

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

*House of Representatives, 12 June 1985.*

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE]

*House of Representatives, 13 August 1985.*

Words struck out are shown in italics within double bold round brackets, or with double black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[This Bill was formerly clauses 162 to 177 of the Criminal Justice Bill (No. 2).]

*Hon. Geoffrey Palmer*

### CRIMES AMENDMENT (NO. 3)

#### ANALYSIS

Title	7. Assisting escape of mentally disordered person under detention for offence
1. Short Title and commencement	8. Infanticide
2. Two new sections inserted in principal Act.	9. Conversion or attempted conversion of motorcars, etc.
10A. Criminal enactments not to have retrospective effect	10. Power to discharge accused
10B. Period of limitation	11. Power to clear Court and forbid report of proceedings
3. Putting under bond	12. Powers of Court of Appeal in special cases
4. Supervision of offender when time for payment is allowed	13. Granting of bail to appellant, and custody pending appeal
5. Community service or periodic detention for non-payment of fine	14. Intermediate effects of appeal
6. Escape from lawful custody	15. Compensation for loss of property
	16. Restitution of property

#### A BILL INTITULED

#### An Act amend the Crimes Act 1961

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

No. 70-3A

**1. Short Title and commencement**—(1) This Act may be cited as the Crimes Amendment Act (No. 3) 1985, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of October 1985. 5

**2. Two new sections inserted in principal Act**—The principal Act is hereby amended by inserting, after section 10, the following sections:

**“10A. Criminal enactments not to have retrospective effect**—Notwithstanding any other enactment or rule of law to the contrary, no person shall be liable in any criminal proceedings in respect of an act or omission by him if, at the time of the act or omission, the act or omission by him did not constitute an offence. 10 15

Cf. 1954, No. 50, s. 43B; 1980, No. 21, s. 22

**“10B. Period of limitation**—(1) Except with the prior consent of the Attorney-General, no proceedings in respect of an offence to which this section applies, or, where such proceedings have been commenced, no further steps in the proceedings (other than steps subsequent to the trial or hearing) shall be taken after the expiration of 10 years from the date of the commission of the offence. 20

“(2) This section shall apply to the following offences:

“(a) An offence punishable by a fine only, where the maximum fine that may be imposed in respect of that offence is less than \$2,000: 25

“(b) An offence punishable by imprisonment, where the maximum term of imprisonment that may be imposed in respect of that offence is less than 3 years. 30

“(3) This section shall apply with respect to offences committed before or after the commencement of this section, and, in the case of an offence committed before the commencement of this section, whether or not proceedings in respect of the offence have been commenced before the commencement of this section or are in progress at the commencement of this section. 35

“(4) Nothing in this section shall derogate from the provisions of any other Act fixing a period of limitation of less than 10 years for the commencement of proceedings in respect of an offence.” 40

Cf. 1954, No. 50, s. 40A; 1966, No. 99, s. 5

**3. Putting under bond**—Section 18 of the principal Act, and the heading above that section, are hereby repealed.

**4. Supervision of offender when time for payment is allowed**—Section 19A of the principal Act (as substituted by section 2 of the Crimes Amendment Act 1966) is hereby repealed.

**5. Community service or periodic detention for non-payment of fine**—The principal Act is hereby amended by inserting, after section 19D (as substituted by section 2 of the Crimes Amendment Act 1966), the following section:

“19DA. (1) In any case where, under section 19D of this Act, an order may be made for the imprisonment of any person in respect of the non-payment of any fine or other sum of money, the Judge may issue a summons to that person, or whether or not a summons has been issued or served, may issue a warrant to arrest that person and bring him before the High Court.

“(2) On the appearance of that person before the Court, the Court may in its discretion, after considering the report referred to in section 19D of this Act, and after taking into account any other fines and any amount of reparation owing by that person, sentence that person in accordance with the relevant provisions of Part III of the Criminal Justice Act (1984) 1985—

“(a) With that person’s consent, to community service for such number of hours, being not less than 20 nor more than 200, as the Court may specify; or

“(b) To periodic detention for such term as the Court thinks fit, not exceeding in any case 12 months.

“(3) A sentence of community service or a sentence of periodic detention may be imposed under this section, notwithstanding that none of the offences in respect of which the fines were imposed was punishable by imprisonment.

“(4) Where any person is sentenced to community service or to periodic detention under this section for the non-payment of the whole or any part of a fine (that fine or part of a fine) or other sum of money, that fine or part of a fine or other sum of money shall be deemed to be remitted.

“(5) Where the Court sentences any person to community service or to periodic detention under this section, that person shall have the same right of appeal to the Court of Appeal

against the sentence as he would have had if the sentence had been imposed by the High Court after his conviction in the High Court.

“(6) Where the Court of Appeal quashes the sentence of community service or the sentence of periodic detention on any such appeal, it shall at the same time direct that the case shall be remitted to the High Court to be dealt with under section 19D of this Act.” 5

*Struck Out*

**167. Sections 19 to 19F not to apply in respect of sentence to make reparation**—The principal Act is hereby amended by inserting in Part II, after section 19F (as substituted by section 2 of the Crimes Amendment Act 1966), the following section: 10  
 “19G. Nothing in sections 19 to 19F of this Act shall apply in respect of any sum payable under a sentence to make reparation.” 15

**6. Escape from lawful custody**—Section 120 of the principal Act is hereby amended by inserting, after paragraph (b), the following paragraph:

“(ba) Being subject to an order made ~~((under section 121 or))~~ pursuant to section 121 or under section 122 of the Criminal Justice Act ~~(1984)~~ 1985 or under the proviso to section 171 (3) of the Summary Proceedings Act 1957, escapes from a psychiatric hospital.” 20 25

**7. Assisting escape of mentally disordered person under detention for offence**—(1) Section 122 (a) of the principal Act (as amended by section 5 (1) of the Criminal Justice Amendment Act 1969) is hereby amended by omitting the words “Part VA of the Criminal Justice Act 1954”, and substituting the words “**Part VII** of the Criminal Justice Act ~~(1984)~~ 1985”. 30

(2) Section 122 (b) of the principal Act (as amended by section 5 (1) of the Criminal Justice Amendment Act 1969) is hereby amended by omitting the expression “Part VA”, and substituting the expression “Part VII”. 35

**8. Infanticide**—(1) Section 178 (4) (c) of the principal Act (as substituted by section 5 (1) of the Criminal Justice Amendment Act 1969) is hereby amended by omitting the words “section 39G of the Criminal Justice Act 1954”, and substituting the words “**section 115** of the Criminal Justice Act ~~(1984)~~ 1985”. 40

*Struck Out*

(2) Section 178 (5) of the principal Act (as substituted by section 5 (1) of the Criminal Justice Amendment Act 1969) is hereby amended—

- 5 (a) By omitting the words “sections 39I and 39K of the Criminal Justice Act 1954”, and substituting the words “**sections 117 and 120 of the Criminal Justice Act (1984) 1985**”:
- 10 (b) By omitting the expression “section 39I”, and substituting the expression “**section 117**”.

*New*

(2) Section 178 (5) of the principal Act (as substituted by section 5 (1) of the Criminal Justice Amendment Act 1969) is hereby amended by omitting the words “sections 39I and 39K  
15 of the Criminal Justice Act 1954 shall apply; except that any direction under the said section 39I shall be given by the Minister of Health and not by the Governor-General in Council”, and substituting the words “**sections 117 and 120 of the Criminal Justice Act 1985 shall apply**”.

20 (3) Section 178 (7) of the principal Act (as amended by section 5 (1) of the Criminal Justice Amendment Act 1969) is hereby amended by omitting the words “Part VA of the Criminal Justice Act 1954”, and substituting the words “**Part VII of the Criminal Justice Act (1984) 1985**”.

25 *New*

**9. Conversion or attempted conversion of motorcars, etc**—(1) Section 228 of the principal Act is hereby amended by repealing subsections (3) and (4).

30 (2) The repeal by **subsection (1)** of this section of subsections (3) and (4) of section 228 of the principal Act shall not affect any order made under that subsection (3) before the date of the commencement of this Act; and any such order may be enforced in the same manner as a fine.

**10. Power to discharge accused**—Section 347 (5) of the principal Act is hereby amended by omitting the words “subsection (5) of section 42 of the Criminal Justice Act 1954”, and substituting the words “**section 17 (3) of the Criminal Justice Act (1984) 1985**”.

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**11. Power to clear Court and forbid report of proceedings**—(1) Section 375 of the principal Act (as substituted by section 4 (1) of the Crimes Amendment Act (No. 2) 1982 is hereby repealed.

(2) Section 4 of the Crimes Amendment Act (No. 2) 1982 is hereby consequentially repealed.

**12. Powers of Court of Appeal in special cases**—Section 386 (4) of the principal Act (as substituted by section 5 (1) of the Criminal Justice Amendment Act 1969) is hereby amended by omitting the words “sections 39G, 39I, and 39K of the Criminal Justice Act 1954”, and substituting the words “**sections 115, 117, and 120 of the Criminal Justice Act (1984) 1985**”.

**13. Granting of bail to appellant, and custody pending appeal**—(1) Section 397 (1) of the principal Act is hereby repealed.

(2) Section 397 of the principal Act is hereby further amended by repealing subsection (3), and substituting the following subsection:

“(3) The time during which an appellant is released on bail pending the determination of his appeal shall not count as part of any term of detention under his sentence, whether it is the sentence passed by the Court from which the appeal is brought or the sentence passed or varied by the Court of Appeal or the sentence imposed in the circumstances described in **section 80 (6) of the Criminal Justice Act (1984) 1985**.”

(3) Section 397 (5) of the principal Act is hereby amended by omitting the words “section 28 of the Criminal Justice Act 1954”, and substituting the words “**section 75 of the Criminal Justice Act (1984) 1985**”.

**14. Intermediate effects of appeal**—(1) Section 399 (3) of the principal Act is hereby amended by omitting the words “released the accused on probation, the term of probation”, and substituting the words “sentenced the accused to supervision, the term of the sentence”.

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(2) Section 399 (4) of the principal Act is hereby amended—

(a) By omitting from paragraph (c) the words “the decision to release the accused on probation”, and substituting the words “the sentence of supervision”:

5 (b) By omitting the words “the term of probation”, and substituting the words “the term of the sentence”.

(3) Section 399 (4A) of the principal Act (as inserted by section 29 (2) of the Criminal Justice Amendment Act 1980) is hereby amended by omitting the words “(including any period of  
10 probation ordered as part of the sentence)”.

(4) Section 399 (4B) of the principal Act (as inserted by section 29 (2) of the Criminal Justice Amendment Act 1980) is hereby amended by omitting the words “(including any period of probation *ordered as part of the sentence*) as aforesaid”.

15 (5) Section 399 of the principal Act is hereby further amended by inserting, after subsection (4D) (as inserted by section 31 (2) of the Criminal Justice Amendment Act 1980), the following subsections:

20 “(4E) Where on any conviction to which any appeal relates the Court has sentenced the accused to community care, the term of the sentence shall cease to run on the day on which notice of appeal or of application for leave to appeal is given.

“(4F) If in any case to which **subsection (4E)** of this section applies—

25 “(a) The appeal is dismissed or is deemed pursuant to rules of Court to be dismissed; or

“(b) Leave to appeal is (*dismissed*) refused; or

30 “(c) When the appeal is determined neither the sentence of community care nor the conviction on which it was passed is set aside—

the term of the sentence of community care as specified by the High Court or as varied by the Court of Appeal, as the case may be, shall resume from the date of such dismissal, refusal, or determination.”

35 **15. Compensation for loss of property**—(1) Section 403 of the principal Act is hereby repealed.

*New*

40 (2) The repeal by **subsection (1)** of this section of section 403 of the principal Act shall not affect any order made under that section before the date of the commencement of this Act; and any such order may be enforced in the same manner as a fine.

**16. Restitution of property**—(1) Section 404 (2) of the principal Act is hereby amended by repealing the second sentence.

(2) Section 404 of the principal Act is hereby further amended by inserting, after subsection (2) (as amended by **subsection (1)** of this section), the following subsections: 5

“(2A) Where, on the arrest of the offender, any money was taken from him, the Court may in its discretion order the whole or any part of the money to be applied to any such payment. 10

“(2B) An order for payment under **subsection (2)** of this section may be enforced in the same manner as a fine.

“(2C) An order for payment under **subsection (2)** of this section shall not affect the right of any person to recover by civil proceedings any sum in excess of the amount recovered under the order.” 15