



Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016

Public Act 2016 No 86
Date of assent 15 November 2016
Commencement see section 2

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal Act	2
4	Section 3 amended (Interpretation)	2
5	New section 92A inserted (Interpretation)	3
	92A Interpretation	3
6	New sections 95A to 95E and cross-headings inserted	4
	<i>Drug or alcohol requirements</i>	
	95A Imposition, and effect, of drug or alcohol requirement	4
	95B Person with drug or alcohol requirement may be directed to undergo testing or submit to continuous monitoring	4
	95C How notice of direction to undergo testing or to submit to continuous monitoring may be given	5
	95D Where prescribed testing procedure may be carried out	6
	95E Information obtained from drug and alcohol testing or monitoring	7
	<i>Variation of requirements</i>	
7	New cross-heading above section 99 inserted	7
	<i>Review of order</i>	
8	New cross-heading above section 103 inserted	7
	<i>Offences</i>	
9	New sections 103A to 103E and cross-heading inserted	7

103A	Offences related to drug or alcohol requirements	8
103B	Offence to refuse authorised person entry to residential address	8
<i>Rules</i>		
103C	Rules about testing and monitoring of persons with drug or alcohol requirements	9
103D	Further provisions concerning rules made under section 103C	10
103E	Availability of rules made under section 103C and status under Legislation Act 2012	11

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Public Safety (Public Protection Orders) (Drug and Alcohol Testing) Amendment Act 2016.

2 Commencement

- (1) This Act comes into force on the earlier of the following:
- (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 which this Act receives the Royal assent.

3 Principal Act

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

4 Section 3 amended (Interpretation)

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

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

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

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

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

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

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

5 New section 92A inserted (Interpretation)

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

92A Interpretation

In this subpart, unless the context otherwise requires,—

bodily sample means—

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

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

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

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

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

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

medical officer means—

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

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

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

6 New sections 95A to 95E and cross-headings inserted

After section 95, insert:

Drug or alcohol requirements

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

- (1) This section applies if a court imposes a drug or alcohol requirement on a person subject to a protective supervision order.
- (2) The court cannot direct, indicate, or require that the person subject to the order undergo or submit to drug or alcohol testing or continuous monitoring, but the requirement means that the person must comply with all directions arising from an authorised person giving the person notice under section 95B(2).
- (3) The court must advise the person that the person must do any 1 or more of the following things if directed to do so by notice given by an authorised person under section 95B(2):
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol:
 - (b) submit to continuous monitoring of the person's compliance with the drug or alcohol requirement through a drug or alcohol monitoring device connected to the person's body:
 - (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.

95B Person with drug or alcohol requirement may be directed to undergo testing or submit to continuous monitoring

- (1) This section applies to a person who is subject to a protective supervision order with a drug or alcohol requirement.
- (2) An authorised person may, by notice given to a person to whom this section applies, direct the person to do any 1 or more of the following:
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under section 103C(a):
 - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the person's compliance with the drug or alcohol requirement through a drug or alcohol monitoring device of a type prescribed in rules made under section 103C(d):

- (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 103C(a).
- (3) An authorised person exercising that person's discretion under subsection (2)—
 - (a) must comply with any rules made under section 103C; and
 - (b) may—
 - (i) select a person 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 person with or without evidence that the person has breached the condition; and
 - (c) must, if directing the person to do what is specified in subsection (2)(a) or (c), determine the prescribed testing procedure to be used for the testing the person is directed to do under subsection (2)(a), or required if the person is selected to undergo testing by an automated system that the person is directed to contact under subsection (2)(c).
- (4) A notice given to a person under subsection (2)(b) may include a direction that the person 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).
- (5) 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 103C(b) (including randomly), whether the person is required to undergo testing.
- (6) Only a medical practitioner or medical officer may collect a blood sample from a person under this section.
- (7) In this section and in sections 95C to 95E and 103A, **authorised person** means a person who is—
 - (a) a constable; or
 - (b) an employee of the department authorised by the chief executive to direct persons to whom this section applies to undergo testing or monitoring.

95C How notice of direction to undergo testing or to submit to continuous monitoring may be given

- (1) An authorised person may give a person to whom section 95B applies a notice under section 95B(2) in any of the following ways:

- (a) by giving the notice personally and in writing to the person:
 - (b) by giving the notice personally and orally to the person, then, unless the notice directs the person only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the person:
 - (c) if the notice is given under section 95B(2)(a), by giving the notice to the person 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 person.
- (2) An automated system must, in response to a person contacting it as directed by a notice given under section 95B(2)(c) and subsection (1), give the person a spoken or written response notice specifying whether the person is required to undergo testing.
- (3) A notice given by an authorised person under subsection (1)(c), or a response notice that is given by an automated system under subsection (2) and that requires a person to undergo testing, must specify the name and location of a testing facility to which the person is required to report to undergo testing, and the time or times when the person is required to report, under section 95D.

95D Where prescribed testing procedure may be carried out

- (1) An authorised person may require a person to whom section 95B applies to undergo testing at the place where the person is given notice under section 95B(2) personally by the authorised person.
- (2) Subsection (1) applies even if the place where the person 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
 - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the person's residential address.
- (3) However, a person cannot be required to undergo a prescribed testing procedure in a place specified in subsection (2)(a) or (b) if the testing procedure involves the collection of blood or urine.
- (4) A person 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 person to undergo testing at the place where the person is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the person to undergo testing.
- (5) A person given a notice under section 95C(1)(c) or (2) that requires the person 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.

95E Information obtained from drug and alcohol testing or monitoring

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

*Variation of requirements***7 New cross-heading above section 99 inserted**

After section 98, insert:

*Review of order***8 New cross-heading above section 103 inserted**

After section 102, insert:

*Offences***9 New sections 103A to 103E and cross-heading inserted**

After section 103, insert:

103A Offences related to drug or alcohol requirements

- (1) A person who is subject to a protective supervision order with a drug or alcohol requirement commits an offence if the person—
- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when directed to do so under section 95B(2)(a) and 95D; or
 - (ii) to submit to continuous monitoring when directed to do so under section 95B(2)(b); or
 - (iii) to accompany an authorised person, when required to do so under section 95D(4), to a place where it is likely that it will be reasonably practicable for the person subject to the order to undergo testing; or
 - (iv) to contact a specified automated system when directed to do so under section 95B(2)(c); or
 - (v) to report, at any time or times when required to do so under section 95D(5), to a specified testing facility to undergo testing; or
 - (vi) to undergo a testing procedure when required to do so under sections 95B(2)(c) and 95D; or
 - (b) does anything with the intention of diluting or contaminating a bodily sample required under section 95B(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 95B(2)(b) or does anything with the intention of interfering with the functioning of that device.
- (2) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years.

103B Offence to refuse authorised person entry to residential address

- (1) This section applies to a person who is—
- (a) subject to a protective supervision order with a drug or alcohol requirement; and
 - (b) directed, under section 95B(2)(b), to submit to continuous monitoring of the person's compliance with the requirement.
- (2) A person to whom this section applies commits an offence if the person refuses or fails, without reasonable excuse, to allow an authorised person to enter the person's residential address for all or any of the following purposes:
- (a) attaching a drug or alcohol monitoring device to, or removing the device from, the person;
 - (b) servicing or inspecting the device:

- (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.
- (3) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In subsection (2), **authorised person** means any of the following:
 - (a) an authorised person (as defined in section 95B(7)) who has produced evidence of that person's identity to the person to whom this section applies:
 - (b) a person accompanying a person described in paragraph (a):
 - (c) a person who—
 - (i) has produced evidence of that person's identity to the person to whom this section applies; and
 - (ii) is authorised in writing by an authorised person (as defined in section 95B(7)) to enter the residential address of the person to whom this section applies for all or any of the following purposes:
 - (A) attaching a drug or alcohol monitoring device to, or removing the device from, the person:
 - (B) servicing or inspecting the device:
 - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
 - (iii) has produced that written authority to the person to whom this section applies.

Rules

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

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

- (a) prescribing, for the purposes of section 95B(2)(a) and (c), 1 or more types of testing procedure that a person to whom section 95B applies may be directed to undergo:
- (b) specifying how often each of the prescribed testing procedures may be carried out:
- (c) prohibiting authorised persons from directing a person to whom section 95B applies to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances:

- (d) prescribing, for the purposes of section 95B(2)(b), 1 or more types of drug or alcohol monitoring device that may be connected to a person to whom section 95B applies:
- (e) specifying restrictions as to how often, and for how long,—
 - (i) continuous monitoring may be carried out:
 - (ii) a person 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 a person in order for the sample to be used as evidence that the person has breached a drug or alcohol requirement:
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol.

103D Further provisions concerning rules made under section 103C

- (1) Rules made under section 103C(a) may, without limitation, prescribe testing procedures that do all or any of the following:
 - (a) include, as part of the procedure, either or both of the following:
 - (i) breath screening:
 - (ii) the collection and analysis of a bodily sample:
 - (b) require a person to be supervised by another person of the same sex during the collection of a bodily sample required for testing:
 - (c) provide for a person to elect, if the person meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.
- (2) The chief executive may make rules under section 103C only if satisfied that the rules—
 - (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol requirement; and
 - (b) allow for persons with drug or alcohol requirements to be tested no more often than is reasonably necessary to ensure compliance with the requirement; and
 - (c) ensure that persons liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) Subsection (1)(b) overrides subsection (2)(c).

103E Availability of rules made under section 103C and status under Legislation Act 2012

- (1) The chief executive must ensure that any rules made under section 103C are, while in force, made available—
 - (a) on an Internet site that is maintained by or on behalf of the department and that is, so far as practicable, publicly available free of charge; and
 - (b) for public inspection free of charge; and
 - (c) for purchase at a reasonable price.
- (2) Rules made under section 103C are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

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 238–3D

8 November 2016

Third reading

15 November 2016

Royal assent

This Act is administered by the Department of Corrections.