

Reprint
as at 1 July 2013



**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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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

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

Schedule
Amendments to principal Act

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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.

Section 2: this Act brought into force, on 1 July 2013, by the Sentencing Amendment Act (No 2) 2011 Commencement Order 2013 (SR 2013/169).

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.

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Notes**1 General**

This is a reprint of the Sentencing Amendment Act (No 2) 2011. The reprint incorporates all the amendments to the Act as at 1 July 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Sentencing Amendment Act (No 2) 2011 Commencement Order 2013
(SR 2013/169)
