

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 7 July 1987.

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, 9 July 1987.

Words inserted are shown with double rule before first line and after last line.

[This Bill was formerly clauses 9 to 17 of the Violent Offences Bill (No. 2)]

Right Hon. Geoffrey Palmer

CRIMINAL JUSTICE AMENDMENT (NO. 4)

ANALYSIS

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A BILL INTITULED

An Act to amend the Criminal Justice Act 1985

BE IT ENACTED by the Parliament of New Zealand as follows:

No. 126—3C

Price \$1.50

incl. GST \$1.65

1. Short Title and commencement—(1) This Act may be cited as the Criminal Justice Amendment Act (No. 4) 1987, and shall be read together with and deemed part of the Criminal Justice Act 1985 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of August 1987. 5

10. Two sections (relating to imprisonment of violent offenders) substituted in principal Act—The principal Act is hereby amended by repealing section 5, and substituting the following sections: 10

“5. Violent offenders to be imprisoned except in special circumstances—(1) Where—

“(a) An offender is convicted of an offence punishable by imprisonment for a term of 2 years or more; and

“(b) The court is satisfied that, in the course of committing the offence, the offender used serious violence against, or caused serious danger to the safety of, any other person,— 15

the court shall impose a full-time custodial sentence on the offender unless the court is satisfied that, because of the special circumstances of the offence or of the offender, the offender should not be so sentenced. 20

“(2) Where—

“(a) An offender is convicted of an offence punishable by imprisonment for a term of 2 years or more; and 25

“(b) The offender has previously been convicted on at least 1 occasion within the preceding 2 years of such an offence; and

“(c) The court is satisfied that, in the course of committing the offence, and in the course of committing the previous offence, the offender used violence against, or caused danger to the safety of, any other person,— 30

the court shall impose a full-time custodial sentence on the offender unless the court is satisfied that, because of the special circumstances of the offence or of the offender, the offender should not be so sentenced. 35

“(3) In determining the length of any sentence of imprisonment to be imposed in any case to which **subsection (1)** or **subsection (2)** of this section applies, the court shall have regard, among other matters, to the need to protect the public. 40

“(4) This section shall be read subject to section 8 of this Act.

“5A. Violent offending while on bail, etc.—(1) Where—

“(a) An offender is convicted of an offence punishable by imprisonment for a term of 2 years or more; and

5 “(b) The offender was, at the time of committing the offence, on bail or remanded at large in respect of any other offence involving violence against, or danger to the safety of, any such person; and

“(c) The court is satisfied that, in the course of committing the offence, the offender used violence against, or caused danger to the safety of, any other person,—
10 the court shall impose a full-time custodial sentence on the offender unless the court is satisfied that, because of the special circumstances of the offence or of the offender, the offender should not be so sentenced.

“(2) In determining the length of any sentence of
15 imprisonment to be imposed in any case to which **subsection (1)** of this section applies, the court shall have regard, among other matters, to the need to protect the public.

“(3) Any sentence of imprisonment imposed by the court shall be cumulative upon any sentence of imprisonment to
20 which the offender is then subject for the offence for which the offender had been on bail or remanded at large, unless the court is satisfied that, because of the special circumstances of the offence or of the offender, the sentence should be concurrent with the earlier sentence.

25 “(4) This section shall be read subject to section 8 of this Act.”

11. Court not to take into account alcohol or drugs, etc., in certain cases—The principal Act is hereby amended by inserting, after section 12, the following section:

30 “12A. (1) Subject to **subsection (2)** of this section, where—

“(a) An offender is convicted of an offence; and

“(b) The court is satisfied that, in the course of committing the offence, the offender used violence against, or caused danger to, any other person,—

35 the court, in imposing a sentence, shall not take into account by way of mitigation the fact that the offender was, at the time of committing the offence, affected by alcohol or any drug or other substance, unless the court is satisfied that the offender did not consume or use the alcohol, drug, or other substance
40 voluntarily.

“(2) Nothing in **subsection (1)** of this section shall limit the power of the court to impose any sentence or to make any

order or to give any direction intended to promote the rehabilitation of the offender.”

12. Two new sections (relating to reparation) substituted in principal Act—(1) The principal Act is hereby amended by repealing sections 22 and 23, and substituting the following sections: 5

“22. Court may sentence offender to make reparation—(1) Where any court by or before which a person is convicted of an offence, or any other court before which the offender appears for sentence, is satisfied that any other person 10 suffered—

“(a) Any emotional harm; or

“(b) Any loss of or damage to property—
through or by means of the offence, the court may sentence the offender to make reparation. 15

“(2) Where, after giving the prosecutor and the offender an opportunity to be heard on the question, the court—

“(a) Considers that such a sentence should be imposed in respect of loss of or damage to property only; and
“(b) Is satisfied of the value of the loss or damage,— 20
the court may impose such a sentence without further inquiry.

“(3) Subject to **subsections (2) and (4)** of this section, before imposing such a sentence, the court may (whether before or after giving the prosecutor and the offender an opportunity to be heard) adjourn the proceedings and order a probation 25 officer, or any other person designated by the court for the purpose, to prepare a report for the court in accordance with section 23 of this Act on all or any of the following matters:

“(a) In the case of emotional harm, the nature of that harm:

“(b) In the case of loss of or damage to property, the value of 30 that loss or damage:

“(c) The means of the offender:

“(d) The nature and extent of the offender’s existing financial obligations:

“(e) The maximum amount that the offender is likely to be 35 able to pay under a sentence to make reparation:

“(f) The frequency and magnitude of any payments that should be required under a sentence to make reparation, where provision for payment by instalments is thought desirable. 40

“(4) Where—

“(a) The court considers that such a sentence should be imposed in respect of loss of or damage to property only; and

5 “(b) It is clear to the court that the maximum amount that the offender could be required to pay does not exceed \$250,—

the court shall not require a report to be prepared under **subsection (3)** of this section.

10 “(5) For the purposes of this section and of **section 23** of this Act, the value of the loss of or damage to property shall be limited to the cost of replacement or (as the case may require) the cost of repair, and shall not include any loss or damage of a consequential nature.

15 “**23. Preparation of report**—(1) Any probation officer or other person who is required by a court to prepare a report under **section 22** of this Act shall attempt to seek agreement between the offender and the person who suffered the emotional harm or the loss of or damage to property on the amount that the offender should be required to pay by way of reparation.

20 “(2) Where such agreement is reached, the probation officer or other person shall report the terms of the agreement to the court (in addition to any other matters on which the court has required a report).

25 “(3) Where no such agreement is reached, the probation officer or other person shall,—

“(a) In respect of emotional harm, state in the report that the matter is unresolved; and

30 “(b) In respect of loss of or damage to property, either—
“(i) Determine the value of the loss or damage on the evidence available, and include in the report the value so determined; or

“(ii) State in the report that the matter is unresolved.

35 “(4) Notwithstanding anything in the preceding provisions of this section, the person who suffered the emotional harm or the loss of or damage to property shall not be obliged to meet with the offender.

40 “(5) Without limiting section 17 of this Act, a copy of any report prepared under this section shall be given to the person who suffered the emotional harm or the loss of or damage to property, unless the court orders that the whole or any part of the report shall not be so disclosed.

“(6) Failure to give a copy of any report in accordance with subsection (5) of this section shall not affect the validity of the proceedings in a court or of any order made or sentence passed by a court.”

(2) Section 2 of the Criminal Justice Amendment Act 1986 is hereby consequentially repealed. 5

13. Conditions of sentence—Section 24 of the principal Act is hereby amended by omitting from paragraph (c), and also from paragraph (e), the words “loss or damage”, and substituting in each case the words “emotional harm or the loss of or damage to property”. 10

14. Whole or part of fine may be awarded to victim of offence suffering physical or emotional harm—(1) Section 28 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection: 15

“(1) Where an offender is convicted of an offence arising out of any act or omission that occasioned physical or emotional harm to any other person (whether or not the occasioning of such harm constitutes a necessary element of the offence at law) and the court before which the offender appears for sentence imposes a fine on the offender, the court shall consider whether or not it should award, and, subject to subsection (2) of this section, may if it thinks fit award, by way of compensation to the victim the whole or such portion of the fine as it thinks just.” 20 25

(2) Section 28 (2) of the principal Act is hereby amended by omitting from paragraph (b) the words “bodily injury”, and substituting the words “physical or emotional harm”.

(3) Section 28 (3) of the principal Act is hereby amended by inserting, after the words “to pay”, the words “the fine or”. 30

15. New heading and section (relating to conditions of parole) inserted in principal Act—(1) The principal Act is hereby amended by inserting, after section 77, the following heading and section:

“Conditions of Parole” 35

“77A. Court on imposing sentence of imprisonment or preventive detention may impose conditions of parole— On imposing a sentence of imprisonment or of preventive detention, a court may impose such special conditions (if any) as it thinks fit to which the offender shall be subject if the offender is released on parole in respect of the sentence in 40

accordance with Part VI of this Act; and every such condition shall be deemed for the purposes of that Part of this Act to have been imposed under that Part.”

(2) Section 99 (1) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Such special conditions (if any) as the court thought fit to impose on sentence pursuant to **section 77A** of this Act for the period on which the offender is on parole; and”.

(3) Section 99 (2) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Such special conditions (if any) as the court thought fit to impose on sentence pursuant to **section 77A** of this Act for the period on which the offender is on parole; and”.

(4) Section 99 (3) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Such special conditions (if any) as the court thought fit to impose on sentence pursuant to **section 77A** of this Act for the period on which the offender is on parole; and”.

New

15A. Period on remand to be taken into account on sentence—(1) The principal Act is hereby amended by repealing section 81, and substituting the following section:

“81. (1) On imposing a sentence of imprisonment for a term, the court shall, in determining the term, take into account in accordance with **subsection (2)** of this section the total period (if any) during which the offender was held on remand in penal custody at any stage of the proceedings leading to the offender’s conviction, or pending sentence, whether that period or any part of it related to any charge on which the offender was eventually convicted or any other charge on which the offender was originally arrested or that the offender faced at any time subsequent to his or her arrest and prior to his or her conviction.

“(2) For the purposes of **subsection (1)** of this section, a court shall take into account the period spent on remand in penal custody by reducing the term of imprisonment that would otherwise be appropriate by so much of that period as is reasonably practicable in all the circumstances.

New

“(3) The court shall be provided with such information as is necessary to enable the court to comply with **subsection (2)** of this section.

“(4) This section shall not apply in respect of any time spent 5
on remand in penal custody while the offender was subject to
any full-time custodial sentence.

“(5) In this section ‘penal custody’ means detention in any
penal institution established under the Penal Institutions Act
1954 except a Police jail.” 10

(2) **Subsection (1)** of this section shall not apply in respect of
any sentences imposed before the commencement of this Act
or any sentences imposed in substitution for any such
sentences.

16. Eligibility for parole—(1) Section 93 (1) of the principal 15
Act is hereby amended by omitting the expression “subsection
(2)”, and substituting the expression “**subsections (2) and (2A)**”.

(2) Section 93 (1) of the principal Act is hereby further
amended by repealing paragraph (b), and substituting the 20
following paragraphs:

“(b) Where the sentence is for a term of 14 years or more,
after the expiry of 7 years of that sentence:

“(c) Where the sentence is for life, after the expiry of 10
years of that sentence.”

(3) Section 93 of the principal Act is hereby further amended 25
by inserting, after subsection (2), the following subsection:

“(2A) An offender shall not be eligible to be released on
parole in respect of any sentence of imprisonment for a term of
more than 2 years imposed on the offender for any offence
against any of the following provisions of the Crimes Act 1961: 30

“Section 128 (sexual violation):

“Section 171 (manslaughter):

“Section 173 (attempt to murder):

“Section 188 (1) (wounding with intent to cause grievous
bodily harm): 35

“Section 188 (2) (wounding with intent to injure):

“Section 189 (1) (injuring with intent to cause grievous bodily
harm):

“Section 189 (2) (injuring with intent to injure):

“Section 198A (as inserted by section 3 of the Crimes Amendment Act (No. 2) 1986) (using any firearm against law enforcement officer, etc.):

5 “Section 198B (as so inserted) (commission of crime with firearm):

“Section 234 (robbery):

“Section 235 (aggravated robbery).”

10 (4) Section 93 (3) of the principal Act is hereby amended by omitting the expression “7”, and substituting the expression “10”.

(5) Nothing in this section shall apply in respect of any sentences imposed before the passing of this Act or any sentences imposed in substitution for any such sentences.

15 **17. Matters to be considered by Parole Board or District Prisons Board**—Section 96 (1) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

20 “(aa) Generally, the likelihood of the offender committing further offences of violence upon his or her release:”.