

Electronic Monitoring of Offenders Legislation Bill

Government Bill

Explanatory note

General policy statement

This Bill removes legislative barriers to the electronic monitoring of—

- offenders released from a sentence of imprisonment of 2 years or less; and
- offenders sentenced to intensive supervision.

Electronic monitoring can improve public safety by making authorities aware when offenders have failed to comply with conditions relating to their whereabouts. It is available under other sentences and criminal orders for this purpose.

As monitoring technologies (such as GPS) improve and become more cost-effective, the public interest in their use in respect of offenders, at the discretion of the sentencing courts, increases. GPS monitoring is particularly useful, and may deter the commission of further offences, in cases where the offender is prohibited from entering areas associated with his or her risk of reoffending.

Departmental disclosure statement

The Department of Corrections is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=18>.

Regulatory impact statement

The Department of Corrections produced a regulatory impact statement on 10 June 2014, which was updated on 30 April 2015, to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- http://www.corrections.govt.nz/resources/electronic_monitoring_of_offenders_legislation_bill
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause. The Bill is intended to be divided at the end of its committee of the whole House stage, and to be enacted as the following 2 separate Acts:

- Parole (Electronic Monitoring of Offenders) Amendment Act **2015**:
- Sentencing (Electronic Monitoring of Offenders) Amendment Act **2015**.

Clause 2 is the commencement clause. The provisions of the Bill are to come into force 3 months after it receives the Royal assent. This commencement date will provide a sufficient lead-in time in order for the Department of Corrections to prepare for changes to electronic monitoring without unduly delaying the benefits afforded by the Bill.

Clause 3 states that *Part 1* of the Bill amends the Parole Act 2002.

Clause 4 makes 2 amendments to section 15(3) of the Parole Act 2002. The first amendment is a minor grammatical change. The second amendment replaces section 15(3)(f) to make it clear that electronic monitoring of compliance with whereabouts conditions includes only residential restrictions and conditions that relate to prohibiting the offender from entering or remaining in particular places or areas. Electronic monitoring is not available under this provision to monitor compliance with a residential condition.

Clause 5 replaces section 15A(3) of the Parole Act 2002. The current subsection (3) provides that, to avoid doubt, an offender who is subject to electronic monitoring may be required to have equipment attached to his or her body. The replacement subsection includes an additional requirement that the offender must also comply with written instructions from a probation officer that are reasonably necessary for the effective administration of the electronic monitoring. Instructions might include, for example, requirements that the offender—

- regularly charges the monitoring equipment:
- does not interfere with the monitoring equipment:
- does not undertake activities that interfere with the signal of the monitoring equipment.

The inclusion of this provision will mean that courts do not have to impose such requirements as individual special conditions or include them in the drafting of the electronic monitoring condition itself.

The change will apply to the electronic monitoring of compliance with non-residential whereabouts conditions imposed on offenders on release from short-term imprisonment (*see clause 12*). It will also apply to the electronic monitoring of compliance

with non-residential whereabouts conditions imposed on release from long-term imprisonment or as a condition of an extended supervision order under other provisions of the Parole Act 2002.

Failure to comply with the written instructions will amount to a breach of the special condition.

Clause 6 states that *Part 2* of the Bill amends the Sentencing Act 2002.

Clause 7 inserts *new section 26(2)(i)* into the Sentencing Act 2002. The new provision includes extra information that a probation officer may include in his or her pre-sentence report in relation to intensive supervision or possible release conditions for a proposed sentence of imprisonment for 24 months or less. The extra information is the opinion of the chief executive of the Department of Corrections as to whether—

- a whereabouts condition would facilitate or promote the objective of reducing the risk of the offender reoffending; and
- a whereabouts condition would facilitate or promote the objective of rehabilitating and reintegrating the offender; and
- either or both of those objectives warrant a condition requiring the offender to submit to electronic monitoring.

Clause 8 inserts *new section 26AB* into the Sentencing Act 2002. The new section applies if the court is considering imposing an electronic monitoring condition as—

- a release condition for a sentence of imprisonment for 24 months or less;
- a condition or a sentence or intensive supervision.

The new section allows the court to direct a probation officer to prepare a pre-sentence report for the court. The report must include the chief executive's opinion as to the matters listed in the analysis of *clause 7* above.

Clause 9 amends section 54I of the Sentencing Act 2002. Currently, this section specifically excludes electronic monitoring as a possible special condition for a sentence of intensive supervision. The amendments to this section explicitly allow a probation officer to require an offender to submit to electronic monitoring of compliance with a condition about the offender's whereabouts.

Clause 10 inserts *new section 54IA* into the Sentencing Act 2002. The new section—

- makes it clear that the purposes of the new electronic monitoring condition imposed under section 54I are to deter the offender from breaching a condition relating to his or her whereabouts and to monitor compliance with that condition; and
- provides that the court must not impose an electronic monitoring condition unless it has had regard to the opinion of the chief executive about the matters covered in a pre-sentence report provided under section 26 or *new section 26AB*; and
- sets out the purposes for which information collected through the electronic monitoring condition may be used; and

- contains a provision equivalent to the proposed amendment to section 15A(3) of the Parole Act 2002 (*see clause 5*). As in that provision, not only may an offender be required to have equipment attached to his or her body, he or she must also comply with written instructions from a probation officer that are reasonably necessary for the effective administration of the electronic monitoring. Failure to comply with the instructions is an offence; and
- provides that annual reports of the Department of Corrections must set out details about the number of offenders subject to electronic monitoring and electronic monitoring processes and systems that are in place. This provision is similar to section 15A(4) of the Parole Act 2002.

Clause 11 amends section 80E of the Sentencing Act 2002. There are multiple provisions in the Act that have the heading “Electronic monitoring”. The minor amendment makes it clear that section 80E refers to electronic monitoring in the case of home detention.

Clause 12 amends section 93 of the Sentencing Act 2002. That section provides for the imposition of conditions on the release of an offender who is sentenced to imprisonment for a short term. If a court imposes a term of imprisonment of 12 months or less, the court may impose the standard conditions and any special conditions. If a court imposes a sentence of more than 12 months but not more than 24 months, the standard conditions apply, unless the court specifies otherwise, and the court may impose special conditions as well.

At present, section 93 specifically excludes the imposition by the court of an electronic monitoring condition. The amendment removes that prohibition. However, the prohibition on residential restrictions will continue. In other words, it will be possible for the court to impose an electronic monitoring condition in order to monitor an offender’s compliance with a condition relating to his or her whereabouts (for example, a prohibition on going to an ex-partner’s home) but not in respect of residential restrictions confining the offender to his or her home at certain times or at all times, because such conditions are not available.

The court must not impose an electronic monitoring condition unless it has had regard to the opinion of the chief executive about the matters covered in a pre-sentence report provided under section 26 or *new section 26AB*.

Clause 13 is a transitional provision. It applies to sentences imposed before the commencement of **Part 2 of the Electronic Monitoring of Offenders Legislation Bill**. Section 54K of the Sentencing Act 2002 provides for the variation or cancellation of the conditions of a sentence of intensive supervision. Section 94 provides for the variation of the release conditions of an offender sentenced to imprisonment for a short term. The transitional provision makes it clear that an electronic monitoring condition is available as a condition that may be imposed or substituted under either of those sections.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Electronic Monitoring of Offenders Legislation Act **2015**.

2 Commencement

This Act comes into force on the day that is 3 months after the date on which it receives the Royal assent. 5

Part 1

Amendments to Parole Act 2002

3 Principal Act

This **Part** amends the Parole Act 2002 (the **principal Act**). 10

4 Section 15 amended (Special conditions)

(1) In section 15(3), replace “a special condition” with “special conditions”.

(2) Replace section 15(3)(f) with:

(f) conditions requiring the offender to submit to the electronic monitoring of compliance with any release conditions or conditions of an extended supervision order, imposed under paragraph (ab) or (e), that relate to the whereabouts of the offender: 15

5 Section 15A amended (Electronic monitoring)

Replace section 15A(3) with:

(3) An offender who is subject to an electronic monitoring condition— 20

(a) may be required to have electronic monitoring equipment attached to his or her body; and

(b) must comply with written instructions from a probation officer that are reasonably necessary for the effective administration of the electronic monitoring (for example, an instruction to regularly charge the equipment); and 25

(c) breaches the electronic monitoring condition if he or she does not comply with those written instructions.

Part 2 Amendments to Sentencing Act 2002

6 Principal Act

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

7 Section 26 amended (Pre-sentence reports)

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

(i) in the case of intensive supervision or possible release conditions for a proposed sentence of imprisonment for 24 months or less, the opinion of the chief executive of the Department of Corrections as to whether—

(i) a condition that prohibits the offender from entering or remaining in specified places or areas at specified times or at all times (a **whereabouts condition** in this paragraph) would facilitate or promote the objective of reducing the risk of the offender reoffending; and 10

(ii) a whereabouts condition would facilitate or promote the objective of rehabilitating and reintegrating the offender; and 15

(iii) either or both of those objectives would warrant a condition requiring the offender to submit to electronic monitoring of his or her compliance with the whereabouts condition.

8 New section 26AB inserted (Pre-sentence reports when considering electronic monitoring condition as release condition for sentence of imprisonment for 24 months or less or as condition of sentence of intensive supervision)

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After section 26A, insert:

26AB Pre-sentence reports when considering electronic monitoring condition as release condition for sentence of imprisonment for 24 months or less or as condition of sentence of intensive supervision

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(1) The court may direct a probation officer to prepare a pre-sentence report for the court in accordance with **subsection (2)** if the court is considering imposing electronic monitoring as—

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(a) a release condition for a sentence of imprisonment for 24 months or less:

(b) a condition of a sentence of intensive supervision.

(2) The pre-sentence report must include the opinion of the chief executive of the Department of Corrections as to whether—

(a) a condition that prohibits the offender from entering or remaining in specified places or areas at specified times or at all times (a **whereabouts condition** in this subsection) would facilitate or promote the objective of reducing the risk of the offender reoffending; and 35

- (b) a whereabouts condition would facilitate or promote the objective of rehabilitating and reintegrating the offender; and
 - (c) either or both of those objectives would warrant a condition requiring the offender to submit to electronic monitoring of his or her compliance with the whereabouts condition. 5
- (3) A pre-sentence report under this section is in addition to other pre-sentence reports required under this Act.

9 Section 54I amended (Other special conditions)

- (1) After section 54I(3)(e), insert:
- (f) a condition that the offender must, when required to do so by a probation officer, submit to the electronic monitoring of compliance with any conditions of his or her sentence imposed under paragraph (e) that prohibit the offender from entering or remaining in specified places or areas at specified times or at all times: 10
- (2) In section 54I(4)(b), delete “; or”. 15
- (3) Repeal section 54I(4)(c).

10 New section 54IA inserted (Electronic monitoring)

After section 54I, insert:

54IA Electronic monitoring

- (1) This section applies to electronic monitoring imposed as a condition under **section 54I(3)(f)**. 20
- (2) The purposes of an electronic monitoring condition are—
- (a) to deter the offender from breaching a condition imposed under section 54I(3)(e) that prohibits the offender from entering or remaining in specified places or areas at specified times or at all times; and 25
 - (b) to monitor compliance with a condition imposed under section 54I(3)(e) that prohibits the offender from entering or remaining in specified places or areas at specified times or at all times.
- (3) The court must not impose an electronic monitoring condition unless it has had regard to the opinion of the chief executive of the Department of Corrections in a pre-sentence report provided under section 26 or **26AB**. 30
- (4) Information about an offender that is obtained through an electronic monitoring condition may be used both for the purposes referred to in **subsection (1)** and for the following purposes:
- (a) to verify compliance with conditions imposed under section 54I(3)(e) that prohibit the offender from entering or remaining in specified places or areas at specified times or at all times: 35

- (b) to detect non-compliance with conditions imposed under section 54I(3)(e) that prohibit the offender from entering or remaining in specified places or areas at specified times or at all times, and the commission of offences:
- (c) to provide evidence of non-compliance with any conditions imposed under section 54I(3)(e) that prohibit the offender from entering or remaining in specified places or areas at specified times or at all times, and the commission of offences: 5
- (d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately. 10
- (5) An offender who is subject to an electronic monitoring condition—
 - (a) may be required to have electronic monitoring equipment attached to his or her body; and
 - (b) must comply with written instructions from a probation officer that are reasonably necessary for the effective administration of the electronic monitoring (for example, an instruction to regularly charge the equipment); and 15
 - (c) fails to comply with the electronic monitoring condition if he or she does not comply with those written instructions. 20
- (6) The annual report of the Department of Corrections must include the following information about the use of electronic monitoring in the year reported on:
 - (a) the number of offenders who were at any time subject to an electronic monitoring condition:
 - (b) the average number of offenders who were subject to an electronic monitoring condition and the average duration of the condition: 25
 - (c) the percentage of offenders who, while subject to an electronic condition, were—
 - (i) convicted for failing to comply with the condition; or
 - (ii) convicted of any other offence: 30
 - (d) a description of the processes and systems that relate to electronic monitoring and that were in place during the year reported on.

11 Section 80E amended (Electronic monitoring)

In section 80E(1), after “electronic monitoring condition”, insert “imposed as a condition under section 80C(2)(d)”. 35

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

(1) In section 93(2B), replace the definition of **special conditions** with:

special conditions includes, without limitation, conditions of a kind described in section 15(3) of the Parole Act 2002, other than a residential restriction condition referred to in section 15(3)(ab) of that Act

- (2) After section 93(3), insert:
- (3A) The court must not impose an electronic monitoring condition under **section 54I(3)(f)** unless it has had regard to the opinion of the chief executive of the Department of Corrections in a pre-sentence report provided under section 26 or **26AB**. 5

13 Transitional provision regarding variation or substitution of special conditions imposed before commencement of this Act 10

- (1) This section applies to sentences imposed before the commencement of this Act.
- (2) To avoid doubt, an electronic monitoring condition may be imposed or substituted under section 54K or 94 of the principal Act.