

Sentencing (Community Sentencing to Fit the Crime) Amendment Bill

Member's Bill

Explanatory note

The Sentencing Act 2002 removed and narrowed the discretion allowing Judges to fit supervision and community work sentences to the crime. For example, a Judge no longer has power to order an accountant to keep the books for a charity even if the accountant is willing to work off his or her crime in that way.

Worse, Judges now face serious restrictions on the use of community sentencing and supervision for ordinary punishment purposes. They can only order supervision in the interests of the offender, and the avoidance of further offending. No supervision order may last for longer than 2 years.

Judges' powers to ban an offender from associating with criminals or consorting with gang members have been severely limited.

This bill:

- restores Judges' discretion to use supervision for punishment as well as in the interests of the offender:
- enables Judges to impose supervision conditions against causes of crime such as associating with gangs, and to require scheduled or random testing for alcohol and drug abuse:
- allows Judges to stipulate non-association terms as conditions of supervision:
- allows Judges to stipulate for supervision at the end of prison sentences:
- allows supervision sentences to be cumulative instead of concurrent:

- restores Judges' powers to stipulate where community work will be done and to impose conditions on it.

The Sentencing Act and the Parole Act 2002 together turn the sentencing process into a charade. The Judge may assess the extent of depravity and a need to denounce a crime, and even talk about it in his or her judgement, but then is not allowed to reflect, in a community sentence, anything other than the interests of the offender and the prospects of reoffending. Probation officers decide all the significant elements of the community sentence including where it will be served, when, how, and who with, and what work will be done.

This bill reinstates court control over punishment. It also enhances probation service powers to ensure discipline among community work attendees. The probation officers asked for a power to sanction poor behaviour or lateness without having to waste their time and that of the courts on formal disciplinary charges. This bill gives them the power to impose school type "detention" of up to 10 per cent of a day's sentence for misconduct on that day.

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Sentencing (Community Sentencing to Fit the Crime) Amendment Act **2004**.
- (2) In this Act, the Sentencing Act 2002¹ is called “the principal Act”.

¹ 2002 No 9

2 Commencement

This Act comes into force on the date on which it receives the Royal assent.

- 3 Purpose**
The purpose of this Act is to amend the principal Act to restore to the courts more control over the nature and effect of sentences of community work and supervision.
- 4 Sections 46 and 47 repealed** 5
Sections 46 and 47 of the principal Act are repealed.
- 5 Standard conditions of supervision**
Section 49(1) of the principal Act is amended by inserting, after paragraph (h), the following paragraph:
“(ha) the offender must not associate with any person or class of persons specified by the court as part of the sentence of supervision:” 10
- 6 Other special conditions**
- (1) Section 52 of the principal Act is amended by repealing the chapeau to subsection (1), and substituting the following chapeau: 15
“A court may impose any of the special conditions described in **subsection (2)** if the court considers that any of the purposes and principles of sentencing would be advanced by such special conditions, and in particular if the court is satisfied that—” 20
- (2) Section 52(2) of the principal Act is amended by inserting, after paragraph (b), the following paragraphs:
“(ba) conditions requiring the offender to submit to routine or random testing for the use of illegal drugs: 25
“(bb) conditions requiring the offender to ensure from his or her financial resources including any entitlements to benefits, the satisfaction of obligations to support dependants, and to pay fines and reparations:
“(bc) conditions prohibiting the offender from consuming alcohol to an extent that would cause him or her to have blood alcohol levels exceeding the maximum prescribed by law from time to time for driving a motor vehicle, and requiring the offender to submit to routine or random blood alcohol testing for this purpose:” 30
- (3) Section 52 of the principal Act is amended by repealing subsection (3). 35

- (4) Section 52(5) of the principal Act is amended by adding, after the word “medication”, the words “, but the withdrawal may trigger the application of alternative conditions or an alternative sentence imposed at the time of sentencing, or on application under **section 54**”.
- 7 Concurrent and cumulative sentences of community work**
Section 57 of the principal Act is amended by replacing the word “concurrent” wherever it presently appears with the word “cumulative”, and replacing the word “concurrent” wherever it presently appears with the word “cumulative”.
- 8 Authorised work for person sentenced to community work**
Section 63(2) of the principal Act is amended by adding after the word “employment”, the words “if the institution or organisation employing the offender would thereby obtain an unfair advantage to the prejudice of competing non-governmental providers of similar services to the community.”
- 9 Supervision of offender while doing community work**
Section 65 of the principal Act is amended by adding, after subsection (2), the following subsection:
“(3) A supervising probation officer may require an offender under his or her control to serve up to 10 per cent more time on any day of community work without subtraction from the sentence—
“(a) toward making up time lost through late arrival by the offender; or
“(b) to penalise laziness; or
“(c) to penalise disruption or other impairments to the usefulness or value of the work which the supervisor considers attributable to the offender or to the team in which the offender is working.”
- 10 New section 78A inserted**
The principal Act is amended by inserting, after section 78, the following section:

- “78A Effect of long-term sentence of imprisonment on community-based sentences**
If an offender who is subject to a community-based sentence is subsequently sentenced to a term or terms of imprisonment which total more than the periods stated in **section 78(1)**, the court must take into account in fixing the terms of imprisonment the unexpired period of the community-based sentence, and cancel the community-based sentence.” 5
- 11 New section 89A inserted**
The principal Act is amended by inserting, after section 89, the following section: 10
- “89A Preventive post-sentence supervision**
“(1) Despite any limits in **sections 45 to 54**, a court which considers an offender likely, on the balance of probabilities, to pose a significant and ongoing risk to the safety of other innocent people, may impose a post-imprisonment sentence of supervision for such period with such conditions as the court thinks fit to reduce the risk posed by the offender. 15
“(2) Supervision may be ordered under this section whether the court imposes a sentence of preventive detention or instead imposes a lengthy determinate sentence. 20
“(3) **Section 88** applies to a sentence of supervision under this section as if references in **section 88** to preventive detention were references to such supervision.
“(4) Nothing in **section 93** of this Act, or **sections 18(2), 29, 31, and 58** of the Parole Act 2002 limits or affects the court’s power to make orders under this section.” 25
- 12 Imposition of conditions on release of offender sentenced to imprisonment for short term**
(1) Section 93 of the principal Act is amended by omitting from the heading the words “for short term”. 30
(2) Section 93 of the principal Act is amended by repealing the chapeau to subsection (1), and substituting the following chapeau:
“A court may impose on the offender—”. 35
(3) Section 93(2) of the principal Act is amended by omitting the words “but not more than 24 months”.

- (4) Section 93(3) of the principal Act is amended by adding the following paragraphs:
- “(d) reduce the risk of offending by associates of the offender; or
- “(e) deter offending by others; or 5
- “(f) help make the punishment fit the crime.”
- (5) Section 93 of the principal Act is amended by repealing subsection (5).
- (6) Sections 93(6) and 93(7) of the principal Act are amended by inserting, after the word “beyond”, the words “3 years after”. 10
- 13 Non-association order**
- Section 112 of the principal Act is amended by repealing subsections (2) and (4).
- 14 Section 114 repealed**
- Section 114 of the principal Act is repealed. 15
- 15 Order must be drawn up and copy given to offender, etc**
- Section 115(4) of the principal Act is amended by adding the following paragraph:
- “(c) the persons identified in the non-association order with whom the offender may not associate, as and when the copies can conveniently be given to such persons.” 20
- 16 Commencement of period of non-association**
- Section 117(2) of the principal Act is amended by omitting the words “under section 114(2),”.
- 17 Breach of non-association order constitutes offence** 25
- Section 118 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) A person identified in a non-association order of which he or she has received a copy, commits an offence if, without reasonable excuse, he or she associates with the offender who is subject to the non-association order, in contravention of the order.” 30