonment.

(3) An order under section 24 in respect of a defendant who has been found unfit to stand trial continues in force during the maximum period specified in subsection (1) until—

(a) the defendant is brought before a court in accordance with a direction given under section 31; or

(b) a direction is given, under section 31, that the defendant be held as a patient or as a care recipient.

(4) Subsection (3) is subject to sections 84 and 128 of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or to section 105 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, as the case may require.

(5) An order under section 24 is to be treated as cancelled if every charge brought against the defendant in the proceedings in which the order was made is withdrawn or dismissed.

Compare: 1985 No 120 s 116(1)–(3)

31 Change of status from special patient to patient or special care recipient to care recipient where person unfit to stand trial

(1) This section applies to a defendant who has been found unfit to stand trial and who is detained as a special patient or as a special care recipient in accordance with an order under section 24 (the **defendant**).

(2) If, before or on the expiry of the relevant maximum period specified in section 30, a certificate is given under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 to the effect that the defendant is no longer unfit to stand trial, the Attorney-General must either—

(a) direct that the defendant be brought before the appropriate court; or

(b) direct that the defendant be held as a patient or, as the case requires, as a care recipient.

(3) If, at any time before the expiry of the relevant maximum period specified in section 30, a certificate is given under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 to the effect that, although the defendant is still unfit to stand trial, the continued detention of the defendant under section 24 is no longer necessary to safeguard the interests specified in subsection (3A), the Minister of Health, acting with the concurrence of the Attorney-General, must—

(a) consider whether, in the Minister's opinion, the continued detention of the defendant under that section is no longer necessary to safeguard those interests; and

(b) direct that the defendant be held as a patient or, as the case requires, as a care recipient if, in the Minister's opinion, that detention is no longer necessary to safeguard those interests.

(3A) The interests referred to in subsection (3) are—

(a) the defendant's own interests; and

(b) the safety of the public or the safety of a person or class of person.

(3B) In reaching a decision under subsection (3)(a), the Minister must have regard to any report from the Director of Mental Health made under section 33A.

(4) The Attorney-General must direct that the defendant be held as a patient or, as the case requires, as a care recipient if—

(a) the defendant is still detained as a special patient or as a special care recipient when the maximum period specified in section 30 expires; and

(b) no direction under subsection (2) or subsection (3) has been given in respect of the defendant; and

(c) no certificate of the kind referred to in subsection (2) has been given in respect of the defendant.

(5) A direction under this section—

(a) that the defendant be held as a patient is to be regarded as a compulsory treatment order for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and the provisions of that Act apply accordingly:

(b) that the defendant be held as a care recipient is to be regarded as a compulsory care order for the purposes of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and the provisions of that Act apply accordingly.

(6) The powers and duties conferred and imposed on the Attorney-General by this section are not capable of being exercised or performed by the Solicitor-General.

Compare: 1985 No 120 s 116(4)–(6A), (8)

Section 31(3): replaced, on 13 December 2022, by section 6 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 31(3A): inserted, on 13 December 2022, by section 6 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Section 31(3B): inserted, on 13 December 2022, by section 6 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

32 Proceedings stayed following certain directions under section 31

When a direction is given under section 31 that a defendant be held as a patient or, as the case requires, as a care recipient,—

(a) the proceedings in which the defendant was ordered to be detained are stayed; and

(b) the defendant may not be charged again with an offence with which he or she was charged in those proceedings.

Compare: 1985 No 120 s 116(7)

33 Duration of order for detention as special patient or special care recipient if person acquitted on account of insanity

(1) This section applies to a defendant who has been acquitted on account of his or her insanity and who is detained as a special patient or a special care recipient in accordance with an order under section 24 (the **defendant**).

(2) The order under which the defendant is detained continues in force until—

(a) a direction is given under this section that the defendant is to be held as a patient or as a care recipient; or

(b) the defendant is discharged in accordance with a direction given under this section.

(3) If, at any time while the order continues in force, a certificate is given under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 to the effect that the defendant's continued detention under the order is no longer necessary to safeguard the interests specified in subsection (4), the Minister of Health must—

(a) consider whether, in the Minister's opinion, the defendant's continued detention is no longer necessary to safeguard those interests; and

(b) if, in the Minister's opinion, that detention is no longer necessary to safeguard those interests, direct—

(i) that the defendant be held as a patient or, as the case requires, as a care recipient; or

(ii) that the defendant be discharged.

(4) The interests referred to in subsection (3) are—

(a) the defendant's own interests; and

(b) the safety of the public or the safety of a person or class of person.

(4A) In reaching a decision under subsection (3)(a), the Minister must have regard to any report from the Director of Mental Health made under section 33A.

(5) A direction under this section—

(a) that the defendant be held as a patient is to be regarded as a compulsory treatment order for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and the provisions of that Act apply accordingly:

(b) that the defendant be held as a care recipient is to be regarded as a compulsory care order for the purposes of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and the provisions of that Act apply accordingly.

Compare: 1985 No 120 s 117

Section 33(4A): inserted, on 13 December 2022, by section 7 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

33A Report by Director of Mental Health on defendant's continued detention

The Director of Mental Health may report to the Minister of Health about the continued detention under section 24 of a defendant described in section 31(1) or 33(1).

Section 33A: inserted, on 13 December 2022, by section 8 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

33B When victims must be notified of impending decision under section 31 or 33

(1) This section applies if the Director of Mental Health intends to report to the Minister of Health under section 33A.

(2) The Director must take all reasonable steps to—

(a) give notice to a victim that the Director intends to report to the Minister of Health under section 33A about the continued detention of a defendant; and

(b) explain to the victim—

(i) the process under section 31(3) or 33(3); and

(ii) how the victim may participate in that process.

Section 33B: inserted, on 13 December 2022, by section 8 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

33C Right of victims to make submissions on proposed change of status

(1) This section applies to a person notified under section 33B.

(2) The person may write to the Director of Mental Health, making submissions on the decision of whether to change the defendant's status under section 31(3) or 33(3).

(3) The person's submissions may address—

(a) any concerns that the person has, on reasonable grounds, about any risk that the defendant presents to—

(i) the person's physical safety or security; or

(ii) the physical safety or security of 1 or more members of the person's immediate family; and

(b) any other information that the person considers relevant to the decision of whether to change the defendant's status under section 31(3) or 33(3).

(4) The person must send the submission to the Director by the date specified by the Director.

(5) The Director must have regard to any written submissions made by a victim under this section or section 33D.

(6) In this section, **immediate family** has the same meaning as in section 4 of the Victims' Rights Act 2002.

Section 33C: inserted, on 13 December 2022, by section 8 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

33D Submissions from certain victims

(1) This section applies to a person who—

(a) is not a victim as defined in section 4; but

(b) is a victim as defined in section 4 of the Victims' Rights Act 2002.

(2) The person may make written submissions to the Director of Mental Health about the decision of whether to change the defendant's status under section 31(3) or 33(3).

(3) If the person seeks information from the Director for the purpose of making submissions under subsection (2), the Director may—

(a) advise the person of the date on which the Director intends to report to the Minister of Health about the continued detention of the defendant; and

(b) give the person any other information that is reasonably necessary to enable the person to make submissions.

(4) Section 33C applies with any necessary modifications.

(5) Neither the Director nor any other person has any liability for any act done in pursuance, or intended pursuance, of the Director's functions under this section or section 33E(1)(b), unless the act was done in bad faith.

Section 33D: inserted, on 13 December 2022, by section 8 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

33E Victims must be notified of decisions made under sections 31 and 33

(1) The Director of Mental Health must advise the following persons of the matters specified in subsection (2):

(a) a person notified under section 33B:

(b) a person who makes a submission under section 33D(2).

(2) The specified matters are—

(a) whether the Director's report to the Minister of Health concludes that the defendant's continued detention under section 24—

(i) continues to be necessary; or

(ii) is no longer necessary; and

(b) what decision the Minister has reached under section 31(3) or 33(3).

Section 33E: inserted, on 13 December 2022, by section 8 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

33F Information about victims not to be disclosed

(1) This section applies to sections 33A to 33E.

(2) No person may, directly or indirectly, disclose to the defendant the current address or contact details of any victim of the defendant.

Section 33F: inserted, on 13 December 2022, by section 8 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Subpart 4—Detention, treatment, and care of defendants who are convicted

34 Power of court to commit offender to hospital or facility on conviction

(1) If the court is satisfied of the matters specified in subsection (2), the court may deal with an offender who is convicted of an imprisonable offence—

(a) by sentencing the offender to a term of imprisonment and also ordering that the offender—

(i) be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

(ii) be detained in a secure facility as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or

(b) instead of passing sentence, by ordering that the offender—

(i) be treated as a patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or

(ii) be cared for as a care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

(2) For the purposes of subsection (1), the court must be satisfied, on the evidence of 1 or more health assessors, that the offender's mental impairment requires the compulsory treatment or compulsory care of the offender either in the offender's interest, or for the safety of the public or for the safety of a person or class of person.

(3) Before the court makes an order under subsection (1)(a)(i) or (b)(i), the court must be satisfied on the evidence of 1 or more health assessors (at least 1 of whom must be a psychiatrist) that the defendant is mentally disordered.

(4) Before the court makes an order under subsection (1)(a)(ii) or (b)(ii), the court must be satisfied on the evidence of 1 or more health assessors that the defendant—

(a) has an intellectual disability; and

(b) has been assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; and

(c) is to receive care under a care programme completed under section 26 of that Act.

(5) No order may be made under this section in respect of an offender who is, at the time of the conviction, subject to a sentence of imprisonment.

(6) No order may be made under subsection (1)(b) in respect of an offender who is convicted of a stage-2 offence, or a stage-3 offence, for which the court would, in the absence of that paragraph, have imposed a qualifying sentence.

(7) In this section, **qualifying sentence**, **stage-2 offence**, and **stage-3 offence** have the same meanings as in section 86J of the Sentencing Act 2002.

Compare: 1985 No 120 s 118(1), (2)

Section 34(6): inserted, on 17 June 2025, by section 16 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Section 34(7): inserted, on 17 June 2025, by section 16 of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

35 Inquiries about persons for whom orders under section 34 proposed

(1) When a court proposes to make an order under section 34 in respect of a person, the court must order that inquiries be made to determine the most suitable method of dealing with the person.

(2) For the purposes of the inquiries under subsection (1), the court must either—

(a) make it a condition of a grant of bail that the person go to a place approved by the court for the purpose of the inquiries; or

(b) remand the person to a hospital or a secure facility.

(3) The inquiries under subsection (1) must be completed as quickly as practicable and, in any event, within 30 days after the date of the order under which the inquiries are made.

(4) A person who has an intellectual disability must, during the period in which the inquiries are made under subsection (1), be assessed under Part 3 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

36 Offenders detained as patients

An order under section 34(1)(b)(i) is to be regarded as a compulsory treatment order for the purposes of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and, in making the order, the court must specify whether,

for the purposes of that Act, the order takes effect as a community treatment order or as an inpatient order.

Compare: 1985 No 120 s 118(3)

37 Offenders detained as care recipients

An order under section 34(1)(b)(ii) is to be regarded as a compulsory care order for the purposes of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and, in making the order, the court must—

(a) direct whether the offender is to be detained in a secure facility within the meaning of that Act; and

(b) specify the term of the order in accordance with section 46 of that Act.

Subpart 5—Assessment of defendants

38 Power of court to require assessment report

(1) When a person is in custody at any stage of a proceeding against the person, whether before or during the hearing or trial, or while awaiting sentence or the determination of an appeal, a court may, on the application of the prosecution or the defence or on its own initiative, order that a health assessor prepare an assessment report on the person for the purpose of assisting the court to determine 1 or more of the following matters:

(a) whether the person is unfit to stand trial:

(b) whether the person is insane within the meaning of section 23 of the Crimes Act 1961:

(c) the type and length of sentence that might be imposed on the person:

(d) the nature of a requirement that the court may impose on the person as part of, or as a condition of, a sentence or order.

(2) If a court orders that an assessment report on a person be prepared under subsection (1), the court may—

(a) make it a condition of a grant of bail that the person go to a place approved by the court for the purpose of the assessment; or

(b) order that the person be detained in a prison for the purpose of the assessment for any period not exceeding 14 days as the court thinks fit; or

(c) order that the person be detained in a hospital or secure facility for the purpose of the assessment for any period not exceeding 14 days as the court thinks fit, if—

(i) a remand to a prison for that purpose would be inappropriate for any reason; and

(ii) a health assessor has expressed the opinion, in a certificate or in evidence, that it would be desirable if an assessment, or a further assessment, take place in a hospital or in a secure facility.

(3) No order may be made under subsection (2)(b) or (c) in respect of a person if—

(a) the person is bailable as of right; or

(b) the person would have been released on bail but for the need for an assessment report.

(4) If the court makes an order under subsection (2)(c) for a person's detention and assessment in a hospital or secure facility, it must record the reasons why it would have been inappropriate to order the detention of the person in a prison for that assessment.

(5) Subsection (1)—

(a) has effect despite other enactments; but

(b) is subject, in the case of a defendant who is under 20 years, to sections 171 to 175 of the Criminal Procedure Act 2011 and to section 15 of the Bail Act 2000.

Compare: 1985 No 120 s 121(1)–(4)

Section 38(2)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 38(2)(c)(i): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 38(4): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 38(5)(b): amended, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

39 Directions as to assessments

(1) On making an order under section 38(1) that a health assessor prepare an assessment report or at any time while a matter for which the report is required remains to be determined, the court may direct that another health assessor provide a second opinion on the person to whom the report relates (the **subject**).

(2) Unless the court otherwise directs, every order under section 38(1) is deemed to include a direction that, in preparing the assessment report on the subject, the health assessor consult, wherever practicable, with the following persons about the subject's condition and background:

(a) any caregiver of the subject:

(b) any welfare guardian of the subject:

(c) if the subject is a child or young person, each parent or guardian of the child or young person:

(d) the subject's family or whanau.

40 Period of detention may be extended

(1) The period for which a person may be detained under an order made under section 38(2)(b) or (c) may, from time to time, be extended with the consent of the person or the person's guardian, but the total period of detention under the order may not exceed 30 days.

(2) It is not necessary for a person subject to detention to be present when the period of detention is extended under subsection (1), as long as the person is represented by counsel.

Compare: 1985 No 120 s 121(5), (6)

41 Attendance at hospitals, etc, by persons detained in prisons

(1) A person who is detained in a prison under an order made under section 38(2)(b) may, from time to time, be taken by, or under the direction of, the manager of the prison to a hospital, facility, or other appropriate place for the purposes of examination, and may also be taken back to the prison by, or under the direction of, that manager.

(2) A person who is taken to a hospital, facility, or place under subsection (1) may not stay in the hospital, facility, or place overnight.

(3) A person who is being examined in a hospital, facility, or place continues to be in legal custody under the Corrections Act 2004, even though the person is absent from the prison in which he or she is detained.

Compare: 1985 No 120 s 121(7)

Section 41 heading: amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 41(1): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 41(3): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

42 Transfer of persons from hospitals, etc, to court, penal, or Police custody

(1) Even though a person has not yet been detained in a hospital or secure facility for the full period specified in an order under section 38(2)(c), the person may be transferred at the direction of the Director of Area Mental Health Services for the hospital or the co-ordinator for the secure facility to court or penal or Police custody for 1 or more of the purposes specified in subsection (3).

(2) If the assessment report on a person is sent to the court before the expiry of the period for which a person has been ordered to be detained in a hospital or secure facility under section 38(2)(c), the person must be transferred at the direction of the Director of Area Mental Health Services for the hospital or the co-ordinator for the secure facility to court or penal or Police custody for 1 or more of the purposes specified in subsection (3).

(3) The purposes for transferring a person to court or penal or Police custody, referred to in subsection (1) or subsection (2), are—

(a) any hearing or the trial in respect of a charge against the person:

(b) the sentencing of the person:

(c) an appeal against the conviction of the person or against a sentence or order imposed on the person.

(4) The transfer of a person under subsection (1) or subsection (2) to court or penal or Police custody is sufficient authority for the detention of the person in that custody until the expiry of the period for which the person has been ordered to be detained in a hospital or secure facility under section 38(2)(c).

Compare: 1985 No 120 s 121(8), (10)

Section 42(3)(a): replaced, on 1 July 2013, by section 4 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87).

43 Medical treatment of persons detained in hospitals, etc

(1) An order under section 23 or section 35 or section 38(2)(c) for the detention of a person in a hospital or secure facility is authority for the administration to the person of any medical treatment or procedure to which the person consents.

(2) If the person is incapable of giving consent, the Director of Area Mental Health Services for the hospital or the co-ordinator for the secure facility may authorise any medical treatment or procedure that, in the opinion of that Director or co-ordinator, is immediately necessary to prevent—

(a) the physical or mental deterioration of the person; or

(b) serious suffering by the person; or

(c) the person causing harm to himself or herself or to others.

(3) This section does not limit an enactment or a rule of law that authorises the administration of a medical treatment or procedure.

Compare: 1985 No 120 s 121(9)

44 Detention pending hearing or trial

(1) If a defendant is brought before a court following an assessment of the defendant conducted under section 38(2)(b) or (c), the court may, on the application of a party or on the court's own initiative, order the detention of the defendant in a hospital or secure facility pending the hearing or trial.

(2) If an order is made under subsection (1), any subsisting order under section 38(2)(b) or (c) is cancelled.

(3) The court may not make an order under subsection (1) without the consent of the following persons:

(a) the defendant or, if the defendant is incapable of giving consent, the defendant's guardian:

(b) the Director of Area Mental Health Services for the hospital, or the co-ordinator for the secure facility, in which the defendant is to be detained.

(4) An order made under subsection (1)—

(a) does not prevent the defendant from being brought before the court for the purposes of the hearing or trial:

(b) does not operate to delay the hearing or trial:

(c) is cancelled on the conclusion of the hearing or trial.

(5) The court must, on the application of a party, cancel an order made under subsection (1) if,—

(a) in a case where the defendant is capable of giving consent, the defendant does not wish the order to continue; or

(b) in a case where the defendant is not capable of giving consent, the defendant's guardian does not wish the order to continue; or

(c) the Director of Area Mental Health Services for the hospital, or the co-ordinator for the secure facility, in which the defendant is detained does not wish the order to continue; or

(d) the court considers that detention of the defendant in a hospital or secure facility pending the hearing or trial is no longer necessary or appropriate.

Compare: 1985 No 120 s 121(11)–(13)

45 Disclosure of assessment reports

(1) In this section and in section 46, the person to whom a report under section 38 relates is called the **subject**.

(2) When a report prepared under section 38 is submitted to a court, the Registrar of the court must give a copy of the report to the subject and (if the subject is represented) also to the subject's counsel.

(3) Despite subsection (2), the court may order that 1 or more parts of the report not be disclosed to the subject if the court considers that disclosure of those parts would be likely—

(a) to prejudice the physical or mental health of the subject; or

(b) to endanger the safety of any individual.

(4) If the subject is represented when an order under subsection (3) is made, the entire report must be shown to the subject's counsel.

(5) The subject or his or her counsel may give evidence on 1 or more matters referred to in the report.

(6) A failure to comply with this section does not affect the validity of any proceedings, order, or sentence.

Compare: 1985 No 120 s 122

46 Access to assessment reports

(1) The following persons have access to a report submitted to a court under section 38 and held by the court:

(a) the prosecutor:

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

(c) 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:

(d) a co-ordinator or a staff member of a facility who requires access to the report for the purposes of his or her official duties:

(e) an officer or employee of the Department of Corrections or of the Ministry of Justice or of the Ministry of Health who requires access to the report for the purposes of his or her official duties:

(f) a health assessor who, in accordance with a direction under section 39(1), is to provide a second opinion on the subject.

(2) If, because of an order under section 45(3), a subject may not be shown a part of a report, the subject may not have access to that part of the report under the Official Information Act 1982 or the Privacy Act 2020.

Compare: 1985 No 120 s 123

Section 46(1)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

Section 46(2): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Part 3
Transitional and consequential provisions

Transitional provisions

47 Transitional provisions

(1) This Act applies to all proceedings described in section 5, even if the proceedings were commenced before the commencement of this Act.

(2) Despite subsection (1),—

(a) section 34(1)(a) does not apply to an offence committed before the commencement of this Act:

(b) section 39(2) does not apply to a psychiatric examination ordered under section 121 of the Criminal Justice Act 1985.

(3) Nothing in this Act affects the validity of—

(a) an order or decision under Part 7 of the Criminal Justice Act 1985; or

(b) a step taken in any proceedings before the commencement of this Act.

(4) Every finding under Part 7 of the Criminal Justice Act 1985 that a defendant is under disability is to be regarded as a finding under this Act that the defendant is unfit to stand trial.

(5) An order made or deemed to have been made under section 115(1) of the Criminal Justice Act 1985 is to be regarded as made under section 24(2)(a) of this Act.

(6) An order made or deemed to have been made under section 115(2)(a) of the Criminal Justice Act 1985 is to be regarded as made under section 25(1)(a).

(7) For the purposes of the continuation or completion of any proceedings commenced before the commencement of this Act,—

(a) an order made under section 121(2)(b)(i) of the Criminal Justice Act 1985 is to be regarded as made under section 38(2)(b) of this Act:

(b) an order made under section 121(2)(b)(ii) of the Criminal Justice Act 1985 is to be regarded as made under section 38(2)(c) of this Act:

(c) an order made under section 121(11) of the Criminal Justice Act 1985 is to be regarded as made under section 44(1) of this Act.

Amendments to other enactments

48 Repeal of Part 7 of Criminal Justice Act 1985

Amendment(s) incorporated in the Act(s).

49 Amendment to Courts Martial Appeals Act 1953

(1) *Amendment(s) incorporated in the Act(s).*

(2) Despite subsection (1), any appeal against a finding under section 188(1A) of the Armed Forces Discipline Act 1971 (as in force immediately before the commencement of this Act) must proceed as if subsection (1) had not been enacted.

50 Amendments to Criminal Investigations (Bodily Samples) Act 1995

(1) In this section, the Criminal Investigations (Bodily Samples) Act 1995 is called "the Act".

(2)–(4) *Amendment(s) incorporated in the Act(s).*

51 Consequential amendments to other enactments

The Acts specified in the Schedule are amended in the manner indicated in that schedule.

Schedule 1AA
Transitional, savings, and related provisions

s 5A

Schedule 1AA: inserted, on 14 November 2018, by section 135 of the Courts Matters Act 2018 (2018 No 50).

Part 1
Provision relating to subpart 6 of Part 4 of Courts Matters Act 2018

1 Proceedings part heard at commencement

(1) If, at the commencement of this schedule, criminal proceedings have been commenced against a defendant but the court has not held any hearing to determine, in accordance with section 9 of the principal Act (as it read before the commencement of this schedule), the nature of the defendant's involvement with the offence, the court may direct that criminal proceedings against the defendant be continued under the provisions of this Act (as amended by subpart 6 of Part 4 of the Courts Matters Act 2018 (the **2018 Act**)).

(2) The court may give a direction under subclause (1) only if it is satisfied that it is in the interests of justice to do so.

(3) If, however, before the commencement of this schedule, the court has begun proceedings to determine under section 9 of the principal Act (as it was before the commencement of this schedule) whether the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged, or the court has made a determination under that section that proceedings against the defendant must be continued as if the 2018 Act had not been passed.

Part 2
Provisions relating to Rights for Victims of Insane Offenders Act 2021

Schedule 1AA Part 2: inserted, on 13 December 2022, by section 9 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

2 Interpretation

In this Part, **amendment Act** means the Rights for Victims of Insane Offenders Act 2021.

Schedule 1AA clause 2: inserted, on 13 December 2022, by section 9 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

3 Proceedings started before commencement

(1) This clause applies if, at the commencement of the amendment Act, criminal proceedings have been commenced against a defendant but the court has not

held any hearing to determine, in accordance with section 20 (as it read before the commencement of the amendment Act), the nature of the defendant's involvement with the offence.

(2) The court may direct that criminal proceedings against the defendant be continued under the provisions of this Act (as amended by the amendment Act).

(3) The court may give a direction under subclause (2) only if it is satisfied that it is in the interests of justice to do so.

(4) However, proceedings against the defendant must be continued as if the amendment Act had not been enacted if, before the commencement of the amendment Act, the court has—

(a) begun proceedings to determine under section 20 (as it was before the commencement of the amendment Act) whether the defendant caused the act or omission that forms the basis of the offence with which the defendant is charged; or

(b) made a determination under that section.

Schedule 1AA clause 3: inserted, on 13 December 2022, by section 9 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

4 Validity of proceedings under section 20

No proceeding under section 20 is invalid only because it was conducted under the law as it was before the commencement of the amendment Act when it ought to have been conducted in accordance with the law as it was after the commencement of that Act.

Schedule 1AA clause 4: inserted, on 13 December 2022, by section 9 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

5 Matters initiated under section 31 or 33

(1) This clause applies to any matter initiated under section 31 or 33 before the commencement of this clause.

(2) If this clause applies, the provisions of the relevant section, as they read immediately before the commencement of this clause, continue to apply to the matter as if they had not been amended or replaced by the amendment Act.

(3) In this clause, **matter** includes any—

(a) action undertaken; and

(b) decision taken; and

(c) notice given; and

(d) proceeding commenced; and

(e) application made; and

(f) agreement entered into; and

(g) requirement imposed.

Schedule 1AA clause 5: inserted, on 13 December 2022, by section 9 of the Rights for Victims of Insane Offenders Act 2021 (2021 No 55).

Part 3
Provision relating to Sentencing (Reinstating Three Strikes) Amendment Act 2024

Schedule 1AA Part 3: inserted, on 17 June 2025, by section 17(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

6 Offences affected by amendment

(1) The amendment made to section 34 of this Act by section 16 of the amendment Act does not apply to any offence committed, whether in whole or in part, before the commencement date.

(2) In this clause,—

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.

Schedule 1AA clause 6: inserted, on 17 June 2025, by section 17(a) of the Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54).

Schedule 1
Consequential amendments to other enactments

s 51

Armed Forces Discipline Act 1971 (1971 No 53)

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).

Coroners Act 1988 (1988 No 111)

Amendment(s) incorporated in the Act(s).

Crimes Act 1961 (1961 No 43)

Amendment(s) incorporated in the Act(s).

Criminal Justice Act 1985 (1985 No 120)

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).

International Crimes and International Criminal Court Act 2000 (2000 No 26)

Amendment(s) incorporated in the Act(s).

Juries Act 1981 (1981 No 23)

Amendment(s) incorporated in the Act(s).

Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46)

Amendment(s) incorporated in the Act(s).

Parole Act 2002 (2002 No 10)

Amendment(s) incorporated in the Act(s).

Penal Institutions Act 1954 (1954 No 51)

Amendment(s) incorporated in the Act(s).

Sentencing Act 2002 (2002 No 9)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Act 1957 (1957 No 87)

Amendment(s) incorporated in the Act(s).

Victims' Rights Act 2002 (2002 No 39)

Amendment(s) incorporated in the Act(s).

Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011

Public Act	2011 No 87
Date of assent	17 October 2011
Commencement	see section 2

1 Title

This Act is the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011.

2 Commencement

This Act comes into force on the day that is 2 years after the date on which this Act receives the Royal assent unless it is brought into force on an earlier date appointed by the Governor-General by Order in Council.

Section 2: this Act brought into force, on 1 July 2013, by clause 2 of the Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 Commencement Order 2013 (SR 2013/163).

5 Application of amendments made by section 4

The amendments made by section 4 apply in relation to a proceeding for an offence that was commenced before section 4 came into force in accordance with the provisions of sections 397 and 399 to 401 of the Criminal Procedure Act 2011.

Notes

1 General

This is a consolidation of the Criminal Procedure (Mentally Impaired Persons) Act 2003 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

Sentencing (Reinstating Three Strikes) Amendment Act 2024 (2024 No 54): Part 2 subpart 2

Rights for Victims of Insane Offenders Act 2021 (2021 No 55): Part 1

Secondary Legislation Act 2021 (2021 No 7): section 3

Privacy Act 2020 (2020 No 31): section 217

Courts Matters Act 2018 (2018 No 50): Part 4 subpart 6

Criminal Procedure (Mentally Impaired Persons) Amendment Act 2011 (2011 No 87)

Corrections Act 2004 (2004 No 50): section 206

Criminal Procedure (Mentally Impaired Persons) Act Commencement Order 2004 (SR 2004/147)

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