



Sentencing Amendment Act (No 2) 2011

Public Act 2011 No 93
Date of assent 17 October 2011
Commencement see section 2

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Amendments to principal Act

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Sentencing Amendment Act (No 2) 2011.

2 Commencement

This Act comes into force on the day that is 2 years after the date on which this Act receives the Royal assent unless it is brought into force on an earlier date appointed by the Governor-General by Order in Council.

3 Principal Act amended

This Act amends the Sentencing Act 2002.

4 Aggravating and mitigating factors

- (1) Section 9(1) is amended by adding the following paragraph:
 - “(k) any failure by the offender personally (or failure by the offender’s lawyer arising out of the offender’s instructions to, or failure or refusal to co-operate with, his or her lawyer) to comply with a procedural requirement that, in the court’s opinion, has done either or both of the following:
 - “(i) caused a delay in the disposition of the proceedings:
 - “(ii) had an adverse effect on a victim or witness.”
- (2) Section 9(2) is amended by inserting the following paragraphs after paragraph (f):
 - “(fa) that the offender has taken steps during the proceedings (other than steps to comply with procedural requirements) to shorten the proceedings or reduce their cost:
 - “(fb) any adverse effects on the offender of a delay in the disposition of the proceedings caused by a failure by the prosecutor to comply with a procedural requirement:”.
- (3) Section 9 is amended by adding the following subsection:
 - “(5) In this section, **procedural requirement** means a requirement imposed by or under—
 - “(a) the Criminal Procedure Act 2011; or
 - “(b) any rules of court or regulations made under that Act; or
 - “(c) the Criminal Disclosure Act 2008 or any regulations made under that Act.”

5 New section 81B inserted

The following section is inserted before section 82:

“81B Procedure if offender convicted in District Court and court believes offender could be sentenced to life imprisonment

- “(1) This section applies if a person is convicted by a District Court of an offence with a maximum penalty of life imprisonment, and the court has reason to believe that a sentence of life imprisonment may be appropriate.
- “(2) The court must transfer the offender to the High Court for sentence and endorse on the charging document a statement to the effect that the court has declined jurisdiction on the ground that it has reason to believe that the offender should be considered for a sentence of life imprisonment.”

6 New section 143A inserted

The following section is inserted after section 143:

“143A Sentencing following finding or verdict of guilt on more than 1 charge

If 1 sentence is imposed following a finding of guilt or verdict of guilty on more than 1 charge, the sentence is lawful if any of those charges would have justified the sentence.

“Compare: 1961 No 43 s 340(7)”.

7 Other amendments to principal Act

The principal Act is amended as set out in the Schedule.

Schedule

Amendments to principal Act

s 7

Section 4(1)

Definition of **community work centre**: omit “section 126 of the Criminal Justice Act 1985” and substitute “section 30 of the Corrections Act 2004”.

Definition of **probation officer**: omit “section 124 of the Criminal Justice Act 1985” and substitute “section 24 of the Corrections Act 2004”.

Definition of **Trial Judge**: repeal and substitute:

“**trial Judge**, in relation to a District Court, means a Judge who holds a warrant under section 5B of the District Courts Act 1947 to conduct jury trials”.

Section 15B

Subsection (1): omit “purely indictable offence,” and substitute “category 4 offence, or a category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years,”.

Subsection (2): repeal.

Section 18

Subsection (1): omit “purely indictable offence,” and substitute “category 4 offence, or a category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years,”.

Subsection (2): repeal.

Section 24(1)(a) and (2)(b)

Omit “hearing or”.

Section 30(3)(b)

Omit “hearing or”.

Section 38A(4)(b)(ii)

Omit “or section 28I of the District Courts Act 1947”.

Section 39(4)

Repeal.

Section 43

Omit “summary”.

Section 69G

Omit “summary”.

Section 69H(1) and (2)

Omit “summary”.

Section 70

Omit “summary”.

Section 70A

Omit “summary”.

Section 71(1) and (2)

Omit “summary”.

Section 72(1)(b)(ii)

Omit “on indictment” and substitute “following a jury trial”.

Section 72(5)

Omit “sections 45 to 47 of the Summary Proceedings Act 1957” and substitute “sections 167 to 170, 206, and 385 of the Criminal Procedure Act 2011”.

Omit “an information” and substitute “a charging document”.

Section 73

Repeal and substitute:

“73 Appeal in respect of substituted sentence

For the purposes of any appeal or application for leave to appeal, a sentence substituted for a community-based sentence imposed on the conviction of the offender on a charge

Section 73—*continued*

is deemed to be a sentence imposed on the conviction of the offender on that charge.”

Section 75(2)

Omit “section 137 of the Summary Proceedings Act 1957” and substitute “sections 345 and 346 of the Criminal Procedure Act 2011”.

Section 80J(2)

Omit “Part 4 of the Summary Proceedings Act 1957 and Part 13 of the Crimes Act 1961” and substitute “Part 6 of the Criminal Procedure Act 2011”.

Section 80M(2)

Repeal and substitute:

“(2) For the purposes of any appeal or application for leave to appeal against the substituted sentence, a sentence substituted for a sentence imposed on the conviction of the offender on a charge is deemed to be a sentence imposed on the conviction of the offender on that charge.”

Section 80S

Omit “summary”.

Section 80T(1) and (2)

Omit “summary”.

Section 80U(1)

Omit “summary”.

Section 86(5)

Omit “Part 4 of the Summary Proceedings Act 1957 and Part 13 of the Crimes Act 1961” and substitute “Part 6 of the Criminal Procedure Act 2011”.

Section 86D(1)(a)

Repeal and substitute:

- “(a) a proceeding against a defendant charged with a stage-3 offence must be transferred to the High Court when the proceeding is adjourned for trial or trial callover under section 57 of the Criminal Procedure Act 2011 or, as the case may be, in accordance with section 36 of that Act, and the proceeding from that point, including the trial, must be in the High Court; and”.

Section 86H

Omit “Part 13 of the Crimes Act 1961” and substitute “Part 6 of the Criminal Procedure Act 2011”.

Section 89(3)

Omit “Part 13 of the Crimes Act 1961” and substitute “Part 6 of the Criminal Procedure Act 2011”.

Section 90(2)

Omit “Section 44 of the Summary Proceedings Act 1957 or (as the case may require) section 28G of the District Courts Act 1947 applies, and the Court must” and substitute “The court must transfer the offender to the High Court for sentence and”.

Omit “information” and substitute “charging document”.

Section 96(1)

Omit “summary”.

Section 105

Omit “Part 13 of the Crimes Act 1961” and substitute “Part 6 of the Criminal Procedure Act 2011”.

Section 111(4)

Repeal and substitute:

- “(4) If an application is made under subsection (2), sections 167 to 170, 206, and 385 of the Criminal Procedure Act 2011 apply, with any necessary modifications, as if the application were a charging document.”

Section 116

Omit “Part 4 of the Summary Proceedings Act 1957 and Part 13 of the Crimes Act 1961” and substitute “Part 6 of the Criminal Procedure Act 2011”.

Section 118(2)

Omit “summary”.

Section 132A(2)

Omit “summary”.

Section 133(2)

Omit “summary”.

Section 136(3)

Omit “summary”.

Section 138A(4)

Omit “or section 28I of the District Courts Act 1947”.

Section 142O

Omit “summary”.

Section 143(3)(b)(ii)

Omit “on indictment” and substitute “following a jury trial”.

Section 146A(2)

Omit “informant” and substitute “prosecutor”.

Section 150

Repeal.

Section 151

Repeal.

Legislative history

29 September 2011	Divided from Criminal Procedure (Reform and Modernisation) Bill (Bill 243–2) by committee of the whole House as Bill 243–3M
4 October 2011	Third reading
17 October 2011	Royal assent

This Act is administered by the Ministry of Justice and the Department of Corrections.
