Sentencing and Parole Reform Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Sentencing and Parole Reform Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This bill seeks to create a three-stage regime of increasing penalties for recidivist violent offenders. The regime is intended to improve public safety by imprisoning the worst repeat violent and sexual offenders for longer periods if they continue to commit such offences, and to increase confidence in the justice system by imposing longer sentences and making certain offenders ineligible for parole.

Reducing eligibility for parole at stages 2 and 3 is intended to ensure that victims and their families do not have to attend regular parole hearings, or worry that an offender may be released on parole. Offenders serving a life sentence without parole or a determinate sentence without parole would be eligible for early release only on compassionate grounds.

Under the bill as introduced as it relates to new section 86B, offenders aged 18 and over who receive a first qualifying sentence for a serious violent offence would incur a recorded warning (stage 1). Following conviction for a second serious violent offence, a final warning would be recorded (stage 2). Offenders would be required to serve their sentence in full and would no longer be eligible for parole. Following a third conviction for a serious violent offence, stage 3 of the regime would come into effect. Such offenders would receive a life sentence unless this was deemed to be manifestly unjust.

Offenders with one recorded warning who were subsequently convicted of murder would be required to serve a life sentence, without parole, unless this was deemed manifestly unjust. If it were deemed manifestly unjust, the Court would be required to give written reasons for not imposing a life sentence.

The three-stage regime would be limited to serious violent offences as determined in clause 5(1) of the bill, which would insert new sections 86A to 86H into the Sentencing Act 2002. Clause 5(1) defines "serious violent offence" to include murder, manslaughter, serious sexual offences, kidnapping, robbery, and certain firearms offences.

Under the bill as introduced, offenders would qualify for each stage of the regime if they received a determinate sentence of at least 5 years' imprisonment, an indeterminate sentence of life imprisonment, or preventive detention, for a specified violent offence. Many submitters argued that the threshold of "at least 5 years' imprisonment" was too high, and would negate the intent of the bill as some offenders could be given sentences of imprisonment of less than 5 years for the qualifying offences, thus avoiding a warning.

There was also concern among submitters about the possibility of disproportionately severe sentences being imposed at stage 3, so that a relatively minor offence in itself might attract a life sentence because of previous warnings.

This bill is also intended to amend the Parole Act 2002, so that offenders who are subject to non-parole orders would be required to serve their sentence in full and would not be eligible for parole.

On 19 January 2010, the Minister of Police wrote to inform us of changes to the bill agreed to by Cabinet on 17 December 2009. These changes included replacing a mandatory life sentence following a third conviction for a serious violent offence with a mandatory sen-

tence of the maximum term of imprisonment for the offence (with an order that the sentence be served without parole) unless this would be manifestly unjust; and replacing the threshold for each of the regime's stages from a determinate sentence of at least 5 years' imprisonment (or an indeterminate sentence of imprisonment) with conviction for a qualifying offence.

We considered these, and other, proposed amendments alongside the main bill. We released an interim report outlining these proposals, and invited further submissions from those who had previously submitted on the aspects of the bill affected by the proposed changes.

On 4 March 2010 the Minister of Police wrote to inform us of further changes to the bill, which Cabinet had agreed to on 22 February 2010. They included specifically providing for preventive detention as a sentencing option at stage 3 of the proposed regime, a mandatory life sentence for offenders at stage 3 convicted of manslaughter, and a requirement for the Court to impose concurrent sentences at stage 3.[1]

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

Petition 2008/4 of Rosa Chow and 7,076 others

Petition 2008/4 of Rosa Chow and 7,076 others asked the House to introduce community safety legislation, tougher penalties for violent or repeat offenders, and "truth in sentencing". With the petitioner's consent, the committee considered this petition alongside the Sentencing and Parole Reform Bill. We consider our commentary on the bill covers the issues raised by the petitioner.

Purpose

A majority of us recommend amending clause 3 by adding "maximum terms of imprisonment" and deleting "sentences of life imprisonment". A majority of us also recommend inserting "who continue to commit serious violent offences" after "persistent repeat offenders". In the light of the amendments proposed by the Government,

[1] Cabinet also agreed on 1 March 2010 that the Commissioner of Police would direct that all prosecutions involving charges that qualified for stage three of the proposed regime be referred to the Crown Solicitor for peer review. This would not require any legislative change.

which a majority of us have agreed to recommend, a majority of us believe that these changes to clause 3 would better reflect the purpose of the bill.

Interpretation

A majority of us recommend inserting new clause 4A to amend the definition of minimum period of imprisonment in section 4(1) of the Sentencing Act 2002. This would incorporate our proposed changes to sentencing offenders convicted of manslaughter, new section 86D(4), or murder, new section 86E(4)(a).

New sections 86A to 86H and heading inserted

A majority of us recommend amending clause 5(1) by deleting the definition of qualifying sentence as "a determinate sentence of imprisonment of 5 years or more or an indeterminate sentence of imprisonment". This would reflect the 17 December 2009 Cabinet decision to replace the threshold for each of the regime's stages from a determinate sentence of at least 5 years' imprisonment (or an indeterminate sentence of imprisonment) to conviction for a qualifying offence.

Serious violent offences

In clause 5(1) is a list of 37 offences that would constitute a "serious violent offence". A majority of us recommend amending this list by adding the following offences to section 86A of the Sentencing Act:

- sexual conduct with children and young people outside New Zealand
- counselling or attempting to procure murder
- conspiracy to murder
- poisoning with intent to cause grievous bodily harm
- infecting with disease.

Sexual conduct with children and young people outside New Zealand is a serious sexual offence, and including it the coverage of the bill would be in line with the policy of targeting the worst repeat violent and sexual offending. Counselling or attempting to procure murder and conspiracy to murder involve conduct that, if successful, will result in the intentional death of a person. Poisoning with intent to

cause grievous bodily harm and infecting with disease are analogous to violent offences as they can result in comparable harm and suffering.

A majority of us further recommend amending this list by removing incest and acid throwing. The charge of incest is generally used of consensual sexual connection. We received advice that in circumstances where it is not consensual other charges in the list of serious violent offences, such as sexual violation or sexual connection with dependent family member under 18 years, could be laid. The charge of acid throwing is rarely used in New Zealand.[2] We received advice that should such a crime be perpetrated other charges in the list of serious violent offences, such as aggravated wounding, could be used.

A number of submitters suggested adding other offences including burglary, and the manufacture and sale of drugs (especially methamphetamine, or "P"). Burglary is a property offence, and including it would be inconsistent with the bill's aim of targeting the worst repeat violent and sexual offenders. Nor do we consider this bill is the proper vehicle to address social problems caused by drugs.

Some submitters also favoured increasing the maximum penalty for many of the offences in clause 5(1), but this is outside the scope of this bill.

For the sake of clarity, a majority of us also recommend amending clause 5(1) by inserting into section 86A of the Sentencing Act a definition of each stage of the proposed regime following the list of offences.

Notice of warning to offender

A majority of us recommend amending clause 5(1) to require a Court to give an offender a written notice of warning setting out the substance of the warning that has been issued in the Court.

Stage-1 offence

A majority of us recommend amending clause 5(1) as it relates to new section 86B(1) to clarify that a warning given at stage 1 (first

[2] We are advised that the Law Commission has recommended that section 199 of the Crimes Act 1961 (acid throwing) be repealed.

warning) would be given following conviction for a first serious violent offence rather than a qualifying sentence.

A majority of us also recommend amendments to new section 86B(2) to make it clear that a judge would not be required to use any particular form of words in giving a warning.

Stage-2 offence

A majority of us recommend amending clause 5(1) as it relates to new section 86C to specify that warnings given at stage 2 (final warning) would be given following conviction for a second serious violent offence, rather than a qualifying sentence.

A majority of us further recommend amending new section 86C(2) to provide that it is not necessary for a judge to use a particular form of words in giving a warning.

The requirement for offenders at stage 2 of the proposed regime who were not convicted of murder to serve their sentence of imprisonment in full without parole would remain as originally introduced. This is in line with the bill's intention to create a regime of increasing penalties for repeat offenders.

A majority of us recommend amending clause 5(1) as it relates to new section 86C(5). We received advice that section 93 of the Sentencing Act already determines the conditions of release for offenders sentenced to short-term sentences of imprisonment.

Court jurisdiction at stage 3

A majority of us recommend amending clause 5(1) as it relates to new section 86D(1) to ensure that the High Court would have exclusive jurisdiction over cases involving offenders on a final warning (stage 2) subsequently charged with committing a serious violent offence (stage 3). Stage 3 of the proposed regime would involve the most severe sanctions available after life imprisonment without parole (for murder) and preventive detention, as well as the imposition of mandatory sentences; and we are advised that it would be appropriate for more senior judges to be responsible for such cases.

In addition, only the High Court, or the Court of Appeal, or the Supreme Court on appeal, may sentence an offender for a stage-3 offence.

Stage-3 offence other than murder

A majority of us recommend amending clause 5(1) as it relates to new section 86D(2) to require the Court to sentence offenders to the maximum term of imprisonment following a third conviction for a serious violent offence, and not life imprisonment.

To ensure that appropriately increasing penalties at each stage of the proposed regime are maintained, a majority of us also recommend amending clause 5(1) as it relates to new section 86D(3) to require the Court to order that offenders serve their sentences without parole, unless the Court is satisfied that would be manifestly unjust. If the Court considered it manifestly unjust for an offender to serve their sentence without parole, the requirement in new section 86D(5) to give written reasons would remain as introduced.

Manslaughter

A majority of us recommend amending clause 5(1) as it relates to new sections 86D(4) and (5) so that the Court would be required to impose on an offender convicted of manslaughter at stage 3 of the proposed regime a minimum period of imprisonment of at least 20 years, unless this was considered manifestly unjust. If a non-parole period of 20 years or more were considered manifestly unjust a majority of us recommend that the Courts be required to impose a minimum period of 10 years or more. The Court would be required to give written reasons for considering the longer non-parole period manifestly unjust.

Manslaughter covers a wide range of conduct, from situations where death is unexpected to those falling just short of murder; and a majority of us consider that it is necessary to recognise the seriousness of taking a human life, while still distinguishing between murder and manslaughter.

Use of concurrent sentences

A majority of us recommend amending clause 5(1) as it relates to new section 86D(6) of the proposed regime. It is not unusual for offenders to be convicted of more than one offence in relation to a particular incident or series of events. If the Court was permitted to impose cumulative sentences for each qualifying offence, an offender could receive effectively the same sentence as a person convicted of

murder, for lesser offences. This could distort the relative seriousness of different types of offending.

We received advice that the need to impose concurrent sentences at stage 3 of the proposed regime would not necessarily involve the inclusion of any subsequent convictions. For example, an offender convicted of an offence committed while in prison for a stage-3 offence could be ordered to begin serving that sentence at the conclusion of the stage-3 sentence.

Preventive detention

A majority of us recommend amending clause 5(1) as it relates to new section 86D(7) to specifically include preventive detention as a sentencing option at stage 3 of the proposed regime. The bill as introduced includes provision for the Court to impose a sentence of preventive detention for offenders at stage 1 or stage 2 of the proposed regime; but there is no such provision at stage 3, as the original provision for a mandatory sentence of life imprisonment, with a minimum non-parole period of 25 years, would have almost inevitably been longer than a sentence of preventive detention.

A majority of us recommend amending clause 5(1) so that the minimum period of imprisonment for preventive detention at stage 3 of the proposed regime would be the maximum determinate sentence for the offence, unless the Court was satisfied that this would be manifestly unjust.

Life imprisonment for murder

A majority of us recommend amending clause 5(1) as it relates to new section 86E to provide that the requirement for offenders at stage 2 or 3 who are convicted of murder to be sentenced to life imprisonment without parole, unless it is deemed manifestly unjust, is not affected by the changes a majority of us have recommended to the proposed regime. If life imprisonment were deemed manifestly unjust, the requirement to give written reasons would remain as introduced.

Quashed convictions

A majority of us recommend amending clause 5(1) as it relates to section 86F to clarify that an offender would continue to have warn-

ings on their criminal record regardless of whether they had served or otherwise completed their sentence.

A majority of us further recommend amending clause 5(1) as it relates to section 86F so that the Court of Appeal would be required to cancel a warning if it quashed the conviction that resulted in the warning. The bill as introduced would allow warnings to be disregarded following a successful appeal. We are aware of concern that the record of warning would remain on a person's criminal record despite the conviction being quashed. We acknowledge that the presence of such a warning, even one that had no legal effect, could carry a stigma and that it should rightfully be cancelled.

If a conviction were to be replaced with a conviction for another serious violent offence, a majority of us recommend that the original warning relate to the subsequent conviction for a different serious violent offence.

A majority of us also recommend amending clause 5(1) as it relates to section 86F and new section 86FA, to require the appellate court to make consequential changes to an offender's record if a warning were cancelled and an offender at stage 2 or 3 of the proposed regime thus reverted a stage, or to refer the case back to the sentencing court with a direction for that Court to amend as necessary the offender's record.

Appeal against minimum period of imprisonment

A majority of us recommend amending clause 5(1) as it relates to section 86G. We received advice that this would be necessary to realign the references to non-parole orders and minimum periods of imprisonment in new sections 86D and 86E; and as a result of the insertion of new section 86D(4) regarding sentencing for manslaughter at stage 3 of the proposed regime.

Imposition of minimum period of imprisonment

A majority of us recommend inserting new clause 5A to cross-reference with the Sentencing Act the changes a majority of us have recommended regarding preventive detention.

Presumption in favour of life imprisonment for murder

A majority of us recommend inserting new clause 5B, which would amend section 102 of the Sentencing Act to make it clear that the presumption in favour of life imprisonment for murder would be subject to new section 86E.

Release date of sentence

A majority of us recommend inserting new clause 13, which would amend the Parole Act to prevent the early release of offenders serving short-term sentences who have recorded a final warning following conviction for a serious violent offence—that is, stage 2 of the proposed regime. Section 86 of the Parole Act stipulates that offenders serving a short-term sentence are to be released from prison once they have served half of their sentence. This would negate the intent of the bill to create a regime of progressively increasing penalties.

Schedule

A majority of us consider that judges should be able to correct records of warning that have been given in error. Section 372 of the Crimes Act 1961 allows such correction in the case of sentences. A majority of us recommend that section 372 be extended to cover records of warning. Other statutes would also be affected by amendments that a majority of us recommend: the District Courts Act 1947, the Evidence Act 2006, and the Summary Proceedings Act 1957. The amendments a majority of us recommend to these Acts relate directly to the subject area of the bill, and are needed to create a three-stage regime of increasing penalties for recidivist violent offenders and to confer exclusive jurisdiction for stage-3 offences on the High Court.

New Zealand Labour Party minority view

The Labour Party members of the Law and Order Committee are opposed to the Sentencing and Parole Reform Bill, and to the process that has been undertaken in regard to this bill.

Process for this bill

On 19 January 2010 the National and ACT parties announced a revised "three-strikes" policy to be incorporated into the Sentencing and Parole Reform Bill. The Law and Order Committee met to consider the revised bill for the first time on 10 February 2010.

Despite the significance of the changes to this bill and the high level of public interest, the National Party and ACT Party members of the committee used the weight of their majority on the committee to ram through the following resolutions:

- prevent the Ministry of Justice, the implementing authority for the bill, to have any role as advisors to the committee
- hold no further oral submissions on this bill, even though the substance of it has changed since submissions were last invited
- allow only written submissions on the revised bill from those who have previously submitted on the specific clauses that have been amended
- give those submitters two weeks or less notice to make further submissions (closing date of 5 March 2010).

The Labour members of the committee voted against each of these resolutions. We believe that this is an unnecessarily rushed process; and that to close submissions to all but those who have already submitted on specific clauses affected by the National/ACT three-strikes announcement is to deny the public its right to submit on the revised bill. The select committee process is one of the most important parts of our democracy as it provides an opportunity for the voting public to have their say. However, this revised bill will now not receive the public scrutiny that it should.

One of the themes of New Zealand today is the shift from all decisions being made on behalf of citizens in a representative democratic style to a participative democracy in which institutions and processes are open to public submission. The denial of the public access to submissions is a step backwards to a "we know best, we are in charge, and we make the decision" attitude. This is lamentable.

The original Sentencing and Parole Reform Bill was in the name of the Justice Minister, Hon Simon Power, and the Ministry of Justice was the lead advising agency. This made sense because this bill aims to change sentencing laws, which are clearly under the jurisdiction of the Ministry of Justice through the Courts.

Without explanation, the revised bill has transferred into the name of the Police and Corrections Minister, Hon Judith Collins, and the New Zealand Police were made lead advisors with the Department of Corrections assisting advisors. We believe that there are serious constitutional issues with this. There has always been a deliberate separation between the Justice agencies such as the Ministry of Justice, the Courts, Police, and the Department of Corrections. This is because it is considered constitutionally inappropriate for the same agency to undertake the roles of arresting offenders, trying and sentencing them, and imprisoning them.

New Zealand Police advisors told the committee that this is only the second time Police have been the lead agency on a sentencing bill—the other occasion being the Vehicle Confiscation and Seizure Bill—and further admitted to the committee that the Police would not have the expertise to lead a review of this legislation, should a review clause be undertaken. They said that the Ministry of Justice would be the more appropriate agency to lead a review. If the Police do not have the expertise to lead a review of the legislation, how can they have the expertise to lead the formation and implementation of the legislation?

Having only the Police and the Department of Corrections as advisors on a bill that will change our sentencing laws is, in the view of the Labour members on this committee, inappropriate.

Even more concerning is the fact that National and ACT members of the committee blocked the request by Labour members to invite the Ministry of Justice to take a continuing role as advisors on this bill. This means that the agency which has all of the background information on this bill, that has been the lead advisor on this bill from its conception, and that will be required to implement and manage the changes in this bill should it pass into law, has been blocked from having any further involvement in it. It is disgraceful that the committee is being denied the right to receive advice from the agency that clearly has the most knowledge and experience of sentencing laws.

As members of Parliament we believe that, in the interests of democracy and openness, parliamentarians should have access to the most appropriate advice when considering legislation before the House. The Government's refusal to allow committee members access to this advice is a serious threat to our open and transparent system of Government that does not sit well with our democratic principles.

When Labour members on the committee sought to include their minority view in the interim report, the National/ACT majority on the committee voted to block that minority view. The Clerk of the House advised that this was the first time she could remember a minority view being blocked by a committee, except for reasons such as un-Parliamentary language. This was another attempt by the National and ACT parties to shut-down opposition to this bill by shutting down the opposition in the committee.

The Labour members on this committee are strongly opposed to these decisions that have been pushed through by a National/ACT majority because we believe that this rushed select committee process, the blocking of Ministry of Justice advice, and the blocking of the minority view on the committee can only result in flawed legislation. Labour members can only assume, given the Justice Minister has relinquished responsibility for progressing this bill through the Parliamentary process, and National and ACT members of this committee have pushed through resolutions to block the Ministry of Justice from providing advice to the committee and limit the submissions on the Government's amendments, that the Government does not want either appropriate scrutiny of the bill or expert advice that may oppose its position to be aired publicly.

Substance of the bill

The Labour Party is opposed to the Sentencing and Parole Reform Bill because it removes the ability of the Courts to take into account the seriousness of an offence; it will increase the stress and burden on victims; and most importantly it will not work to prevent crime.

The revised three-strikes policy announced on 19 January 2010 changed the threshold for the regime from a minimum sentence of five years to conviction for a qualifying offence. The problem with this, as has been pointed out by the Ministry of Justice and the New Zealand Police, is that many of the qualifying offences can range from relatively minor offending to very serious offending. This regime does not allow the judiciary to take the seriousness of the offending into account when sentencing and treats every instance of a qualifying offence as if it were of equal seriousness.

One of the consequences of this revised policy is that victims of crime will endure further and prolonged suffering. This regime will result

in fewer guilty pleas, particularly at stage 3. It will also result in more appeals against convictions and sentences, both of which mean more victims having to go through lengthy trials and appeals processes to establish guilt.

In practice, this revised policy could mean an offender who committed a very serious crime on a first strike could end up receiving a substantially lesser sentence than someone who has committed a far less serious offence but who is on their third strike. The Ministry of Justice has advised that sentences under the three-strikes rule could be 10 times what offenders would otherwise receive.

This will clearly be a significant extra burden on our corrections system and a huge cost to taxpayers. The worst thing is that this extra cost will not result in less crime. The Ministry of Justice and the Department of Corrections have both raised doubts that there will be any notable deterrence effect from this legislation. In the 16 December 2009 Cabinet Paper from the Minister of Police and Corrections, Changes to the Sentencing and Parole Reform Bill, the Ministry of Justice has noted:

> … the deterrence effect of the three stage regime is uncertain. The proposals will add substantial direct costs to the justice system without creating any significantly improved outcomes in terms of reducing the drivers of crimes, improving social outcomes or reducing reoffending and victimisation.

The Department of Corrections has also said in its report to the Law and Order Committee, Further information requested by the Law and Order Committee regarding prison bed forecasts, received on 5 March 2010 "… there is an implicit assumption that the Bill will have no deterrent impact."

This legislation will increase the burden on victims and the cost to taxpayers, while being ineffective in reducing crime.

Appendix

Committee process

The Sentencing and Parole Reform Bill was referred to the committee on 18 February 2009. The closing date for submissions was 24 April 2009. We received and considered 1,075 submissions from interested groups and individuals. We heard 57 submissions, which included holding a hearing in Auckland. We released an interim report on 17 February 2010 and invited further submissions from a number of submitters. The closing date for further submissions was 5 March 2010. We received and considered 36 further submissions.

Petition 2008/4 of Rosa Chow and 7,076 others was referred to the Law and Order Committee of the 48th Parliament on 16 December 2008, and was reinstated by the 49th Parliament. With the petitioner's consent we agreed to consider the petition alongside the Sentencing and Parole Reform Bill on 11 March 2009.

Until 10 February 2010 we received advice from the Ministry of Justice. From 10 February 2010 we received advice from the New Zealand Police, assisted by the Department of Corrections.

Committee membership

Sandra Goudie (Chairperson)
Shane Ardern
Hon Rick Barker
Simon Bridges (until 24 June 2009)
Dr Cam Calder (from 24 June 2009)
David Clendon (from 25 November 2009 until 17 February 2010)
Hon Clayton Cosgrove
David Garrett
Melissa Lee
Carmel Sepuloni
Metiria Turei (until 25 November 2009)
Jonathan Young

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Judith Collins

Sentencing and Parole Reform Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sentencing and Parole Reform Act **2008**.

2 Commencement

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

3 Purpose

The purpose of this Act is to—

(a) deny parole to certain repeat offenders and to offenders guilty of the worst murders:

(b) impose ~~sentences of life imprisonment~~ maximum terms of imprisonment on persistent repeat offenders who continue to commit serious violent offences.

Part 1
Amendments to Sentencing Act 2002

4 Principal Act amended

This Part amends the Sentencing Act 2002.

4A Interpretation

The definition of **minimum period of imprisonment** in section 4(1) is amended by omitting "section 86 or section 89 or section 103" and substituting "section 86, **86D(4), 86E(4)(a),** 89, or 103".

5 New sections 86A to 86H and heading inserted

(1) The following heading and sections are inserted after section 86:

"*Additional consequences for repeated serious violent offending*

"**86A Interpretation**

In this section and in **sections 86B to 86H**, unless the context otherwise requires,—

~~"**qualifying sentence** means a determinate sentence of imprisonment of 5 years or more or an indeterminate sentence of imprisonment~~

"**record of final warning**, in relation to an offender, means a record of a warning that the offender has under **section 86C~~(4)~~(3)** or **86E(7)**

"**record of first warning**, in relation to an offender, means a record of a warning that the offender has under **section 86B(3)**

"**serious violent offence** means an offence against any of the following provisions of the Crimes Act 1961:

"(1) section 128B (sexual violation):

"(2) section 129 (attempted sexual violation and assault with intent to commit sexual violation):

"(3) section 129A(1) (sexual connection with consent induced by threat):

~~"(4) section 130 (incest):~~

"(5) section 131(1) (sexual connection with dependent family member under 18 years):

"(6) section 131(2) (attempted sexual connection with dependent family member under 18 years):
"(7) section 132(1) (sexual connection with child):
"(8) section 132(2) (attempted sexual connection with child):
"(9) section 132(3) (indecent act on child):
"(10) section 134(1) (sexual connection with young person):
"(11) section 134(2) (attempted sexual connection with young person):
"(12) section 134(3) (indecent act on young person):
"(13) section 135 (indecent assault):
"(14) section 138(1) (exploitative sexual connection with person with significant impairment):
"(15) section 138(2) (attempted exploitative sexual connection with person with significant impairment):
"(16) section 142A (compelling indecent act with animal):
"(16a) section 144A (sexual conduct with children and young people outside New Zealand):
"(17) section 172 (murder):
"(18) section 173 (attempted murder):
"(18a) section 174 (counselling or attempting to procure murder):
"(18b) section 175 (conspiracy to murder):
"(19) section 177 (manslaughter):
"(20) section 188(1) (wounding with intent to cause grievous bodily harm):
"(21) section 188(2) (wounding with intent to injure):
"(22) section 189(1) (injuring with intent to cause grievous bodily harm):
"(23) section 191(1) (aggravated wounding):
"(24) section 191(2) (aggravated injury):
"(25) section 198(1) (discharging firearm or doing dangerous act with intent to do grievous bodily harm):
"(26) section 198(2) (discharging firearm or doing dangerous act with intent to injure):
"(27) section 198A(1) (using firearm against law enforcement officer, etc):
"(28) section 198A(2) (using firearm with intent to resist arrest or detention):

"(29) section 198B (commission of crime with firearm):
~~"(30) section 199 (acid throwing):~~
"(30) section 200(1) (poisoning with intent to cause grievous bodily harm):
"(30a) section 201 (infecting with disease):
"(31) section 208 (abduction for purposes of marriage or sexual connection):
"(32) section 209 (kidnapping):
"(33) section 232(1) (aggravated burglary):
"(34) section 234 (robbery):
"(35) section 235 (aggravated robbery):
"(36) section 236(1) (causing grievous bodily harm with intent to rob or assault with intent to rob in specified circumstances):
"(37) section 236(2) (assault with intent to rob)

"**stage-1 offence** means an offence that—
"(a) is a serious violent offence; and
"(b) was committed by an offender at a time when the offender—
"(i) did not have a record of first warning given under **section 86B**; and
"(ii) was 18 years of age or over

"**stage-2 offence** means an offence that—
"(a) is a serious violent offence; and
"(b) was committed by an offender at a time when the offender had a record of first warning (in relation to 1 or more offences) but did not have a record of final warning

"**stage-3 offence** means an offence that—
"(a) is a serious violent offence; and
"(b) was committed by an offender at a time when the offender had a record of final warning (in relation to 1 or more offences).

~~"86B First warning on receiving first qualifying sentence for serious violent offence~~

~~"(1) This section applies to a qualifying sentence for a serious violent offence imposed on an offender who, at the time of committing that serious violent offence,—~~

~~"(a) did not have a record of a warning given under this section; and~~

~~"(b) was 18 years of age or over.~~

~~"(2) When the court imposes the qualifying sentence, the court must—~~

~~"(a) advise the offender that the court is imposing a sentence to which this section applies and warn the offender of the consequences of receiving a further qualifying sentence for a further serious violent offence; and~~

~~"(b) record that a sentence to which this section applies has been imposed on the offender and that the offender has been warned in accordance with **paragraph (a)**.~~

~~"(3) On the entry of a record under **subsection (2)(b)**, the offender has a record of a first warning.~~

"**86B Stage-1 offence: offender given first warning**

"(1) When a court, on any occasion, convicts an offender of 1 or more stage-1 offences, the court must—

"(a) warn the offender of the consequences if the offender is convicted of any serious violent offence committed after that warning (whether or not that further serious violent offence is different in kind from any stage-1 offence for which the offender is being convicted); and

"(b) give the offender a written notice that sets out the substance of the warning given to the offender under **paragraph (a)**; and

"(c) record, in relation to each stage-1 offence, that the offender has been warned in accordance with **paragraph (a)**.

"(2) It is not necessary for a Judge to use a particular form of words in giving the warning.

"(3) On the entry of a record under **subsection (1)(c)**, the offender has, in relation to each stage-1 offence (for which a record is entered), a record of first warning.

~~"**86C Final warning on receiving second qualifying sentence for serious violent offence**~~

~~"(1) This section applies to a qualifying sentence, other than a sentence of imprisonment for life for murder, for a serious violent~~

~~offence imposed on an offender who, at the time of committing that offence, had a record of a first warning.~~

~~"(2) If the sentence imposed on the offender is a determinate sentence of imprisonment, the court must order that the offender serve the sentence without parole.~~

~~"(3) When the court imposes the qualifying sentence, the court must—~~

~~"(a) advise the offender that the court is imposing a sentence to which this section applies and warn the offender of the consequences of receiving a further qualifying sentence for a further serious violent offence; and~~

~~"(b) record that a sentence to which this section applies has been imposed on the offender and that the offender has been warned in accordance with **paragraph (a)**.~~

~~"(4) On the entry of a record under **subsection (3)(b)**, the offender has a record of a final warning.~~

"**86C Stage-2 offence other than murder: offender given final warning and must serve full term of imprisonment**

"(1) When, on any occasion, a court convicts an offender of 1 or more stage-2 offences other than murder, the court must—

"(a) warn the offender of the consequences if the offender is convicted of any serious violent offence committed after that warning (whether or not that further serious violent offence is different in kind from any stage-2 offence for which the offender is being convicted); and

"(b) give the offender a written notice that sets out the substance of the warning given to the offender under **paragraph (a)**; and

"(c) record, in relation to each stage-2 offence, that the offender has been warned in accordance with **paragraph (a)**.

"(2) It is not necessary for a Judge to use a particular form of words in giving the warning.

"(3) On the entry of a record under **subsection (1)(c)**, the offender has, in relation to each stage-2 offence for which a record is entered, a record of a final warning.

"(4) If the sentence imposed on the offender for any stage-2 offences is a determinate sentence of imprisonment, the court

must order that the offender serve the full term of the sentence and, accordingly, that the offender,—

"(a) in the case of a long-term sentence (within the meaning of the Parole Act 2002), serve the sentence without parole; and

"(b) in the case of a short-term sentence (within the meaning of the Parole Act 2002), not be released before the expiry of the sentence.

"(5) If the sentence imposed on the offender for 1 or more stage-2 offences is a short-term sentence (within the meaning of the Parole Act 2002) and any conditions are imposed on the offender under section 93, then, despite anything in that section, those conditions take effect on the sentence expiry date (within the meaning of the Parole Act 2002).

"(6) If, but for the application of this section, the court would have ordered, under section 86, that the offender serve a minimum period of imprisonment, the court must state, with reasons, the period that it would have imposed.

"86D Imprisonment for life on third or subsequent qualifying sentence

"(1) This section applies if—

"(a) an offender who has a record of a final warning commits a serious violent offence; and

"(b) the court would, but for this section, impose a further qualifying sentence, other than a sentence of imprisonment for life for murder, for that offence.

"(2) If this section applies, the court must—

"(a) impose a sentence of imprisonment for life; and

"(b) order that the offender serve a minimum period of imprisonment under that sentence.

"(3) The court must impose a minimum period of imprisonment of 25 years unless the court is satisfied that it would be manifestly unjust to do so.

"(4) If the court imposes a minimum period of imprisonment that is less than 25 years, the court must give written reasons for doing so.

"(5) If the court imposes a sentence of life imprisonment for an offence under this section, it must record, with reasons, the

~~qualifying sentence the court would, but for this section ; have imposed for that offence.~~

"**86D Stage-3 offences other than murder: offender sentenced to maximum term of imprisonment**

"(1) Despite any other enactment,—

"(a) a trial for a stage-3 offence must be held in the High Court; and

"(b) no court other than the High Court, or the Court of Appeal or the Supreme Court on an appeal, may sentence an offender for a stage-3 offence.

"(2) Despite any other enactment, if, on any occasion, an offender is convicted of 1 or more stage-3 offences other than murder, the High Court must sentence the offender to the maximum term of imprisonment prescribed for each offence.

"(3) When the Court sentences the offender under **subsection (2)**, the Court must order that the offender serve the sentence without parole unless the Court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to make the order.

"(4) Despite **subsection (3)**, if the Court sentences the offender for manslaughter, the Court must order that the offender serve a minimum period of imprisonment of not less than 20 years unless the Court considers that, given the circumstances of the offence and the offender, a minimum period of that duration would be manifestly unjust, in which case the Court must order that the offender serve a minimum period of imprisonment of not less than 10 years.

"(5) If the Court does not make an order under **subsection (3)** or, where **subsection (4)** applies, does not order a minimum period of not less than 20 years under **subsection (4)**, the Court must give written reasons for not doing so.

"(6) If the Court imposes a sentence under **subsection (2)**, any other sentence of imprisonment imposed on the same occasion (whether for a stage-3 offence or for any other kind of offence) must be imposed concurrently.

"(7) Despite **subsection (2)**, this section does not preclude the Court from imposing, under section 87, a sentence of preven-

tive detention on the offender, and if the Court imposes such a sentence on the offender,—

"(a) **subsections (2) to (5)** do not apply; and

"(b) the minimum period of imprisonment that the Court imposes on the offender under section 89(1) must not be less than the term of imprisonment that the Court would have imposed under **subsection (2)**, unless the Court is satisfied that, given the circumstances of the offence and the offender, the imposition of that minimum period would be manifestly unjust.

"(8) If, in reliance on **subsection (7)(b)**, the Court imposes a minimum period of imprisonment that is less than the term of imprisonment that the Court would have imposed under **subsection (2)**, the Court must give written reasons for doing so.

~~"86E **Offenders with record of warning or final warning who are sentenced to imprisonment for life for murder**~~

~~"(1) This section applies to a sentence of imprisonment for life for murder imposed on an offender who, at the time of committing that murder, had a record of a warning or a record of a final warning.~~

~~"(2) If this section applies to a sentence, the court must order that the offender serve the sentence of imprisonment for life without parole unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so.~~

~~"(3) If the court does not make an order under **subsection (2)**, the court must give written reasons for not doing so.~~

~~"(4) If the court does not make an order under **subsection (2)**, the court must,—~~

~~"(a) if the offender did not, at the time of the commission of the murder, have a record of a final warning, order that the offender serve a minimum period of imprisonment in accordance with section 103 and, if applicable, section 104, and~~

~~"(b) in any other case, impose a minimum period of imprisonment of not less than 25 years unless the court is satisfied that it would be manifestly unjust to do so.~~

~~"(5) If, in any case to which **subsection (4)(b)** applies, the court imposes a minimum period of imprisonment of less than 25 years, the court must give written reasons for doing so.~~

~~"(6) If the court makes an order under **subsection (4)(a)** and the offender does not, at the time of sentencing, have a record of a final warning, the court must—~~

~~"(a) warn the offender of the consequences of receiving a further qualifying sentence for a further serious violent offence; and~~

~~"(b) record the sentence that has been imposed on the offender and that the offender has been warned in accordance with **paragraph (a)**.~~

~~"(7) On the entry of a record under **subsection (6)(b)**, the offender has a record of a final warning.~~

"**86E When murder is a stage-2 or stage-3 offence**

"(1) This section applies if—

"(a) an offender is convicted of murder; and

"(b) that murder is a stage-2 offence or a stage-3 offence.

"(2) If this section applies, the court must—

"(a) sentence the offender to imprisonment for life for that murder; and

"(b) order that the offender serve that sentence of imprisonment for life without parole unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so.

"(3) If the court does not make an order under **subsection (2)(b)**, the court must give written reasons for not doing so.

"(4) If the court does not make an order under **subsection (2)(b)**, the court must,—

"(a) if that murder is a stage-3 offence, impose a minimum period of imprisonment of not less than 20 years unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so; and

"(b) if that murder is a stage-2 offence, or if the court is satisfied that a minimum period of imprisonment of not less than 20 years under **paragraph (a)** would be man-

ifestly unjust, order that the offender serve a minimum period of imprisonment in accordance with section 103.

"(5) If, in the case of a stage-3 offence, the court imposes under **subsection (4)(a)** a minimum period of imprisonment of less than 20 years, the court must give written reasons for doing so.

"(6) If, in the case of a stage-2 offence, the court makes an order under **subsection (4)(b)** and the offender does not, at the time of sentencing, have a record of final warning, the court must—

"(a) warn the offender of the consequences if the offender is convicted of any serious violent offence committed after that warning; and

"(b) give the offender a written notice that sets out the substance of the warning given to the offender under **paragraph (a)**; and

"(c) record that the offender has been warned in accordance with **paragraph (a)**.

"(7) It is not necessary for a Judge to use a particular form of words in giving the warning.

"(8) On the entry of a record under **subsection (6)(c)**, the offender has a record of final warning.

"**86F Continuing effect of warnings**

"(1) An offender continues to have a record of a first warning or a record of a final warning regardless of ~~the effect of~~ whether the offender has served or otherwise completed the sentence imposed on the offender for the offence (including, without limitation, any sentence imposed under **section 86D or 86E**) to which the record relates.

~~"(2) However, a record of a warning or a record of a final warning must be disregarded if, as a consequence of an appeal,—~~

~~"(a) the sentence to which the record relates is quashed or replaced by a sentence that is not a qualifying sentence; or~~

~~"(b) the conviction for the offence for which the sentence was imposed is quashed or replaced by a conviction for an offence that is not a serious violent offence.~~

"(2) However, an offender ceases to have a record of first warning or a record of final warning if, on an appeal, an appellate court —

"(a) quashes all the convictions to which the relevant record relates; and

"(b) does not replace 1 or more of those quashed convictions with a conviction for another serious violent offence.

"(3) If the appellate court quashes a conviction to which a record of first warning or a record of final warning relates, the appellate court must order that the record of the warning be cancelled in respect of that conviction.

"(4) If the appellate court replaces a conviction (the **quashed conviction**) to which a record of first warning or a record of final warning relates with a conviction for another serious violent offence (the **substituted conviction**), then any record of first warning or final warning that previously related to the quashed conviction is deemed—

"(a) to relate to the substituted conviction; and

"(b) to have taken effect on the date on which the record that related to the quashed conviction took effect.

"(5) If, in accordance with **subsection (2)**, an offender has ceased to have a record of first warning but continues to have a record of final warning, then—

"(a) the appellate court must order that a record of first warning replace that record of final warning; and

"(b) that replacement record of first warning is deemed to have taken effect on the date on which the record of final warning took effect.

"**86FA Consequences of cancellation of record on later sentences**

"(1) This section applies where,—

"(a) in accordance with **section 86F(2)**, an offender ceases to have a record of first warning or a record of final warning (the **previous record**); and

"(b) the offender continues to be subject to a sentence (a **later sentence**) that was imposed on the offender under any of **sections 86C, 86D, or 86E** for serious violent offences committed when the offender had the previous record.

"(2) The appellate court must take the actions described in this section that are applicable to the case or remit the matter to the

court that sentenced the offender with a direction to take those actions.

"(3) If the later sentence or an order relating to the later sentence or both would not have been imposed or made but for the previous record, the appropriate court—

"(a) must set aside the later sentence and any order relating to the later sentence; and

"(b) must replace the sentence and any order set aside with a sentence and any order that the court would have imposed or made if the offender had not been subject to the previous record; and

"(c) may make any consequential orders that the court considers just.

"(4) Without limiting the generality of **subsection (3)**, if an offender who continues to be subject to a later sentence for 1 or more stage-2 offences ceases, in accordance with **section 86F(2)**, to have a record of first warning, the appropriate court must—

"(a) cancel any order imposed on the offender in respect of those stage-2 offences under **section 86C(4)**; and

"(b) if the court considers it appropriate to do so, impose a minimum period of imprisonment under section 86 in respect of those stage-2 offences, taking into account any indication given by the sentencing court under **section 86C(6)**; and

"(c) in the case of a stage-2 offence that is murder, cancel any sentence or order imposed on the offender under **section 86E(2)** and resentence the offender under subpart 4 of this Part.

"(5) Without limiting the generality of **subsection (3)**, if an offender who continues to be subject to a later sentence for stage-3 offences ceases, in accordance with **section 86F(2)**, to have either a record of first warning or a record of final warning, the appropriate court must,—

"(a) if the offender has been sentenced under **section 86D**, resentence the offender for the offence concerned by applying **section 86C**; and

"(b) in the case of a stage-3 offence that is murder, cancel any order made under **section 86E(4)(a)** and replace it with an order under **section 86E(4)(b)**.

"(6) Without limiting the generality of **subsection (3)**, if an offender who continues to be subject to a later sentence for stage-3 convictions ceases, in accordance with **section 86F(2)**, to have both a record of first warning and a record of final warning, the court must,—

"(a) if the offender has been sentenced under **section 86D**, resentence the offender for the offence concerned:

"(b) in the case of a stage-3 offence that is murder, cancel any sentence or order imposed on the offender under **section 86E(2)** and any order under **section 86E(4)** and resentence the offender under subpart 4 of this Part:

"(c) administer a first warning to the offender by taking the action described in **section 86B(2)**.

"**86G Appeal against ~~order imposing minimum period of imprisonment or life without parole~~orders relating to imprisonment**

For the purposes of Part 13 of the Crimes Act 1961, an order under **section ~~86D(2)(b)~~ 86D(3) or (4), or 86E(2)(b) or ~~(4)(b)~~** is a sentence.

"**86H Sections 86B to 86E prevail over inconsistent provisions**

A provision contained in **sections 86B to 86E** that is inconsistent with another provision of this Act or the Parole Act 2002 prevails over the other provision, to the extent of the inconsistency."

(2) **Sections 86C(6)** and **86FA(4)(b)** of the principal Act (as inserted by **subsection (1)** of this section) expire and are repealed on the commencement of section 46 of the Sentencing Amendment Act 2007.

5A Imposition of minimum period of imprisonment

Section 89 is amended by inserting the following subsection after subsection (2):

"(2A) In any case where a sentence is imposed under this section for a stage-3 offence (within the meaning of **section 86A**), subsections (1) and (2) are subject to section **86D(7)**."

5B Presumption in favour of life imprisonment for murder

Section 102 is amended by adding the following subsection:

"(3) This section is subject to **section 86E(2)**."

6 Heading above section 103 amended

The heading above section 103 is amended by adding "*or imprisonment without parole*".

7 Imposition of minimum period of imprisonment if life imprisonment imposed for murder

(1) The heading to section 103 is amended by inserting "**or imprisonment without parole**" after "**minimum period of imprisonment**".

(2) Section 103 is amended by repealing subsection (1) and substituting the following subsection:

"(1) If a court sentences an offender convicted of murder to imprisonment for life it ~~must—~~ must,—

~~"(a) order that the offender serve a minimum period of imprisonment under that sentence; or~~

~~"(b) make an order under **subsection (2A) or section 86E(2)**.~~

"(a) if **section 86E(1)** does not apply to the conviction,—

"(i) order that the offender serve a minimum period of imprisonment under that sentence; or

"(ii) if **subsection (2A)** applies, make an order under that subsection; or

"(b) in any case where **section 86E(1)** applies to the conviction, take the action prescribed by that section."

(3) Section 103 is amended by inserting the following subsections after subsection (2):

"(2A) If the court that sentences an offender convicted of murder to imprisonment for life is satisfied that no minimum term of imprisonment would be sufficient to satisfy 1 or more of the

purposes stated in subsection (2), the court may order that the offender serve the sentence without parole.

"(2B) The court may not make an order under **subsection (2A)** unless the offender was 18 years of age or over at the time that the offender committed the murder."

(4) Section 103(7) is amended by omitting "This section" and substituting "Subsection (2)".

8 Imposition of minimum period of imprisonment of 17 years or more

Section 104 is amended by adding the following subsection as subsection (2):

"(2) This section does not apply to an offender in respect of whom an order under **section** **86E(2)(b) or (4)(a)** or **103(2A)** ~~**86E(2), (4)(b)**~~ is made."

9 Transitional provision

(1) **Sections 86A to 86H** of the principal Act (as inserted by **section 5**) do not apply to any offence committed, whether in whole or in part, before the commencement of this Act.

(2) **Section 103(2A)** of the principal Act (as inserted by **section 7**) does not apply to any murder committed, whether in whole or in part, before the commencement of this Act.

9A Consequential amendments to other Acts

The Acts specified in the Schedule are amended in the manner set out in that schedule.

Part 2
Amendments to Parole Act 2002

10 Principal Act amended

This Part amends the Parole Act 2002.

11 Parole eligibility date

Section 20 is amended by adding the following subsections:

"(5) If an offender is required, by an order under **section 86C~~(2)~~(4) or 86D(3)** of the Sentencing Act 2002, to serve a sentence without parole, the offender—

"(a) does not have a parole eligibility date in respect of the sentence; and

"(b) may not be released on parole in respect of that sentence.

"(6) If an offender is required, by an order under **section 86E(2) or 103(2A)** of the Sentencing Act 2002, to serve a sentence of imprisonment for life without parole, the offender may not be released on parole.

"(7) This subsection applies to an offender who is subject to a sentence (**sentence A**) in respect of which an order under **section 86C~~(2)~~(4) or 86D(3)** of the Sentencing Act 2002 has been made and who is also subject to 1 or more other sentences (**sentence B**) in respect of which no such order has been made.

"(8) For the purpose of determining the parole eligibility date (if any) of sentence B of an offender to whom **subsection (7)** applies, the full term of sentence A must be treated as the non-parole period of sentence A."

12 Non-parole periods

(1) Section 84(2) is amended by inserting "**section 86D~~(2)~~(4), section 86E(4),**" after "section 86".

(2) Section 84 is amended by repealing subsection (3) and substituting the following subsections:

"(3) The non-parole period of a sentence of imprisonment for life is 10 years, unless the court—

"(a) has imposed a minimum term of imprisonment in respect of that sentence; or

"(b) has made an order under **section 86E(2) or 103(2A)** of the Sentencing Act 2002 in respect of that sentence.

"(3A) An offender who is subject to an order under **section 86E(2) or 103(2A)** of the Sentencing Act 2002 is not eligible for parole in respect of the sentence to which the order relates, nor in respect of any other sentence to which he or she is subject when the order is imposed, nor in respect of any sentence subsequently imposed."

(3) Section 84(5) is amended by inserting the following paragraph after paragraph (a):

"(ab) every sentence in respect of which an order under **section 86C~~(2)~~(4) or 86D(3)** of the Sentencing Act 2002 has been made must be treated as if the full term of the sentence were the non-parole period of the sentence; and".

13 Release date of sentence

Section 86 is amended by inserting the following subsection after subsection (1):

"(1A) Subsection (1) does not apply to a short-term sentence in respect of which an order has been made under **section 86C(4)(b)** of the Sentencing Act 2002, and the release date of such a sentence is its sentence expiry date."

Schedule

s 9A

Consequential amendments to other Acts

Crimes Act 1961 (1961 No 43)

Section 372(6): repeal and substitute:

"(6) In this section, **sentence** includes—

"(a) an order, and references to the passing of a sentence include references to the making of an order:

"(b) a record of first warning (within the meaning of **section 86A** of the Sentencing Act 2002) and a record of final warning (within the meaning of that section), and references to the passing of a sentence include references to the giving and recording of a warning of either kind."

District Courts Act 1947 (1947 No 16)

Section 28A: add:

"(3) Despite subsection (1), a court does not have jurisdiction to try a person charged with a stage-3 offence (within the meaning of **section 86A** of the Sentencing Act 2002)."

Section 28F: add:

"(5) Despite subsections (1) to (4), a court does not have jurisdiction to impose a sentence in respect of a stage-3 offence (within the meaning of **section 86A** of the Sentencing Act 2002)."

Evidence Act 2006 (2006 No 69)

Section 139(1): insert after paragraph (b):

"(ba) a record of first warning (within the meaning of **section 86A** of the Sentencing Act 2002) or a record of final warning (within the meaning of that section) made in respect of a person:".

Summary Proceedings Act 1957 (1957 No 87)

Section 6: add:

"(3) Despite this section, a Court does not have summary jurisdiction in respect of a stage-3 offence (within the meaning of **section 86A** of the Sentencing Act 2002)."

Summary Proceedings Act 1957 (1957 No 87)—*continued*

Section 184Q: add:

"(7) Nothing in this section applies to a proceeding where the defendant is charged with a stage-3 offence (within the meaning of **section 86A** of the Sentencing Act 2002)."

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