



## Parole (Drug and Alcohol Testing) Amendment Act 2016

Public Act      2016 No 84  
Date of assent      15 November 2016  
Commencement      see section 2

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Parole (Drug and Alcohol Testing) Amendment Act 2016.

**2 Commencement**

(1) This Act comes into force on the earlier of the following:

- (a) a date appointed by the Governor-General by Order in Council;
- (b) the day immediately after the expiry of the 6-month period.

(2) The **6-month period** is the period of 6 months that commences on the date on which this Act receives the Royal assent.

**3 Principal Act**

This Act amends the Parole Act 2002 (the **principal Act**).

*Definitions*

**4 Section 4 amended (Interpretation)**

In section 4(1), insert in their appropriate alphabetical order:

**bodily sample**, for a person, means—

- (a) a sample of the person's blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

**controlled drug** has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

**drug or alcohol condition** means a special condition of parole, a special condition on release under section 17 at the release date of a long-term sentence, or a condition of an extended supervision order—

- (a) that is imposed under section 15(3)(ba), 18(2)(b), or 107K(1); and
- (b) that prohibits an offender from doing 1 or more of the following:
  - (i) using (as defined in this section) a controlled drug;
  - (ii) using a psychoactive substance;
  - (iii) consuming alcohol

**drug or alcohol monitoring device** means a device, connected to a person's body, that is able to detect the presence in the person's body of 1 or more of the following:

- (a) a controlled drug used by the person;
- (b) a psychoactive substance used by the person;
- (c) alcohol consumed by the person

**medical laboratory technologist** means a health practitioner who is, or is deemed to be, registered with the Medical Sciences Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medical laboratory science

**medical officer** means—

- (a) a person acting in a hospital who, in the normal course of the person's duties, takes blood specimens; or
- (b) a nurse; or
- (c) a medical laboratory technologist

**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

**nurse** means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

**psychoactive substance** has the same meaning as in section 9 of the Psychoactive Substances Act 2013

**testing** of a person for a controlled drug, a psychoactive substance, or alcohol includes, without limitation, the person's permitting the collection for analysis of a bodily sample

**using**, in relation to a controlled drug and a person, excludes the person using the controlled drug as a prescription medication in accordance with section 8(2)(c) or (d) of the Misuse of Drugs Act 1975

**5 New section 4A inserted (Transitional, savings, and related provisions)**

After section 4, insert:

**4A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

*Conditions on parole or release*

**6 Section 15 amended (Special conditions)**

After section 15(3)(b), insert:

- (ba) conditions prohibiting the offender from doing 1 or more of the following:
- (i) using (as defined in section 4(1)) a controlled drug:
  - (ii) using a psychoactive substance:
  - (iii) consuming alcohol:

**7 New sections 16A to 16E and cross-heading inserted**

After section 16, insert:

*Drug or alcohol conditions*

**16A Imposition, and effect, of drug or alcohol condition**

- (1) This section applies if the Board imposes a drug or alcohol condition on an offender under section 15(3)(ba), 18(2)(b), or 107K(1).
- (2) The Board cannot direct, indicate, or require that the offender undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the offender to comply with all requirements arising from an authorised person giving the offender notice under section 16B(2).
- (3) The Board must advise the offender that the offender must do any 1 or more of the following things if required to do so by notice given by an authorised person under section 16B(2):
  - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol:

- (b) submit to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the offender's body:
- (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system.

**16B Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring**

- (1) This section applies to an offender who—
  - (a) is on parole with a drug or alcohol condition; or
  - (b) has been released under section 17, at the release date of a long-term sentence, with a drug or alcohol condition; or
  - (c) is subject to an extended supervision order with a drug or alcohol condition.
- (2) An authorised person may, by notice given to an offender to whom this section applies, require the offender to do any 1 or more of the following:
  - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under section 74A(a):
  - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under section 74A(d):
  - (c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under section 74A(a).
- (3) An authorised person exercising that person's discretion under subsection (2)—
  - (a) must comply with any rules made under section 74A; and
  - (b) may—
    - (i) select an offender to do what is specified in subsection (2)(a), (b), or (c) in any manner (including randomly); and
    - (ii) make a determination in respect of the offender with or without evidence that the offender has breached the condition; and
  - (c) must, if requiring the offender to do what is specified in subsection (2)(a) or (c), determine the prescribed testing procedure to be used for the testing required under subsection (2)(a), or required if the offender is

selected to undergo testing by an automated system that the offender is required to contact under subsection (2)(c).

- (4) A notice given to an offender under subsection (2)(b) may include a requirement that the offender comply with instructions specified in the notice that are reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or protect it from events, such as submersion in water, that may damage it or interfere with its functioning).
- (5) An automated system specified in a notice under subsection (2)(c) must include an automated selection method that determines, in any manner consistent with rules made under section 74A(b) (including randomly), whether the offender is required to undergo testing.
- (6) Only a medical practitioner or medical officer may collect a blood sample from an offender under this section.
- (7) In this section and in sections 16C to 16E and 71A, **authorised person** means a person who is—
  - (a) a constable; or
  - (b) an employee of the Department of Corrections authorised by the chief executive of that department to require offenders to undergo testing, or submit to continuous monitoring, under this section.

**16C How notice of requirement to undergo testing or to submit to continuous monitoring may be given**

- (1) An authorised person may give an offender a notice under section 16B(2) in any of the following ways:
  - (a) by giving the notice personally and in writing to the offender;
  - (b) by giving the notice personally and orally to the offender, then, unless the notice requires the offender only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the offender;
  - (c) if the notice is given under section 16B(2)(a), by giving the notice to the offender by telephone or other means of electronic communication (as defined in section 5 of the Electronic Transactions Act 2002), then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the offender.
- (2) An automated system must, in response to an offender contacting it as required by a notice given under section 16B(2)(c) and subsection (1), give the offender a spoken or written response notice specifying whether the offender is required to undergo testing.
- (3) A notice given by an authorised person under subsection (1)(c), or a response notice that is given by an automated system under subsection (2) and that re-

quires an offender to undergo testing, must specify the name and location of a testing facility to which the offender is required to report to undergo testing, and the time or times when the offender is required to report, under section 16D.

#### **16D Where prescribed testing procedure may be carried out**

- (1) An authorised person may require an offender to whom section 16B applies to undergo testing at the place where the offender is given notice under section 16B(2) personally by the authorised person.
- (2) Subsection (1) applies even if the place where the offender is given notice personally by the authorised person is—
  - (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
  - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the offender's residential address.
- (3) However, an offender cannot be required to undergo a prescribed testing procedure in a place specified in subsection (2)(a) or (b) if the testing procedure involves the collection of blood or urine.
- (4) An offender given notice personally (in writing or orally) by the authorised person may be required by the authorised person, if subsection (3) applies or if it is not reasonably practicable to require the offender to undergo testing at the place where the offender is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the offender to undergo testing.
- (5) An offender given a notice under section 16C(1)(c) or (2) that requires the offender to undergo testing is required to report to the testing facility whose name and location are specified in the notice, at the time or times specified, to undergo testing.

#### **16E Information obtained from drug and alcohol testing or monitoring**

- (1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under section 16B(2)—
  - (a) may be used for all or any of the following purposes:
    - (i) verifying compliance by the offender with a drug or alcohol condition;
    - (ii) detecting non-compliance by the offender with a drug or alcohol condition, and providing evidence of that non-compliance;
    - (iii) verifying that the offender has not tampered or otherwise interfered with a drug or alcohol monitoring device;
    - (iv) any purpose for which the offender has requested to use the information or consented to its use; and

- (b) must not, except at the request or with the consent of the offender, be used—
  - (i) as evidence that the offender committed an offence, other than an offence against section 71, 71A, 107T, or 107TA; or
  - (ii) for any other purpose not listed in paragraph (a).
- (2) The Board or a court may, in the absence of evidence that is available to the Board or court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
  - (a) is accurate; and
  - (b) was obtained in the manner required by sections 16B to 16D.

*Offences: parole or release*

**8 New section 71A inserted (Offences related to drug or alcohol conditions)**

After section 71, insert:

**71A Offences related to drug or alcohol conditions**

- (1) An offender on parole, or released under section 17 at the release date of a long-term sentence, with a drug or alcohol condition commits an offence if the offender—
  - (a) refuses or fails, without reasonable excuse,—
    - (i) to undergo a testing procedure when required to do so under sections 16B(2)(a) and 16D; or
    - (ii) to submit to continuous monitoring when required to do so under section 16B(2)(b); or
    - (iii) to comply with instructions specified in a notice given under section 16B(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or
    - (iv) to accompany an authorised person, when required to do so under section 16D(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
    - (v) to contact a specified automated system when required to do so under section 16B(2)(c); or
    - (vi) to report, at any time or times when required to do so under section 16D(5), to a specified testing facility to undergo testing; or
    - (vii) to undergo a testing procedure when required to do so under sections 16B(2)(c) and 16D; or
  - (b) does anything with the intention of diluting or contaminating a bodily sample required under section 16B(2)(a) or (c) for the purposes of a prescribed testing procedure; or

- (c) tampers with a drug or alcohol monitoring device required under section 16B(2)(b) or does anything with the intention of interfering with the functioning of that device.
- (2) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000.

**9 New section 72A inserted (Offence to refuse authorised person entry for certain purposes related to continuous monitoring)**

After section 72, insert:

**72A Offence to refuse authorised person entry for certain purposes related to continuous monitoring**

- (1) This section applies to an offender who is—
  - (a) on parole, or released under section 17 at the release date of a long-term sentence, or subject to an extended supervision order, with a drug or alcohol condition; and
  - (b) required, under section 16B(2)(b), to submit to continuous monitoring of the offender's compliance with the condition.
- (2) The offender commits an offence if the offender refuses or fails, without reasonable excuse, to allow an authorised person to enter the offender's residential address for all or any of the following purposes:
  - (a) attaching a drug or alcohol monitoring device to, or removing the device from, the offender;
  - (b) servicing or inspecting the device;
  - (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.
- (3) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In subsection (2), **authorised person** means any of the following:
  - (a) an authorised person (as defined in section 16B(7)) who has produced evidence of that person's identity to the offender;
  - (b) a person accompanying a person described in paragraph (a);
  - (c) a person who—
    - (i) has produced evidence of that person's identity to the offender; and
    - (ii) is authorised in writing by an authorised person (as defined in section 16B(7)) to enter the offender's residential address for all or any of the following purposes:

- (A) attaching a drug or alcohol monitoring device to, or removing the device from, the offender:
  - (B) servicing or inspecting the device:
  - (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
- (iii) has produced that written authority to the offender.

*Rules*

**10 New sections 74A to 74C and cross-heading inserted**

After section 74, insert:

*Rules*

**74A Rules about drug and alcohol testing and monitoring**

The chief executive may, by notice in the *Gazette*, make rules for all or any of the following purposes:

- (a) prescribing, for the purposes of section 16B(2)(a) and (c), 1 or more types of testing procedure that an offender to whom section 16B applies may be required to undergo:
- (b) specifying how often each of the prescribed testing procedures may be carried out:
- (c) prohibiting authorised persons from requiring an offender to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances:
- (d) prescribing, for the purposes of section 16B(2)(b), 1 or more types of drug or alcohol monitoring device that may be connected to an offender to whom section 16B applies:
- (e) specifying restrictions as to how often, and for how long,—
  - (i) continuous monitoring may be carried out:
  - (ii) an offender may be required to contact an automated system:
- (f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from an offender in order for the sample to be used as evidence that the offender has breached a drug or alcohol condition:
  - (i) controlled drugs:
  - (ii) psychoactive substances:
  - (iii) alcohol.

**74B Further provisions concerning rules about drug and alcohol testing and monitoring**

- (1) Rules made under section 74A(a) may, without limitation, prescribe testing procedures that do all or any of the following:
  - (a) include, as part of the procedure, either or both of the following:
    - (i) breath screening;
    - (ii) the collection and analysis of breath, blood, hair, urine, or any other bodily sample;
  - (b) require an offender to be supervised by a person of the same sex as the offender during the collection of a bodily sample required for testing;
  - (c) provide for an offender to elect, if the offender meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.
- (2) The chief executive may make rules under section 74A only if satisfied that the rules—
  - (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
  - (b) allow for offenders to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
  - (c) ensure that offenders liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) Subsection (1)(b) overrides subsection (2)(c).

**74C Availability of rules about drug and alcohol testing and monitoring, and status under Legislation Act 2012**

- (1) The chief executive must ensure that any rules made under section 74A are, while in force, made available—
  - (a) on an Internet site that is maintained by or on behalf of the Department of Corrections and that is, so far as practicable, publicly available free of charge; and
  - (b) for public inspection free of charge; and
  - (c) for purchase at a reasonable price.
- (2) Rules made under section 74A are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

*Offences: extended supervision orders***11 New section 107TA inserted (Offences related to drug or alcohol conditions)**

After section 107T, insert:

**107TA Offences related to drug or alcohol conditions**

- (1) An offender who is subject to an extended supervision order with a drug or alcohol condition commits an offence if the offender—
- (a) refuses or fails, without reasonable excuse,—
    - (i) to undergo a testing procedure when required to do so under sections 16B(2)(a) and 16D; or
    - (ii) to submit to continuous monitoring when required to do so under section 16B(2)(b); or
    - (iii) to comply with instructions specified in a notice given under section 16B(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or
    - (iv) to accompany an authorised person, when required to do so under section 16D(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
    - (v) to contact a specified automated system when required to do so under section 16B(2)(c); or
    - (vi) to report, at any time or times when required to do so under section 16D(5), to a specified testing facility to undergo testing; or
    - (vii) to undergo a testing procedure when required to do so under sections 16B(2)(c) and 16D; or
  - (b) does anything with the intention of diluting or contaminating a bodily sample required under section 16B(2)(a) or (c) for the purposes of a prescribed testing procedure; or
  - (c) tampers with a drug or alcohol monitoring device required under section 16B(2)(b) or does anything with the intention of interfering with the functioning of that device.
- (2) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 2 years.

**12 New Schedule 1 inserted**

Before the Schedule, insert as Schedule 1 the Schedule 1 set out in the Schedule of this Act.

**Schedule**  
**New Schedule 1 inserted**

s 12

**Schedule 1**  
**Transitional, savings, and related provisions**

s 4A

**Part 1**  
**Provisions relating to Parole (Drug and Alcohol Testing)**  
**Amendment Act 2016**

**1 Interpretation**

In this schedule,—

**commencement date** means the date on which the Parole (Drug and Alcohol Testing) Amendment Act 2016 comes into force

**pre-commencement drug or alcohol condition** means a condition—

- (a) that is imposed before the commencement date under section 15, 18(2)(b), or 107K(1); and
- (b) that prohibits an offender from doing 1 or more of the following:
  - (i) using (as defined in section 4(1)) a controlled drug;
  - (ii) using a psychoactive substance;
  - (iii) consuming alcohol.

**2 Testing and monitoring of offender on parole, or released under section 17, with pre-commencement drug or alcohol condition**

- (1) This clause applies if an offender—
  - (a) is on parole with a pre-commencement drug or alcohol condition; or
  - (b) has been released under section 17, at the release date of a long-term sentence, with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, sections 16B to 16E, 71A, 72A, 74A, and 74B, and any rules made under section 74A, apply in respect of the offender—
  - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by the Board on or after the commencement date; and
  - (b) as if the Board had complied with section 16A(3) in respect of the condition.

**3 Testing and monitoring of offender subject to extended supervision order with pre-commencement drug or alcohol condition**

- (1) This clause applies if an offender is subject to an extended supervision order with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, sections 16B to 16E, 72A, 74A, 74B, and 107TA, and any rules made under section 74A, apply in respect of the offender—
  - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by the Board on or after the commencement date; and
  - (b) as if the Board had complied with section 16A(3) in respect of the condition.

**Legislative history**

|                  |   |
|------------------|---|
| 2 November 2016  | Divided from Drug and Alcohol Testing of Community-based Offenders, Bailees, and Other Persons Legislation Bill (Bill 238–2) as Bill 238–3B |
| 8 November 2016  | Third reading   |
| 15 November 2016 | Royal assent  |

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