

Sentencing (Drug and Alcohol Testing) Amendment Bill

(Divided from the Drug and Alcohol Testing of Community-based Offenders,
Bailees, and Other Persons Legislation Bill)

Government Bill

As reported from the committee of the whole House

This Bill was formerly part of the Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Bill as reported from the Law and Order Committee. The committee of the whole House has further amended the Bill and divided it into the following Bills:

- Bail (Drug and Alcohol Testing) Amendment Bill comprising clauses 1 and 2, Part 1, and Schedule 1
- Parole (Drug and Alcohol Testing) Amendment Bill comprising Part 2 and Schedule 2
- this Bill comprising Part 3 and Schedule 3
- Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Bill comprising Part 4
- Returning Offenders (Management and Information) (Drug and Alcohol Testing) Amendment Bill comprising Part 5 and Schedule 4.

Sentencing (Drug and Alcohol Testing) Amendment Bill

Key to symbols used in reprinted bill

As reported from the committee of the whole House

text inserted

~~text deleted~~

Hon Judith Collins

Sentencing (Drug and Alcohol Testing) Amendment Bill

Government Bill

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Sentencing (Drug and Alcohol Testing) Amendment Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sentencing (Drug and Alcohol Testing) Amendment Act **2016**.

2 Commencement

(1) This Act comes into force on the earlier of the following: ~~day immediately~~ 5
~~after the expiry of the period of 6 months that commences on the date on which~~
~~this Act receives the Royal assent.~~

(a) a date appointed by the Governor-General by Order in Council:

(b) the day immediately after the expiry of the 6-month period.

(2) The **6-month period** is the period of 6 months that commences on the date on 10
which this Act receives the Royal assent.

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20 Principal Act

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

Interpretation 15

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 20

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,—

- (a) that is imposed under section **52(2)(bb)**, **54I(3)(ba)**, **80D(4)(ca)**, **80N(1)** and (2)(b), or 93(1) or (2)(b); and 5
- (b) that prohibits an offender from 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

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: 10

- (a) a controlled drug used by the person:
- (ab) a psychoactive substance used by the person:
- (b) alcohol consumed by the person 15

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— 20

- (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

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 25

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 30

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 35

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

5

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

After section 4, insert:

4A Transitional, savings, and related provisions

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

10

Supervision

22 Section 52 amended (Other special conditions)

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

(bb) conditions prohibiting the offender from doing 1 or more of the following:

15

- (i) using (as defined in section 4(1)) a controlled drug:
- (ii) using a psychoactive substance:
- (iii) consuming alcohol:

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

20

(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)

25

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

(ba) conditions prohibiting the 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:
- (iii) consuming alcohol:

30

(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.

35

*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 5

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—

- (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
 - (ia) to comply with instructions specified in a notice given under **section 80ZO(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; 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
 - (iv) to contact a specified automated system when required to do so under **section 80ZO(2)(c)**; or
 - (v) to report, at any time or times when required to do so under **section 80ZP(5)**, to a specified testing facility to undergo testing; or
 - (vi) to undergo a testing procedure when required to do so under **sections 80ZO(2)(c) and 80ZP**; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a) or (c)** 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.

*Offence: intensive supervision***25 New section 70B inserted (Offences related to sentences of intensive supervision with drug or alcohol conditions)** 35

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
 - (ii) to submit to continuous monitoring when required to do so under **section 80ZO(2)(b)**; or
 - (ia) to comply with instructions specified in a notice given under **section 80ZO(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; 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
 - (iv) to contact a specified automated system when required to do so under **section 80ZO(2)(c)**; or
 - (v) to report, at any time or times when required to do so under **section 80ZP(5)**, to a specified testing facility to undergo testing; or
 - (vi) to undergo a testing procedure when required to do so under **sections 80ZO(2)(c) and 80ZP**; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a) or (c)** 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.

Home detention 30

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

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

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

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

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

(ba) conditions prohibiting the offender from doing 1 or more of the following:

(i) using (as defined in section 4(1)) a controlled drug: 5

(ii) using a psychoactive substance:

(iii) consuming alcohol:

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

After section 80S, insert: 15

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— 20

(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 25(ia) to comply with instructions specified in a notice given under **section 80ZO(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; 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 30(iv) to contact a specified automated system when required to do so under **section 80ZO(2)(c)**; or(v) to report, at any time or times when required to do so under **section 80ZP(5)**, to a specified testing facility to undergo testing; or 35

- (vi) to undergo a testing procedure when required to do so under **sections 80ZO(2)(c) and 80ZP**; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a) or (c)** 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.

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

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
 - (ia) to comply with instructions specified in a notice given under **section 80ZO(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; 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
 - (iv) to contact a specified automated system when required to do so under **section 80ZO(2)(c)**; or
 - (v) to report, at any time or times when required to do so under **section 80ZP(5)**, to a specified testing facility to undergo testing; or
 - (vi) to undergo a testing procedure when required to do so under **sections 80ZO(2)(c) and 80ZP**; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a) or (c)** 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.

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

30 New subpart 2C of Part 2 inserted 5

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(1) and (2)(b), or 93(1) or (2)(b). 10
- (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)**. 15
- (3) The court must advise the offender that the offender must do ~~either or both~~ any 1 or more 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: 20
- (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;
- (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system. 25

80ZO Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring

- (1) This section applies to an offender who is— 30
- (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.
- (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~~ any 1 or more of the following: 35

- (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)**;
 - (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)**;
 - (c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under **section 80ZS(1)(a)**.
- (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~~
 - (ii) ~~which of the prescribed testing procedures, if any, the offender is required to undergo.~~
- (3) An authorised person exercising that person’s discretion under **subsection (2)**—
- (a) must comply with any rules made under **section 80ZS**; and
 - (b) may—
 - (i) select an offender to do what is specified in **subsection (2)(a), (b), or (c)** in any manner (including randomly); and
 - (ii) make a determination in respect of the offender with or without evidence that the offender has breached the condition; and
 - (c) must, if requiring the offender to do what is specified in **subsection (2)(a) or (c)**, determine the prescribed testing procedure to be used for the testing required under **subsection (2)(a)**, or required if the offender is selected to undergo testing by an automated system that the offender is required to contact under **subsection (2)(c)**.
- (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.~~
- (4) A notice given to an offender under **subsection (2)(b)** may include a requirement that the offender comply with instructions specified in the notice that are

- reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or protect it from events, such as submersion in water, that may damage it or interfere with its functioning).
- (4A) An automated system specified in a notice given under **subsection (2)(c)** must include an automated selection method that determines, in any manner consistent with rules made under **section 80ZS(1)(b)** (including randomly), whether the offender is required to undergo testing. 5
- (5) Only a medical practitioner or medical officer may collect a blood sample from an offender under this section. 10
- (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.~~
- (7) In this section and in **sections 70AA, 70B, 80SA, 80UA, 80ZOA to 80ZQ, and 96A 80ZP and 80ZQ**, **authorised person** means a person who is— 15
- (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.
- 80ZOA How notice of requirement to undergo testing or to submit to continuous monitoring may be given** 20
- (1) An authorised person may give an offender a notice under **section 80ZO(2)** in any of the following ways:
- (a) by giving the notice personally and in writing to the offender:
- (b) by giving the notice personally and orally to the offender, then, unless the notice requires the offender only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the offender: 25
- (c) if the notice is given under **section 80ZO(2)(a)**, by giving the notice to the offender by telephone or other means of electronic communication (as defined in section 5 of the Electronic Transactions Act 2002), then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the offender. 30
- (2) An automated system must, in response to an offender contacting it as required by a notice given under **section 80ZO(2)(c)** and **subsection (1)**, give the offender a spoken or written response notice specifying whether the offender is required to undergo testing. 35
- (3) A notice given by an authorised person under **subsection (1)(c)** or a response notice that is given under **subsection (2)** and that requires an offender to undergo testing must specify the name and location of a testing facility to 40

which the offender is required to report to undergo testing, and the time or times when the offender is required to report, under **section 80ZP**.

80ZP Where prescribed testing procedure may be carried out

- (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)** personally by the authorised person. 5
- (2) **Subsection (1)** applies even if the place where the offender is given notice personally by the authorised person 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 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. 15
- ~~(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.~~ 20
- (4) An offender given notice personally (in writing or orally) by the authorised person may be required by the authorised person, 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, 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
- (5) An offender given a notice under **section 80ZOA(1)(c)** or **(2)** that requires the offender to undergo testing is required to report to the testing facility whose name and location are specified in the notice, at the time or times specified, to undergo testing. 30

80ZQ Information obtained from drug 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)**—
- (a) may be used for all or any of the following purposes:
- (i) verifying compliance by the offender with a drug or alcohol condition: 35
- (ii) detecting non-compliance by an 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 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, 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 **to 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 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) 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 produced evidence of that person’s identity to the offender;
- (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 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 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 the device:
 - (B) installing, removing, 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) and (c)**, 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 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, and for how long, ~~continuous monitoring may be carried out:—~~
 - (i) continuous monitoring may be carried out:
 - (ii) an offender may be required to contact an automated system:
 - (f) prescribing, for any 1 or more of the following, minimum levels 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 has breached a drug or alcohol condition:
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol.

- (2) In this section and in **sections 80ZT** and **80ZU**, **chief executive** means the chief executive of the Department of Corrections.

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: 5
- (a) include, as part of the procedure, either or both of the following:
 - (i) breath screening:
 - (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: 10
 - (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 manner prescribed in the rules. 15
- (2) The chief executive may make rules under **section 80ZS(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
 - (b) allow for offenders to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and 20
 - (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)**.

80ZU Availability of rules about drug and alcohol testing and monitoring, and status under Legislation Act 2012 25

- (1) The chief executive must ensure that any rules made under **section 80ZS** are, while in force, made available—
- (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 30
 - (b) for public inspection free of charge; and
 - (c) for purchase at a reasonable price.
- (2) Rules made under **section 80ZS** 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. 35

*Offence: post-imprisonment conditions***30A Section 93 amended (Imposition of conditions on release of offender sentenced to imprisonment for short term)**

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. 5

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

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— 15

- (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 20
 - (ia) to comply with instructions specified in a notice given under **section 80ZO(2)(b)** that are reasonably necessary for the effective administration of the continuous monitoring; 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
 - (iv) to contact a specified automated system when required to do so under **section 80ZO(2)(c)**; or
 - (v) to report, at any time or times when required to do so under **section 80ZP(5)**, to a specified testing facility to undergo testing; or 30
 - (vi) to undergo a testing procedure when required to do so under **sections 80ZO(2)(c)** and **80ZP**; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under **section 80ZO(2)(a) or (c)** 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.

31A New Schedule 1AA inserted

Before ~~Schedule 1~~, insert the ~~**Schedule 1AA**~~ set out in ~~**Schedule 3**~~ of this Act. 5

31A Consequential amendments and transitional provisions if this Act in force before Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016

- (1) This section applies if this Act comes into force before the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force. 10
- (2) Sections 4 and 10 and the Schedule of the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 are repealed.
- (3) On the day that the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force, the following are repealed: 15
- (a) **section 54I(4A)** of the principal Act (as inserted by **section 23(2)** of this Act); and
- (b) **section 93(2C)** of the principal Act (as inserted by **section 30A** of this Act).
- (4) Insert the **Schedule 1AA** set out in **Part 1 of Schedule 3** of this Act as the first schedule to appear after the last section of the principal Act. 20

31B Consequential amendments and transitional provisions if Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 in force before this Act

- (1) This section applies if the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force before this Act comes into force. 25
- (2) **Sections 21A, 23(2), 30A, and 31A** of this Act are repealed.
- (3) Amend **Schedule 1AA** of the principal Act as indicated in **Part 2 of Schedule 3** of this Act.

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Schedule 3
New Schedule 1AA of Sentencing Act 2002
Consequential amendments and transitional provisions

ss 31A, 31B

Part 1
New Schedule 1AA inserted

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Schedule 1AA
Transitional, savings, and related provisions

s 4A

Part 1
Provisions relating to Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016

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1AA Interpretation

In this Part, **commencement date** means the date on which the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force.

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1AB Varying special conditions for sentence of intensive supervision imposed before commencement date

(1) This clause applies to a sentence of intensive supervision imposed before the commencement date.

(2) An electronic monitoring condition may be imposed in the circumstances specified in **subclause (3)** even though such a condition—

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(a) was not available as a special condition before the commencement date; and

(b) could not have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence of intensive supervision was imposed.

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(3) The circumstances are as follows:

(a) if the court imposes additional special conditions under section 54K(3)(a):

(b) if the court cancels a sentence and substitutes a sentence of intensive supervision (that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed).

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1AC Varying release conditions for sentence of imprisonment of not more than 24 months imposed before commencement date

- (1) This clause applies to a sentence of imprisonment of not more than 24 months imposed before the commencement date.
- (2) An electronic monitoring condition may be imposed in the circumstances specified in **subclause (3)** even though such a condition—
- (a) was not available before the commencement date; and
- (b) could not have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence of imprisonment of not more than 24 months was imposed.
- (3) The circumstances are as follows:
- (a) if the court imposes an additional release condition under section 94(3)(a):
- (b) if the court discharges a release condition and substitutes another release condition under section 94(3)(b).

Part 2

Provisions relating to Part 3 of Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Act 2014

*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

In this schedule ~~Part~~,—

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,—

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

- 2 Testing and monitoring of offender subject to sentence of supervision with pre-commencement drug or alcohol condition**
- (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
- (b) as if the court had complied with **section 80ZN(3)** in respect of the condition. 5 10
- 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. 15
- (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 20
- (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. 25
- (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 30
- (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** 35
- (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. 5
- 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. 10
- (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. 15

Part 2

Consequential amendments

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Insert as Part 2 of **Schedule 1AA** the **Part 2** set out in **Part 1** of this schedule.

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Legislative history

2 November 2016

Divided from Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Bill (Bill 238–2) as Bill 238–3C