



## **Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016**

Public Act    2016 No 47  
Date of assent    22 September 2016  
Commencement    see section 2

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	<b>New Schedule 1AA inserted</b>

**The Parliament of New Zealand enacts as follows:**

### **1      Title**

This Act is the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016.

**2 Commencement**

This Act comes into force on the day that is 3 months after the date on which it receives the Royal assent.

**3 Principal Act**

This Act amends the Sentencing Act 2002 (the **principal Act**).

**4 New section 4A inserted (Transitional, savings, and related provisions)**

After section 4, insert:

**4A Transitional, savings, and related provisions**

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

**5 Section 26 amended (Pre-sentence reports)**

After section 26(2)(h), insert:

- (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.

**6 Section 54I amended (Other special conditions)**

(1) After section 54I(3)(e), insert:

- (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:

(2) In section 54I(4)(b), delete “; or”.

(3) Repeal section 54I(4)(c).

**7 New section 54IA inserted (Electronic monitoring)**

After section 54I, insert:

**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.

**8 Section 80E amended (Electronic monitoring)**

In section 80E(1), after “electronic monitoring condition”, insert “imposed as a condition under section 80C(2)(d)”.

**9 Section 93 amended (Imposition of conditions on release of offender sentenced to imprisonment for short term)**

- (1) In section 93(2B), replace the definition of **special conditions** with:
- 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
- (2) After section 93(3), insert:
- (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.

**10 New Schedule 1AA inserted**

Insert the Schedule 1AA set out in the Schedule of this Act as the first schedule to appear after the last section of the principal Act.

**Schedule**  
**New Schedule 1AA inserted**

s 10

**Schedule 1AA**  
**Transitional, savings, and related provisions**

s 4A

**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).

### **Legislative history**

23 August 2016

Divided from Electronic Monitoring of Offenders Legislation  
Bill (Bill 18–2) as Bill 18–3C

20 September 2016

Third reading

22 September 2016

Royal assent

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