

Sentencing (Domestic Violence) Amendment Bill

Member's Bill

Explanatory note

General policy statement

Domestic violence is an oppressive and devastating feature of our society—with approximately 80,000 cases per year (84,000 in 2011–12), which have a disproportionate impact on women and children. It is a complex problem that requires a comprehensive response.

This Bill aims to be part of the solution by representing society's abhorrence about the act of domestic violence and by improving the reporting of domestic violence offending so that we can respond to the needs of domestic violence survivors, and work to prevent domestic violence.

The nature of domestic violence offending and the significant and long-term impact that it has on the lives of victims and witnesses (such as children in a relationship) makes it appropriate to be considered separately as a factor that may lead to a penalty being increased. This approach ensures that the breadth of offences that may involve or relate to domestic violence are considered and taken into account.

Judge Boshier, the former Principal Family Court Judge and now Law Commissioner, has highlighted deficiencies in the automatic access to information Judges have about an offender's history of domestic violence (including complaints and convictions) when making decisions in the Family Court.

In addition, New Zealand Police stated in its 2011/12 Annual Report that it will no longer be reporting on the domestic violence offence rate.

Access to this information is important to ensure that the right decisions are made in individual cases and to ensure tracking of how effective agency efforts are at responding to domestic violence in society.

The Family Court is primarily responsible for the decisions made under the Domestic Violence Act 1995, decisions relating to spouses and partners, and care and access to children of a relationship. Background information from Police and Criminal Courts

about the parties to a case is essential information for a Judge to ensure that appropriate and effective steps are taken to reduce the risk of domestic violence. It is also important for a Judge to be aware of the power dynamics in a relationship, particularly marriage dissolution cases, as the Government recently decided that legal aid should not be available in these cases and parties may therefore be without legal representation.

This Bill addresses these issues by making domestic violence an aggravating factor at the time of sentencing. Currently, all Judges of criminal cases are required to weigh up the mitigating and aggravating features of a case before deciding on an appropriate sentence. Sentencing decisions are recorded and made available in subsequent judgments, including in the Family Court.

It is important to start a formal record so that policy makers know the nature and extent of domestic violence in order to identify ways to prevent it.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Bill to come into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the Sentencing Act 2002 (the **principal Act**).

Clause 4 amends section 4 by inserting a definition of **domestic violence**. For consistency, and to ensure that the full range of offending is covered, the definition in the Domestic Violence Act 1995 is applied.

Clause 5 amends section 9 by adding a new aggravating factor to be considered by Judges at the time of sentencing—namely, that the offending involved or related (in whole or in part) to domestic violence committed by the offender.

Hon Nanaia Mahuta

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sentencing (Domestic Violence) Amendment Act **2017**.

2 Commencement

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

3 Principal Act

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

4 Section 4 amended (Interpretation)

In section 4(1), after the definition of **curfew period**, insert: 10
domestic violence has the meaning given in section 3 of the Domestic Violence Act 1995

5 Section 9 amended (Aggravating and mitigating factors)

After section 9(1)(e), insert:

(ea) that the offending involved, or related (in whole or in part), to domestic violence committed by the offender: