

## CRIMINAL JUSTICE AMENDMENT BILL (NO. 2)

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### EXPLANATORY NOTE

THIS Bill amends the Criminal Justice Act 1985 in 2 respects.

First, it broadens the circumstances in which a person may become liable to preventive detention. At present, such liability arises where a person who has attained the age of 25 years is convicted of a sexual offence (as defined in section 75 (4) of the principal Act), having been previously convicted of such an offence when at least 17 years of age.

Thus, liability to this sentence is limited in relation to 2 matters: the age of the offender and the nature of the offences committed. *Clause 2* of the Bill lowers the qualifying age from 25 to 21 years of age, and broadens the class of qualifying offences to include attempted murder, wounding with intent, injuring with intent to cause grievous bodily harm, aggravated wounding or injury, and acid throwing.

Secondly, the Bill provides a procedure whereby the Secretary for Justice may apply to the Parole Board for an order that an inmate serving a finite sentence of imprisonment be not released until the expiry of the full term of the sentence. Under the principal Act, such an inmate is eligible to one-third remission of sentence (that is, the inmate is released after serving two-thirds of the sentence), and may be released on parole after serving half the sentence (or, in the case of a sentence of more than 14 years, after serving 7 years).

Under *clause 8* of the Bill, the Parole Board may order that the inmate be not released before the expiry of the sentence if the Board is satisfied that the inmate, if released earlier, would be likely to commit a specified offence before the date on which the sentence would expire.

Where the Secretary for Justice applies for such an order, the inmate must be given 14 days' notice of the application, and is entitled to appear before the Board and be heard, either personally or by counsel.

Every such order is to be reviewed by the Board every 6 months. While the order remains in force, the inmate cannot be released, except for the purpose of deportation.

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No. 98—1

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*Right Hon. Geoffrey Palmer*

## CRIMINAL JUSTICE AMENDMENT (NO. 2)

### ANALYSIS

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### A BILL INTITULED

#### **An Act to amend the Criminal Justice Act 1985 in relation to violent offenders**

BE IT ENACTED by the General Assembly of New Zealand in  
5 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) 1986, and shall be read together with and deemed part of the Criminal  
10 Justice Act 1985\* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

**2. Sentence of preventive detention**—The principal Act is hereby amended by repealing section 75, and substituting the  
15 following section:

“75. (1) This section shall apply to any person who is not less than 21 years of age, and who, having been previously convicted on at least one occasion since that person attained the age of 17 years of a specified offence, is convicted of  
20 another specified offence, being an offence committed after that previous conviction.

\*1985, No. 120  
Amendment: 1986, No. 83

“(2) Subject to the provisions of this section, the High Court, if it is satisfied that it is expedient for the protection of the public that an offender to whom this section applies should be detained in custody for a substantial period, may pass a sentence of preventive detention. 5

“(3) Where any person is convicted by a District Court of any specified offence, and the court has reason to believe, from a report of a probation officer or otherwise, that the offender is liable to preventive detention, section 44 of the Summary Proceedings Act 1957 or (as the case may require) 10 section 28G of the District Courts Act 1947 shall apply as if there were added to subsection (1) of that section the words ‘and a statement that the court has declined jurisdiction upon the ground that the court has reason to believe that the offender is liable to preventive detention’. 15

“(4) For the purposes of this section the expression ‘specified offence’ means,—

“(a) If committed against a child under the age of 16 years at the time of the commission of the offence,—

“(i) Any offence against any of sections 130 to 134 20 and 140 to 142 of the Crimes Act 1961; or

“(ii) An attempt to commit an offence against section 142 of that Act:

“(b) If committed against any person, whether or not a child under the age of 16 years at the time of the 25 commission of the offence,—

“(i) Any offence against any of sections 128, 129, 142A, 173, 188, 189 (1), 191, and 199 of that Act; or

“(ii) An attempt to commit an offence against section 142A or section 188 (1) or section 189 (1) of 30 that Act.”

**3. Remission of sentence**—Section 80 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) An offender shall not be eligible for remission of 35 sentence—

“(a) While the offender remains subject to an order made under **section 107A** of this Act or to an order made under section 47 of the Misuse of Drugs 40 Amendment Act 1978; or

“(b) When an application for an order under **section 107A** of this Act in respect of the inmate has been made to, but not determined by, the Parole Board.”

**4. Early release for special reason**—(1) Section 91 (1) of the principal Act is hereby amended by inserting, after the words “remission of sentence,”, the words “but subject to **subsection (1A)** of this section,”.

5 (2) Section 91 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) The Minister shall not direct the release under this section of any inmate who is subject to an order made under **section 107A** of this Act.”

10 **5. Eligibility for parole**—Section 93 of the principal Act is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) Notwithstanding the foregoing provisions of this section, no offender shall be eligible to be released on parole—

15 “(a) While the offender remains subject to an order made under **section 107A** of this Act; or

“(b) When an application for an order under that section in respect of the offender has been made to, but not determined by, the Parole Board; or

20 “(c) While the offender is detained in a police station or police jail.”

**6. Jurisdiction of Parole Board**—Section 94 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

25 “(4A) The Parole Board shall not consider under any of the foregoing provisions of this section the case of an offender who is subject to an order made under **section 107A** of this Act or in respect of whom an application for such an order has been made to, but not determined by, the Parole Board.”

30 **7. Jurisdiction of District Prisons Board**—Section 95 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

35 “(4A) A District Prisons Board shall not consider under any of the foregoing provisions of this section the case of an offender who is subject to an order made under **section 107A** of this Act or in respect of whom an application for such an order has been made to, but not determined by, the Parole Board.”

**8. Inmate may be required to serve full term**—The principal Act is hereby amended by inserting in Part VII, after 40 section 107, the following section:

“107A. (1) This section applies to every inmate who is subject to a sentence of imprisonment otherwise than for life in respect of a specified offence.

“(2) In this section the term ‘final release date’, in relation to any inmate to whom this section applies, means the date on which the sentence of imprisonment to which the inmate is subject would expire; and, in the case of an inmate who is subject to more than one sentence of imprisonment imposed in respect of a specified offence, means the later or latest date on which any of those sentences would expire.

“(3) If, on an application by the Secretary for Justice made in respect of an inmate to whom this section applies at any time before the date on which the inmate becomes eligible for remission of sentence, the Parole Board is satisfied that the inmate would, if released before his or her final release date, be likely to commit a specified offence before that date, the Board may order that the inmate shall not be released before his or her final release date.

“(4) A copy of any application made under **subsection (3)** of this section shall be given to the inmate at least 14 days before it is to be considered by the Parole Board, and the inmate shall be given an opportunity of appearing before the Board and stating his or her case in person or by counsel.

“(5) If the Parole Board makes an order under **subsection (3)** of this section in respect of any inmate, it shall state its reasons in writing for making the order, and shall give a copy of that statement to the inmate or his or her counsel.

“(6) Every order made under **subsection (3)** of this section shall be reviewed by the Parole Board at least once in every 6 months following the making of the order.

“(7) On any such review, the Parole Board may revoke the order if it is no longer satisfied that the inmate would, if released before his or her final release date, be likely to commit a specified offence before that date.

“(8) Where the Parole Board revokes the order and the inmate thereupon becomes eligible to be released on parole, the Board may,—

“(a) In any case, direct the release of the inmate on parole;  
or

“(b) In the case of an inmate who is subject to a sentence of imprisonment for a term of less than 7 years, refer the case to the appropriate District Prisons Board for consideration.

“(9) Where the Parole Board revokes the order after the date on which the offender would, but for the order, have become eligible for remission of sentence, the Board may direct the release of the inmate.

5 “(10) For the purposes of this section the expression ‘specified offence’ means,—

“(a) Murder:

“(b) If committed against a child under the age of 16 years at the time of the commission of the offence,—

10 “(i) Any offence against any of sections 130 to 134 and 140 to 142 of the Crimes Act 1961; or

“(ii) An attempt to commit an offence against section 142 of that Act:

15 “(c) If committed against any person, whether or not a child under the age of 16 years at the time of the commission of the offence,—

“(i) Any offence against any of sections 128, 129, 142A, 173, 188, 189 (1), 191, and 199 of that Act; or

20 “(ii) An attempt to commit an offence against section 142A or section 188 (1) or section 189 (1) of that Act.”

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