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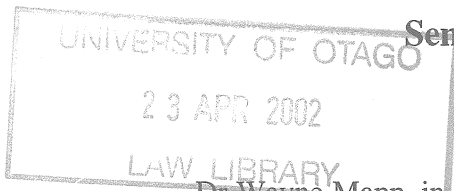
No 259

# House of Representatives

## Supplementary Order Paper

Tuesday, 16 April 2002

### Sentencing and Parole Reform Bill



#### *Proposed amendments*

Dr Wayne Mapp, in Committee, to move the following amendments:

#### *Clause 4*

To insert, in its appropriate alphabetical order in subclause (1) (after line 1 on page 10), the following definition:

**serious violent or sexual offence** means a sexual crime under Part VII of the Crimes Act 1961 punishable by 7 or more years imprisonment (and including a crime under section 144A or 144C of that Act) or an offence against any of sections 171, 173 to 177, 188, 189, 191, 198 to 201, 203, 204, 208 to 210, 234, 235, or 237 of the Crimes Act 1961

#### *Clause 7*

To insert, after subclause (1)(d) (after line 23 on page 12), the following paragraph:

(da) to punish the offender for the offence that the offender has committed; or

#### *Clause 9*

To omit subclause (1)(g) and (ga) (line 26 on page 15 to line 4 on page 16).

#### *Clause 14*

To insert, after subclause (2) (after line 4 on page 22), the following subclause:

(2A) The court must impose a sentence of imprisonment where it is necessary to do so to take proper account of the purpose in **section 7(1)(da)** to punish the offender.

#### *Clause 29*

To omit from subclause (1) the word "may" (line 22 on page 32), and substitute the word "must".

To omit subclause (3) (lines 19 to 21 on page 33), and substitute the following subclause:

- (3) The court may impose as part of a sentence of reparation an obligation on the offender to perform any form of work or service for the victim, with the consent of the victim.

*Clause 40*

To add the following paragraph (after line 5 on page 40):

- (c) a sentence of periodic detention.

*Clause 51*

To insert, after subclause (1) (after line 2 on page 47), the following subclause:

- (1A) The court may make a direction as to the nature of the community work to be undertaken by the offender.

*New heading and clauses 64A to 64H*

To insert, after clause 64 (after line 29 on page 54), the following heading and clauses:

*Periodic detention*

**64A Sentence of periodic detention**

A court may sentence an offender to periodic detention if the offender—

- (a) is not less than 15 years of age; and  
 (b) is convicted of an offence punishable by imprisonment.
- (2) The sentence may be for such term, not exceeding 12 months, as the court thinks fit.
- (3) This section is subject to **sections 64B and 64C**.

**64B Sentence not to be imposed unless appropriate periodic detention centre available**

- (1) A court may not sentence an offender to periodic detention unless an appropriate periodic detention centre to which the offender would be required to report is, having regard to the means of transport available to the offender, within reasonable distance of the offender's place of residence.
- (2) For the purpose of this Subpart, a periodic detention centre is every place that is declared by the Minister of the Crown who is responsible for the Department of Corrections, by notice in the *Gazette*, to be a periodic detention centre.
- (3) Every manager so appointed or designated for the time being at a periodic detention centre must—
- (a) monitor compliance by offenders with the conditions of the sentence of periodic detention; and  
 (b) ensure that authorised work is available for offenders sentenced to periodic detention; and  
 (c) perform such other duties as may be prescribed by or under this Act or any other Act; and

- (d) report to the controlling officer in the manager's district on the matters specified in paragraphs (a) to (c) and on any other matter relating to periodic detention as the manager thinks fit.

**64C Cumulative sentences involving periodic detention**

- (1) A sentence of periodic detention may be cumulative on a sentence of imprisonment of 12 months or less but must not be cumulative on another sentence of periodic detention or on a sentence of any other kind.
- (3) A sentence of any other kind must not be cumulative on a sentence of periodic detention.

**64D Conditions of sentence**

- (1) An offender who is subject to a sentence of periodic detention is required during the term of the sentence—
  - (a) to report at a periodic detention centre on such occasions as may be specified in or pursuant to the order of the court made under subsection (2); and
  - (b) to remain at the periodic detention centre, or to report to and remain at any other place, at the direction of the manager of the centre; and
  - (c) on each such occasion, to remain in the custody of the manager of that centre as directed by the manager in accordance with this section.
- (2) A court imposing a sentence of periodic detention must, by order,—
  - (a) give directions as to—
    - (i) the number of occasions in each week on which the offender is required to report; or
    - (ii) the offender reporting on 1 occasion in each week and on such other occasion or occasions in each week as the manager of the periodic detention centre may from time to time specify; or
    - (iii) the offender reporting on such number of occasions in each week as the manager may from time to time specify; and
  - (b) except where the sentence is cumulative on a sentence of imprisonment, specify the periodic detention centre at which the offender is required to report on each occasion; and
  - (c) specify—
    - (i) in any case where the sentence of periodic detention is cumulative on a sentence of imprisonment, that the offender must, as soon as practicable and not later than 72 hours after release from the penal institution, report in person to a probation officer for the district in which the offender is to

- reside and report to a periodic detention centre in that district in accordance with the directions of that probation officer; or
- (ii) in any other case, the date and time at which the offender is required to report on the first such occasion after the sentence is imposed; and
- (d) specify the maximum duration of each period of custody.
- (3) It is not necessary for all the periods of custody in any week to be of the same duration, but no such period is to be longer than 10 hours and the aggregate in any week must not exceed 18 hours.
- (4) The day and time at which an offender who is subject to a sentence of periodic detention is required to report at a periodic detention centre on every occasion after the first, and the period for which the offender is required to remain in custody on any occasion (including the first), must be determined by the manager of the centre, who must have regard to the directions given by the court in imposing the sentence or, subsequently, by any District Court Judge to whom an application is made by the offender.
- (5) The times at which the offender is required to report, and the periods during which he or she is required to remain in custody, must be such as to avoid interference, so far as practicable, with the offender's attendance at any place of education or employment, or with his or her genuine religious observances.
- (6) Despite anything in **subsections (1) and (2)**,—
- (a) the chief executive of the Department of Corrections may subsequently direct that an offender who is serving a sentence of periodic detention must thereafter report at a periodic detention centre established in a district different from that in which the periodic detention centre specified by the court is established:
- (b) the manager of the centre may subsequently direct that any offender must thereafter report to another periodic detention centre established within the same district as the periodic detention centre specified by the court.
- (7) A direction given under **subsection (6)** may be revoked at any time.

**64E Offender excused from reporting in certain circumstances**

- (1) An offender who is subject to a sentence of periodic detention is excused from reporting during any period while the periodic detention centre at which the offender would otherwise be required to report is closed.

- (2) In special circumstances the manager of the centre may excuse such an offender from reporting on any occasion or occasions, or on every occasion, in any week.
- (3) Without limiting **subsection (2)**, the manager of the centre may excuse an offender who is subject to a sentence of periodic detention from reporting for any period or periods not exceeding in the aggregate 1 week on completion of each 3-month period of the sentence.
- (4) Without limiting **subsections (2) and (3)**, if an offender who is subject to a sentence of periodic detention is unable to report on any occasion or occasions, or on every occasion, in any week because of illness or injury, the manager of the centre must, on being satisfied (whether before or after the failure to report) with the circumstances of the case, excuse the offender from the requirement to report on that occasion or those occasions.
- (5) For the purpose of determining whether or not to excuse an offender under **subsection (4)**, the manager of the centre may have regard to a certificate given by a registered medical practitioner to the effect that the offender is or will be or was unfit to report to the centre on the day or during the period specified in the certificate, but no such certificate is conclusive of the matter.

**64F Legal custody of offenders**

- (1) An offender who is subject to a sentence of periodic detention is in the legal custody of the manager of a periodic detention centre—
  - (a) throughout every period during which the offender is detained at the centre; and
  - (b) while the offender is at any other place at the direction or with the permission of the manager of the centre or of some other officer or employee of the centre; and
  - (c) while the offender is travelling between the periodic detention centre and any other place referred to in **paragraph (b)**, or between any 2 such places.
- (2) Every such offender is subject to the control, direction, and supervision of the manager of the centre while in the legal custody of the manager, whether the offender is within the centre or outside it.

**64G Activities and work to be done by offenders**

- (1) Every period during which an offender who is subject to a sentence of periodic detention is in custody for the purposes of the sentence must be spent in participating in such activities (physical or mental), attending such classes or groups, or undergoing such instruction, whether within the periodic

detention centre or outside it, as the manager of the centre directs.

- (2) Any such offender may, at any time during any period in which he or she is required to be in custody for the purposes of the sentence, be employed in such authorised work, whether within the periodic detention centre or outside it, as the manager of the centre directs.

**64H Variation, cancellation, or suspension of sentence of periodic detention**

- (1) A sentence of periodic detention may at any time, on the application of the offender or of the manager of the periodic detention centre at which the offender is required to report made in accordance with **section 67**, be varied by altering the length of the sentence or any of the conditions of the sentence specified by the court under **section 64D(2)**, or cancelled, by a 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.
- (2) Without limiting **subsection (1)**, a court may, on the application of the offender or of the manager of the centre at which the offender is required to report made in accordance with **section 67**, suspend for such time as it thinks fit the running of the sentence if it is satisfied that, because of incapacity or any humanitarian or other reasons considered sufficient by the court, it will be impossible for the offender to serve the sentence during that period or that it would be unreasonable to require the offender to do so.

*New clause 66A*

To insert, after clause 66 (after line 3 on page 57), the following clause:

**66A Offences relating to breach of sentence of periodic detention**

- (1) An offender who is sentenced to periodic detention commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1,000 who—
- (a) fails, without reasonable excuse,—
    - (i) to report at a periodic detention centre—
      - (A) as ordered by the court imposing the sentence; or
      - (B) as specified pursuant to section 137(4) of the Summary Proceedings Act 1957 on appeal; or
      - (C) as directed by a probation officer pursuant to **section 64D(2)(c)(i)**; or

- (D) as determined pursuant to **section 64D(4)**; or
  - (E) as directed pursuant to **section 64D(6)**; or
  - (ii) to report to any other place as directed pursuant to **section 64D(1)(b)** or **section 64G**; or
  - (b) fails without reasonable excuse to obey any rules governing the periodic detention centre at which the offender is required to report or any directions lawfully given regarding the manner in which his or her time is to be spent while in the legal custody of the manager of the centre; or
  - (c) leaves the periodic detention centre without reasonable excuse at any time when the offender should be there; or
  - (d) leaves without reasonable excuse any premises at which the offender has been directed to attend outside the periodic detention centre at any time when required to be at those premises; or
  - (e) refuses to work, or fails to work in the manner reasonably required of the offender, or neglects or intentionally mismanages his or her work, while in the custody of the manager of the centre; or
  - (f) behaves in an offensive, threatening, insolent, insulting, disorderly, or indecent manner while in the legal custody of the manager of the centre; or
  - (g) accepts remuneration, whether by way of gift or otherwise, in respect of any work that the offender is directed to do while in the legal custody of the manager of the centre.
- (2) Every person commits an offence and is liable to a fine not exceeding \$500 who, without lawful justification or excuse, loiters about any periodic detention centre or any place where persons sentenced to periodic detention are employed, and refuses or neglects to depart after being warned by any member of the Police or by any officer of the periodic detention centre.

*Clause 67*

To insert in subclause (1), after the expression “**section 53**” (line 6 on page 57), the words “**or section 64H**”.

*Clause 79*

To omit from subclause (2)(a) the words “qualifying sexual or violent offence (as that term is defined in **subsection (5)**” (lines 26 to 28 on page 67), and substitute the words “serious violent or sexual offence”.

To omit from subclause (2)(c) the words “qualifying sexual or violent offence” (line 32 on page 67), and substitute the words “serious violent or sexual offence”.

To omit subclause (5) (lines 13 to 24 on page 68).

*Clause 80*

To omit from subclause (1)(b) the words “qualifying sexual or violent offence” (lines 7 to 8 on page 69), and substitute the words “serious violent or sexual offence”.

*Clause 82*

To omit from subclause (1) the words “qualifying sexual or violent offence” (line 7 on page 70), and substitute the words “serious violent or sexual offence”.

*New heading and clauses 88A to 88C*

To insert, after clause 88 (after line 29 on page 78), the following heading and clauses:

*Suspended sentences***88A Suspended sentences**

- (1) Where a court sentences an offender to a term of imprisonment of not less than 6 months and not more than 2 years, it may make an order suspending the sentence for a period not exceeding 2 years from the date of the order.
- (2) A court must not make an order under **subsection (1)** if it would not have sentenced the offender to imprisonment in the absence of power to make an order suspending the sentence.
- (3) A court making an order under **subsection (1)** must specify a suspended sentence that corresponds in length to the sentence of imprisonment that it would have imposed in the absence of power to make an order suspending the sentence.
- (4) Where an offender who is subject to a suspended sentence is convicted of a further offence punishable by imprisonment, the court sentencing the offender for the further offence must order that the suspended sentence is to take effect for the period specified in the order made under **subsection (1)**, unless it is of the opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was imposed, including the circumstances of any further offending.
- (5) Where a court decides under **subsection (4)** that a suspended sentence is not to take effect for the period specified in the order, then, subject to this Act, the court must either—
  - (a) order that the suspended sentence—
    - (i) take effect with the substitution of a lesser term of imprisonment; or
    - (ii) be cancelled and replaced by any non-custodial sentence that could have been imposed on the offender at the time when the offender was convicted of the offence for which the suspended sentence was imposed; or
    - (iii) be cancelled; or



- (b) decline to make any order referred to in **paragraph (a)** concerning the suspended sentence.
- (6) Where, pursuant to **subsection (4) or subsection (5)**, a court orders that the suspended sentence is to take effect, then, subject to any direction made under **section 76(1)**, the sentence commences on the date of the making of that order.
- (7) Where a court sentences an offender for a further offence without taking into account the existence of a suspended sentence, the Solicitor-General or any member of the Police or a Crown Prosecutor may, before the expiry of the suspended sentence, apply to the court for the making of an order referred to in **subsection (4)**.
- (8) On any application under **subsection (7)**, the court may issue a summons requiring the offender to appear, or issue a warrant to arrest the offender and bring him or her before the court, at the time and place appointed, for the purpose of being dealt with in accordance with **subsection (4)** and that subsection has effect in all respects notwithstanding that the offender has already been sentenced for the further offence.
- (9) Where a court imposes a suspended sentence for one offence, the court may also impose suspended sentences under **subsection (1)** for other offences for which the offender has appeared for sentence, so long as the total period of all suspended sentences to which the offender is subject does not exceed 2 years from the date of commencement of the first such sentence; and, where 2 or more suspended sentences are imposed on an offender, the sentences must be served concurrently.
- (10) For the purposes of this section, a conviction includes a conviction entered in the Youth Court where the offender is referred to the District Court for sentencing under section 283(o) of the Children, Young Persons, and Their Families Act 1989.

**88B Administration and effect of suspended sentences**

- (1) On making an order under **section 88A(1)**, the court must explain to the offender that if he or she is convicted of a further offence punishable by imprisonment while subject to a suspended sentence he or she is liable to undergo the sentence in addition to any other sentence which may be imposed.
- (2) Where the court imposes a suspended sentence on an offender it must cause the particulars of the sentence, including the consequences of non-compliance, to be drawn up in the form of an order and the provisions of **section 69** apply as if the reference in that section to a community-based sentence were a reference to a suspended sentence.

- (3) An offender has the same right of appeal against a suspended sentence as he or she would have had if the sentence had taken effect.
- (4) Nothing in this Act authorises any court to direct that—
  - (a) a suspended sentence is to be cumulative on another suspended sentence or on a sentence of any other kind; or
  - (b) a sentence of any kind is to be cumulative on a suspended sentence.
- (5) Subject to **subsection (3)**, an offender who is subject to a suspended sentence which has not taken effect under **section 88A(4) or (5)(a)** must not be treated for the purposes of this Act or any other Act as being subject to a sentence of imprisonment.

#### **88C Registrar to keep records**

The Registrar of any court making an order or sentencing an offender under **section 88A** must cause records to be kept of such orders and sentences for the purpose of ensuring that suspended sentences are administered in accordance with **sections 88A and 88B**.

#### *Clause 92*

To omit from subclause (1A) the expression “10” (line 7 on page 80), and substitute the expression “15”.

To omit from subclause (1) the expression “10” (line 13 on page 80), and substitute the expression “15”.

To omit from subclause (2) the expression “10” (line 15 on page 80), and substitute the expression “15”.

#### *Clause 93*

To omit from the heading the words “minimum period of imprisonment of 17 years or more” (lines 21 to 22 on page 81), and substitute the words “imprisonment for life without parole”.

To omit the words “a minimum period of imprisonment of at least 17 years” (lines 23 to 24 on page 81), and substitute the words “imprisonment for life without parole”.

To add the following subclauses (after line 14 on page 82):

- (2) Despite **subsection (1)**, the Minister of the Crown who is responsible for the Department of Corrections may, in exceptional circumstances of an offender who has a terminal illness or other health condition such that he or she could not pose a danger to the community, order the release of an offender to whom this section applies.
- (3) **Part 3** is subject to this section.

#### *Clause 112*

To omit from subclause (2) all the words and paragraphs after the expression “**subsection (1)**” (lines line 8 to 21 on page 94).

*Clause 139*

To omit from subclause (2)(a) the words “or periodic detention” (lines 27 to 28 on page 108) and the words “or section 37” (line 28 on page 108).

*Clause 140*

To omit subclause (2)(b)(ii) (lines 28 to 30 on page 109).

*Clause 144*

To omit clause 144 (lines 5 to 32 on page 111).

*Clause 156*

To omit from subclause (1) (from new subsection (1)(b) of section 125) the words “and community work” (line 12 on page 115), and substitute the words “, community work, and periodic detention”.

To omit subclauses (2A) and (3) (lines 1 to 7 on page 116).

*Clause 157*

To omit new section 126(3) and (4) (line 33 on page 116 to line 5 on page 117).

To insert in new section 127(2), after the word “centres” (line 12 on page 117), the words “and periodic detention centres”.

To insert in new section 127(4), after the word “centre” (line 18 on page 117), the words “or a periodic detention centre”.

*Clause 158*

To insert in new section 129(1), after the word “centre” (line 33 on page 117), the words “or any periodic detention centre”.

To omit from new section 129(2) the words “community work” wherever they occur (lines 35 to 37 on page 117).

*Clause 169*

To omit subclause (2)(a) (lines 8 to 14 on page 128), and substitute the following paragraph:

- (a) that offenders must not be released unless the Board is satisfied that community safety will not be endangered by the release of the offender.

*New clause 169A*

To insert, after clause 169 (after line 29 on page 128), the following clause:

**169A Protection of victims**

Despite **section 169**, the Board must not release an offender on parole if to do so would affect the health (whether physical or psychological or both) of a victim of the offender.

*New clause 233A*

To insert, after clause 233 (after line 20 on page 195), the following clause:

**233A Relationship to suspended sentences**

**Sections 231 to 233** are subject to **section 88A**.

*Clause 240*

To insert in subclause (1), after the words “single sentence” where they first occur (line 17 on page 197), the words “but not including a sentence for a serious violent or sexual offence”.

To insert, after subclause (3) (after line 33 on page 197), the following subclauses:

- (3A) The parole date of a sentence for a serious violent or sexual offence is the date that is reached when the offender serving the sentence has served two-thirds of it.
- (3B) For the purposes of this section, “serious violent or sexual offence” has the same meaning as in **section 4**.

*Clause 256A*

To omit clause 256A (lines 6 to 19 on page 208).

*Clause 267*

To insert, after subclause (2)(b) (after line 30 on page 218), the following paragraph:

- (ba) at least 1 member who is a representative of victims;  
and

*Schedule 1*

To omit the entries relating to the Child Support Act 1991 (line 29 on page 226 to line 22 on page 227).

To omit the entries relating to the District Courts Act 1947 (line 31 on page 231 to line 18 on page 232).

To insert, after the word “work” in paragraph (b) of the description of the Department of Corrections records to be substituted in the Fifth Schedule of the Privacy Act 1993 (line 30 on page 236), the words “or periodic detention”.

To insert, after paragraph (i) of new section 9C(2) of the Summary Proceedings Act 1957 (after line 36 on page 237), the following paragraphs:

- (ia) impose, under **section 64A** of that Act, a sentence of periodic detention on the offender:
- (ib) impose, under **section 88A** of that Act, a suspended sentence on the offender:

To insert, after the word “work” in the entries relating to sections 88(5) and 89(2) of the Summary Proceedings Act 1957 (lines 18 and 21 on page 239), the words “or periodic detention”.

To omit the entry relating to section 106E(1) of the Summary Proceedings Act 1957 (lines 33 and 34 on page 239).

To omit the entries relating to section 137(4) of the Summary Proceedings Act 1957 (lines 14 to 17 on page 240).

*Schedule 2*

To insert, after the words “community work” wherever they occur in the entries relating to the Criminal Proceedings (Enforcement of Fines) Rules 1967 (lines 7 to 22 on page 242), the words “or periodic detention”.

## Explanatory note

This Supplementary Order Paper makes a number of amendments that are required to strengthen the Sentencing and Parole Reform Bill in response to strong community concern over crime. The amendments include:

- Retaining the category of serious violent offenders, expanded to include serious sexual offences, and ensuring that they cannot become eligible for parole until they have served two-thirds, not one-third, of their sentences. As well, such offences are applied in relation to preventive detention.
- Providing that punishment must be part of the purposes of sentencing, and must be taken into account when determining whether to imprison.
- Removing age and discrimination related aggravating factors that may be taken into account in sentencing.
- Providing for the offender to perform work or service for the victim, if the victim consents.
- Retaining the sentence of periodic detention from the Criminal Justice Act 1985, not simply softer community-based sentences.
- Permitting the court to make directions as to the community work to be undertaken.
- Retaining the category of suspended sentences from the Criminal Justice Act 1985, as another weapon in the sentencing armoury.
- Increasing the sentence for murder from a minimum of 10 to 15 years.
- Providing that in the case of the worst kinds of murder an offender must be sentenced to life imprisonment without parole. Life imprisonment in these cases will mean just that.
- Strengthening the power to confiscate motor vehicles in the case of drink driving and other offences.
- Strengthening parole provisions so that offenders are not released unless the Parole Board is satisfied that community safety will not be endangered.
- Giving victims a greater say in the process, in relation both to restrictions on parole if victims' physical or psychological health would be affected and to representation on the Parole Board.