BILLS DIGEST

PAROLE (EXTENDED SUPERVISION) AND SENTENCING AMENDMENT BILL 2003

Date of Introduction: 11 November 2003

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Portfolio: Justice
Select Committee: As at 19 November, 1st reading not held

PURPOSE

The aim of the Bill is to amend the Parole Act 2002 and the Sentencing Act 2002 to introduce a new extended supervision regime to manage child sex offenders and to make other amendments to both those Acts.

BACKGROUND

In a Report on this Bill under the New Zealand Bill of Rights Act 1990, the Attorney-General states:

“I have undertaken an examination of the Parole (Extended Supervision) and Sentencing Amendment Bill (“the Bill”) for consistency with the New Zealand Bill of Rights Act 1990 (“the Bill of Rights Act”). Although the Bill seeks to address an important and significant social issue, I have identified the following provisions as being inconsistent with the rights and freedoms contained in the Bill of Rights Act:

- The imposition of significant restrictions of liberty under the proposed extended supervision regime on individuals who were convicted prior to the Bill coming into force (cl 10, new sections 107B and 107T) (unreasonable limit on right not to be subject to double jeopardy); and
- The statutory power to impose 24 hour electronic monitoring on individuals subject to an extended supervision order (cl 6 and cl 10, new section 107I) (unreasonable search or seizure).

“Without further amendment to the Bill, these provisions cannot be justified under section 5 of the Bill of Rights Act”¹.

The Government’s view

In a recent Media release, the Minister for Justice said that the “… Sentencing and Parole Amendment Bill allows judges to place high-risk convicted sex offenders under an extended supervision regime for up to 10 years following the completion of their prison sentences”.

¹ Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Parole (Extended Supervision) and Sentencing Amendment Bill, 2003 A to J E.63.
“Once passed, the new law will apply … to all child sex offenders, including those convicted under existing legislation and still subject to their sentence”.

“The primary purpose of this law is preventative, not punitive. It aims to protect children against sex offenders who Corrections and the judiciary regard as being at high risk of re-offending but who must be released because they are subject to a finite sentence”.

**MAIN PROVISIONS**

**Extended supervision orders**

The Bill provides that a sentencing court (generally the High Court) may make an extended supervision order following the hearing of an application by the chief executive of the Department of Corrections made before the later of the expiry of a sentence of an offender (whether or not relating to a relevant offence) or when the offender ceases to be subject to release conditions if the Court is satisfied, having considered the matters addressed in a health assessor’s report that the offender is likely to commit further relevant offences on ceasing to be an eligible offender. The report of the health assessor must address (“without limitation”) the following:

- the nature of any likely future sexual offending by the offender, including the age and sex of likely victims;
- the offenders ability to control his or her sexual impulses;
- the offender’s predilection and proclivity for sexual offending;
- the offender’s acceptance of responsibility and remorse for past offending; and
- any other relevant matters.

The Bill also provides that the purpose of an extended supervision order is to protect members of the community from those who, following receipt of a determinate sentence, pose a real and ongoing risk of committing sexual offences against children or young persons. The order must state a term of up to ten years. This term must be the minimum period required for the purposes of the safety of the community in light of:

- the level of risk posed by the offender; and

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3 The term “health assessor” is defined in Section 4 of the Sentencing Act 2002 and broadly means: a practising psychiatrist who is a registered medical practitioner or a registered psychologist.

4 An “eligible offender” is, generally, an offender who has been sentenced to imprisonment for a relevant offence and who is not subject to an indeterminate sentence. A “relevant offence” is an offence under certain specified sections of the Crimes Act 1961 or their repealed equivalents. These are all of a sexual nature and are listed exhaustively in the Bill (Part 1, Clause 10, New Part 1A of the Parole Act 2002, New Section 107B, definitions of “eligible offender” and “relevant offence”).
- the seriousness of the harm that might be caused to victims; and
- the likely duration of the risk.

The conditions of an extended supervision order are:

- the standard release conditions\(^5\) which apply throughout the term of the order and may be varied or discharged by the New Zealand Parole Board; and
- any special conditions imposed by the New Zealand Parole Board.

The sentencing court may cancel an extended supervision order on the application of the offender or the chief executive of the Department of Corrections “on the grounds that the offender is no longer likely to commit further relevant offences within the term off the order (Part 1, Clause 10, New part 1A of the Parole Act 2002, New Sections 107A – 107U).

### Home detention

Section 97(3) of the Sentencing Act 1997 provides that the court must grant the offender leave to apply to the New Zealand Parole Board under Section 33 of the Parole Act 2002 for home detention unless the court is satisfied that it would be inappropriate to grant leave taking into account:

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\(^5\) The “standard release conditions” are set out in Section 14 of the Parole Act 2002 and are as follows:

- the offender must report in person to a probation officer in the probation area in which the offender resides as soon as practicable, and not later than 72 hours, after release;
- the offender must report to a probation officer as and when required to do so by a probation officer, and must notify the probation officer of his or her residential address and the nature and place of his or her employment when asked to do so;
- the offender must not move to a new residential address in another probation area without the prior written consent of the probation officer;
- if this consent is given, the offender must report in person to a probation officer in the new probation area in which the offender is to reside as soon as practicable, and not later than 72 hours, after the offender's arrival in the new area;
- if an offender intends to change his or her residential address within a probation area, the offender must give the probation officer reasonable notice before moving from his or her residential address (unless notification is impossible in the circumstances) and must advise the probation officer of the new address;
- the offender must not reside at any address at which a probation officer has directed the offender not to reside;
- the offender must not engage, or continue to engage, in any employment or occupation in which the probation officer has directed the offender not to engage or continue to engage;
- the offender must not associate with any specified person, or with persons of any specified class, with whom the probation officer has, in writing, directed the offender not to associate;
- the offender must take part in a rehabilitative and reintegrative needs assessment if and when directed to do so by a probation officer.
• the nature and seriousness of the offence; and
• the circumstances and background of the offender; and
• any relevant matters in the victim impact statement in the case; and
• any other factor that the court considers relevant.

The Bill replaces Section 97(3) and the replacement provision is expressed as follows: “The Court may grant the offender leave to apply to the New Zealand Parole Board under Section 33 of the Parole Act 2002 for home detention only if the Court is satisfied that it would be appropriate to grant leave, taking into account:

• the nature and seriousness of the offence; and
• the circumstances and background of the offender; and
• any relevant matters in the victim impact statement in the case” (Part 2, Subpart 1, Clause 21, New Section 97(3) of the Sentencing Act 2002).

Comment
This amendment is intended to make it clear “… that the Court has a ‘sifting role’” and that “… the Court has the primary role in determining whether wider sentencing considerations … and information in the victim’s impact statement make home detention inappropriate”6.

Deferral of start date of prison sentence
The Bill allows an offender whose sentence is deferred to be released on bail and the circumstances in which sentence deferral may be granted are restricted (Part 2, Subpart 1, Clause 22, amending Section 100 of the Sentencing Act 2002; Clause 33, New Section 39A of the Bail Act 2000; Clause 35, New Section 65A of the Bail Act 2000).

Minimum term of imprisonment
The Bill clarifies the approach the Courts should take to imposing minimum terms of imprisonment in reaction to the approach of the Court of Appeal in R v Brown [2002] 3NZLR 670 that minimum period orders were designed for cases of such seriousness that release after one-third of the sentence imposed had been served would represent “insufficient denunciation, deterrence and punishment” and that the safety of the community was not relevant to the imposition of minimum terms.

The Bill confirms the Brown approach but clarifies that the safety of the public is relevant in determining minimum terms (Part 2, Subpart 1, Clause 19, new subsection (2) of Section 86 of the Sentencing Act 2002).

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6 Parole (Extended Supervision) and Sentencing Amendment Bill 2003, Explanatory Note, p. 3.