

Drug and Alcohol Testing of Community-based Offenders and Bailees Legislation Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Drug and Alcohol Testing of Community-based Offenders and Bailees Legislation Bill and recommends that it be passed with the amendments shown.

Introduction

The bill would enable the Department of Corrections and the New Zealand Police to require bailees and community-based offenders, who are subject to conditions prohibiting the use of drugs and alcohol to undergo drug or alcohol testing. The bill would amend the Bail Act 2000, the Parole Act 2002, and the Sentencing Act 2002.

Drug and alcohol misuse has been identified as a major driver of crime. Approximately two-thirds of offenders on home detention, intensive supervision, and supervision orders, have alcohol or other drug abuse or addiction issues.

The court can impose drug and alcohol conditions as a condition of bail or sentencing, and the Parole Board can impose them as a condition of release on parole. However, current legislation does not provide a clear authority to test offenders or bailees for the presence of drugs and alcohol. The bill would create an explicit legislative mandate for testing liable offenders and bailees for drugs and alcohol. Imposing and enforcing drug and alcohol conditions would play an important role in preventing re-offending and ensuring public safety.

This commentary covers the key amendments that we recommend to the bill. It does not cover minor or technical amendments.

Commencement date

The commencement date for the bill as introduced is 1 July 2015. We recommend amending clause 2 so that amendments to the bill would come into force six months after the date on which it receives Royal assent. This extension would allow the Department of Corrections and the New Zealand Police to implement the drug and alcohol testing regime, such as by training staff and procuring testing equipment.

Psychoactive substances

The bill would allow for the testing of “controlled drugs” as defined by the Misuse of Drugs Act 1975. We recommend amending the bill to allow for the testing of psychoactive substances, such as synthetic cannabis, as defined by the Psychoactive Substances Act 2014.

Imposition of drug and alcohol conditions on bailees by Registrars

Under section 30(4) of the Bail Act 2000, registrars can set bail conditions, including drug and alcohol conditions, to reduce the likelihood of the defendant offending while on bail. Court data shows that registrars impose about 35 percent of drug and alcohol conditions.

We noted that the drug and alcohol testing proposed by the bill may engage the right under section 21 of the Bill of Rights Act 1990 to be secure against unreasonable search or seizure. We considered that, because the drug and alcohol testing had implications for human rights, drug and alcohol conditions for bailees might be more appropriately imposed by a judicial officer, rather than a registrar. However, we also considered that removing the power for registrars to impose drug and alcohol conditions could significantly affect the efficiency and timeliness of bail processes, given the volume of drug and alcohol conditions being imposed.

We recommend amending clause 6, which would amend section 30 of the Bail Act 2000, to provide that registrars could only impose a drug and alcohol condition as a condition of bail when the defendant agrees to the condition. If the defendant disputed the imposed condition, the registrar would elevate the decision to a judicial officer. This would not change current practice. However, it would provide a safeguard in the Bail Act 2000 that would help to protect the defendant’s rights under the Bill of Rights.

Consequences of non-compliance by bailees

The bill, as introduced, makes it an offence to refuse an authorised person entry to a residence to install, attach, or remove any drug or alcohol monitoring device. The penalty for this offence would be imprisonment for a term not exceeding 3 months or a fine not exceeding \$5,000.

Under current law, it is an offence to breach parole and sentencing conditions. However, it is not an offence to breach bail conditions. Instead, the bailee can be arrested, brought to court, and have their bail reconsidered or revoked. Because breaching bail

conditions is not an offence, applying the bill's proposed offence penalties to bailees would be inconsistent.

We recommend deleting clause 9 and amending clause 8, which would insert new section 30V(1)(b)(iv) into the Bail Act 2000 to provide that refusing entry to an authorised person for purposes relating to continuous monitoring equipment is to be treated as a breach of bail conditions, rather than an offence.

Use of evidence from testing

We recommend amending the following clauses of the bill to allow the person subject to testing to use, or consent to have used, evidence from the drug and alcohol testing provided by the bill in any relevant proceedings:

- clause 8, which inserts new section 30W(1)(a)(iv) into the Bail Act 2000
- clause 15, which inserts new section 16D(1)(a)(iv) into the Parole Act 2002; and
- clause 30, which inserts new section 80ZQ(1)(a)(iv) into the Sentencing Act 2002.

For example, a person could use evidence from their drug and alcohol testing to prove sobriety in child custody proceedings where they are accused of being an unsuitable parent due to drug or alcohol use.

Independent testing

The bill as it stands allows for the person subject to testing to elect to have a sample independently tested. We recommend amending the following clauses to provide a power for the manner of independent testing to be prescribed in the rules made by the Chief Executive of Corrections and the Commissioner of Police:

- clause 11, which would amend new section 73AAB of the Bail Act 2000
- clause 18, which would amend new section 74B of the Parole Act 2002; and
- clause 30, which would amend new section 80ZT of the Sentencing Act 2002.

Protective supervision orders

The Public Safety (Public Protection Orders) Act 2014 empowers the High Court to issue a public protection order for the civil detention of individuals who have completed a sentence but continue to pose a risk of serious sexual or violent offending. If the individual has their public protection order cancelled (for example, because their risk has reduced), the court must impose a protective supervision order to assist the individual's release back into the community. Protective supervision orders may include conditions deemed necessary to reduce the individual's risk of reoffending such as drug or alcohol conditions.

We recommend the insertion of new Part 4 which would amend the Public Safety (Public Protection Orders) Act 2014 to include individuals subject to protective super-

vision orders as eligible for drug and alcohol testing if they have drug or alcohol conditions imposed by the court.

Applications to persons on whom drug and alcohol conditions are imposed before the bill comes into force.

The bill would allow drug and alcohol testing to apply to all drug and alcohol conditions imposed after the bill would come into force. However, the bill is unclear as to whether drug and alcohol testing would apply to drug and alcohol conditions imposed before the bill would come into force.

We considered that allowing high risk offenders and bailees with drug and alcohol conditions to remain unmonitored would be inconsistent with the preventative approach to re-offending taken by Corrections and Police and pose a risk to public safety.

The Attorney-General advised that imposing drug and alcohol testing on individuals who had drug and alcohol conditions imposed before the bill would come into force would not constitute a retrospective penalty or an increase in punishment. This is because neither the sentence nor the conditions would change. Rather, being required to submit to drug and alcohol testing would change the way that the sentence and conditions are being administered and monitored.

We recommend inserting the following schedules, so that the powers to undertake drug and alcohol testing can be exercised to verify compliance with drug and alcohol conditions that were imposed before the bill would commence that are still in effect after the bill would commence:

- schedule 1, which would insert new schedule 1AA into the Bail Act 2000
- schedule 2, which would insert new schedule 1 into the Parole Act 2002; and
- schedule 3, which would insert new schedule 1AA into the Sentencing Act 2002.

Post-imprisonment conditions

Offenders sentenced to terms of imprisonment of two years or less can have conditions imposed that come into effect on release from prison (post-imprisonment conditions). These conditions can include drug or alcohol conditions. The bill, as it stands, specifies that drug and alcohol testing can be applied to offenders sentenced to a term of imprisonment of more than 12 months but not more than 24 months. The bill, as introduced, also specifies that a post-imprisonment condition only applies after the sentence expiry date; however, these conditions can apply before the sentence expiry date.

We recommend amending the definition of “drug or alcohol condition” in clause 21 (which would amend section 4 of the Sentencing Act 2002) and “post-imprisonment condition” in the following clauses, so that testing can be applied to offenders with drug or alcohol conditions who are sentenced to a term of imprisonment of less than

twelve months, and to remove the reference to the condition applying only after the sentence expiry date:

- clause 21, which would amend section 4 of the Sentencing Act 2002
- clause 30, which would insert new subpart 2C into the Sentencing Act 2002;
and
- schedule 3, which would insert new schedule 1AA into the Sentencing Act 2002.

Appendix

Committee process

The Drug and Alcohol Testing of Community-based Offenders and Bailees Legislation Bill was referred to the committee on 10 March 2015. The closing date for submissions was 23 April 2015. We received and considered 11 submissions from interested groups and individuals. We heard two submissions.

We received advice from the Department of Corrections and the New Zealand Police. The Regulations Review Committee reported to the committee on the powers contained in clauses 11, 18, and 30.

Committee membership

Kanwaljit Singh Bakshi (Chairperson)

Todd Barclay

Mahesh Bindra

David Clendon

Kelvin Davis

Hon Phil Goff

Ian McKelvie

Lindsay Tisch

Jonathan Young

**Drug and Alcohol Testing of Community-based
Offenders and Bailees Legislation Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peseta Sam Lotu-Iiga

Drug and Alcohol Testing of Community-based Offenders and Bailees Legislation Bill

Government Bill

Contents

	Page
1 Title	6
2 Commencement	6
Part 1	
Amendments to Bail Act 2000	
3 Principal Act	6
<i>Definitions and correction of cross-reference</i>	
4 Section 3 amended (Interpretation)	6
<u>4A</u> <u>New section 3A inserted (Transitional, savings, and related provisions)</u>	<u>7</u>
<u>3A</u> <u>Transitional, savings, and related provisions</u>	<u>7</u>
5 Section 13 amended (Exercise of discretion when considering bail pending sentencing)	7
<i>Conditions of bail</i>	
6 Section 30 amended (Conditions of bail)	8
7 New section 30AA inserted (Imposition, and effect, of drug or alcohol condition)	8
<u>30AA</u> <u>Imposition, and effect, of drug or alcohol condition</u>	<u>8</u>
8 New sections 30T to 30W and cross-heading inserted	8
<i>Testing and monitoring of defendants on bail with drug or alcohol conditions</i>	
<u>30T</u> <u>Defendant on bail (other than Police bail) with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring</u>	<u>9</u>

**Drug and Alcohol Testing of Community-based
Offenders and Bailees Legislation Bill**

	30U	Where prescribed testing procedure may be carried out	10
	30V	Breach of drug or alcohol condition	10
	30W	Information obtained from drug- or <u>and</u> alcohol testing or monitoring	11
		<i>Offence after defendant granted bail</i>	
9		New section 36B inserted (Offence to refuse authorised person entry for certain purposes related to continuous monitoring)	12
	36B	Offence to refuse authorised person entry for certain purposes related to continuous monitoring	12
		<i>Rules</i>	
10		Section 73 amended (Rules)	13
11		New sections 73AA to 73AAC inserted	13
	73AA	Rules about drug and alcohol testing and monitoring	13
	73AAB	Further provisions concerning rules about drug and alcohol testing and monitoring	14
	73AAC	Availability of rules about drug- or <u>and</u> alcohol testing and monitoring, and status under Legislation Act 2012	14
<u>11A</u>		<u>New Schedule 1AA inserted</u>	<u>15</u>
		Part 2	
		Amendments to Parole Act 2002	
12		Principal Act	15
		<i>Definitions</i>	
13		Section 4 amended (Interpretation)	15
<u>13A</u>		<u>New section 4A inserted (Transitional, savings, and related provisions)</u>	<u>16</u>
	<u>4A</u>	<u>Transitional, savings, and related provisions</u>	<u>16</u>
		<i>Conditions on parole or release</i>	
14		Section 15 amended (Special conditions)	16
15		New sections 16A to 16D and cross-heading inserted	17
		<i>Drug or alcohol conditions</i>	
	16A	Imposition, and effect, of drug or alcohol condition	17
	16B	Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring	17
	16C	Where prescribed testing procedure may be carried out	18
	16D	Information obtained from drug- or <u>and</u> alcohol testing or monitoring	19
		<i>Offences: parole or release</i>	
16		New section 71A inserted (Offences related to drug or alcohol conditions)	19
	71A	Offences related to drug or alcohol conditions	19

**Drug and Alcohol Testing of Community-based
Offenders and Bailees Legislation Bill**

17	New section 72A inserted (Offence to refuse authorised person entry for certain purposes related to continuous monitoring)	20
	72A Offence to refuse authorised person entry for certain purposes related to continuous monitoring	20
	<i>Rules</i>	
18	New sections 74A to 74C and cross-heading inserted	21
	<i>Rules</i>	
	74A Rules about drug and alcohol testing and monitoring	21
	74B Further provisions concerning rules about drug and alcohol testing and monitoring	22
	74C Availability of rules relating to about drug and alcohol testing and monitoring, and status under Legislation Act 2012	22
	<i>Offences: extended supervision orders</i>	
19	New section 107TA inserted (Offences related to drug or alcohol conditions)	23
	107TA Offences related to drug or alcohol conditions	23
<u>19A</u>	<u>New Schedule 1 inserted</u>	<u>23</u>
	Part 3	
	Amendments to Sentencing Act 2002	
20	Principal Act	24
	<i>Interpretation</i>	
21	Section 4 amended (Interpretation)	24
<u>21A</u>	<u>New section 4A inserted (Transitional, savings, and related provisions)</u>	<u>25</u>
	4A Transitional, savings, and related provisions	25
	<i>Supervision</i>	
22	Section 52 amended (Other special conditions)	25
	<i>Intensive supervision</i>	
23	Section 54I amended (Other special conditions)	26
	<i>Offence: supervision</i>	
24	New section 70AA inserted (Offences related to sentences of supervision with drug or alcohol conditions)	26
	70AA Offences related to sentences of supervision with drug or alcohol conditions	26
	<i>Offence: intensive supervision</i>	
25	New section 70B inserted (Offences related to sentences of intensive supervision with drug or alcohol conditions)	27

**Drug and Alcohol Testing of Community-based
Offenders and Bailees Legislation Bill**

70B	Offences related to sentences of intensive supervision with drug or alcohol conditions	27
<i>Home detention</i>		
26	Section 80D amended (Special conditions of sentence of home detention)	27
27	Section 80P amended (Special post-detention conditions)	28
<i>Offences: home detention</i>		
28	New section 80SA inserted (Offences related to sentences of home detention with drug or alcohol conditions)	28
80SA	Offences related to sentences of home detention with drug or alcohol conditions	28
29	New section 80UA inserted (Offences related to post-detention conditions that are drug or alcohol conditions)	29
80UA	Offences related to post-detention conditions that are drug or alcohol conditions	29
<i>Conditions, offences, and rules related to community-based offenders</i>		
30	New subpart 2C of Part 2 inserted	29
Subpart 2C—Drug or alcohol conditions		
80ZN	Imposition, and effect, of drug or alcohol condition	29
80ZO	Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring	30
80ZP	Where prescribed testing procedure may be carried out	31
80ZQ	Information obtained from drug- or <u>and</u> alcohol testing or monitoring	31
80ZR	Offence to refuse authorised person entry to offender’s residential address	32
80ZS	Rules about drug and alcohol testing and monitoring	33
80ZT	Further provisions concerning rules about drug and alcohol testing and monitoring	34
80ZU	Availability of rules relating to <u>about</u> drug and alcohol testing and monitoring, and status under Legislation Act 2012	34
<i>Offence: post-imprisonment conditions</i>		
<u>30A</u>	<u>Section 93 amended (Imposition of conditions on release of offender sentenced to imprisonment for short term)</u>	<u>35</u>
31	New section 96A inserted (Offences related to post-imprisonment conditions that are drug or alcohol conditions)	35
96A	Offences related to post-imprisonment conditions that are drug or alcohol conditions	35
<u>31A</u>	<u>New Schedule 1AA inserted</u>	<u>35</u>

**Drug and Alcohol Testing of Community-based
Offenders and Bailees Legislation Bill**

**Part 4
Amendments to Public Safety (Public Protection Orders) Act
2014**

<u>32</u>	<u>Principal Act</u>	<u>36</u>
<u>33</u>	<u>Section 3 amended (Interpretation)</u>	<u>36</u>
<u>34</u>	<u>New section 92A inserted (Interpretation)</u>	<u>36</u>
	<u>92A Interpretation</u>	<u>36</u>
<u>35</u>	<u>New sections 95A to 95D and cross-headings inserted</u>	<u>37</u>
	<i>Drug or alcohol requirements</i>	
	<u>95A Imposition, and effect, of drug or alcohol requirement</u>	<u>37</u>
	<u>95B Person with drug or alcohol requirement may be directed to undergo testing or submit to continuous monitoring</u>	<u>38</u>
	<u>95C Where prescribed testing procedure may be carried out</u>	<u>39</u>
	<u>95D Information obtained from drug and alcohol testing or monitoring</u>	<u>39</u>
	<i>Variation of requirements</i>	
<u>36</u>	<u>New cross-heading above section 99 inserted</u>	<u>40</u>
	<i>Review of order</i>	
<u>37</u>	<u>New cross-heading above section 103 inserted</u>	<u>40</u>
	<i>Offences</i>	
<u>38</u>	<u>New sections 103A to 103E and cross-heading inserted</u>	<u>40</u>
	<u>103A Offences related to drug or alcohol requirements</u>	<u>40</u>
	<u>103B Offence to refuse authorised person entry to residential address</u>	<u>41</u>
	<i>Rules</i>	
	<u>103C Rules about testing and monitoring of persons with drug or alcohol requirements</u>	<u>42</u>
	<u>103D Further provisions concerning rules made under section 103C</u>	<u>42</u>
	<u>103E Availability of rules made under section 103C and status under Legislation Act 2012</u>	<u>43</u>
	Schedule 1	<u>44</u>
	<u>New Schedule 1AA of Bail Act 2000</u>	
	Schedule 2	<u>45</u>
	<u>New Schedule 1 of Parole Act 2002</u>	
	Schedule 3	<u>47</u>
	<u>New Schedule 1AA of Sentencing Act 2002</u>	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Drug and Alcohol Testing of Community-based Offenders ~~and~~,
Bailees, ~~and Other Persons~~ Legislation Act **2014**.

2 Commencement

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This Act comes into force on ~~1 July 2015~~ the day immediately after the expiry of the period of 6 months that commences on the date on which this Act receives the Royal assent.

Part 1

Amendments to Bail Act 2000

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3 Principal Act

This **Part** amends the Bail Act 2000 (the **principal Act**).

Definitions and correction of cross-reference

4 Section 3 amended (Interpretation)

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In section 3, insert in their appropriate alphabetical order:

bodily sample, for a person, means—

- (a) a sample of the person's blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

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

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drug or alcohol condition means a condition of bail—

- (a) that is imposed under section 30(4) (alone or with any of sections 21B(2) and (3), 40(4), 53(4), and 54(4)); and
- (b) that prohibits a defendant from either or both— doing 1 or more of the following:
 - (i) using (as defined in this section) a controlled drug:
 - (ia) using a psychoactive substance:
 - (ii) consuming alcohol

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

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- (a) a controlled drug used by the person:
- (ab) a psychoactive substance used by the person:
- (b) alcohol consumed by the person

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

medical officer means—

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

(a) a nurse; or

(b) a medical laboratory technologist

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

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

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

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

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

4A New section 3A inserted (Transitional, savings, and related provisions)

After section 3, insert:

3A Transitional, savings, and related provisions

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

5 Section 13 amended (Exercise of discretion when considering bail pending sentencing)

In section 13(4A)(a), replace “section 30(3A)” with “section 30(3)”.

*Conditions of bail***6 Section 30 amended (Conditions of bail)**

In section 30(4), after “other condition”, insert “(including, without limitation, a drug or alcohol condition)”.

After section 30(4), insert:

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(4A) However, a Registrar must not impose a drug or alcohol condition under subsection (4) unless the defendant consents to the condition being imposed.

7 New section 30AA inserted (Imposition, and effect, of drug or alcohol condition)

After section 30, insert:

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30AA Imposition, and effect, of drug or alcohol condition

(1) This section applies if a judicial officer or Registrar imposes a drug or alcohol condition on a defendant under section 30(4) (alone or with any of sections 40(4), 53(4), and 54(4)).

(2) The judicial officer or Registrar cannot direct, indicate, or require that the defendant undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the defendant to comply with all requirements arising from an authorised person giving the defendant notice under **section 30T(1)**.

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(3) The judicial officer or Registrar must advise the defendant that the defendant must do either or both of the following things if required to do so by notice given to the defendant by an authorised person under **section 30T(1)**:

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(a) undergo testing for a controlled drug, a psychoactive substance, or alcohol:

(b) submit to continuous monitoring of the defendant’s compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the defendant’s body.

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(4) To avoid doubt, this section does not apply to a defendant who has been granted Police bail ~~under section 21B~~ with a drug or alcohol condition.

8 New sections 30T to 30W and cross-heading inserted

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After section 30S, insert:

Testing and monitoring of defendants on bail with drug or alcohol conditions

30T Defendant on bail (other than Police bail) with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring

- (1) An authorised person may, by notice given orally or in writing to a defendant who is on bail (other than Police bail) with a drug or alcohol condition, require the defendant to do either or both of the following: 5
- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under **section 73AA(1)(a)**: 10
 - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the defendant's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under **section 73AA(1)(d)**. 10
- (2) In exercising his or her discretion under **subsection (1)**, an authorised person— 15
- (a) must comply with any rules made under **section 73AA(1)**; and
 - (b) may determine—
 - (i) whether to require the defendant to undergo a prescribed testing procedure or to submit to continuous monitoring; and
 - (ii) which of the prescribed testing procedures, if any, the defendant is required to undergo. 20
- (3) A determination under **subsection (2)(b)(i)** may be made in respect of—
- (a) a defendant who is on bail with a drug or alcohol condition; or
 - (b) a defendant who is on bail with a drug or alcohol condition and who the authorised person has cause to suspect has breached the condition. 25
- (4) Only a medical practitioner or medical officer may collect a blood sample from a defendant under this section.
- (5) If a notice under **subsection (1)** is given orally, the authorised person who gives the notice must record it in writing, and give a copy to the defendant, as soon as is reasonably practicable. 30
- (6) In this section and in **sections 30U to 30W**, **authorised person** means a person who is—
- (a) a constable; or
 - (b) an employee of the Department of Corrections authorised by the chief executive of that department to require defendants to undergo testing, or submit to continuous monitoring, under this section. 35

30U Where prescribed testing procedure may be carried out

- (1) An authorised person may require a defendant to undergo testing at the place where the defendant is given notice under **section 30T(1)**.
- (2) **Subsection (1)** applies even if the place where the defendant is given notice is—
- (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
 - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the defendant’s residential address.
- (3) However, a defendant cannot be required to undergo a prescribed testing procedure in a place specified in **subsection (2)(a)** or **(b)** if the testing procedure involves the collection of blood or urine.
- (4) An authorised person may, if **subsection (3)** applies, or if it is not reasonably practicable to require the defendant to undergo testing at the place where the defendant is given notice, require the defendant to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the defendant to undergo testing.

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30V Breach of drug or alcohol condition

- (1) A defendant on bail with a drug or alcohol condition breaches the condition if the defendant—
- (a) uses a controlled drug or a psychoactive substance, or consumes alcohol, in contravention of the condition; or
 - (b) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 30T(1)(a)** and **30U**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 30T(1)(b)**; or
 - (iii) to accompany an authorised person, when required to do so under **section 30U(4)**, to a place where it is likely that it will be reasonably practicable for the defendant to undergo testing; or
 - (iv) to allow 1 or more persons specified in **subsection (2)** to enter the defendant’s residential address for all or any of the following purposes:
 - (A) attaching a drug or alcohol monitoring device to, or removing the device from, the defendant:
 - (B) servicing or inspecting the device:
 - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; or

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- (c) does anything with the intention of diluting or contaminating a bodily sample required under **section 30T(1)(a)** for the purposes of a prescribed testing procedure; or
- (d) tampers with a drug or alcohol monitoring device required under **section 30T(1)(b)** or does anything with the intention of interfering with the functioning of that device. 5
- (2) The persons referred to in **subsection (1)(b)(iv)** are—
- (a) an authorised person who has produced evidence of that person’s identity to the defendant; and
- (b) a person accompanying a person described in **paragraph (a)**; and 10
- (c) a person who—
- (i) has produced evidence of that person’s identity to the defendant; and
- (ii) is authorised in writing by an authorised person to enter the defendant’s residential address for all or any of the following purposes: 15
- (A) attaching a drug or alcohol monitoring device to, or removing the device from, the defendant;
- (B) servicing or inspecting the device;
- (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and 20
- (iii) has produced that written authority to the defendant.
- (3) **Subsection (1)(b) to (d)** does not apply to a defendant who has been granted Police bail with a drug or alcohol condition.
- 30W Information obtained from drug or alcohol testing or monitoring** 25
- (1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under **section 30T(1)**—
- (a) may be used for all or any of the following purposes:
- (i) verifying compliance by the defendant with a drug or alcohol condition: 30
- (ii) detecting non-compliance by the defendant with a drug or alcohol condition, and providing evidence of that non-compliance:
- (iii) verifying that the defendant has not tampered or otherwise interfered with ~~the a~~ a drug or alcohol monitoring device:
- (iv) any purpose for which the defendant has requested, or consented to, the information being used; and 35
- (b) must not, except at the request or with the consent of the defendant, be used as evidence that the defendant committed an offence (including,

without limitation, an offence against the Misuse of Drugs Act 1975), or for any other purpose not listed in **paragraph (a)**.

- (2) A judicial officer or court may, in the absence of evidence that is available to the judicial officer or court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
- (a) is accurate; and
 - (b) was obtained in the manner required by **sections 30T** and **30U**.

Offence after defendant granted bail

- 9 ~~New section 36B inserted (Offence to refuse authorised person entry for certain purposes related to continuous monitoring)~~ 10

After section 36A, insert:

~~36B Offence to refuse authorised person entry for certain purposes related to continuous monitoring~~

- (1) This section applies to a defendant—
- (a) on bail with a drug or alcohol condition; and
 - (b) required, under ~~section 30T(1)(b)~~, to submit to continuous monitoring of his or her compliance with the condition.
- (2) The defendant commits an offence if the defendant refuses or fails, without reasonable excuse, to allow an authorised person to enter the defendant's residential address for all or any of the following purposes:
- (a) attaching a drug or alcohol monitoring device to, or removing the device from, the defendant;
 - (b) installing or removing any equipment necessary for the operation of the drug or alcohol monitoring device;
 - (c) servicing or inspecting the drug or alcohol monitoring device or the equipment necessary for the operation of the device.
- (3) A defendant who commits an offence against ~~subsection (2)~~ is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In ~~subsection (2)~~, ~~authorised person~~ means—
- (a) an authorised person (as defined in ~~section 30T(6)~~) who has identified himself or herself to the defendant; or
 - (b) a person accompanying a person described in ~~paragraph (a)~~; or
 - (c) a person who—
 - (i) has identified himself or herself to the defendant; and

- (ii) ~~is authorised in writing by an authorised person (as defined in **section 30T(6)**) to enter the defendant’s residential address for the purpose of—~~
- ~~(A) servicing or inspecting a drug or alcohol monitoring device;~~
 - ~~or~~
 - ~~(B) servicing, inspecting, installing, or removing any equipment necessary for the operation of the device; and~~
- (iii) has produced that written authority to the defendant.

5

Rules

10 Section 73 amended (Rules) 10

Replace the heading to section 73 with “**Rules relating to practice and procedure of courts**”.

11 New sections 73AA to 73AAC inserted

After section 73, insert:

73AA Rules about drug and alcohol testing and monitoring 15

(1) The Commissioner may, by notice in the *Gazette*, make rules for all or any of the following purposes:

(a) prescribing, for the purposes of **section 30T(1)(a)**, 1 or more types of testing procedure that defendants on bail with a drug or alcohol condition may be required to undergo: 20

(b) specifying how often each of the prescribed testing procedures may be carried out:

(c) prohibiting authorised persons from requiring a defendant to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances: 25

(d) prescribing, for the purposes of **section 30T(1)(b)**, 1 or more types of drug or alcohol monitoring device that may be connected to a defendant on bail with a drug or alcohol condition:

(e) specifying restrictions as to how often, ~~or~~ and for how long, continuous monitoring may be carried out: 30

(f) prescribing, ~~for any 1 or more of the following, minimum levels of controlled drugs or alcohol, or both, that must be present in a bodily sample collected from a defendant in order for the sample to be used as evidence that the defendant from whom the sample is taken has breached a drug or alcohol condition:~~ 35

(i) controlled drugs:

(ii) psychoactive substances:

	(iii) alcohol.	
(2)	In this section and in sections 73AAB and 73AAC , Commissioner means the Commissioner of Police.	
	73AAB Further provisions concerning rules about drug and alcohol testing and monitoring	5
(1)	Rules made under section 73AA(1)(a) may, without limitation, prescribe testing procedures that do all or any of the following:	
	(a) include, as part of the procedure, <u>either or both of the following</u> :—	
	(i) breath screening; and	
	(ii) the collection and analysis of a bodily sample:	10
	(b) require a defendant to be supervised by a person of the same sex as the defendant during the collection of a bodily sample required for testing:	
	(c) provide for a defendant to elect, if the defendant meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a prescribed <u>prescribed in the rules</u> .	15
(2)	The Commissioner may make rules under section 73AA(1) only if satisfied that the rules—	
	(a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and	20
	(b) allow for defendants to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and	
	(c) ensure that defendants liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.	
(3)	Subsection (1)(b) overrides subsection (2)(c) .	25
	73AAC Availability of rules about drug or and alcohol testing and monitoring, and status under Legislation Act 2012	
(1)	The Commissioner must ensure that any rules made under section 73AA are, while in force, made available—	
	(a) on an Internet site that is maintained by or on behalf of the New Zealand Police and that is, so far as practicable, publicly available free of charge; and	30
	(b) for public inspection free of charge; and	
	(c) for purchase at a reasonable price.	
(2)	Rules made under section 73AA are a disallowable instruments, but not a legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.	35

11A New Schedule 1AA inserted

Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 1** of this Act.

Part 2
Amendments to Parole Act 2002

5

12 **Principal Act**

This **Part** amends the Parole Act 2002 (the **principal Act**).

Definitions

13 **Section 4 amended (Interpretation)**

In section 4(1), insert in their appropriate alphabetical order: 10

bodily sample, for a person, means—

- (a) a sample of the person's blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

controlled drug has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975 15

drug or alcohol condition means a special condition of parole, a special condition on release under section 17 at the release date of a long-term sentence, or a condition of an extended supervision order—

- (a) that is imposed under section 15(3)(ba), 18(2)(b), or 107K(1); and
- (b) that prohibits an offender from either or both— doing 1 or more of the following: 20
 - (i) using (as defined in this section) a controlled drug:
 - (ia) using a psychoactive substance:
 - (ii) consuming alcohol

drug or alcohol monitoring device means a device, connected to a person's body, that is able to detect the presence in the person's body of— 1 or more of the following: 25

- (a) a controlled drug used by the person; ~~or:~~
- (ab) a psychoactive substance used by the person:
- (b) alcohol consumed by the person 30

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

medical officer means— 35

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

(a) a nurse; or

(b) a medical laboratory technologist

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

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

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

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

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

13A 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 1** have effect according to their terms.

Conditions on parole or release

14 Section 15 amended (Special conditions)

After section 15(3)(b), insert:

(ba) ~~conditions prohibiting the offender from using (as defined in section 4(1)) a controlled drug, from consuming alcohol, or from both doing 1 or more of the following:~~

(i) using (as defined in section 4(1)) a controlled drug:

(ii) using a psychoactive substance:

(iii) consuming alcohol:

15 New sections 16A to 16D and cross-heading inserted

After section 16, insert:

Drug or alcohol conditions

16A Imposition, and effect, of drug or alcohol condition

- (1) This section applies if the Board imposes a drug or alcohol condition on an offender under section 15(3)(ba), 18(2)(b), or 107K(1). 5
- (2) The Board cannot direct, indicate, or require that the offender undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the offender to comply with all requirements arising from an authorised person giving the defendant notice under **section 16B(2)**. 10
- (3) The Board must advise the offender that the offender must do either or both of the following things if required to do so by notice given by an authorised person under **section 16B(2)**:
- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol: 15
- (b) submit to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the offender's body.

16B Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring 20

- (1) This section applies to an offender who—
- (a) is on parole with a drug or alcohol condition; or
- (b) has been released under section 17, at the release date of a long-term sentence, with a drug or alcohol condition; or
- (c) is subject to an extended supervision order with a drug or alcohol condition. 25
- (2) An authorised person may, by notice given orally or in writing to an offender to whom this section applies, require the offender to do either or both of the following:
- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under **section 74A(a)**: 30
- (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under **section 74A(d)**. 35
- (3) In exercising his or her discretion under **subsection (2)**, an authorised person—

- (a) must comply with any rules made under **section 74A**; and
- (b) may determine—
- (i) whether to require the offender to undergo a prescribed testing procedure or to submit to continuous monitoring; and
- (ii) which of the prescribed testing procedures, if any, the offender is required to undergo. 5
- (4) A determination under **subsection (3)(b)(i)** may be made in respect of—
- (a) an offender to whom this section applies; or
- (b) an offender to whom this section applies who the authorised person has cause to suspect has breached the condition. 10
- (5) Only a medical practitioner or medical officer may collect a blood sample from an offender under this section.
- (6) If a notice under **subsection (2)** is given orally, the authorised person who gives the notice must record it in writing, and give a copy to the offender, as soon as is reasonably practicable. 15
- (7) In this section and in **sections 16C** and **16D**, **authorised person** means a person who is—
- (a) a constable; or
- (b) an employee of the Department of Corrections authorised by the chief executive of that department to require offenders to undergo testing, or submit to continuous monitoring, under this section. 20
- 16C Where prescribed testing procedure may be carried out**
- (1) An authorised person may require an offender to whom **section 16B** applies to undergo testing at the place where the offender is given notice under **section 16B(2)**. 25
- (2) **Subsection (1)** applies even if the place where the offender is given notice is—
- (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
- (b) a place that is wholly or partly outside a dwelling house, or any other building, at the defendant’s residential address. 30
- (3) However, an offender cannot be required to undergo a prescribed testing procedure in a place specified in **subsection (2)(a)** or **(b)** if the testing procedure involves the collection of blood or urine.
- (4) An authorised person may, if **subsection (3)** applies, or if it is not reasonably practicable to require the offender to undergo testing at the place where the offender is given notice, require the offender to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the offender to undergo testing. 35

16D	Information obtained from drug or alcohol testing or monitoring	
(1)	Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under section 16B(2) —	
(a)	may be used for all or any of the following purposes:	
(i)	verifying compliance by the offender with a drug or alcohol condition:	5
(ii)	detecting non-compliance by the offender with a drug or alcohol condition, and providing evidence of that non-compliance:	
(iii)	verifying that the offender has not tampered or otherwise interfered with the a drug or alcohol monitoring device:	10
(iv)	<u>any purpose for which the offender has requested to use the information or consented to its use; and</u>	
(b)	must not, <u>except at the request or with the consent of the offender,</u> be used—	
(i)	as evidence that the offender committed an offence (including, without limitation, an offence against the Misuse of Drugs Act 1975), other than an offence against sections 71, 71A , 107T, or 107TA ; or	15
(ii)	for any other purpose not listed in paragraph (a) .	
(2)	The Board or a court may, in the absence of evidence that is available to the Board or court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—	20
(a)	is accurate; and	
(b)	was obtained in the manner required by sections 16B and 16C .	25

Offences: parole or release

16 **New section 71A inserted (Offences related to drug or alcohol conditions)**

After section 71, insert:

71A	Offences related to drug or alcohol conditions	
(1)	An offender on parole, or released under section 17 at the release date of a long-term sentence, with a drug or alcohol condition commits an offence if the offender—	30
(a)	refuses or fails, without reasonable excuse,—	
(i)	to undergo a testing procedure when required to do so under sections 16B(2)(a) and 16C ; or	35
(ii)	to submit to continuous monitoring when required to do so under section 16B(2)(b) ; or	

- (iii) to accompany an authorised person, when required to do so under **section 16C(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
 - (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 16B(2)(a)** for the purposes of a prescribed testing procedure; or 5
 - (c) tampers with a drug or alcohol monitoring device required under **section 16B(2)(b)** or does anything with the intention of interfering with the functioning of that device.
- (2) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000. 10

17 New section 72A inserted (Offence to refuse authorised person entry for certain purposes related to continuous monitoring)

After section 72, insert: 15

72A Offence to refuse authorised person entry for certain purposes related to continuous monitoring

- (1) This section applies to an offender who is—
- (a) on parole, or released under section 17 at the release date of a long term sentence, or subject to an extended supervision order, with a drug or alcohol condition; and 20
 - (b) required, under **section 16B(2)(b)**, to submit to continuous monitoring of the offender's compliance with the condition.
- (2) The offender commits an offence if the offender refuses or fails, without reasonable excuse, to allow an authorised person to enter the offender's residential address for all or any of the following purposes: 25
- (a) attaching a drug or alcohol monitoring device to, or removing the device from, the offender;
 - (b) ~~installing or removing any equipment necessary for the operation of the drug or alcohol monitoring device:~~ 30
 - (c) ~~servicing or inspecting the drug or alcohol monitoring device or the equipment necessary for the operation of the device.~~
 - (b) servicing or inspecting the device:
 - (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device. 35
- (3) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In **subsection (2)**, **authorised person** means— any of the following:

- (a) an authorised person (as defined in **section 16B(7)**) who has ~~identified himself or herself~~ produced evidence of that person's identity to the offender; ~~or;~~
- (b) a person accompanying a person described in **paragraph (a)**; ~~or;~~
- (c) a person who—
 - (i) ~~has identified himself or herself~~ produced evidence of that person's identity to the offender; and
 - (ii) is authorised in writing by an authorised person (as defined in **section 16B(7)**) to enter the offender's residential address for the purpose of—all or any of the following purposes:
 - (AA) ~~attaching a drug or alcohol monitoring device to, or removing the device from,~~ the offender;
 - (A) servicing or inspecting ~~a drug or alcohol monitoring the device;~~ ~~or;~~
 - (B) ~~servicing, inspecting, installing, or removing~~ installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
 - (iii) has produced that written authority to the offender.

Rules

- 18 New sections 74A to 74C and cross-heading inserted** 20
After section 74, insert:

Rules

74A Rules about drug and alcohol testing and monitoring

- The chief executive may, by notice in the *Gazette*, make rules for all or any of the following purposes: 25
- (a) prescribing, for the purposes of **section 16B(2)(a)**, 1 or more types of testing procedure that an offender to whom **section 16B** applies may be required to undergo;
 - (b) specifying how often each of the prescribed testing procedures may be carried out: 30
 - (c) prohibiting authorised persons from requiring an offender to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances;
 - (d) prescribing, for the purposes of **section 16B(2)(b)**, 1 or more types of drug or alcohol monitoring device that may be connected to an offender to whom **section 16B** applies: 35

(e)	specifying restrictions as to how often, or <u>and</u> for how long, continuous monitoring may be carried out:	
(f)	prescribing, for any 1 or more of the following, minimum levels of alcohol or controlled drugs, or both, that must be present in a bodily sample collected from an offender in order for the sample to be used as evidence that the offender from whom the sample is taken has breached a drug or alcohol condition:	5
	(i) <u>controlled drugs</u> :	
	(ii) <u>psychoactive substances</u> :	
	(iii) <u>alcohol</u> .	10
74B	Further provisions concerning rules about drug and alcohol testing and monitoring	
(1)	Rules made under section 74A(a) may, without limitation, prescribe testing procedures that do all or any of the following:	
(a)	include, as part of the procedure, <u>either or both of the following</u> :—	15
	(i) <u>breath screening</u> ; and :	
	(ii) the collection and analysis of breath, blood, hair, urine, or any other bodily sample:	
(b)	require an offender to be supervised by a person of the same sex as the offender during the collection of a bodily sample required for testing:	20
(c)	provide for an offender to elect, if the offender meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested <u>in a manner prescribed in the rules</u> .	
(2)	The chief executive may make rules under section 74A only if satisfied that the rules—	25
	(a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and	
	(b) allow for offenders to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and	30
	(c) ensure that offenders liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.	
(3)	Subsection (1)(b) overrides subsection (2)(c) .	
74C	Availability of rules relating to <u>about</u> drug and alcohol testing and monitoring, and status under Legislation Act 2012	
(1)	The chief executive must ensure that any rules made under section 74A are, while in force, made available—	35

- (a) on an Internet site that is maintained by or on behalf of the Department of Corrections and that is, so far as practicable, publicly available free of charge; and
 - (b) for public inspection free of charge; and
 - (c) for purchase at a reasonable price. 5
- (2) Rules made under **section 74A** are a disallowable instruments, but not a legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Offences: extended supervision orders

19 New section 107TA inserted (Offences related to drug or alcohol conditions) 10

After section 107T, insert:

107TA Offences related to drug or alcohol conditions

- (1) An offender who is subject to an extended supervision order with a drug or alcohol condition commits an offence if the offender— 15
- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 16B(2)(a)** and **16C**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 16B(2)(b)**; or 20
 - (iii) to accompany an authorised person, when required to do so under **section 16C(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
 - (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 16B(2)(a)** for the purposes of a prescribed testing procedure; or 25
 - (c) tampers with a drug or alcohol monitoring device required under **section 16B(2)(b)** or does anything with the intention of interfering with the functioning of that device.
- (2) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years. 30

19A New Schedule 1 inserted

Before the Schedule, insert as Schedule 1 the **Schedule 1** set out in **Schedule 2** of this Act.

Part 3

Amendments to Sentencing Act 2002

20 Principal Act

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

Interpretation

5

21 Section 4 amended (Interpretation)

In section 4(1), insert in their appropriate alphabetical order:

bodily sample, for a person, means—

- (a) a sample of the person's blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

10

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

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

15

- (a) that is imposed under section 52(2)(bb), 54I(3)(ba), 80D(4)(ca), 80N(2)(b), or 93(1) or (2)(b); and
- (b) that prohibits an offender from either or both— doing 1 or more of the following:
 - (i) using (as defined in this section) a controlled drug:
 - (ia) using a psychoactive substance:
 - (ii) consuming alcohol

20

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

25

- (a) a controlled drug used by the person; ~~or:~~
- (ab) a psychoactive substance used by the person:
- (b) alcohol consumed by the person

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

30

medical officer means—

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

35

(c) a medical laboratory technologist

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

5

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

10

post-imprisonment condition means a special condition that is imposed under section 93(1) or (2)(b) on an offender sentenced to a short term of imprisonment of more than 12 months but not more than 24 months, but only if, and so far as, the condition is one that applies to the offender after the sentence expiry date

15

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

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

20

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

21A New section 4A inserted (Transitional, savings, and related provisions)

After section 4, insert:

25

4A Transitional, savings, and related provisions

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

Supervision

22 Section 52 amended (Other special conditions)

30

(1) After section 52(2)(ba), insert:

(bb) conditions prohibiting the offender from ~~using a controlled drug, from consuming alcohol, or from both~~ doing 1 or more of the following:

(i) using (as defined in section 4(1)) a controlled drug:

(ii) using a psychoactive substance:

(iii) consuming alcohol:

35

(2) After section 52(3A), insert:

- (3B) However, subsection (3A) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under **section 80ZO(2)(b)**, to submit to continuous monitoring.

Intensive supervision

23 Section 54I amended (Other special conditions) 5

- (1) After section 54I(3)(b), insert:
- (ba) ~~conditions prohibiting the offender from using a controlled drug, from consuming alcohol, or from both doing 1 or more of the following:~~
- (i) using (as defined in section 4(1)) a controlled drug:
 - (ii) using a psychoactive substance:
 - (iii) consuming alcohol:

- (2) After section 54I(4), insert:
- (4A) However, subsection (4)(c) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under **section 80ZO(2)(b)**, to submit to continuous monitoring. 15

Offence: supervision

24 New section 70AA inserted (Offences related to sentences of supervision with drug or alcohol conditions)

After section 70, insert:

70AA Offences related to sentences of supervision with drug or alcohol conditions 20

An offender who is subject to a sentence of supervision with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000, if the offender— 25

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 80ZO(2)(a)** and **80ZP**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or 30
 - (iii) to accompany an authorised person, when required to do so under **section 80ZP(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
- (b) does anything with the intention of diluting or contaminating a sample required under **section 80ZO(2)(a)** for the purposes of a prescribed testing procedure; or 35

- (c) tampers with a drug or alcohol monitoring device required under **section 80ZO(2)(b)** or does anything with the intention of interfering with the functioning of that device.

Offence: intensive supervision

25 New section 70B inserted (Offences related to sentences of intensive supervision with drug or alcohol conditions) 5

After section 70A, insert:

70B Offences related to sentences of intensive supervision with drug or alcohol conditions

An offender who is subject to a sentence of intensive supervision with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,500, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 80ZO(2)(a)** and **80ZP**; or 15
 - (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or
 - (iii) to accompany an authorised person, when required to do so under **section 80ZP(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or 20
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a)** for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under **section 80ZO(2)(b)** or does anything with the intention of interfering with the functioning of that device. 25

Home detention

26 Section 80D amended (Special conditions of sentence of home detention)

After section 80D(4)(c), insert: 30

- (ca) ~~conditions prohibiting the offender from using a controlled drug or consuming alcohol or both~~ doing 1 or more of the following:
 - (i) using (as defined in section 4(1)) a controlled drug:
 - (ii) using a psychoactive substance:
 - (iii) consuming alcohol: 35

27 Section 80P amended (Special post-detention conditions)

(1) After section 80P(2)(b), insert:

- (ba) ~~conditions prohibiting the offender from using a controlled drug or consuming alcohol or both~~ doing 1 or more of the following:
- (i) using (as defined in section 4(1)) a controlled drug:
 - (ii) using a psychoactive substance:
 - (iii) consuming alcohol:

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(2) After section 80P(4), insert:

- (4A) However, subsection (4) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under **section 80ZO(2)(b)**, to submit to continuous monitoring.

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*Offences: home detention***28 New section 80SA inserted (Offences related to sentences of home detention with drug or alcohol conditions)**

After section 80S, insert:

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80SA Offences related to sentences of home detention with drug or alcohol conditions

An offender who is subject to a sentence of home detention with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000, if the offender—

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- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 80ZO(2)(a)** and **80ZP**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or
 - (iii) to accompany an authorised person, when required to do so under **section 80ZP(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
- (b) does anything with the intention of diluting or contaminating a sample required under **section 80ZO(2)(a)** for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under **section 80ZO(2)(b)** or does anything with the intention of interfering with the functioning of that device.

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29 New section 80UA inserted (Offences related to post-detention conditions that are drug or alcohol conditions)

After section 80U, insert:

80UA Offences related to post-detention conditions that are drug or alcohol conditions

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An offender who is subject to a post-detention condition that is a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,500, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under **sections 80ZO(2)(a)** and **80ZP**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or
 - (iii) to accompany an authorised person, when required to do so under **section 80ZP(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a)** for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under **section 80ZO(2)(b)** or does anything with the intention of interfering with the functioning of that device.

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Conditions, offences, and rules related to community-based offenders

30 New subpart 2C of Part 2 inserted

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After section 80ZM, insert:

Subpart 2C—Drug or alcohol conditions

80ZN Imposition, and effect, of drug or alcohol condition

- (1) This section applies if a court imposes a drug or alcohol condition on an offender under section **52(2)(bb)**, **54I(3)(ba)**, **80D(4)(ca)**, 80N(2)(b), or 93(1) or (2)(b).
- (2) The court cannot direct, indicate, or require that the offender undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the offender to comply with all requirements arising from an authorised person giving the offender notice under **section 80ZO(2)**.

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- (3) The court must advise the offender that the offender must do either or both of the following things if required to do so by notice given by an authorised person under **section 80ZO(2)**:
- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol: 5
 - (b) submit to continuous monitoring of the offender’s compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the offender’s body.
- 80ZO Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring** 10
- (1) This section applies to an offender who is—
- (a) subject to a sentence of supervision, intensive supervision, or home detention with a drug or alcohol condition; or
 - (b) subject to a post-detention condition or a post-imprisonment condition that is a drug or alcohol condition. 15
- (2) An authorised person may, by notice given orally or in writing to an offender to whom this section applies, require the offender to do either or both of the following:
- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under **section 80ZS(1)(a)**: 20
 - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the offender’s compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under **section 80ZS(1)(d)**. 25
- (3) In exercising his or her discretion under **subsection (2)**, an authorised person—
- (a) must comply with any rules made under **section 80ZS**; and
 - (b) may determine—
 - (i) whether to require the offender to undergo a prescribed testing procedure or to submit to continuous monitoring; and 30
 - (ii) which of the prescribed testing procedures, if any, the offender is required to undergo.
- (4) A determination under **subsection (3)(b)(i)** may be made in respect of—
- (a) an offender to whom this section applies; or 35
 - (b) an offender to whom this section applies who the authorised person has cause to suspect has breached the condition.
- (5) Only a medical practitioner or medical officer may collect a blood sample from an offender under this section.

- (6) If a notice under **subsection (2)** is given orally, the authorised person who ~~gave~~ gives the notice must record it in writing, and give a copy to the offender, as soon as is reasonably practicable.
- (7) In this section and in **sections 80ZP** and **80ZQ**, **authorised person** means a person who is— 5
- (a) a constable; or
 - (b) an employee of the Department of Corrections authorised by the chief executive of that department to require offenders to undergo testing or monitoring.

80ZP Where prescribed testing procedure may be carried out 10

- (1) An authorised person may require an offender to whom **section 80ZO** applies to undergo testing at the place where the offender is given notice under **section 80ZO(2)**.
- (2) **Subsection (1)** applies even if the place where the ~~defendant~~ offender is given notice is— 15
- (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
 - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the offender's residential address.
- (3) However, an offender cannot be required to undergo a prescribed testing procedure in a place specified in **subsection (2)(a)** or **(b)** if the testing procedure involves the collection of blood or urine. 20
- (4) An authorised person may, if **subsection (3)** applies, or if it is not reasonably practicable to require the offender to undergo testing at the place where the offender has been given notice, require the offender to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the offender to undergo testing. 25

80ZQ Information obtained from drug ~~or~~ and alcohol testing or monitoring

- (1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under **section 80ZO(2)**— 30
- (a) may be used for all or any of the following purposes:
 - (i) verifying compliance by the offender with a drug or alcohol condition;
 - (ii) detecting non-compliance by an offender with a drug or alcohol condition, and providing evidence of that non-compliance: 35
 - (iii) verifying that the offender has not tampered or otherwise interfered with ~~the~~ a drug or alcohol monitoring device;
 - (iv) any purpose for which the offender has requested to use the information or consented to its use; and

- (b) must not, except at the request or with the consent of the offender, be used—
- (i) as evidence that the offender committed an offence ~~(including, without limitation, an offence against the Misuse of Drugs Act 1975)~~, other than an offence against any of sections 70 to **70B**, 80S, **80SA**, 80U, **80UA**, 96, and **96A**; or
 - (ii) for any other purpose not listed in **paragraph (a)**.
- (2) A court may, in the absence of evidence that is available to the court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
- (a) is accurate; and
 - (b) was obtained in the manner required by **sections 80ZO** and **80ZP**.
- 80ZR Offence to refuse authorised person entry to offender’s residential address**
- (1) This section applies to an offender who is—
- (a) subject to a sentence of supervision, intensive supervision, or home detention with a drug or alcohol condition, or subject to a post-detention condition or post-imprisonment condition that is a drug or alcohol condition; and
 - (b) required, under **section 80ZO(2)(b)**, to submit to continuous monitoring ~~of his or her~~ the offender’s compliance with the condition.
- (2) The offender commits an offence if the offender refuses or fails, without reasonable excuse, to allow an authorised person to enter the offender’s residential address for all or any of the following purposes:
- (a) attaching a drug or alcohol monitoring device to, or removing the device from, the offender;
 - (b) ~~installing or removing any equipment necessary for the operation of the drug or alcohol monitoring device;~~
 - (e) ~~servicing or inspecting the drug or alcohol monitoring device or the equipment necessary for the operation of the device.~~
 - (b) servicing or inspecting the device;
 - (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.
- (3) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In **subsection (2)**, **authorised person** means— any of the following:

- (a) an authorised person (as defined in **section 80ZO(7)**) who has ~~identified himself or herself~~ produced evidence of that person's identity to the offender; ~~or~~;
- (b) a person accompanying a person described in **paragraph (a)**; ~~or~~;
- (c) a person who—
 - (i) ~~has identified himself or herself~~ produced evidence of that person's identity to the offender; and
 - (ii) is authorised in writing by an authorised person (as defined in **section 80ZO(7)**) to enter the offender's residential address for the purpose of— all or any of the following purposes:
 - (AA) ~~attaching a drug or alcohol monitoring device to, or removing the device from, the offender:~~
 - (A) servicing or inspecting a drug or alcohol monitoring the device; ~~or~~;
 - (B) ~~servicing, inspecting, installing, or removing~~ installing, re-
moving, servicing, or inspecting any equipment necessary for the operation of the device; and
 - (iii) has produced that written authority to the offender.

80ZS Rules about drug and alcohol testing and monitoring

- (1) The chief executive may, by notice in the *Gazette*, make rules for all or any of the following purposes:
 - (a) prescribing, for the purposes of **section 80ZO(2)(a)**, 1 or more types of testing procedure that an offender to whom **section 80ZO** applies may be required to undergo;
 - (b) specifying how often each of the prescribed testing procedures may be carried out;
 - (c) prohibiting authorised persons from requiring a defendant an offender to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances;
 - (d) prescribing, for the purposes of **section 80ZO(2)(b)**, 1 or more types of drug or alcohol monitoring device that may be connected to an offender to whom **section 80ZO** applies;
 - (e) specifying restrictions as to how often, ~~or~~ and for how long, continuous monitoring may be carried out;
 - (f) prescribing, for any 1 or more of the following, minimum levels of alcohol or controlled drugs, or both, that must be present in a bodily sample collected from an offender in order for the sample to be used as evidence that the offender ~~from whom the sample is taken~~ has breached a drug or alcohol condition;

(i) <u>controlled drugs:</u>	
(ii) <u>psychoactive substances:</u>	
(iii) <u>alcohol.</u>	
(2) In this section and in sections 80ZT and 80ZU , chief executive means the chief executive of the Department of Corrections.	5
80ZT Further provisions concerning rules about drug and alcohol testing and monitoring	
(1) Rules made under section 80ZS(1)(a) may, without limitation, prescribe testing procedures that do all or any of the following:	
(a) include, as part of the procedure,— <u>either or both of the following:</u>	10
(i) <u>breath screening; and</u>	
(ii) the collection and analysis of a bodily sample:	
(b) require an offender to be supervised by a person of the same sex as the offender during the collection of a bodily sample required for testing:	
(c) provide for an offender to elect, if the offender meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a <u>prescribed manner prescribed in the rules.</u>	15
(2) The chief executive may make rules under section 80ZS(1) only if satisfied that the rules—	20
(a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and	
(b) allow for offenders to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and	
(c) ensure that offenders liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.	25
(3) Subsection (1)(b) overrides subsection (2)(c) .	
80ZU Availability of rules relating to <u>about</u> drug and alcohol testing and monitoring, and status under Legislation Act 2012	
(1) The chief executive must ensure that any rules made under section 80ZS are, while in force, made available—	30
(a) on an Internet site <u>that is maintained by or on behalf of the Department of Corrections and that is, so far as practicable, publicly available free of charge;</u> and	
(b) for public inspection free of charge; and	35
(c) for purchase at a reasonable price.	

- (2) Rules made under **section 80ZS** are a disallowable instruments, but not a legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Offence: post-imprisonment conditions

30A Section 93 amended (Imposition of conditions on release of offender sentenced to imprisonment for short term) 5

After section 93(2B), insert:

- (2C) Subsection (2B) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under **section 80ZO(2)(b)**, to submit to continuous monitoring. 10

31 New section 96A inserted (Offences related to post-imprisonment conditions that are drug or alcohol conditions)

After section 96, insert:

96A Offences related to post-imprisonment conditions that are drug or alcohol conditions 15

An offender who is subject to a post-imprisonment condition that is a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000, if the offender—

- (a) refuses or fails, without reasonable excuse,— 20
- (i) to undergo a testing procedure when required to do so under **sections 80ZO(2)(a)** and **80ZP**; or
 - (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or
 - (iii) to accompany an authorised person, when required to do so under **section 80ZP(4)**, to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or 25
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a)** for the purposes of a prescribed testing procedure; or 30
- (c) tampers with a drug or alcohol monitoring device required under **section 80ZO(2)(b)** or does anything with the intention of interfering with the functioning of that device.

31A New Schedule 1AA inserted

Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 3** of this Act. 35

Part 4**Amendments to Public Safety (Public Protection Orders) Act 2014****32 Principal Act**

This **Part** amends the Public Safety (Public Protection Orders) Act 2014 (the **principal Act**).

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33 Section 3 amended (Interpretation)

(1) In section 3, insert in their appropriate alphabetical order:

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

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

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

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

(2) In section 3, definition of **prohibited item**, replace paragraphs (c) and (d) with:

(c) any controlled drugs and precursor substances, except for medicines prescribed for the resident under the Medicines Act 1981:

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(d) any psychoactive substance:

34 New section 92A inserted (Interpretation)

In Part 1, after the subpart 7 heading, insert:

92A Interpretation

In this subpart, unless the context otherwise requires,—

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bodily sample means—

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

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

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

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(a) a controlled drug used by the person:

(b) a psychoactive substance used by the person:

(c) alcohol consumed by the person

drug or alcohol requirement means a requirement imposed under section 94 on a person under a protective supervision order that prohibits the person from doing 1 or more of the following:

- (a) using a controlled drug (other than a medicine prescribed for the person under the Medicines Act 1981):
- (b) using a psychoactive substance:
- (c) consuming alcohol

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

medical officer means—

- (a) a person acting in a hospital who, in the normal course of the person’s duties, takes blood specimens; or
- (b) a nurse; or
- (c) a medical laboratory technologist

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

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

35 New sections 95A to 95D and cross-headings inserted

After section 95, insert:

Drug or alcohol requirements

95A Imposition, and effect, of drug or alcohol requirement

- (1) This section applies if a court imposes a drug or alcohol requirement on a person subject to a protective supervision order.
- (2) The court cannot direct, indicate, or require that the person subject to the order undergo or submit to drug or alcohol testing or continuous monitoring, but the requirement means that the person must comply with all directions arising from an authorised person giving the person notice under **section 95B(2)**.
- (3) The court must advise the person that the person must do either or both of the following things if directed to do so by notice given by an authorised person under **section 95B(2)**:

**Drug and Alcohol Testing of Community-based
Offenders and Bailees Legislation Bill**

Part 4 cl 35

- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol:
- (b) submit to continuous monitoring of the person's compliance with the drug or alcohol requirement through a drug or alcohol monitoring device connected to the person's body. 5
- 95B Person with drug or alcohol requirement may be directed to undergo testing or submit to continuous monitoring**
- (1) This section applies to a person who is subject to a protective supervision order with a drug or alcohol requirement.
- (2) An authorised person may, by notice given orally or in writing to a person to whom this section applies, direct the person to do either or both of the following: 10
- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under **section 103C(a)**: 15
- (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the person's compliance with the drug or alcohol requirement through a drug or alcohol monitoring device of a type prescribed in rules made under **section 103C(d)**.
- (3) In exercising his or her discretion under **subsection (2)**, an authorised person— 20
- (a) must comply with any rules made under **section 103C**; and
- (b) may determine—
- (i) whether to direct the person to undergo a prescribed testing procedure or to submit to continuous monitoring; and 25
- (ii) which of the prescribed testing procedures, if any, the person is directed to undergo.
- (4) A determination under **subsection (3)(b)(i)** may be made in respect of—
- (a) a person to whom this section applies; or
- (b) a person to whom this section applies who the authorised person has cause to suspect has breached the requirement. 30
- (5) Only a medical practitioner or medical officer may collect a blood sample from a person under this section.
- (6) If a notice under **subsection (2)** is given orally, the authorised person who gives the notice must record it in writing, and give a copy to the person to whom this section applies, as soon as is reasonably practicable. 35
- (7) In this section and in **sections 95C, 95D, and 103A**, authorised person means a person who is—
- (a) a constable; or

- (b) an employee of the department authorised by the chief executive to direct persons to whom this section applies to undergo testing or monitoring.

95C Where prescribed testing procedure may be carried out

- (1) An authorised person may require a person to whom **section 95B** applies to undergo testing at the place where the person is given notice under **section 95B(2)**. 5
- (2) **Subsection (1)** applies even if the place where the person is given notice is—
- (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or 10
- (b) a place that is wholly or partly outside a dwelling house, or any other building, at the person’s residential address.
- (3) However, a person cannot be required to undergo a prescribed testing procedure in a place specified in **subsection (2)(a)** or **(b)** if the testing procedure involves the collection of blood or urine. 15
- (4) An authorised person may, if **subsection (3)** applies, or if it is not reasonably practicable to require the person to undergo testing at the place where the person has been given notice, require the person to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the person to undergo testing. 20

95D Information obtained from drug and alcohol testing or monitoring

- (1) Information obtained following a direction under **section 95B(2)** (from a prescribed testing procedure or a drug or alcohol monitoring device) about a person subject to a protected supervision order with a drug or alcohol requirement— 25
- (a) may be used for all or any of the following purposes:
- (i) verifying compliance by the person with the drug or alcohol requirement;
- (ii) detecting non-compliance by the person with the drug or alcohol requirement, and providing evidence of that non-compliance; 30
- (iii) verifying that the person has not tampered or otherwise interfered with a drug or alcohol monitoring device;
- (iv) any purpose for which the person has requested to use the information or consented to its use; and
- (b) must not, except at the request or with the consent of the person, be used— 35
- (i) as evidence that the person committed an offence, other than an offence against section 103, **103A**, or **103B**; or
- (ii) for any other purpose not listed in **paragraph (a)**.

- (2) A court may, in the absence of evidence that is available to the court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
- (a) is accurate; and
- (b) was obtained in the manner required by **sections 95B and 95C.**

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Variation of requirements

36 New cross-heading above section 99 inserted

After section 98, insert:

Review of order

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37 New cross-heading above section 103 inserted

After section 102, insert:

Offences

38 New sections 103A to 103E and cross-heading inserted

After section 103, insert:

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103A Offences related to drug or alcohol requirements

- (1) A person who is subject to a protective supervision order with a drug or alcohol requirement commits an offence if the person—
- (a) refuses or fails, without reasonable excuse,—
- (i) to undergo a testing procedure when directed to do so under **section 95B(2)(a)**; or
- (ii) to submit to continuous monitoring when directed to do so under **section 95B(2)(b)**; or
- (iii) to accompany an authorised person, when required to do so under **section 95C(4)**, to a place where it is likely that it will be reasonably practicable for the person subject to the order to undergo testing; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 95B(2)(a)** for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under **section 95B(2)(b)** or does anything with the intention of interfering with the functioning of that device.
- (2) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years.

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103B Offence to refuse authorised person entry to residential address

- (1) This section applies to a person who is—
- (a) subject to a protective supervision order with a drug or alcohol requirement; and
 - (b) directed, under **section 95B(2)(b)**, to submit to continuous monitoring of the person’s compliance with the requirement. 5
- (2) A person to whom this section applies commits an offence if the person refuses or fails, without reasonable excuse, to allow an authorised person to enter the person’s residential address for all or any of the following purposes:
- (a) attaching a drug or alcohol monitoring device to, or removing the device from, the person: 10
 - (b) servicing or inspecting the device:
 - (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.
- (3) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000. 15
- (4) In **subsection (2)**, **authorised person** means any of the following:
- (a) an authorised person (as defined in **section 95B(7)**) who has produced evidence of that person’s identity to the person to whom this section applies: 20
 - (b) a person accompanying a person described in **paragraph (a)**:
 - (c) a person who—
 - (i) has produced evidence of that person’s identity to the person to whom this section applies; and 25
 - (ii) is authorised in writing by an authorised person (as defined in **section 95B(7)**) to enter the residential address of the person to whom this section applies for all or any of the following purposes:
 - (A) attaching a drug or alcohol monitoring device to, or removing the device from, the person: 30
 - (B) servicing or inspecting the device:
 - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
 - (iii) has produced that written authority to the person to whom this section applies. 35

*Rules***103C Rules about testing and monitoring of persons with drug or alcohol requirements**

The chief executive may, by notice in the *Gazette*, make rules for all or any of the following purposes:

- (a) prescribing, for the purposes of **section 95B(2)(a)**, 1 or more types of testing procedure that a person to whom **section 95B** applies may be directed to undergo: 5
- (b) specifying how often each of the prescribed testing procedures may be carried out: 10
- (c) prohibiting authorised persons from directing a person to whom **section 95B** applies to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances:
- (d) prescribing, for the purposes of **section 95B(2)(b)**, 1 or more types of drug or alcohol monitoring device that may be connected to a person to whom **section 95B** applies: 15
- (e) specifying restrictions as to how often, and for how long, continuous monitoring may be carried out:
- (f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from a person in order for the sample to be used as evidence that the person has breached a drug or alcohol requirement: 20
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol. 25

103D Further provisions concerning rules made under section 103C

- (1) Rules made under **section 103C(a)** may, without limitation, prescribe testing procedures that do all or any of the following:
 - (a) include, as part of the procedure, either or both of the following: 30
 - (i) breath screening:
 - (ii) the collection and analysis of a bodily sample:
 - (b) require a person to be supervised by another person of the same sex during the collection of a bodily sample required for testing:
 - (c) provide for a person to elect, if the person meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules. 35

- (2) The chief executive may make rules under **section 103C** only if satisfied that the rules—
- (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol requirement; and
 - (b) allow for persons with drug or alcohol requirements to be tested no more often than is reasonably necessary to ensure compliance with the requirement; and 5
 - (c) ensure that persons liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) **Subsection (1)(b) overrides subsection (2)(c).** 10
- 103E Availability of rules made under section 103C and status under Legislation Act 2012**
- (1) The chief executive must ensure that any rules made under **section 103C** are, while in force, made available—
- (a) on an Internet site that is maintained by or on behalf of the department and that is, so far as practicable, publicly available free of charge; and 15
 - (b) for public inspection free of charge; and
 - (c) for purchase at a reasonable price.
- (2) Rules made under **section 103C** are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 20

Schedule 1
New Schedule 1AA of Bail Act 2000

s 11A

Schedule 1AA
Transitional, savings, and related provisions

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s 3A

*Transitional and savings provisions relating to amendments made to this Act by **Part 1 of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014***

1 **Interpretation**

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In this schedule,—

commencement date means the date on which **Part 1 of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014** comes into force

pre-commencement drug or alcohol condition means a condition—

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- (a) that is imposed before the commencement date under section 30(4) (alone or with any of sections 40(4), 53(4), and 54(4)); and
- (b) that prohibits a defendant from doing 1 or more of the following:
 - (i) using (as defined in section 3) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol.

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2 **Testing and monitoring of defendants on bail with pre-commencement drug or alcohol conditions**

(1) This clause applies if a defendant is on bail with a pre-commencement drug or alcohol condition.

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(2) On and from the commencement date, **sections 30T to 30W, 73AA, and 73AAB**, and any rules made under **section 73AA**, apply in respect of the defendant—

- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a judicial officer or Registrar on or after the commencement date; and
- (b) as if the judicial officer or Registrar had complied with **section 30AA(3)** in respect of the condition.

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Schedule 2
New Schedule 1 of Parole Act 2002

19A

Schedule 1
Transitional, savings, and related provisions

5

4A

*Transitional and savings provisions relating to amendments made to this Act
by **Part 2 of the Drug and Alcohol Testing of Community-based
Offenders, Bailees, and Other Persons Legislation Act 2014***

1 **Interpretation**

10

In this schedule,—

commencement date means the date on which **Part 2 of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014** comes into force

pre-commencement drug or alcohol condition means a condition—

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(a) that is imposed before the commencement date under section 15, 18(2)(b), or 107K(1); and

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

(i) using (as defined in section 4(1)) a controlled drug;

(ii) using a psychoactive substance;

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(iii) consuming alcohol.

2 **Testing and monitoring of offender on parole, or released under section 17, with pre-commencement drug or alcohol condition**

(1) This clause applies if an offender—

(a) is on parole with a pre-commencement drug or alcohol condition; or

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(b) has been released under section 17, at the release date of a long-term sentence, with a pre-commencement drug or alcohol condition.

(2) On and from the commencement date, **sections 16B to 16D, 71A, 72A, 74A, and 74B**, and any rules made under **section 74A**, apply in respect of the offender—

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(a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by the Board on or after the commencement date; and

(b) as if the Board had complied with **section 16A(3)** in respect of the condition.

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**Drug and Alcohol Testing of Community-based
Offenders and Bailees Legislation Bill**

Schedule 2

3 Testing and monitoring of offender subject to extended supervision order with pre-commencement drug or alcohol condition

(1) This clause applies if an offender is subject to an extended supervision order with a pre-commencement drug or alcohol condition.

(2) On and from the commencement date, **sections 16B to 16D, 72A, 74A, 74B, and 107TA**, and any rules made under **section 74A**, apply in respect of the offender—

(a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by the Board on or after the commencement date; and

(b) as if the Board had complied with **section 16A(3)** in respect of the condition.

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Schedule 3
New Schedule 1AA of Sentencing Act 2002

31A

Schedule 1AA
Transitional, savings, and related provisions

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4A

*Transitional and savings provisions relating to amendments made to this Act
by **Part 3 of the Drug and Alcohol Testing of Community-based
Offenders, Bailees, and Other Persons Legislation Act 2014***

1 **Interpretation**

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In this schedule,—

commencement date means the date on which **Part 3 of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014** comes into force

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

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(a) that is imposed before the commencement date under section 52(2)(c), 54I(3)(e), 80D(4)(e), 80N(2)(b), or 93(1) or (2)(b); and

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

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(i) using (as defined in section 4(1)) a controlled drug;

(ii) using a psychoactive substance;

(iii) consuming alcohol.

2 **Testing and monitoring of offender subject to sentence of supervision with pre-commencement drug or alcohol condition**

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(1) This clause applies if an offender is subject to a sentence of supervision with a pre-commencement drug or alcohol condition.

(2) On and from the commencement date, **sections 70AA and 80ZO to 80ZT**, and any rules made under **section 80ZS**, apply in respect of the offender—

(a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and

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(b) as if the court had complied with **section 80ZN(3)** in respect of the condition.

- 3 Testing and monitoring of offender subject to sentence of intensive supervision with pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a sentence of intensive supervision with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, **sections 70B and 80ZO to 80ZT**, and any rules made under **section 80ZS**, apply in respect of the offender—
- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date;
and
- (b) as if the court had complied with **section 80ZN(3)** in respect of the condition.
- 4 Testing and monitoring of offender subject to sentence of home detention with pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a sentence of home detention with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, **sections 80SA and 80ZO to 80ZT**, and any rules made under section **80ZS**, apply in respect of the offender—
- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date;
and
- (b) as if the court had complied with **section 80ZN(3)** in respect of the condition.
- 5 Testing and monitoring of offender subject to post-detention condition that is a pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a post-detention condition that is a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, **sections 80UA and 80ZO to 80ZT**, and any rules made under **section 80ZS**, apply in respect of the offender—
- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date;
and
- (b) as if the court had complied with **section 80ZN(3)** in respect of the condition.
- 6 Testing and monitoring of offender subject to post-imprisonment condition that is a pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a post-imprisonment condition that is a pre-commencement drug or alcohol condition.

- (2) On and from the commencement date, **sections 80ZO to 80ZT and 96A**, and any rules made under **section 80ZS**, apply in respect of the offender—
- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
- (b) as if the court had complied with **section 80ZN(3)** in respect of the condition.

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Legislative history

31 July 2014
10 March 2015

Introduction (Bill 238–1)
First reading and referral to Law and Order Committee