

Sentencing and Parole Reform Bill

Government Bill

As reported from the committee of the whole
House

Sentencing and Parole Reform Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

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Hon Judith Collins

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sentencing and Parole Reform Act **2008**.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent. 5
- (2) Despite **subsection (1), section 13(2)** comes into force on the commencement of section 49 of the Parole Amendment Act 2007.

3 Purpose

The purpose of this Act is to— 10

(a) deny parole to certain repeat offenders and to offenders guilty of the worst murders:

(b) impose maximum terms of imprisonment on persistent repeat offenders who continue to commit serious violent offences. 15

Part 1

Amendments to Sentencing Act 2002

- 4 Principal Act amended**
This Part amends the Sentencing Act 2002.
- 4A Interpretation** 5
 The definition of **minimum period of imprisonment** in section 4(1) is amended by omitting “section 86 or section 89 or section 103” and substituting “section 86, **86D(4), 86E(4)(a), 89, or 103**”.
- 5 New sections 86A to 86H and heading inserted** 10
 (1) The following heading and sections are inserted after section 86:
 “Additional consequences for repeated serious violent offending
- “86A Interpretation** 15
 In this section and in **sections 86B to 86H**, unless the context otherwise requires,—
 “**record of final warning**, in relation to an offender, means a record of a warning that the offender has under **section 86C(3) or 86E(7) 86E(8)** 20
 “**record of first warning**, in relation to an offender, means a record of a warning that the offender has under **section 86B(3)**
 “**serious violent offence** means an offence against any of the following provisions of the Crimes Act 1961: 25
 “(1) section 128B (sexual violation):
 “(2) section 129 (attempted sexual violation and assault with intent to commit sexual violation):
 “(3) section 129A(1) (sexual connection with consent induced by threat): 30
 “(5) section 131(1) (sexual connection with dependent family member under 18 years):
 “(6) section 131(2) (attempted sexual connection with dependent family member under 18 years):
 “(7) section 132(1) (sexual connection with child): 35

- “(8) section 132(2) (attempted sexual connection with child):
- “(9) section 132(3) (indecent act on child):
- “(10) section 134(1) (sexual connection with young person):
- “(11) section 134(2) (attempted sexual connection with young person): 5
- “(12) section 134(3) (indecent act on young person):
- “(13) section 135 (indecent assault):
- “(14) section 138(1) (exploitative sexual connection with person with significant impairment): 10
- “(15) section 138(2) (attempted exploitative sexual connection with person with significant impairment):
- “(16) section 142A (compelling indecent act with animal):
- “(16a) section 144A (sexual conduct with children and young people outside New Zealand): 15
- “(17) section 172 (murder):
- “(18) section 173 (attempted murder):
- “(18a) section 174 (counselling or attempting to procure murder):
- “(18b) section 175 (conspiracy to murder): 20
- “(19) section 177 (manslaughter):
- “(20) section 188(1) (wounding with intent to cause grievous bodily harm):
- “(21) section 188(2) (wounding with intent to injure):
- “(22) section 189(1) (injuring with intent to cause grievous bodily harm): 25
- “(23) section 191(1) (aggravated wounding):
- “(24) section 191(2) (aggravated injury):
- “(25) section 198(1) (discharging firearm or doing dangerous act with intent to do grievous bodily harm): 30
- “(26) section 198(2) (discharging firearm or doing dangerous act with intent to injure):
- “(27) section 198A(1) (using firearm against law enforcement officer, etc):
- “(28) section 198A(2) (using firearm with intent to resist arrest or detention): 35
- “(29) section 198B (commission of crime with firearm):
- “(30) section 200(1) (poisoning with intent to cause grievous bodily harm):

- “(30a) section 201 (infecting with disease):
- “(31) section 208 (abduction for purposes of marriage or sexual connection):
- “(32) section 209 (kidnapping):
- “(33) section 232(1) (aggravated burglary): 5
- “(34) section 234 (robbery):
- “(35) section 235 (aggravated robbery):
- “(36) section 236(1) (causing grievous bodily harm with intent to rob or assault with intent to rob in specified circumstances): 10
- “(37) section 236(2) (assault with intent to rob)
- “**stage-1 offence** means an offence that—
- “(a) is a serious violent offence; and
- “(b) was committed by an offender at a time when the offender— 15
- “(i) did not have a record of first warning given under **section 86B**; and
- “(ii) was 18 years of age or over
- “**stage-2 offence** means an offence that—
- “(a) is a serious violent offence; and 20
- “(b) was committed by an offender at a time when the offender had a record of first warning (in relation to 1 or more offences) but did not have a record of final warning
- “**stage-3 offence** means an offence that— 25
- “(a) is a serious violent offence; and
- “(b) was committed by an offender at a time when the offender had a record of final warning (in relation to 1 or more offences).”
- “**86B Stage-1 offence: offender given first warning** 30
- “(1) When a court, on any occasion, convicts an offender of 1 or more stage-1 offences, the court must at the same time—
- “(a) warn the offender of the consequences if the offender is convicted of any serious violent offence committed after that warning (whether or not that further serious violent offence is different in kind from any stage-1 offence for which the offender is being convicted); and 35

- “(b) ~~give the offender a written notice that sets out the substance of the warning given to the offender under **paragraph (a)**; and~~
- “(c) record, in relation to each stage-1 offence, that the offender has been warned in accordance with **paragraph (a)**. 5
- “(2) It is not necessary for a Judge to use a particular form of words in giving the warning.
- “(3) On the entry of a record under **subsection (1)(c)**, the offender has, in relation to each stage-1 offence (for which a record is entered), a record of first warning. 10
- “(4) The court must give the offender a written notice that sets out the consequences if the offender is convicted of any serious violent offence committed after the warning given under **subsection (1)(a)**. 15
- “**86C Stage-2 offence other than murder: offender given final warning and must serve full term of imprisonment**
- “(1) When, on any occasion, a court convicts an offender of 1 or more stage-2 offences other than murder, the court must at the same time— 20
- “(a) warn the offender of the consequences if the offender is convicted of any serious violent offence committed after that warning (whether or not that further serious violent offence is different in kind from any stage-2 offence for which the offender is being convicted); and 25
- “(b) ~~give the offender a written notice that sets out the substance of the warning given to the offender under **paragraph (a)**; and~~
- “(c) record, in relation to each stage-2 offence, that the offender has been warned in accordance with **paragraph (a)**. 30
- “(2) It is not necessary for a Judge to use a particular form of words in giving the warning.
- “(3) On the entry of a record under **subsection (1)(c)**, the offender has, in relation to each stage-2 offence for which a record is entered, a record of a final warning. 35

- “(4) If the sentence imposed on the offender for any stage-2 offences is a determinate sentence of imprisonment, the court must order that the offender serve the full term of the sentence and, accordingly, that the offender,—
- “(a) in the case of a long-term sentence (within the meaning of the Parole Act 2002), serve the sentence without parole; and
- “(b) in the case of a short-term sentence (within the meaning of the Parole Act 2002), not be released before the expiry of the sentence.
- “(5) If the sentence imposed on the offender for 1 or more stage-2 offences is a short-term sentence (within the meaning of the Parole Act 2002) and any conditions are imposed on the offender under section 93, then, despite anything in that section, those conditions take effect on the sentence expiry date (within the meaning of the Parole Act 2002).
- “(6) If, but for the application of this section, the court would have ordered, under section 86, that the offender serve a minimum period of imprisonment, the court must state, with reasons, the period that it would have imposed.
- “(7) The court must give the offender a written notice that sets out the consequences if the offender is convicted of any serious violent offence committed after the warning given under **sub-section (1)(a)**.
- “**86D Stage-3 offences other than murder: offender sentenced to maximum term of imprisonment**
- “(1) Despite any other enactment,—
- “(a) a trial for a stage-3 offence must be held in the High Court; and
- “(a) a defendant who is committed for trial for a stage-3 offence must be committed to the High Court for that trial; and
- “(b) no court other than the High Court, or the Court of Appeal or the Supreme Court on an appeal, may sentence an offender for a stage-3 offence.
- “(2) Despite any other enactment, if, on any occasion, an offender is convicted of 1 or more stage-3 offences other than murder,

the High Court must sentence the offender to the maximum term of imprisonment prescribed for each offence.

- “(3) When the Court sentences the offender under **subsection (2)**, the Court must order that the offender serve the sentence without parole unless the Court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to make the order. 5
- “(4) Despite **subsection (3)**, if the Court sentences the offender for manslaughter, the Court must order that the offender serve a minimum period of imprisonment of not less than 20 years unless the Court considers that, given the circumstances of the offence and the offender, a minimum period of that duration would be manifestly unjust, in which case the Court must order that the offender serve a minimum period of imprisonment of not less than 10 years. 10 15
- “(5) If the Court does not make an order under **subsection (3)** or, where **subsection (4)** applies, does not order a minimum period of not less than 20 years under **subsection (4)**, the Court must give written reasons for not doing so.
- “(6) If the Court imposes a sentence under **subsection (2)**, any other sentence of imprisonment imposed on the same occasion (whether for a stage-3 offence or for any other kind of offence) must be imposed concurrently. 20
- “(7) Despite **subsection (2)**, this section does not preclude the Court from imposing, under section 87, a sentence of preventive detention on the offender, and if the Court imposes such a sentence on the offender,— 25
- “(a) **subsections (2) to (5)** do not apply; and
- “(b) the minimum period of imprisonment that the Court imposes on the offender under section 89(1) must not be less than the term of imprisonment that the Court would have imposed under **subsection (2)**, unless the Court is satisfied that, given the circumstances of the offence and the offender, the imposition of that minimum period would be manifestly unjust. 30 35
- “(8) If, in reliance on **subsection (7)(b)**, the Court imposes a minimum period of imprisonment that is less than the term of im-

prisonment that the Court would have imposed under **subsection (2)**, the Court must give written reasons for doing so.

“86E When murder is a stage-2 or stage-3 offence

- “(1) This section applies if—
- “(a) an offender is convicted of murder; and 5
 - “(b) that murder is a stage-2 offence or a stage-3 offence.
- “(2) If this section applies, the court must—
- “(a) sentence the offender to imprisonment for life for that murder; and
 - “(b) order that the offender serve that sentence of imprisonment for life without parole unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so. 10
- “(3) If the court does not make an order under **subsection (2)(b)**, the court must give written reasons for not doing so. 15
- “(4) If the court does not make an order under **subsection (2)(b)**, the court must,—
- “(a) if that murder is a stage-3 offence, impose a minimum period of imprisonment of not less than 20 years unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so; and 20
 - “(b) if that murder is a stage-2 offence, or if the court is satisfied that a minimum period of imprisonment of not less than 20 years under **paragraph (a)** would be manifestly unjust, order that the offender serve a minimum period of imprisonment in accordance with section 103. 25
- “(5) If, in the case of a stage-3 offence, the court imposes under **subsection (4)(a)** a minimum period of imprisonment of less than 20 years, the court must give written reasons for doing so. 30
- “(6) If, in the case of a stage-2 offence, the court makes an order under **subsection (4)(b)** and the offender does not, at the time of sentencing, have a record of final warning, the court must—
- “(a) warn the offender of the consequences if the offender is convicted of any serious violent offence committed after that warning; and 35

- “(b) ~~give the offender a written notice that sets out the substance of the warning given to the offender under **paragraph (a)**; and~~
- “(c) record that the offender has been warned in accordance with **paragraph (a)**. 5
- “(7) It is not necessary for a Judge to use a particular form of words in giving the warning.
- “(8) On the entry of a record under **subsection (6)(c)**, the offender has a record of final warning.
- “(9) The court must give the offender a written notice that sets out the consequences if the offender is convicted of any serious violent offence committed after the warning given under **subsection (6)(a)**. 10
- “**86F Continuing effect of warnings**
- “(1) An offender continues to have a record of first warning or a record of final warning regardless of whether the offender has served or otherwise completed the sentence imposed on the offender for the offence (including, without limitation, any sentence imposed under **section 86D or 86E**) to which the record relates. 15 20
- “(2) However, an offender ceases to have a record of first warning or a record of final warning if, on an appeal, an appellate court—
- “(a) quashes all the convictions to which the relevant record relates; and 25
- “(b) does not replace 1 or more of those quashed convictions with a conviction for another serious violent offence.
- “(3) If the appellate court quashes a conviction to which a record of first warning or a record of final warning relates, the appellate court must order that the record of the warning be cancelled in respect of that conviction. 30
- “(4) If the appellate court replaces a conviction (the **quashed conviction**) to which a record of first warning or a record of final warning relates with a conviction for another serious violent offence (the **substituted conviction**), then any record of first warning or final warning that previously related to the quashed conviction is deemed— 35

- “(a) to relate to the substituted conviction; and
“(b) to have taken effect on the date on which the record that related to the quashed conviction took effect.
- “(5) If, in accordance with **subsection (2)**, an offender has ceased to have a record of first warning but continues to have a record of final warning, then—
- “(a) the appellate court must order that a record of first warning replace that record of final warning; and
“(b) that replacement record of first warning is deemed to have taken effect on the date on which the record of final warning took effect.
- “(6) **Subsection (3)** is subject to **subsection (4)**.

“**86FA Consequences of cancellation of record on later sentences**

- “(1) This section applies where,—
- “(a) in accordance with **section 86F(2)**, an offender ceases to have a record of first warning or a record of final warning or both (the **previous record**); and
“(b) the offender continues to be subject to a sentence (a **later sentence**) that was imposed on the offender under any of **sections 86C, 86D, or 86E** for serious violent offences committed when the offender had the previous record.
- “(2) The appellate court must take the actions described in this section that are applicable to the case or remit the matter to the court that sentenced the offender with a direction to take those actions.
- “(3) ~~If the later sentence or an order relating to the later sentence or both would not have been imposed or made but for the previous record, the appropriate court—~~
- “(a) ~~must set aside the later sentence and any order relating to the later sentence; and~~
“(b) ~~must replace the sentence and any order set aside with a sentence and any order that the court would have imposed or made if the offender had not been subject to the previous record; and~~
“(c) ~~may make any consequential orders that the court considers just.~~

- “(3) The appropriate court must take the following actions:
- “(a) if the later sentence would not have been imposed but for the previous record, the court must set aside the later sentence and replace it with a sentence that the court would have imposed had the offender not been subject to the previous record: 5
- “(b) if any order relating to the later sentence would not have been made but for the previous record, the court must cancel the order and, where appropriate, replace it with an order that the court would have made had the offender not been subject to the previous record: 10
- “(c) if the court considers it just to make any consequential orders, the court must make those orders.
- “(4) Without limiting the generality of **subsection (3)**, if an offender who continues to be subject to a later sentence for 1 or more stage-2 offences ceases, in accordance with **section 86F(2)**, to have a record of first warning, the appropriate court must— 15
- “(a) cancel any order imposed on the offender in respect of those stage-2 offences under **section 86C(4)**; and 20
- “(b) if the court considers it appropriate to do so, impose a minimum period of imprisonment under section 86 in respect of those stage-2 offences, taking into account any indication given by the sentencing court under **section 86C(6)**; and 25
- “(c) in the case of a stage-2 offence that is murder, cancel any sentence or order imposed on the offender under **section 86E(2)** and re-sentence the offender under subpart 4 of this Part.
- “(5) Without limiting the generality of **subsection (3)**, if an offender who continues to be subject to a later sentence for stage-3 offences ceases, in accordance with **section 86F(2)**, to have either a record of first warning or a record of final warning, the appropriate court must,— 30
- “(a) if the offender has been sentenced under **section 86D**, re-sentence the offender for the offence concerned by applying **section 86C**; and 35

- “(b) in the case of a stage-3 offence that is murder, cancel any order made under **section 86E(4)(a)** and replace it with an order under **section 86E(4)(b)**.
- “(6) Without limiting the generality of **subsection (3)**, if an offender who continues to be subject to a later sentence for stage-3 convictions ceases, in accordance with **section 86F(2)**, to have both a record of first warning and a record of final warning, the court must,—
- “(a) if the offender has been sentenced under **section 86D**, re-sentence the offender for the offence concerned:
- “(b) in the case of a stage-3 offence that is murder, cancel any sentence or order imposed on the offender under **section 86E(2)** and any order under **section 86E(4)** and re-sentence the offender under subpart 4 of this Part:
- “(c) administer a first warning to the offender by taking the action described in **section 86B(2)** **section 86B(1)**.

“86G Appeal against orders relating to imprisonment

For the purposes of Part 13 of the Crimes Act 1961, an order under **section 86D(3) or (4), or 86E(2)(b) or (4) is (4)(a)**, is a sentence.

“86H Sections 86B to 86E prevail over inconsistent provisions

A provision contained in **sections 86B to 86E** that is inconsistent with another provision of this Act or the Parole Act 2002 prevails over the other provision, to the extent of the inconsistency.”

- (2) **Sections 86C(6) and 86FA(4)(b)** of the principal Act (as inserted by **subsection (1)** of this section) expire and are repealed on the commencement of section 46 of the Sentencing Amendment Act 2007.

5A Imposition of minimum period of imprisonment

Section 89 is amended by inserting the following subsection after subsection (2):

- “(2A) In any case where a sentence is imposed under this section of preventive detention is imposed for a stage-3 offence (within

the meaning of **section 86A**), subsections (1) and (2) are subject to section **86D(7)**.”

5B Presumption in favour of life imprisonment for murder

Section 102 is amended by adding the following subsection:

“(3) This section is subject to **section 86E(2)**.” 5

6 Heading above section 103 amended

The heading above section 103 is amended by adding “*or imprisonment without parole*”.

7 Imposition of minimum period of imprisonment if life imprisonment imposed for murder 10

(1) The heading to section 103 is amended by inserting “**or imprisonment without parole**” after “**minimum period of imprisonment**”.

(2) Section 103 is amended by repealing subsection (1) and substituting the following subsection: 15

“(1) If a court sentences an offender convicted of murder to imprisonment for life it must,—

“(a) if **section 86E(1)** does not apply to the conviction,—

“(i) order that the offender serve a minimum period of imprisonment under that sentence; or 20

“(ii) if **subsection (2A)** applies, make an order under that subsection; or

“(b) in any case where **section 86E(1)** applies to the conviction, take the action prescribed by that section.”

(3) Section 103 is amended by inserting the following subsections after subsection (2): 25

“(2A) If the court that sentences an offender convicted of murder to imprisonment for life is satisfied that no minimum term of imprisonment would be sufficient to satisfy 1 or more of the purposes stated in subsection (2), the court may order that the offender serve the sentence without parole. 30

“(2B) The court may not make an order under **subsection (2A)** unless the offender was 18 years of age or over at the time that the offender committed the murder.”

- (4) Section 103(7) is amended by omitting “This section” and substituting “Subsection (2)”.

8 Imposition of minimum period of imprisonment of 17 years or more

Section 104 is amended by adding the following subsection as subsection (2):

- “(2) This section does not apply to an offender in respect of whom an order under **section 86E(2)(b) or (4)(a) or 103(2A)** is made.”

9 Transitional provision

- (1) **Sections 86A to 86H** of the principal Act (as inserted by **section 5**) do not apply to any offence committed, whether in whole or in part, before the commencement of this Act.

- (2) **Section 103(2A)** of the principal Act (as inserted by **section 7**) does not apply to any murder committed, whether in whole or in part, before the commencement of this Act.

9A Consequential amendments to other Acts

The Acts specified in the Schedule are amended in the manner set out in that schedule.

Part 2

Amendments to Parole Act 2002

10 Principal Act amended

This Part amends the Parole Act 2002.

11 Parole eligibility date

Section 20 is amended by adding the following subsections:

- “(5) If an offender is required, by an order under **section 86C(4) or 86D(3)** of the Sentencing Act 2002, to serve a sentence without parole, the offender—

“(a) does not have a parole eligibility date in respect of the sentence; and

“(b) may not be released on parole in respect of that sentence.

- “(6) If an offender is required, by an order under **section 86E(2) or 103(2A)** of the Sentencing Act 2002, to serve a sentence of imprisonment for life without parole, the offender may not be released on parole.
- “(7) This subsection applies to an offender who is subject to a sentence (**sentence A**) in respect of which an order under **section 86C(4) or 86D(3)** of the Sentencing Act 2002 has been made and who is also subject to 1 or more other sentences (**sentence B**) in respect of which no such order has been made. 5
- “(8) For the purpose of determining the parole eligibility date (if any) of sentence B of an offender to whom **subsection (7)** applies, the full term of sentence A must be treated as the non-parole period of sentence A.” 10

12 Non-parole periods

- (1) Section 84(2) is amended by inserting “**section 86D(4), section 86E(4),**” after “section 86”. 15
- (2) Section 84 is amended by repealing subsection (3) and substituting the following subsections:
- “(3) The non-parole period of a sentence of imprisonment for life is 10 years, unless the court— 20
- “(a) has imposed a minimum term of imprisonment in respect of that sentence; or
- “(b) has made an order under **section 86E(2) or 103(2A)** of the Sentencing Act 2002 in respect of that sentence.
- “(3A) An offender who is subject to an order under **section 86E(2) or 103(2A)** of the Sentencing Act 2002 is not eligible for parole in respect of the sentence to which the order relates, nor in respect of any other sentence to which he or she is subject when the order is imposed, nor in respect of any sentence subsequently imposed.” 25 30
- (3) Section 84(5) is amended by inserting the following paragraph after paragraph (a):
- “(ab) every sentence in respect of which an order under **section 86C(4) or 86D(3)** of the Sentencing Act 2002 has been made must be treated as if the full term of the sentence were the non-parole period of the sentence; and” 35

13 Release date of sentence

(1) Section 86 (as in force on the commencement of this Act) is amended by inserting the following subsection after subsection (1):

“(1A) Subsection (1) does not apply to a short-term sentence in respect of which an order has been made under **section 86C(4)(b)** of the Sentencing Act 2002, and the release date of such a sentence is its sentence expiry date.”

(2) Section 86 (as substituted by section 49 of the Parole Amendment Act 2007) is amended by inserting the following subsection after subsection (2):

“(2A) Subsection (2) does not apply to a short-term sentence in respect of which an order has been made under **section 86C(4)(b)** of the Sentencing Act 2002.”

(3) **Subsection (2)** comes into force on the commencement of section 49 of the Parole Amendment Act 2007.

Schedule

s 9A

Consequential amendments to other Acts

Crimes Act 1961 (1961 No 43)

Section 372(6): repeal and substitute:

- “(6) In this section, **sentence** includes— 5
- “(a) an order, and references to the passing of a sentence include references to the making of an order:
 - “(b) a record of first warning (within the meaning of **section 86A** of the Sentencing Act 2002) and a record of final warning (within the meaning of that section), and refer- 10
ences to the passing of a sentence include references to the giving and recording of a warning of either kind.”

District Courts Act 1947 (1947 No 16)

Section 28A: add:

- “(3) Despite subsection (1), a court does not have jurisdiction to try 15
a person charged with a stage-3 offence (within the meaning of **section 86A** of the Sentencing Act 2002).”

Section 28F: add:

- “(5) Despite subsections (1) to (4), a court does not have jurisdic- 20
tion to impose a sentence in respect of a stage-3 offence (within the meaning of **section 86A** of the Sentencing Act 2002).”

Evidence Act 2006 (2006 No 69)

Section 139(1): insert after paragraph (b):

- “(ba) a record of first warning (within the meaning of **section 86A** of the Sentencing Act 2002) or a record of final 25
warning (within the meaning of that section) made in respect of a person.”.

Summary Proceedings Act 1957 (1957 No 87)

Section 6: add:

- “(3) Despite this section, a Court does not have summary jurisdic- 30
tion in respect of a stage-3 offence (within the meaning of **sec-
tion 86A** of the Sentencing Act 2002).”

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Summary Proceedings Act 1957 (1957 No 87)—*continued*

Section 184Q: add:

“(7) Nothing in this section applies to a proceeding where the defendant is charged with a stage-3 offence (within the meaning of **section 86A** of the Sentencing Act 2002).”

Legislative history

18 February 2009	Introduction (Bill 17–1)
18 February 2009	First reading and referral to Law and Order Committee
17 February 2010	Interim report of Law and Order Committee
26 March 2010	Reported from Law and Order Committee (Bill 17–2)
4 May 2010	Second reading
18 May 2010	Committee of the whole House (Bill 17–3)
