

Criminal Procedure Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the Criminal Procedure Legislation Bill as reported from the Justice and Electoral Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- this bill comprising clauses 1 and 2, Part 1, and Schedule 1
- Auctioneers Amendment Bill comprising subpart 1 of Part 2
- Crimes Amendment Bill (No 2) comprising subpart 2 of Part 2, and Schedule 2
- Criminal Disclosure Amendment Bill comprising subpart 3 of Part 2
- Evidence Amendment Bill comprising subpart 3A of Part 2
- Juries Amendment Bill comprising subpart 4 of Part 2
- Misuse of Drugs Amendment Bill comprising subpart 5 of Part 2
- Sentencing Amendment Bill comprising subpart 5A of Part 2
- Summary Offences Amendment Bill comprising subpart 6 of Part 2

Criminal Procedure Amendment Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text deleted

Hon Chester Borrows

Criminal Procedure Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Criminal Procedure Amendment Act **2013**.

2 Commencement
This Act comes into force on **1 July 2013**. 5

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- 3 Principal Act**
This Part amends the Criminal Procedure Act 2011 (the **principal Act**).
- 4 Section 5 amended (Interpretation)**
In section 5, insert in its appropriate alphabetical order: 5
“**imprisonable offence** means,—
“(a) in the case of an individual, an offence punishable by imprisonment for life or by a term of imprisonment:
“(b) in the case of a body corporate, an offence that would be punishable by imprisonment for life or by a term of imprisonment if the offence were committed by an individual” 10
- 5 Section 16 amended (Charging documents)**
Replace section 16(2)(e) with:
“(e) except if the prosecution is a private prosecution brought by an individual,— 15
“(i) the name of the prosecuting organisation; and
“(ii) the particulars of an appropriate contact person in relation to the prosecution; and”.
- 6 Section 31 amended (Charging document must be filed promptly)** 20
In section 31(2), delete “and in any event not less than 5 working days before the date on which the defendant is required by the summons to appear”.
- 6A Section 82 amended (Requirements for formal statements)** 25
After section 82(4), insert:
“(5) A formal written statement that satisfies the requirements of section 162 of the Summary Proceedings Act 1957 may be treated as a formal statement that satisfies the requirements of this section.” 30
- 7 Section 138 replaced (Trial of different charges together)**
Replace section 138 with:

“138 Trial of different charges together

- “(1) The prosecutor may—
- “(a) notify the court before which a proceeding is being conducted proposing that—
- “(i) 2 or more charges be heard together; or 5
- “(ii) the charges against 1 defendant be heard with charges against 1 or more other defendants:
- “(b) amend a notification given under **paragraph (a)**.
- “(2) Despite **subsection (1)**, if the prosecutor seeks to give or amend a notification involving a charge in respect of which the proceeding has been adjourned after the entry of a not guilty plea, the prosecutor must seek the leave of the court. 10
- “(3) Charges must be heard together in accordance with any notification given under **subsection (1)(a)** or amended under **subsection (1)(b)** unless the court— 15
- “(a) does not grant leave where the prosecutor seeks leave under **subsection (2)**; or
- “(b) makes an order under **subsection (5)**.
- “(5) If the court before which the proceeding is being conducted thinks it is in the interests of justice to do so, it may, on its own motion or on the application of a defendant, order that 1 or more charges against the defendant be heard separately. 20
- “(6) An order under **subsection (5)** may be made either before or during the trial, and,—
- “(a) if it is made during the course of a Judge-alone trial, the court must adjourn the trial of the charges in respect of which the trial is not to proceed; and 25
- “(b) if it is made during the course of a jury trial, the jury must be discharged from giving a verdict on the charges on which the trial is not to proceed.” 30

8 Section 157 amended (Transfer of proceedings to court at different place or different sitting)

- (1) In section 157(3), replace “the Registrar” with “a District Court presided over by 1 or more Justices or 1 or more Community Magistrates”. 35
- (2) After section 157(3), insert:

“(3A) A Registrar may exercise the power specified in subsection (3).”

8A Section 169 amended (Warrant for detention of defendant in hospital or secure facility)

In the heading to section 169, replace “**Warrant**” with “**Order**”.

9 Section 187 amended (Assumption of responsibility for Crown prosecutions by Solicitor-General)

After section 187(4), insert:

“(5) No Crown prosecution is invalid only because the Crown— 10
 “(a) did not assume responsibility for a prosecution in accordance with regulations made under this Act; or
 “(b) assumed responsibility for a prosecution for which it should not have assumed responsibility.”

9A Section 191 amended (Power of Solicitor-General or Crown prosecutor to add new charges) 15

Replace section 191(2)(b) with:

“(b) a notice filed under subsection (1)—
 “(i) satisfies the requirements of **section 138(1)**;
 and 20
 “(ii) **section 138(2)** does not apply when new charges are added to a proceeding in accordance with that notice; and”.

10 Section 321 amended (Related appeals that are to be heard by Court of Appeal) 25

Replace section 321(2) with:

“(2) Appeals arising from the exercise of a related right of appeal by the convicted person or the prosecutor must be heard and determined by the Court of Appeal.

“(2A) **Subsection (2)** does not apply to any appeal to the Supreme Court for which the Supreme Court has given leave.” 30

11 Section 357 amended (Jurisdiction of Community Magistrates to impose sentence in respect of certain category 1 and 2 offences)

- (1) In the heading to section 357, delete “**1 and**”.
- (2) Replace section 357(1) with: 5
- “(1) This section applies to any category 2 offence (not being a continuing offence) in respect of which—
- “(a) the maximum term of imprisonment that can be imposed does not exceed 3 months:
- “(b) the sentence that can be imposed relates to an offence 10
punishable by a community-based sentence and not punishable by a term of imprisonment.”
- (3) After section 357(2)(m), insert:
- “(ma) make, under section 129A of that Act, a confiscation and destruction order in respect of a motor vehicle: 15
- “(mb) make, under section 129B of that Act, an order that a written caution be issued and served.”.

11A Section 358 amended (Power to impose penalties provided for in Land Transport Act 1998)

- (1) After section 358(1)(b), insert: 20
- “(ba) must, if that offence is an offence to which section 33 of the Land Transport Act 1998 applies, make, in addition to any other penalties it may impose but subject to sections 81 and 94 of that Act, an order under section 33 of that Act disqualifying the person from holding or obtaining a driver licence for 6 months or more, unless the court, for special reasons relating to the offence, thinks fit to order otherwise.” 25
- (2) In section 358(1)(d), replace “56,” with “56, 57A,” in each place. 30
- (3) In section 358(1)(e), replace “57” with “57 or 57AA(3)” in each place.
- (4) In section 358(1)(g), replace “Director” with “New Zealand Transport Agency”.
- (5) After section 358(1)(g), insert: 35

- “(ga) may, if that offence is an offence to which section 65A(1) of the Land Transport Act 1998 applies, impose an alcohol interlock licence disqualification:
- “(gb) must, if an alcohol interlock licence disqualification is imposed under section 65A of the Land Transport Act 1998,— 5
- “(i) make, in addition to any other penalties it may impose, an order under section 65A(2)(a) disqualifying the person from holding any driver licence for a period of 3 months; and 10
- “(ii) make an order under section 65A(2)(b) of the Land Transport Act 1998:
- “(gc) must, if that offence is an offence to which section 65B(1) of the Land Transport Act 1998 applies, make an order authorising the person to apply for a zero alcohol licence that has effect for a period of 3 years from the date on which the licence is issued.” 15
- (6) After section 358(1)(h), insert:
- “(i) must, if that offence is an offence to which section 79D of the Land Transport Act 1998 applies, make, in addition to any other penalties it may impose but subject to sections 81 and 94 of that Act, an order under section 79D of that Act disqualifying the person from holding or obtaining a transport service licence for 6 months or more, unless the court, for special reasons relating to the offence, thinks fit to order otherwise.” 25

12 Section 361 replaced (Jurisdiction of Justices and Community Magistrates to take pleas)

Replace section 361 with:

- “361 Jurisdiction of Justices and Community Magistrates to take pleas 30**
- “(1) A District Court presided over by 1 or more Justices or 1 or more Community Magistrates may—
- “(a) receive a plea under section 37 from a defendant charged with an offence that is not a category 4 offence: 35
- “(b) require a plea under section 39 from a defendant charged with an offence that is not a category 4 offence.

- “(2) If the defendant indicates to the court exercising the power under **subsection (1)** that he or she wishes to plead guilty to an offence, the defendant must be brought before a Judge to enter a plea.
- “(3) **Subsection (2)** does not apply if— 5
- “(a) the defendant is entering a plea in respect of any offence to which **section 357(1)** applies; and
- “(b) the court exercising jurisdiction under **subsection (1)** is presided over by 1 or more Community Magistrates.
- “(4) Nothing in this section applies when a District Court presided over by 1 or more Justices or 1 or more Community Magistrates is exercising jurisdiction in accordance with section 355 or 356.” 10
- 13 Section 380 replaced (Proceedings not invalid because defendant should have been dealt with in Youth Court)** 15
Replace section 380 with:
- “380 Proceedings not invalid because defendant should have been dealt with in Youth Court**
- “(1) This section applies if—
- “(a) section 177(1) applies; or 20
- “(b) the defendant—
- “(i) is convicted of a category 3 offence punishable by a term of imprisonment exceeding 3 years; and
- “(ii) did not elect a jury trial. 25
- “(2) No conviction or order or other process or proceeding is invalid by reason only that at the time the defendant was convicted the defendant should by reason of his or her age have been dealt with in a Youth Court.
- “(3) On the application of either party, a retrial of the charge may be granted under section 177. 30
- “(4) If, at the time appointed for the retrial, the defendant is still a child or young person within the meaning of the Children, Young Persons, and Their Families Act 1989, the court must remit the proceedings to a Youth Court to be dealt with in that court.” 35

- 14 Section 382 amended (Payment and recovery of fees)**
Repeal section 382(6) and (7).
- 14A New section 385A inserted (Judge or Registrar may waive certain fees)**
After section 385, insert: 5
- “385A Judge or Registrar may waive certain fees**
A Judge or Registrar may, subject to any terms or conditions that the Judge or Registrar thinks fit, waive the payment of a fee prescribed under section 387 for accessing documents (in whole or in part) if the Judge or Registrar is satisfied that the person is unable, or should not be required, to pay the fee.” 10
- 14B New section 404A inserted (Access to court documents)**
After section 404, insert:
- “404A Access to court documents**
Part 6 of the Criminal Procedure Rules 2012 applies, with any necessary modifications, to a request for access to court documents relating to a proceeding that was commenced prior to the commencement date as if that proceeding were a proceeding under the Criminal Procedure Act 2011.” 15
- 14C New section 406A inserted (Savings)** 20
After section 406, insert:
- “406A Savings**
The Witnesses and Interpreters Fees Regulations 1974, insofar as they apply to criminal proceedings, continue in force, and may be amended, as if they had been made under section 387.” 25
- 15 Section 409 amended (Regulations making consequential amendments)**
- (1) In section 409, replace “before” with “before, on, or after”.
 - (2) In section 409(e), replace “, or” with “or”.
 - (3) After section 409(e), insert: 30
 - “(f) the Crimes Act 1961:
 - “(g) ‘indictable’ or ‘indictment’ or any related terminology:
 - “(i) ‘committal’ or any related terminology:
 - “(j) ‘accused’ or any related terminology.”

16 Schedule 3 amended

- (1) In Schedule 3, Part 1, item relating to the Criminal Investigations (Bodily Samples) Act 1995, replace the item relating to definition of charged in section 2(1) with:
 “Definition of **charged** in section 2(1): repeal and substitute: 5
 “ ‘**charged**, in relation to a person, means that a charging document charging the person with an offence has been filed in a District Court (including in relation to proceedings in the Youth Court)’ .”
- (2) In Schedule 3, Part 1, item relating to the Criminal Investigations (Bodily Samples) Act 1995, after the item relating to section 24F(b)(i), insert:
 “Section 24J(1)(b): omit ‘by way of summons’ and substitute ‘by filing a charging document’.
 “Section 24K(1)(b): omit ‘by way of summons’ and substitute 15
 ‘by filing a charging document’.”
- (3) In Schedule 3, Part 1, item relating to the Criminal Investigations (Bodily Samples) Act 1995, after the item relating to section 26A(3)(b), insert:
 “Section 50C(4)(a): omit ‘laid’ and substitute ‘filed’. 20
 “Section 50C(4)(b): omit ‘laid’ and substitute ‘filed’.”
- (4) In Schedule 3, Part 1, item relating to the Extradition Act 1999, item relating to new section 68(3), replace “the court that made the determination” with “the court to which the appeal is being taken”. 25
- (4A) In Schedule 3, Part 1, item relating to the Fisheries Act 1996, after the item relating to section 237(1), insert:
 “Section 237(1): omit ‘specified in subsection (1) of that section’ and substitute ‘permitted by those rules’.”
- (5) In Schedule 3, Part 1, item relating to the Insurance Law Reform Act 1977, replace “Section 112A(3)(a) and (b)” with “Section 12A(3)(a) and (b)”. 30
- (6) In Schedule 3, Part 1, item relating to the Policing Act 2008, after the item relating to section 33(4)(b), insert:
 “Section 34(3)(a): omit ‘Crimes Act 1961, or under the Summary Proceedings Act 1957’ and substitute ‘Criminal Procedure Act 2011’. 35

- “Section 34(3)(b): omit ‘committal process’ and substitute ‘pre-trial’.”
- (7) In Schedule 3, Part 1, item relating to the Local Government Act 2002, after the item relating to section 239(1) and (2), insert: 5
- “Section 239A(2) (as inserted by section 6 of the Local Government (Alcohol Reform) Amendment Act 2012): omit ‘the laying of an information under the Summary Proceedings Act 1957, or by the filing of a notice of prosecution under section 20A of that Act’ and substitute ‘filing a charging document under section 14 of the Criminal Procedure Act 2011’.” 10
- (8) In Schedule 3, Part 1, item relating to the Local Government Act 2002, after the item relating to section 244(a), insert:
- “Section 244(1)(a) (as inserted by section 7 of the Local Government (Alcohol Reform) Amendment Act 2012): omit ‘Summary Proceedings Act 1957’ and substitute ‘Criminal Procedure Act 2011’.” 15
- “Section 244(2)(b) (as inserted by section 7 of the Local Government (Alcohol Reform) Amendment Act 2012): omit ‘Summary Proceedings Act 1957’ and substitute ‘Criminal Procedure Act 2011’.” 20
- (9) In Schedule 3, Part 1, item relating to the Misuse of Drugs Act 1975, replace the item relating to definition of **served** in section 31(5) with:
- “Definition of **served** in section 31(5): omit ‘in accordance with sections 24 to 29 of the Summary Proceedings Act 1957’ and substitute ‘as if the certificate were a document required to be served in accordance with rules made under the Criminal Procedure Act 2011’.” 25
- (10) In Schedule 3, Part 1, item relating to the Parole Act 2002, after item relating to section 107G(7), insert: 30
- “Section 107G(8): omit ‘form that’ and substitute ‘form for which the content’.”
- (11) In Schedule 3, Part 4, item relating to the International Criminal Court Regulations 2004, replace the item relating to regulation 6(2) with: 35
- “Regulation 6(2): omit ‘section 24 of the Summary Proceedings Act 1957 as if references in that section to the defendant

were references to the person required to be served’ and substitute ‘rules in relation to service of a summons made under the Criminal Procedure Act 2011 that apply (with all necessary modifications)’.

“Regulation 7: revoke.” 5

- (12) In Schedule 3, Part 4, item relating to the International War Crimes Tribunals Regulations 1995, replace the item relating to regulation 4(2) with:

“Regulation 4(2): omit “provisions of section 24 of the Summary Proceedings Act 1957 as if references in that section to the defendant were references to the person required to be served” and substitute “rules in relation to service of a summons made under the Criminal Procedure Act 2011 that apply (with all necessary modifications)”.

“Regulation 4(3): revoke.” 15

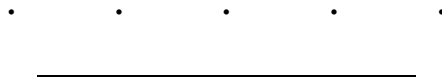
- (13) In Schedule 3, Part 4, item relating to the Mutual Assistance in Criminal Matters Regulations 1993, replace the item relating to regulation 4(2) with:

“Regulation 4(2): omit “provisions of section 24 of the Summary Proceedings Act 1957 as if references in that section to the defendant were references to the person required to be served” and substitute “rules in relation to service of a summons made under the Criminal Procedure Act 2011 that apply (with all necessary modifications)”.

“Regulation 4(3): revoke.” 25

17 Further amendments to principal Act

Amend the principal Act as set out in **Schedule 1**.



Schedule 1
Further amendments to Criminal
Procedure Act 2011

s 17

Section 58

In section 58(1)(a), replace “57; or” with “57:”. 5

Section 59

In section 59(1)(a), replace “apply; or” with “apply:”.

Section 73

In section 73(6)(c), after “different”, insert “or an alternative”.

Section 74

In section 74(4), after “High Court”, insert “at the place”. 10

Section 152

In section 152(1), definition of **specified serious offence**, paragraph (a), replace “a term of imprisonment of 14 years” with “imprisonment for life or by imprisonment for 14 years”. 15

Section 191

~~In section 191(2)(b), replace “section 138(1)” with “**section 138(1)(a)**”.~~

Section 215

In section 215(1),— 20

(a) replace “Judge makes” with “court makes”; and

(b) replace “a Judge alone” with “Judge-alone trial procedure”.

Section 217

In section 217(2)(f), replace “section 138(4)” with “**section 138(5)**”. 25

Section 222

In section 222(1)(a), replace “an application” with “a notice of application”.

Section 318

In section 318(3), replace “to appeal” with “under section 317”.

Section 335

In section 335(3), replace “Subsection (2) does” with “Subsection (2)(a) to (d) and (f) do”.

5

Section 356

In section 356(1)(c), replace “that is” with “unless the offence is”.

Section 364

In section 364(1), delete “and section 381”.

Section 368

In section 368(3), delete “in accordance with rules of court”.

10

Section 387

In section 387(1)(d), replace “places of trial other than” with “different or alternative places of trial from”.

Section 399

In section 399(1)(b), replace “before or after” with “before, on, or after”.

15

Section 400

In section 400(1), replace “after” with “on or after”.

In section 400(3), replace “Schedule 1” with “Schedule 2” in each place.

20

Section 402

In section 402, replace “before or after” with “before, on, or after”.

Section 403

In section 403, replace “before or after” with “before, on, or after”.

25

Criminal Procedure Amendment Bill

Section 404

In section 404(1), replace “before or after” with “before, on, or after”.

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Legislative history

8 May 2013

Divided from Criminal Procedure Legislation Bill
(Bill 74–2) by committee of the whole House as
Bill 74–3A
