

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 24 June 1980

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 double rule, or with double rule before first line and after last line.

Hon. Mr McLay

CRIMINAL JUSTICE AMENDMENT (NO. 2)

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A BILL INTITULED

An Act to make provision for the sentence of community service, and to amend the Criminal Justice Act 1954

No. 135—2

Price 85c

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

1. Short Title and commencement—(1) This Act may be cited as the Criminal Justice Amendment Act (No. 2) (1979,) 1980, and shall be read together with and deemed part of the Criminal Justice Act 1954* (hereinafter referred to as the principal Act). 5

(2) Section 12 (2) of this Act, to the extent that it relates to the sentence of corrective training, shall come into force on the date appointed for the commencement of section 4 of the Criminal Justice Amendment Act 1975 (which makes provision for that sentence). 10

(3) Sections 2 to 17 (but subject in the case of section 12 (2) to subsection (2) of this section), (27,) and 29 to 31 shall come into force on the 1st day of (October 1980.) February 1981. 15

(4) Except as provided in subsections (2) and (3) of this section, this Act shall come into force on the 28th day after the day on which it receives the Governor-General's assent. 20

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Employing authority”, in relation to a person serving a sentence of community service, means the institution or organisation, or the instrument of the Crown, or the public body, on whose behalf the person is required to (undertake work) perform any service for the purpose of the sentence: 25

“Secretary” means the Secretary for Justice:

“Supervising Officer”, in relation to any person serving a sentence of community service, means the probation officer who is for the time being supervising that person in accordance with section 7 of this Act. 30

(2) Subject to the control of the Minister and to the general directions of the Secretary (for Justice,) any officer of the Department of Justice who is for the time being authorised for the purpose by the Secretary (for Justice) shall have and may exercise all or any of the powers, duties, and functions of the Secretary under this Act; and the fact that any such officer exercises any such power, duty, or function shall be conclusive evidence of his authority to do so. 35 40

*Reprinted 1973, Vol. 2, p. 1267

Amendments: 1975, No. 47; 1975, No. 67; 1976, No. 4; 1976, No. 156; 1978, No. 66

Community Service

3. **Community service**—(1) Subject to subsections (2) and (3) of this section, and to section 4 of this Act, where any person is convicted of any offence punishable by imprisonment, the Court may in its discretion, with the consent of the offender, sentence the offender to community service in accordance with the subsequent provisions of this Act, for such number of hours being (*in the aggregate not less than 20*) not less than 8 nor more than 200, as the Court may specify.

(2) Where the Court sentences any person to community service,—

(a) It may also sentence him to pay any fine authorised by law, but, except as provided in paragraphs (aa) and (b) of this subsection, it shall not impose any other sentence:

New

(aa) It may also, if in the special circumstances of the case it is satisfied that the offender requires supervision, order that he be released on probation under section 6 of the principal Act:

(b) It may also make any other order (*, not being an order that the offender be released on probation,*) that it could have made in conjunction with a sentence of imprisonment.

(3) Nothing in this section shall apply when the offence of which the person is convicted is an offence against Part X of the Domestic Proceedings Act 1968.

Cf. Powers of Criminal Courts Act 1973, s. 14 (1) (U.K.)

New

3A. Community service where offender liable to imprisonment for non-payment of fine imposed by High Court—

(1) In any case where, under section 19D of the Crimes Act 1961, an order may be made for the imprisonment of any person by reason of the non-payment of a fine imposed on him, 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.

New

(2) On the appearance of that person before the Court, the Court may in its discretion, subject to section 5 of this Act, after considering the report that the Judge would be required to consider if acting under the said section 19D of the Crimes Act 1961, and after taking into account any other fines owing by that person, and with that person's consent, sentence that person to community service in accordance with the subsequent provisions of this Act, being not less than 8 nor more than 200, as the Court may specify. 5 10

(3) If the Court does not sentence that person to community service under this section, the matter may be dealt with under the said section 19D.

(4) A sentence of community service may be imposed under this section notwithstanding that none of the offences in respect of which the fines were imposed was punishable by imprisonment. 15

(5) Where any person is sentenced to community service under this section for the non-payment of the whole or any part of a fine, that fine or part of a fine shall be deemed to be remitted. 20

(6) Where the Court sentences any person to community service 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: 25

Provided that where the Court of Appeal quashes the sentence of community service 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 the said section 19D. 30

(7) This section shall apply only in respect of fines imposed after the commencement of this section.

4. Cumulative sentences—(1) Subject to subsection (2) of this section, a sentence of community service may be cumulative on any other sentence of community service. 35

(2) No sentence of community service may be imposed on any person if that sentence, together with any other sentence of community service imposed on that person at any time within the immediately preceding period of 12 months (whether or not the offender has already served that other sentence), would require that person to undertake more than 200 hours of community service. 40

(3) A sentence of community service shall not be cumulative on a sentence of any other kind.

(4) No sentence of any other kind shall be cumulative on a sentence of community service.

5 Cf. Powers of Criminal Courts Act 1973, s. 14 (3)

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10 **5. Court to consider report of probation officer—(1) No Court shall impose a sentence of community service in respect of any person until a report on his character and personal history, and on any other relevant circumstances, has been made by a probation officer and has been considered by the Court.**

15 (2) No sentence of community service shall be deemed to be invalid on the ground that a report by a probation officer was not made or was not considered by the Court.

20 (3) If any Court imposes a sentence of community service before the probation officer's report has been made and considered under this section, the defendant or the prosecutor or any counsel or solicitor on behalf of the Crown may at any time apply to have the sentence reviewed; and for that purpose the provisions of subsections (4) to (6) of section 19 of the principal Act, as far as they are applicable and with the necessary modifications, shall apply as if the application had been made under that section.

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New

5. Matters to be considered by Court before community service imposed—No Court shall impose a sentence of community service in respect of any person unless it is satisfied—

30 (a) That the sentence is appropriate having regard to the offender's character and personal history, and to any other relevant circumstances:

(b) That the offender understands the purpose and effect of the sentence and consents to its imposition:

35 (c) That suitable service is available for the offender to perform for the purpose of the sentence.

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6. Court to ensure that offender understands import of sentence—(1) Before imposing a sentence of community service, the Court shall satisfy itself that the offender understands the purpose and effect of such a sentence. 5

(2) Where any person is sentenced to community service, the Registrar shall, before the offender leaves the Court, hand to the offender a written statement of the purpose and effect of such a sentence, including the information required by regulations made under this Act to be included therein. 10

Cf. Powers of Criminal Courts Act 1973, s. 14 (5) (U.K.)

7. Supervising Officer—(1) Every person who is serving a sentence of community service shall, during the currency of the sentence, be under the supervision of a probation officer in whose district he resides for the time being, or of such other probation officer as the Secretary may from time to time direct. 15

(2) Within ~~(24)~~ 48 hours after a sentence of community service is imposed, the offender shall report to the Supervising Officer. 20

(3) When the offender first reports to him, the Supervising Officer shall give him written notice of the terms of the Court's order by which the sentence of community service was imposed.

Cf. Powers of Criminal Courts Act 1973, s. 14 (4), (6) (U.K.) 25

8. Community service to be performed by offenders—

(1) As soon as practicable after a sentence of community service is imposed, the Supervising Officer shall arrange for the offender to ~~(undertake suitable work)~~ perform suitable service, in accordance with the succeeding provisions of this section and of section 9 of this Act, for the number of hours in the aggregate specified by the Court. 30

(2) **Subject to subsection (3) of this section, the type of (work) service** that any person may be required to ~~(undertake)~~ perform for the purpose of a sentence of community service shall be ~~(work)~~ service— 35

(a) At or for any hospital, or at or for any charitable, educational, cultural, or recreational institution or organisation; or

5 (b) At or for any other institution or organisation for old, infirm, or handicapped persons; or

(c) On any land of which the Crown or any public body is the owner or lessee or occupier, or any land that is administered by the Crown or any public body.

(3) No person shall be required for the purpose of a sentence of community service to (undertake any work) perform any service if, in doing (that work,) so, he would take the place of any person who would otherwise be employed (on that work) in performing that service as a regular employee of the institution or organisation or, as the case may be, of the Crown or a public body.

(4) Where any person (undertakes any work) performs any service for the purpose of a sentence of community service, the following provisions shall apply:

20 (a) Subject to paragraph (b) of this subsection, he shall be deemed for the purposes of the Accident Compensation Act 1972 and any other enactment or rule of law to be an employee of the Crown:

25 (b) Where he suffers any personal injury by accident arising out of and in the course of (that work,) performing that service,—

(i) Section 107 of the Accident Compensation Act 1972 shall not apply:

30 (ii) Subject to subparagraph (i) of this paragraph, the accident shall be deemed to have arisen out of and in the course of his primary employment; but the compensation to which he would have been entitled under section 112 (2) (a) of that Act if the accident had so arisen shall be payable to him by the Crown and not by his primary employer:

35 (c) For the purposes of paragraph (b) of this subsection, “primary employment” means the employment in which the person had been engaged during the 7 days before the date of the accident, being employment that had not terminated before the accident and was not due to terminate on the day of the accident or within 6 days thereafter; and, where

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he was engaged during that period in more than one such employment, means the employment for which he received the greater or greatest remuneration; and "primary employer" has a corresponding meaning. 5

(5) A person (*undertaking work*) performing any service for the purpose of a sentence of community service shall not be entitled to any remuneration, nor shall he accept any remuneration, whether by way of gift or otherwise, in respect of that (*work.*) service. 10

Cf. 1962, No. 29, s. 18

9. When work to be done—(1) Except in a case to which subsection (2) of this section applies and subject to sections ~~(11)~~ 10 (3) and 12 (2) of this Act, the (*work*) service required to be performed for the purpose of a sentence of 15 community service shall be performed during the period of 12 months commencing with the date of the sentence.

(2) Where a sentence of community service (in this subsection referred to as the subsequent sentence) is imposed on an offender in respect of whom such a sentence has been 20 imposed at any time within the immediately preceding period of 12 months (the earliest such sentence being referred to in this subsection as the first sentence), the (*work*) service required to be performed for the purpose of the subsequent 25 sentence shall be performed during the period of 12 months commencing with the date of the first sentence, or within such further period not exceeding 3 months as the Court imposing the subsequent sentence may order.

(3) Subject to subsections (1) and (2) of this section, the days on which and the times at which the offender (*under-* 30 *takes the work*) performs the service shall be fixed by agreement between the offender and the employing authority, with the approval of the Supervising Officer.

Cf. 1962, No. 29, s. 16 (4)–(6); Powers of Criminal 35 Courts Act 1973, s. 15 (U.K.)

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10. Variation or cancellation of sentence of community service—(1) Any sentence of community service may at any time, on the application of the offender or of the Supervising

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Officer, be varied by reducing the number of hours to be worked for the purpose of the order, or cancelled, by the Court.

5 (2) The Court to which application shall be made shall be—

(a) The Supreme Court, if the sentence was imposed by the Supreme Court or by the Court of Appeal on appeal from the Supreme Court:

10 (b) Any Magistrate's Court, if the sentence was imposed by a Magistrate's Court or by the Supreme Court on appeal from a Magistrate's Court.

(3) A sentence may be varied or cancelled under this section on the ground that there has been a change of circumstances since the sentence was imposed; or, if the Court considers that a continuation of the sentence is no longer necessary in the interests of the community or of the offender, the sentence may be cancelled on that ground.

20 (4) A copy of every application under this section shall, either before or immediately after the application is lodged in the office of the Court, be served by the applicant on the Supervising Officer or, as the case may require, the offender.

Cf. 1962, No. 29, s. 19

11. Period of community service may be suspended during incapacity, etc.—(1) Without limiting section 10 of this Act, the Court may, on the application of the offender or of the Supervising Officer, suspend for such time as it thinks fit the running of the period of 12 months during which the work is to be undertaken for the purpose of a sentence of community service if it is satisfied—

30 (a) That, in accordance with section 9 (3) of this Act, the offender has arranged to undertake the work or any part of it during a specified period; and

35 (b) Because of incapacity or for humanitarian or other reasons considered sufficient by the Court, it will be impossible for the offender to undertake the work in that period or that it would be unreasonable to require him to do so.

(2) The Court to which application shall be made shall

40 be—
(a) The Supreme Court, if the sentence was imposed by the Supreme Court or by the Court of Appeal on appeal from the Supreme Court:

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- (b) Any Magistrate's Court, if the sentence was imposed by a Magistrate's Court or by the Supreme Court on appeal from a Magistrate's Court.
- (3) A copy of every application under this section shall, either before or immediately after the application is lodged in the office of the Court, be served by the applicant on the Supervising Officer or, as the case may require, the offender.

New

10. Variation or cancellation of sentence of community service, etc.—(1) Any sentence of community service may at any time, on the application of the offender or of the Supervising Officer, be varied by reducing the number of hours of service to be performed for the purpose of the sentence, or cancelled, by the Court on any of the following grounds:

- (a) That there has been a change of circumstances since the sentence was imposed that would justify the variation or cancellation of the sentence:
- (b) That a continuation of the sentence is no longer necessary in the interests of the community or the offender:
- (c) That no or no more suitable service is available to be performed by the offender for the purpose of the sentence.
- (2) Without limiting subsection (1) of this section, the Court may, on the application of the offender or of the Supervising Officer, suspend for such time as it thinks fit the running of the period of 12 months during which the service is to be performed for the purpose of a sentence of community service if it is satisfied—
- (a) That, in accordance with section 9 (3) of this Act, the offender has arranged to perform the service or any part of it during a specified period; and
- (b) Because of incapacity or for humanitarian or other reasons considered sufficient by the Court, it will be impossible for the offender to perform the service in that period or that it would be unreasonable to require him to do so.
- (3) Where the Supervising Officer applies to the Court for the cancellation of a sentence of community service on the

New

ground set out in subsection (1) (c) of this section, he may also, in that application, apply to the Court to substitute another sentence in place of the sentence of community service.

(4) A copy of every application under this section shall, either before or immediately after the application is lodged in the office of the Court, be served by the applicant on the Supervising Officer or, as the case may require, the offender.

12. Effect of subsequent convictions—(1) If any person who is serving a sentence of community service is convicted of another offence and sentenced to ~~(borstal training, or to imprisonment for life or for a term of more than 6 months, or to preventive detention, the sentence of community service shall be deemed to be cancelled.)~~ detention of any kind, the sentence of community service shall, unless the Court otherwise orders, be deemed to be cancelled.

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(2) If any person who is serving a sentence of community service is sentenced to imprisonment for a term of 6 months or less or to detention in a detention centre or to corrective training, the sentence of community service shall continue in force but the period of 12 months during which the work is to be performed for the purpose of the sentence shall be suspended until the person is released from detention.

Cf. 1962, No. 29, s. 22

13. Application for substituted sentence—(1) If any person who is serving a sentence of community service is convicted of ~~(any offence, committed after the sentence of community service was imposed, that is punishable by imprisonment (whether or not the person subject to the sentence of community service was sentenced to pay a fine), or of)~~ any offence against paragraph (b) or paragraph (c) of section 15 of this Act, any probation officer may ~~(, unless the sentence of community service has been cancelled under section 12 of this Act,)~~ apply to the Court, in accordance with this section and section 14 of this Act, to substitute another sentence in place of the sentence of community service.

(2) For the purposes of this section every person who is convicted of an offence against section 15 (c) of this Act shall be deemed to be still serving his sentence of community service.

(3) Before the hearing by the Court of any application under this section for the substitution of another sentence in place of a sentence of community service, the probation officer making the application shall cause notice of the application to be served on the offender. 5

(4) Notwithstanding anything in subsection (1) or subsection (3) of this section, if the offender is charged with an offence against paragraph (b) or paragraph (c) of section 15 of this Act, the probation officer, if he thinks fit, may, before the hearing of the charge, give notice to the person charged that if he is convicted of the offence the Court will be asked to substitute another sentence in place of the sentence of community service. 10 15

(5) If the person so notified is convicted of the offence charged, the probation officer may (, *unless the sentence of community service has been cancelled under section 12 of this Act,*) apply to the Court to substitute another sentence in place of the sentence of community service, and it shall not be necessary for the probation officer to cause any subsequent notice of the application to be served on that person. 20

Cf. 1962, No. 29, s. 22A 25

14. Court empowered to substitute sentence—

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(1) Any application made under section 13 of this Act to substitute another sentence in place of a sentence of community service shall be made to— 30

(a) The Supreme Court, if the sentence of community service was imposed by the Supreme Court or by the Court of Appeal on appeal from the Supreme Court; or 35

(b) Any Magistrate's Court, if the sentence was imposed by a Magistrate's Court or by the Supreme Court on appeal from a Magistrate's Court.

(2) If the application is dealt with by a Judge or Magistrate other than the one who imposed the sentence of community service, the Judge or Magistrate shall, before deter- 40

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mining the application, make such inquiries as to the circumstances of the case as he considers reasonable, and may, if he thinks fit, hear any evidence relevant to those
5 circumstances.

(3) The Judge or Magistrate by whom an application is heard under this section may, if he thinks fit, having regard to the gravity of the offence in respect of which the sentence of community service was imposed, the amount of work
10 already undertaken for the purpose of the sentence (and the payment of any fine imposed with the sentence), and any other circumstances that the Judge or Magistrate thinks relevant, substitute for the sentence of community service any sentence that could have been imposed on the offender
15 at the time when the sentence of community service was imposed.

New

(1) On any application made under section 10 or section 13 of this Act to substitute another sentence in place of a sentence
20 of community service, the Judge by whom the application is heard may, if he thinks fit, having regard to the gravity of the offence in respect of which the sentence of community service was imposed, the amount of service already performed for the purpose of the sentence (and the payment of any fine
25 imposed with the sentence), and any other circumstances that the Judge thinks relevant,—

(a) If any sentence was imposed on the offender under section 3 of this Act, substitute for it any sentence
30 (other than a sentence of community service) that could have been imposed on him at the time he was sentenced to community service:

(b) If the sentence was imposed on the offender under paragraph (c) of subsection (3) of section 100 of the Summary Proceedings Act 1957, substitute for
35 it a period of imprisonment not exceeding the maximum period for which he could have been committed to prison if he had been so dealt with under paragraph (b) of that subsection, instead of being sentenced to community service:

(c) If the sentence was imposed on the offender under section 3A of this Act, substitute for it a sentence
40 to a term of imprisonment not exceeding the

New

maximum term for which he could have been committed to prison if he had been so dealt with under section 19D of the Crimes Act 1961 instead of being sentenced to community service.

(2) If any such application is dealt with by a Judge other than the one who imposed the sentence of community service, the Judge shall, before determining the application, make such inquiries as to the circumstances of the case as he considers reasonable, and may, if he thinks fit, hear any evidence relevant to those circumstances.

(4) When under this section a sentence is substituted in place of a sentence of community service, the sentence of community service shall be deemed to be cancelled.

(5) For the purposes of any appeal or application for leave to appeal, any sentence substituted under this section in place of a sentence of community service imposed on the conviction of the offender on indictment shall be deemed to be a sentence passed on the conviction of the offender on indictment, and any sentence substituted under this section in place of a sentence of community service imposed on the determination of an information against him in a (*Magistrate's*) District Court shall be deemed to be a sentence passed on the determination of an information against him in a (*Magistrate's*) District Court.

Cf. 1962, No. 29, s. 22B

New

14A. Jurisdiction of Court—Every application made under section 10 or section 13 of this Act shall be made to—

- (a) The High Court, if the sentence of community service was imposed by the High Court or by the Court of Appeal on appeal from the High Court; or
- (b) A District Court, if the sentence was imposed by a District Court or by the High Court on appeal from a District Court.

15. Offences—Every person sentenced to community service commits an offence and is liable to a fine not exceeding \$500 who—

- (a) Fails without reasonable excuse to report to the Supervising Officer in accordance with section 7 (2) of this Act:
- 5 (b) Fails without reasonable excuse to *(work)* perform any service satisfactorily in accordance with the sentence:
- (c) Fails without reasonable excuse to complete the required number of hours of *(work)* service within the period prescribed by or under section 9 of this Act:
- 10 (d) Accepts remuneration, whether by way of gift or otherwise, in respect of any *(work)* service that he is required to *(do)* perform for the purpose of the sentence.

15 Cf. 1962, No. 29, s. 21

16. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- 20 (a) Prescribing the powers and duties of Supervising Officers:

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- (b) Specifying the information to be contained in the written statements to be given pursuant to section 6 of this Act to persons sentenced to community service:
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New

- (b) Requiring persons serving sentences of community service to report to their Supervising Officer as and when required to do so by the Supervising Officer:
- 30 (ba) Requiring persons serving sentences of community service to notify their Supervising Officer when they change their address:
- (c) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$200:
- 35 (d) Generally providing for such matters as are contemplated by or necessary for giving full effect to this Act, and for its due administration.
- 40

Cf. 1962, No. 29, s. 23

Miscellaneous Amendments to Principal Act

17. Community service not to be imposed as condition of probation—Section 8 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Notwithstanding anything in subsection (1) of this section, the Court shall not have power to impose a condition that the person being released on probation (*undertake*) perform any service that he could have been required to perform if he had been sentenced to community service.”

18. Prisons Parole Board may recommend release of offender for purpose of deportation—The principal Act is hereby amended by inserting, after section 33A (as substituted by section 4 of the Criminal Justice Amendment Act 1961 and amended by section 15 (7) of the Criminal Justice Amendment Act 1975), the following section:

“33AA.

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(1) This section applies in respect of every offender—

“(a) Upon whom a deportation order, or a notice that a deportation order has been made, has been served pursuant to any of the provisions of section 22 of the Immigration Act 1964; and

“(b) Who—

“(i) Has no right to appeal against the making of that order under the Immigration Act 1964; or

“(ii) Has not exercised his right to appeal against the making of that order within the period prescribed by that Act; or

“(iii) Has exhausted his rights of appeal under that Act against the making of the order, but the order has not been quashed.

“(2) The Prisons Parole Board may at any time, in respect of any offender to whom this section applies who is undergoing preventive detention, or imprisonment for life or for any term, recommend to the Minister that he be released for deportation.

“(3) Where the Prisons Parole Board recommends the release of any offender under subsection (2) of this section, the Minister may, by notice in writing to the Superintendent of the institution in which the offender is detained, order the

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release of the offender into the custody of any member of the Police in possession of the order, and that notice shall be sufficient authority for the Superintendent to release the offender
5 accordingly.

New

(1) This section applies to every offender in respect of whom a deportation order has been under any of the provisions of section 22 of the Immigration Act 1964 and
10 who is undergoing preventive detention or imprisonment.

“(2) The Prisons Parole Board may at any time recommend to the Minister that any offender to whom this section applies be released for deportation.

“(3) Where the Prisons Parole Board recommends the
15 release of any offender under subsection (2) of this section and neither the deportation order nor notice of the order has been served on the offender, the Minister may request the Minister of Immigration to serve the order or notice of the order on the offender in accordance with the Immigration
20 Act 1964.

“(3A) Where—

“(a) The Prisons Parole Board has recommended the release of any offender under subsection (2) of this section; and

25 “(b) The deportation order or a notice of the order has been served on the offender under the Immigration Act 1964; and

“(c) The offender—

30 “(i) Has no right of appeal against the making of that order under that Act; or

“(ii) Has not exercised his right of appeal against the making of that order within the relevant period prescribed by that Act; or

35 “(iii) Has exhausted his rights of appeal under that Act against the making of the order but the order has not been quashed,—

the Minister may, by notice in writing to the Superintendent of the institution in which the offender is detained, order the release of the offender into the custody of any member of
40 the Police in possession of the notice, and that notice shall be sufficient authority for the Superintendent to release the offender accordingly.

“(4) As soon as a ship or aircraft becomes available to take the offender from New Zealand, a member of the Police shall require the Superintendent, in accordance with (sub-section (3)) subsection (3A) of this section, to deliver the offender into the custody of the member, who shall escort the offender or arrange for him to be escorted to the seaport or airport and ensure that the offender is placed upon the ship or aircraft and detained there until the ship or aircraft leaves New Zealand. 5

“(5) If, for any reason, that ship or aircraft is delayed in New Zealand for more than 24 hours, the offender shall be returned to the custody of the Superintendent, and for that purpose the warrant by which the offender was originally committed to the institution shall be deemed still to be of full force and effect. Thereafter, the Superintendent shall, on request by any member of the Police, release the offender into the custody of that member for deportation, and the provisions of this section shall apply in respect of every such request until the offender is finally deported. 10 15

“(6) Where any offender is released and deported under this section, his sentence shall continue to run, and, if he subsequently returns to New Zealand during the currency of the sentence, he shall be liable to resume serving it.” 20

19. Person found under disability—(1) Section 39A of the principal Act (as inserted by section 2 of the Criminal Justice Amendment Act 1969) is hereby amended by omitting from subsection (1) the definition of the term “under disability”. 25

(2) The said section 39A is hereby further amended by inserting, after subsection (1), the following subsection: 30

“(1A) For the purposes of this Part of this Act, a person is under disability if, because of the extent to which he is mentally disordered, he is unable—

“(a) To plead; or

“(b) To understand the nature or purpose of the proceedings; or 35

“(c) To communicate adequately with a solicitor for the purposes of conducting a defence.”

(3) Section 39c of the principal Act (as inserted by section 2 of the Criminal Justice Amendment Act 1969) is hereby amended by repealing subsections (1) and (2), and substituting the following subsections: 40

“(1) If at any time after any person has been committed for trial, whether or not he has pleaded to the indictment, a Judge of the (*Supreme*) High Court is satisfied, on the evidence of 2 medical practitioners, that the person is
5 mentally disordered, then, subject to subsection (4) of this section, the Judge shall, after giving the prosecutor and the person an opportunity to be heard and to call evidence on the matter, determine whether the person is under disability.

“(2) If at the hearing or the preliminary hearing before
10 a (*Magistrate's*) District Court of any information in respect of any offence punishable by imprisonment or death, the Court is satisfied, on the evidence of 2 medical practitioners, that the person is mentally disordered, then, subject to sub-
15 sections (4) and (5) of this section, the Court shall, after giving the prosecutor and the person an opportunity to be heard and to call evidence on the matter, determine whether the person is under disability.

“(2A) Where the Judge or Court is satisfied that the person is under disability, he or it shall direct a finding to that effect
20 to be recorded.”

Struck Out

(4) The said section 39c is hereby further amended by adding the following subsection:

“(7) Where any person is found by a Magistrate to be
25 under disability, that person shall have the same right of appeal against the finding as he would have if he had been acquitted of the charge on account of his insanity; and section 39F of this Act, with the necessary modifications shall apply accordingly.”

30 *New*

19A. Appeal against finding of disability—The principal Act is hereby amended by inserting, after section 39c (as inserted by section 2 of the Criminal Justice Amendment Act 1969), the following section:

35 “39CA. (1) Where under section 39c of this Act, any person is found by a Court to be under disability, that person shall have the same right of appeal against the finding as he would have if the finding were a conviction; and the provisions of the Crimes Act 1961 and the Summary Proceedings
40 Act 1957 relating to appeals, so far as they are applicable and subject to any necessary modifications and to the provisions of this section, shall apply accordingly.”

New

“(2) If, on any such appeal, the Court hearing the appeal is satisfied, on the evidence of 2 medical practitioners, that the appellant is mentally disordered, it shall, after giving the appellant and the respondent an opportunity to be heard and to call evidence on the matter, determine whether the appellant is under disability. 5

“(3) If the Court determines that the appellant is under disability, it shall confirm the finding under appeal.

“(4) If the Court determines that the appellant is not under disability, it shall quash the finding under appeal, and remit the case to the High Court or, as the case may require, the District Court accordingly. 10

“(5) An appellant under this section in respect of whom an order of detention has been made under section 39G of this Act may be granted bail in the same manner as if he had been convicted and sentenced to a term of imprisonment. 15

“(6) If the offender is not released on bail, he shall be detained, pending the determination of his appeal, as required by the order: 20

“Provided that any Judge of the High Court, or the District Court Judge or Justices who presided over the Court whose decision is appealed against, may make such other order as may be thought fit for the custody of the appellant if he is not released on bail pending the determination of his appeal.” 25

20. Duration of order for detention as special patient where person under disability—(1) Section 39H of the principal Act (as inserted by section 2 of the Criminal Justice Amendment Act 1969) is hereby amended by omitting from subsection (1) the expression “section 74”, and substituting the expression “sections 72 and 74”. 30

(2) The said section 39H is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) Notwithstanding anything in subsection (1) of this section, where, in any case to which that subsection applies, the charge against the person concerned is withdrawn, the order made by the Court under section 39G (1) of this Act shall be deemed to be cancelled.” 35

21. Criminal and penal enactments not to have retrospective effect—The principal Act is hereby amended by inserting, before section 44, the following section: 40

“43B. (1) Notwithstanding any other enactment or rule of law to the contrary, no person shall be liable in any criminal proceeding in respect of any act or omission by him if, at the time of the act or omission, the act or omission by
5 him did not constitute an offence.

“(2) Notwithstanding any other enactment or rule of law to the contrary, where the maximum term of imprisonment or the maximum fine that may be imposed under any enactment on any person for a particular offence is altered
10 between the time when that person commits the offence and the time when he is to be sentenced, the maximum term of imprisonment or the maximum fine that may be imposed on him for the offence shall be either—

“(a) The maximum term or the maximum fine that could
15 have been imposed at the time of the offence, where that maximum has subsequently been increased; or

“(b) The maximum term or the maximum fine that can
20 be imposed on the day on which he is to be sentenced, where that maximum is less than that prescribed at the time of the offence.

“(3) Without limiting subsection (2) of this section, but notwithstanding any other enactment or rule of law to the contrary, no Court shall have power, on the conviction of any
25 person of any offence, to impose any sentence or make any order in the nature of a penalty that it could not have imposed on or made against that person at the time of the commission of the offence, except with his consent.

“(4) For the purposes of subsection (2) of this section a
30 sentence of life imprisonment shall be deemed to be the longest term of imprisonment that may be imposed.

“(5) For the purposes of subsection (2) of this section a sentence of detention of any kind (other than imprisonment) prescribed by this Act shall be deemed to be a sentence of
35 imprisonment for a term equal to the maximum period for which the person concerned may be detained pursuant to the sentence.”

New

40 **21A. Prohibition against publication of names in specified sexual cases**—Section 45c of the principal Act (as inserted by section 17 of the Criminal Justice Amendment Act 1975) is hereby amended by repealing subsection (1), and substituting the following subsection:

New

“(1) No person shall publish, in any report relating to any proceedings commenced in any Court in respect of an offence against any of sections 128 to 142 of the Crimes Act 1961, the name of any person upon or with whom the offence has been or is alleged to have been committed, or any name or particulars likely to lead to the identification of that person, unless—

“(a) That person is of or over the age of 16 years; and

“(b) The Court, by order, permits such publication.”

22. Warden of work centre may make rules—(1) Section 7 of the Criminal Justice Amendment Act 1962 is hereby amended by adding to subsection (1) the words “, and may make such rules, not inconsistent with this Act or with any regulations made thereunder, for the management of the work centre and for the conduct and safe custody of the (residents) offenders”.

(2) The said section 7 is hereby further amended by inserting, after subsection (1) (as so amended), the following subsection:

“(1A) No such rules shall have effect unless and until they are approved by the Secretary for Justice in writing.”

23. Inability to report to work centre because of illness, etc.—(1) Section 16 of the Criminal Justice Amendment Act 1962 is hereby amended by inserting in subsection (2A) (as inserted by section 10 (1) of the Criminal Justice Amendment Act 1966), after the words “The Secretary for Justice”, the words “, or any other officer of the Department of Justice for the time being authorised for the purpose by the Secretary for Justice”.

(2) The said section 16 is hereby further amended by inserting, after subsection (5), the following subsections:

“(5A) Without limiting subsection (5) of this section, if a person sentenced to periodic detention is unable to report on any occasion or occasions, or on every occasion, in any week because of illness or injury, the Warden shall, on being satisfied (whether before or after the failure to report) of the circumstances of the case, excuse the person from the requirement to report on that occasion or those occasions.

“(5B) For the purpose of determining whether or not to excuse any person under subsection (5A) of this section, the

Warden may have regard to a certificate given by a registered medical practitioner to the effect that the person concerned is or will be or was unfit to report to the work centre on the day or during the period specified in the certificate, but no such certificate shall be conclusive of the matter.”

24. Compensation, etc., for accidents while serving periodic detention—(1) Section 18 of the Criminal Justice Amendment Act 1962 is hereby amended by repealing subsection (4), and substituting the following subsection:

10 “(4) Where any person is directed to work pursuant to this section, the following provisions shall apply:

“(a) Subject to paragraph (b) of this subsection, he shall be deemed for the purposes of the Accident Compensation Act 1972 and any other enactment or rule of law to be an employee of the Crown:

15 “(b) Where he suffers any personal injury by accident arising out of and in the course of that work,—

(i) Section 107 of the Accident Compensation Act 1972 shall not apply:

20 (ii) Subject to subparagraph (i) of this paragraph, the accident shall be deemed to have arisen out of and in the course of his primary employment; but the compensation to which he would have been entitled under section 112 (2)

25 (a) of that Act if the accident had so arisen shall be payable to him by the Crown and not by his primary employer:

“(c) For the purposes of paragraph (b) of this subsection, ‘primary employment’ means the employment in which the person had been engaged during the 7 days before the date of the accident, being employment that had not terminated before the accident and was not due to terminate on the day of the accident or within 6 days thereafter; and, where he was engaged during that period in more than one such employment, means the employment for which he received the greater or greatest remuneration; and ‘primary employer’ has a corresponding meaning.”

30 (2) The following enactments are hereby consequentially repealed:

35 (a) So much of the Third Schedule to the Accident Compensation Act 1972 as relates to section 18 (4) of the Criminal Justice Amendment Act 1962:

- (b) Section 61 of the Accident Compensation Amendment Act (No. 2) 1973.

25. Substituted sentence where failure to comply with periodic detention—Section 22B of the Criminal Justice Amendment Act 1962 (as substituted by section 7 of the Criminal Justice Amendment Act 1970) is hereby amended by repealing paragraph (b) of subsection (3), and substituting the following paragraph: 5

“(b) If the sentence was imposed on the offender pursuant to paragraph (c) of subsection (3) of section 100 of the Summary Proceedings Act 1957, substitute for it a period of imprisonment not exceeding the maximum period for which he could have been committed to prison if he had been so dealt with under paragraph (b) of that subsection, instead of being sentenced to periodic detention.”. 15

26. Regulations—Section 23 of the Criminal Justice Amendment Act 1962 is hereby amended by repealing paragraph (e), and substituting the following paragraph:

“(e) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under this Part of this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$200.” 25

Struck Out

27. Consequential amendments—On the date appointed for the commencement of section 4 of the Criminal Justice Amendment Act 1975 (which relates to corrective training),— 30

- (a) Section 5 (3) of this Act shall be amended by omitting the words “subsections (4) to (6) of section 19”, and substituting the words “subsections (3) to (6) of section 14D”:
- (b) Section 12 (2) of this Act shall be amended by omitting the words “to detention in a detention centre or”. 35

Miscellaneous Amendments to Other Acts

28. **Term of sentence of periodic detention suspended when appeal lodged**—(1) Section 124 of the Summary Proceedings Act 1957 is hereby amended by inserting in subsection (3A) 5 (as inserted by section 15 of the Summary Proceedings Amendment Act 1973), after the words “the term of the sentence”, the words “(including any period of probation ordered as part of the sentence)”.

(2) Section 399 of the Crimes Act 1961 is hereby amended 10 by inserting, after subsection (4), the following subsections:
 “(4A) Where on any conviction to which any appeal relates the Court has sentenced the accused to periodic detention, the term of the sentence (including any period of probation ordered as part of the sentence) shall cease to run on the day 15 on which notice of appeal or of application for leave to appeal is given.

“(4B) If in any case to which subsection (4A) of this section applies,—

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

“(b) Leave to appeal is refused; or

“(c) When the appeal is determined neither the sentence of periodic detention nor the conviction on which it was made is set aside,—

25 the term of the sentence of periodic detention (including any period of probation as aforesaid) as specified by the ~~{Supreme}~~ High Court or as varied by the Court of Appeal, as the case may be, shall be resumed from the date of such dismissal, refusal, or determination.”

30 *Struck Out*

29. **Probation with requirement of community service may not be imposed for non-payment of fine**—Section 100 of the Summary Proceedings Act 1957 (as substituted by section 12 of the Summary Proceedings Amendment Act 35 1973) is hereby amended—

(a) By omitting from paragraph (c) of subsection (3) the words “or for release on probation with a direction to undertake community work”:

40 (b) By omitting from subsection (5) the words “and to section 6 to 13 (relating to release on probation),”:

(c) By omitting from subsection (8) the words “or releases the defendant on probation”.

New

29. Community service may be imposed for non-payment of fine—(1) Section 100 of the Summary Proceedings Act 1957 (as substituted by section 12 of the Summary Proceedings Amendment Act 1973) is hereby amended by repealing paragraph (c) of subsection (3), and substituting the following paragraph: 5

“(c) Sentence the defendant to corrective training for a term of 3 months or to periodic detention or to community service:” 10

(2) Section 100 of the Summary Proceedings Act 1957 (as so substituted) is hereby further amended by repealing subsection (5), and substituting the following subsection:

“(5) On the appearance of that person before a Court, the Court may, if it thinks fit, but subject to the provisions of this section, and to— 15

“(a) Sections 14A to 14B of the Criminal Justice Act 1954, in respect of a sentence of corrective training; or

“(b) Sections 9 (except subsection (2)) and 11 to 22B of the Criminal Justice Amendment Act 1962, in respect of a sentence of periodic detention; or 20

“(c) Sections 3 to 16 of the Criminal Justice Amendment Act 1980, in respect of a sentence of community service, 25

sentence that person accordingly or may give a direction or remit the sum or part of the sum under this section.” 30

(3) Section 100 of the Summary Proceedings Act 1957 (as so substituted) is hereby further amended by omitting from subsection (8) the words “releases the defendant on probation”, and substituting the words “to community service”. 30

30. Period of sentence of community service suspended when appeal lodged—(1) Section 124 of the Summary Proceedings Act 1957 is hereby amended by inserting, after subsection (3A) (as inserted by section 15 of the Summary Proceedings Amendment Act 1973), the following subsection: 35

“(3B) Where under any determination in respect of which either party appeals the Court has sentenced the defendant to community service, the period during which the (work) service is to be (undertaken) performed for the purpose of the sentence shall cease to run on the day notice of appeal is filed.” 40

(2) Section 399 of the Crimes Act 1961 is hereby amended by inserting, after subsection (4B) (as inserted by section (26) 28 of this Act) the following subsections:

5 “(4C) Where on any conviction to which any appeal relates the Court has sentenced the accused to community service, the period during which the **(work is to be undertaken)** service is to be performed for the purpose of the sentence shall cease to run on the day on which notice of appeal or of application for leave to appeal is given.

10 “(4D) If in any case to which subsection (4C) of this section applies—

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

“(b) Leave to appeal is refused; or

15 “(c) When the appeal is determined neither the sentence of community service nor the conviction on which it was made is set aside—

the period during which the **(work is to be undertaken)** service is to be performed for the purpose of the sentence of

20 community service shall resume running from the date of such dismissal, refusal, or determination.”

31. Provisions on determination of appeal where defendant sentenced to community service—The Summary Proceedings Act 1957 is hereby amended by inserting, after section 137A
25 (as inserted by section 18 of the Summary Proceedings Amendment Act 1973), the following section:

“137B. (1) Where under any determination in respect of which either party appeals the defendant was sentenced to community service, and—

30 “(a) When the appeal is determined the conviction is not set aside and the sentence is not quashed; or

“(b) The appeal is not prosecuted or is dismissed for for non-prosecution,—

35 the period during which the **(work is to be undertaken)** service is to be performed for the purpose of the sentence of

community service shall resume running as from the day the appeal is determined or, as the case may be, the **(Magistrate)** Judge or Justice or Justices certify that it has not been prosecuted or the Registrar of the **(Supreme)** High Court certifies

40 that it has been dismissed for non-prosecution.

“(2) Where on any appeal any sentence other than a sentence of community service is quashed and a sentence of community service substituted therefore, then, notwithstanding anything in section 29 (1A) of the Penal Institutions Act 1954, the period during which the *(work is to be undertaken)* service is to be performed for the purpose of the substituted sentence shall commence on the day on which that substituted sentence is imposed.” 5