

# **Sentencing (Reform) Amendment Bill**

Government Bill

As reported from the Justice Committee

## **Commentary**

### **Recommendation**

The Justice Committee has examined the Sentencing (Reform) Amendment Bill and recommends by majority that it be passed. We recommend all amendments by majority.

### **Introduction**

The bill seeks to amend the Sentencing Act 2002 to strengthen the consequences of offending and ensure that offenders take personal responsibility for the harm they cause. It responds to a perceived trend away from the use of imprisonment and towards non-custodial sentences such as home detention, community detention, and intensive supervision, despite an increase in the seriousness of offending.

The bill proposes to:

- limit to 40% the extent to which a sentence may be reduced based on mitigating factors personal to the offender, unless the sentence would be manifestly unjust
- implement a sliding scale setting out reductions for guilty pleas
- prevent repeat use of sentence reductions for youth and for remorse
- encourage cumulative sentencing for offences committed while on bail, in custody, or on parole
- introduce new aggravating factors
- strengthen the requirement to take into account any information provided to the court about victims' interests.

## Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

## Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments. For example:

- our proposed clause 5A, new section 8A, is included purely for clarity to provide an overview of aggravating and mitigating factors in sections 9, 9A, and 9B–9R
- new sections 9B to 9G in the bill as introduced are, for clarity, replaced with simpler and shorter new sections 9B to 9R.

## Failure to inform the offender would not affect the validity of the sentence

Clause 7 would insert new sections after section 9A of the Act dealing with sentence reductions for personal mitigating factors. Proposed section 9B concerns sentence reductions for the youth of the offender, while proposed section 9E concerns sentence reductions for remorse shown by the offender. As introduced, proposed sections 9B(2)(b) and 9E(2)(b) would require the court to inform the offender that a sentence for any later offending would not be reduced under the youth factor or the remorse factor. Some submitters suggested that if the offender was not informed, the offender could appeal the sentence, or a future sentence where a sentence reduction for youth or remorse was not given. While we consider that the risk of the court failing to inform the offender would be minor, this could happen if proceedings were disrupted.

Therefore, we recommend inserting new sections 9EA and 9NA to specify that a failure to inform the offender or failure to record the sentence reduction would not affect the validity of the sentence for the offending or a sentence imposed on the offender later, and would not in itself be grounds for an appeal. Those new sections also clarify that a failure to perform one or both of these duties would not limit the court's duty to comply with the general rule in new sections 9B and 9K.

## Offer to make amends excluded from limitations on sentence reductions

Proposed section 9E as introduced concerns sentence reductions under the remorse factor. Subsections (1) and (2) would require the court to make an entry in the permanent court record and inform the offender that a sentence for any later offending by them would not be reduced under the remorse factor, except to the extent that it relates to anything in section 10 of the Act. Section 10 is about offers or agreements to make amends. This means that an offender could not use remorse as a mitigating factor for future sentencing but could offer to make amends under section 10.

We consider that subsections (1) and (2) are inconsistent with proposed section 9E(3), which prevents a repeat reduction for remorse but does not explicitly exclude section

10. We think that the bill should be clearer that section 10 is excluded from the limitations on reductions for remorse.

We understand that the bill is not intended to limit restorative justice principles, reparation to victims, or other measures to make amends, but seeks to limit repeated applications of the remorse mitigating factor. To achieve this, we recommend inserting in section 4(1) a new definition of “remorse mitigating factor”, ensuring that section 10 (offer to make amends) is excluded from the limitations on sentence reductions for remorse.

### **Mitigating factors included in the 40% cap**

Proposed section 9F as introduced would cap the amount by which sentences could be reduced for mitigating factors personal to the offender. Some submitters said that “mitigating factors personal to the offender” is unclear. They suggested that the proposed section should make clear which factors are included in the cap. This is because some factors that result in discounts are not personal to the offender, such as:

- a delay in the proceedings caused by a failure by the prosecutor to comply with a procedural requirement
- the time spent on bail with an electronic monitoring condition.

We note that the use of the term “personal factors” could lead to uncertainty about which factors the cap should apply to because they could be open to interpretation. We therefore recommend inserting in section 4(1) a new definition of “personal mitigating factor” that makes clear all the personal mitigating factors included in the 40% cap. We also recommend inserting section 9O(4), which specifies that reductions under the youth mitigating factor, the guilty plea mitigating factor, and remorse mitigating factor are included in the 40% cap.

### **Exclusions from the 40% cap**

Some submitters expressed concern that including under the cap any assistance provided to the authorities by the offender could disincentivise offenders from assisting authorities. We note that its inclusion within the 40% cap is not consistent with the policy to strengthen the consequences of offending and to ensure offenders take personal responsibility. Therefore, we recommend inserting section 9O(3), which makes clear that assistance provided to the authorities would be excluded from the 40% cap on total sentence reductions.

We also propose inserting a definition of “personal mitigating factor”, paragraph (a)(iv), which would exclude offers to make amends from the 40% cap on total sentence reductions. This would be consistent with our recommendation above to insert in section 4(1) a definition of “remorse mitigating factor”, to exclude offers of amends from the limitations on sentence reductions for remorse.

### **Aggravating factor—adult offender as a party to an offence**

Clause 6 would amend section 9 of the Act to establish new aggravating factors to be taken into account in sentencing. Proposed section 9(1)(cb) would make it an aggra-

vating factor if an offender (aged 18 years or over) was convicted as a party to an offence committed by a child or young person. In our view, this provision might be interpreted as applying only where the adult offender had aided, abetted, or incited a child or young person to commit an offence. That is, it might be taken to exclude situations where the adult offender had actually committed the offence, either with a child or young person who also committed the offence, or supported by a child or young person who acted in a more secondary role. For clarity, we recommend amending proposed section 9(1)(cb) to specify that the aggravating factor would apply when the offender was aged 18 years or over when they actually committed or were party to the offence, and a child or young person was also involved. This change would align the new aggravating factor with the general law of parties to offences in section 66 of the Crimes Act 1961.

### **Release of offender if suitable residence becomes available**

Under clause 10, proposed section 80GA(1) would enable a constable or probation officer to arrest an offender without a warrant if:

- the offender's home detention residence is no longer available
- there is no suitable alternative residence decided by the chief executive of the Department of Corrections
- there is no suitable provisional home detention residence approved by a probation officer
- they believe on reasonable grounds that there is a risk to any person's safety.

New section 80GA(5) would require the arrested offender to be brought before the court as soon as possible. The court could then bail the offender or remand them in custody until the home detention sentence is cancelled or changed or a suitable alternative residence is decided or a suitable provisional home detention residence is approved.

We think that section 80GA as introduced could be interpreted as requiring an offender, once arrested, to be detained until they are brought before the court, even when a suitable alternative residence has been decided or a suitable provisional home detention residence has been approved. We consider it preferable to release an offender to a new decided or approved suitable residence as soon as possible. Therefore, we recommend inserting section 80GA(5A) to provide that an offender may be released as soon as possible if a suitable alternative residence is decided by the chief executive of the Department of Corrections or a suitable provisional home detention residence is approved by a probation officer before they are brought before the court.

### **Matters considered for a sentence reduction for guilty plea**

As introduced, proposed section 9D(g) would allow the court to consider whether the defendant disputed the facts of the case and the dispute was not resolved in favour of the defendant. We recommend amending this provision (renumbered as section 9J(g)) to refer to the outcome of the dispute, rather than the dispute not being resolved in favour of the defendant.

## **Youth or remorse reductions to sentences for offending that is a series of offences**

Proposed sections 9B(1) and 9K(1) would prevent a sentence for any type of offending from being reduced under the youth or remorse personal mitigating factor if the offender has already had a sentence reduction under that factor for earlier offending. Sections 9B and 9K apply only to offending, and earlier offending, that occurred after the commencement of the Amendment Act inserting those sections. However, we consider that it is unclear how “earlier offending” applies to an offender being sentenced for multiple offences in a series of offending, where sentencing for those multiple offences in a series takes place at different times.

We think that the offender should be entitled to youth and remorse discounts for all earlier offending in a series of offences, even if some of those offences are sentenced later in time, if they were all committed before the sentencing when the offender first received the youth or remorse discount. We recommend amending proposed sections 9B(1) and 9K(1) to ensure that they:

- specify clearly the relevant offending, and the further offending, committed after the commencement of the Amendment Act by which they are inserted
- ensure that offences committed before the sentencing at which the offender first received a youth or remorse sentence reduction are eligible for a youth or remorse sentence reduction
- ensure that all further offences committed after that sentencing are ineligible for a youth or remorse sentence reduction.

We also recommend amending sections 9B(2) and 9K(2) to specify that in imposing a sentence of any type on the offender for the further offending, the court must not reduce that sentence under the youth mitigating factor or the remorse mitigating factor.

We looked into whether the inability to use the youth mitigating factor and remorse mitigating factor for sentence reductions for any further offending might be inconsistent with the amendments made to the Sentencing Act 2002 by the Sentencing (Reinstating Three Strikes) Amendment Act 2024. The Three Strikes regime has provisions addressing the effects of appeals, whereas this bill does not contain similar provisions. We think that any inconsistency may need to be resolved at the Committee of the whole House.

We were advised, however, that sections 9B and 9K differ from the Reinstating Three Strikes amendments. This is because Three Strikes amendments involve mandatory penalties based on an offender’s current warnings status, which required specific provisions to address changes in status that could arise as a result of appeals. Sections 9B and 9K, in contrast, apply based only on the offending and further offending specified in sections 9B and 9K. A change in when the offender first validly received a youth or remorse sentence reduction can be dealt with under courts’ existing powers for appeals against sentences (including appeals against sentences allowed out of time). Those powers enable courts to adjust affected sentences if the court on an appeal

against a sentence considers that sections 9B and 9K should not have been applied. (This might be, for example, because a conviction or sentence for the earlier offending is, on an appeal, quashed or no longer reduced under the relevant factor.)

### **New Zealand Labour Party differing view**

The Labour Party does not support this legislation. Most fundamentally, this legislation reduces the range of sentences that a judge may impose on an offender and is intended to reduce the discretion of a judge in imposing a sentence. Fundamental to the sentencing process, and in achieving the objectives set out in section 7 of the Sentencing Act is the fact that, in every situation, the circumstances of the victim, offender, and the offending are unique, and the task of the judge is to impose a sentence which is appropriate to all of those circumstances. This legislation is a departure from that and will make it harder for judges to achieve the objectives of the Act.

The reduction of judicial discretion was a key concern of many submitters including the New Zealand Law Society, the Defence Lawyers Association | Te Matakahi, Te Hunga Rōia Māori o Aotearoa | The Māori Law Society, the Royal Australian and New Zealand College of Psychiatrists, the New Zealand Council of Christian Social Services, and the Law Association of New Zealand.

This Government is not interested in reforms based on expert advice or evidence. The Ministry of Justice has made a number of warnings about these changes in its Regulatory Impact Statement including that:

- the changes are likely to lead to increases in legal challenges to how the exceptions are applied and the unintended consequences of disincentivising offenders from taking steps that will benefit victims
- sentencing will be made significantly more complex, which is likely to result in delays to Court
- the total cost after 10 years will be up to approximately \$150 million, resulting from the addition of approximately 1,350 to the prison population.

The Regulatory Impact Statement was also critical of the process adopted, noting that insufficient time was given to address wider issues raised, or to allow for detailed and peer reviewed modelling of impacts. The Ministry was not able to explore all of the options available, but was instructed only to look at the narrow options in the Government's coalition agreement – meaning that better options may remain available.

The Ministry was also not able to consult broadly, meaning that there was no engagement in dialogue with Treaty partners, strategic partners, and practitioners. This has provided further difficulties in anticipating the direct impact of some of the legislative amendments. All of these constraints meant that the Ministry could not adequately test the implications and unintended consequences that could undermine the stated objectives of the legislative changes.

In short, this reform is the Government grasping in the dark. Central to this reform is limiting the reductions in sentence that a judge can grant. One such measure is the

provision that a reduction of a sentence (or taking into account as a mitigating factor, to put it another way) for youth or remorse is a one-time-only reduction.

In respect of youth offending, we agree that a judge can properly give it less weight as a mitigating factor in subsequent offending – and this is the case under the current law. However, we consider it to be irrational and at odds with good sentencing practice to require a judge to disregard a factor which remains relevant to sentencing. A person does not cease to be affected in their decision making by their youthfulness simply because they have previously had it taken into account by a judge in prior sentencing. We consider that the weight to be given to such a factor in subsequent offending is a matter properly left to the judge.

We also agree that a judge can be rightly sceptical of claims of remorse in respect of repeat offending – and this is the case under the current legislation. The removal of remorse as a mitigating factor in subsequent offending may have perverse consequences. We are concerned that there will be no incentive for offenders to make amends for their offending, like making a genuine apology or meeting with the victim, because there is no incentive for them to do so. This could lead to worse outcomes for victims. Further, if an offender is genuinely remorseful for subsequent offending, this is relevant to offending, and once again, we would trust the judge to give it a weight that is appropriate in the circumstances.

The difficulties with removing remorse as a mitigating factor for subsequent offending is highlighted by the way in which an offer to make amends under section 10 of the Act is dealt with. Such offers generally take the form of a money payment – and are a way of seeking compensation for the victim and could be said to be a tangible way of showing remorse. Obviously, such payments can be beneficial to victims. In light of this, the committee has recommended that it be clear that such offers can still be taken into account as a mitigating factor. The result is that if a person has the financial means to give a show of apparent (but in fact feigned) remorse by offering money compensation for their wrongdoing then this will be taken into account and their sentence reduced. However, if a person genuinely regrets their wrongdoing and is prepared to engage with the victim appropriately to express this but cannot pay compensation – that cannot be taken into account in respect of subsequent offending.

A key part of the reform is placing a cap on sentence reductions for mitigating factors at 40%. The bill provides in proposed section 9O that “If a sentence of imprisonment for offending of any kind is reduced under 1 or more personal mitigating factors, total reductions under all those personal mitigating factors must not exceed 40% of the sentence.” This fundamentally reduces the discretion of a judge and makes it more difficult to impose a sentence which meets the purposes and principles of the Sentencing Act. We oppose it for that reason. It also adds considerable complexity to the sentencing process.

It is not clear to us what the 40% cap refers to. We were advised that on the wording of the provision the 40% reduction is not a reduction off the maximum sentence. It is a reduction off the “starting point” sentence (which is almost always less than the maximum sentence). We considered that this should be more clearly stated in the

legislation. The starting point sentence is the sentence that a judge would consider normal for offending of this type before considering any aggravating and mitigating factors which are personal to the offender. The starting point is determined by the judge in light of the leading decisions on prior cases in the area on sentencing (sometimes referred to as tariff cases).

One of the things that we consider likely to happen as a result of this amendment is a change in starting points for sentencing, especially in cases where the 40% cap would lead to an outcome which is clearly inappropriate. This is unfortunate as tariff cases which provide clear starting points are an important part of the legal framework around sentencing and this is likely to create greater uncertainty in sentencing and undermine the utility of those tariff cases.

The provision also introduces the concept of mitigating factors which are “personal” to the offender. This is then defined in clause 4 but in a non-exhaustive way (by reference to s 9(4)(a) of the Sentencing Act). This leads to a further lack of clarity about when a reduction over and above 40% is available. For example, there is no guidance on whether the matters that would usually be traversed in a report under section 27 of the Sentencing Act are “personal” to the offender.

Matters which are not “personal” to the offender can reduce the sentence more than 40% including a number of matters such as time spent on bail with an electronic monitoring condition, the conduct of the victim, limited involvement in the offence on the offender’s part, and any adverse effects on the offender of a delay caused by a failure by the prosecutor. These are existing mitigating factors in the Sentencing Act.

The bill also adds some specific circumstances to the list of aggravating factors. We do not consider that these additions are necessary for a judge to take them into account in sentencing. We recognise that particular circumstances – such as the vulnerability of a victim who is working alone – should be taken into account as an aggravating factor. It is also the case that the law already enables this. Adding to the list of aggravating factors increases complexity, reduces workability, and creates some arbitrary distinctions. A judge has the ability to take any matter into account as an aggravating factor where appropriate.

The addition of particular aggravating circumstances which must be taken into account risks diminishing the importance of other facts – including the particular circumstances of a victim. We agree that offences committed against public transport service workers, or sole charge retail workers are deeply concerning – and can properly be taken into account by the judge as aggravating factors in any case. But there is a degree of arbitrariness in the exclusion or inclusion of such detailed aggravating factors. This was pointed out by the Dairy and Business Owners Group who in their submission noted that it would be odd to take a different sentencing approach “simply because another [person] was ‘out back’” in a retail premises. This reform, by only identifying sole charge retail workers and public transport workers risks de-emphasising other workers’ vulnerability. Retail New Zealand observed that “it is difficult to see the justification in treating crime against one retail worker differently to another, simply depending on the size of their workplace”.

The amendments include provisions that the judge can depart from the rules in the case of “manifest injustice”. Implicit in this is a recognition that the application of these new sentencing standards will lead to injustice in varying degrees. Manifest injustice is a high threshold – it is more than just an unfair or inappropriate sentence. It must be a sentence that is so clearly wrong, so egregious, that no reasonable person would consider it appropriate. In short, by this reform this Government has intentionally designed a sentencing regime to be unjust – but not manifestly so.

### **Green Party of Aotearoa New Zealand differing view**

The Green Party of Aotearoa New Zealand does not support this bill. Fundamentally, this is because incarcerating people who have committed offences for longer does not lead to reduced re-offending or better rehabilitation outcomes, because of the limits it places on judicial discretion, and because of its potential to breach the New Zealand Bill of Rights Act 1990 (NZBORA).

#### **Tiriti analysis**

We are disappointed to see the lack of consultation with hapū, iwi, and Māori on the bill. Māori will be disproportionately affected by the outcomes of this bill and will continue to be over-represented within our corrections system. This is especially disappointing given Corrections’ Hōkai Rangi strategy to reduce Māori over-representation throughout our corrections system expired last year.

The lack of Tiriti analysis and the negative impact this will have on Māori, especially Māori youth, have also been noted by several submitters. They have raised concerns about potential breaches of international law and compliance with international treaties such as:

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- International Covenant on Civil and Political Rights
- United Nations Declaration on the Rights of Indigenous Peoples
- United Nations Convention on the Rights of the Child
- International Covenant on the Rights of the Child 1990.

#### **Limits on judicial discretion**

One of the constitutional principles of Aotearoa New Zealand is the separation of power, which ensures that each branch of government operates independently from each other. This bill is Executive overreach and limits judiciary discretion and undermines our constitutional arrangements.

A number of key submitters and experts, including the New Zealand Law Society, the Defence Lawyers Association | Te Matakahi, Te Hunga Rōia Māori o Aotearoa | The Māori Law Society, and the Law Association of New Zealand have expressed similar concerns on this bill.

### Youth justice

The Green Party has serious concerns on no reduction to sentence under the youth mitigating factor if the mitigating factor was already applied to an earlier offence (section 9B). The judiciary system already accounts for instances where mitigating factors would not be applied in the event of repeat offending (e.g. section 9(2)(g)); there is no reason for young offenders to be further punished by not having their age taken into consideration.

Furthermore, it is deeply concerning that this bill is intended to apply to current sentences as well. This is a serious violation of section 26 of NZBORA on retrospective penalties. From a process perspective, it is also concerning that the clarification that this will apply to current sentences was only provided to the select committee after hearings have been completed. As a result, the advice on consistency of bills with the Bill of Rights Act by the Attorney-General did not mention section 26 of NZBORA at all.

In addition to this, the decision to remove youth as a mitigating factor in sentencing is not in line with the evidential consensus among experts internationally in child forensic psychology which shows that:

- the parts of the brain that govern risk-taking behaviour, impulse control, and the ability to evaluate consequences continues to evolve into a person's mid-twenties. This is exacerbated by experiences of trauma, abuse, poor mental health, and social disadvantage.
- a criminal record is an impediment to obtaining employment, housing and full participation in community life which disproportionately affects young people who have a less extensive work history to rely on
- younger cohorts of offenders are more responsive to rehabilitation than older offenders
- young offenders who are imprisoned are more likely than the general population to be re-imprisoned (42.5 percent) or reconvicted (62.6 percent) within 12 months of their release from prison
- generally, threats of harsh punishments and long prison sentences have little "deterrent" effect on young people.

Further, in terms of victims' interests, evidence shows that victims care about the certainty of punishment, not the severity of punishment. This is also true for evidence on the deterrent effect of punishment – certainty of punishment deters crime over the severity of punishment. Tinkering with mitigating factors at sentencing is not going to deter crime and is not something victims of crime have called for on any substantive level.

Young people who have offended should be supported to take accountability, but this does not need to mean long prison sentences that fail to address the underlying cause of their offending.

**Longer periods of incarceration do not prevent crime**

We concur with one of the conclusions from Sir Peter Gluckman's report, *Using evidence to build a better justice system: The challenge of rising prison cost*, that the prison population has grown because of "dogma not data".

It is easy for political parties to promise the New Zealand public safety by punishing criminals more and using harsher prison sentences. But this will not keep New Zealanders safe, and this is not based on the international and domestic consensus on what works to reduce crime.

Prisoners are seven times more likely than the general population to have a mental health or substance abuse problem; 90 percent have a history of mental health or addiction, with 60 percent still affected. Up to 70 percent have significant literacy problems. In women's prisons, two thirds have experienced intimate partner violence, and over half have experienced sexual assault.

These factors do not excuse offending. But they represent systemic failures across government, particularly in health, education, housing, and employment. Prison should not be the first place where one can access help for addiction, or obtain literacy, or counselling for past trauma.

We also note that the Regulatory Impact Statement notes that if all aspects of this bill were adhered to it could double the current prison population. A doubling of the prison population is an indictment on our so-called "justice" system. Putting people into prison does not make our communities safer, it simply shifts harm elsewhere and concentrates it within our prisons and increases risks to the work safety of Corrections officers.

We think that a growing prison population is not something to be proud of and our country's limited resources should go towards meeting people's basic needs as opposed to incarcerating people.

To prevent crime, inequality must be addressed with the urgency that it requires. Governments should prioritise liveable incomes, stable housing, and accessible education, healthcare, and addiction treatment. Longer prison sentences are an ambulance at the bottom of the cliff solution for a much bigger problem that needs investment.

## Appendix

### Committee process

The Sentencing (Reform) Amendment Bill was referred to us on 24 September 2024. The House instructed us to report the bill back no later than 13 February 2025. We called for submissions with a closing date of 29 October 2024. We received and considered submissions from 83 interested groups and individuals. We heard oral evidence from 24 submitters.

Advice on the bill was provided by the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

### Committee membership

James Meager (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Carl Bates (from 29 January 2025)

Cameron Brewer (until 29 January 2025)

Tākuta Ferris

Paulo Garcia (until 29 January 2025)

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul (until 29 January 2025)

Tom Rutherford (from 29 January 2025)

Todd Stephenson

Hon Dr Duncan Webb

Dr Lawrence Xu-Nan (from 29 January 2025)

### Related resources

The documents we received as advice and evidence are available on the Parliament website.

**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~



Hon Paul Goldsmith

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Government Bill

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<b>Amendment to Family Court Rules 2002</b>		
17	Principal rules	21
	<i>Protection orders</i>	
18	Rule 431B amended (Information requested by sentencing court for purposes of section 123B of Sentencing Act 2002)	21
	<b>Schedule</b>	<b>22</b>
	<b>New Part 6 inserted into Schedule 1AA of Sentencing Act 2002</b>	

**The Parliament of New Zealand enacts as follows:****1 Title**

This Act is the Sentencing (Reform) Amendment Act **2024**.

**2 Commencement**

This Act comes into force 3 months after Royal assent.

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**Part 1**  
**Amendments to Sentencing Act 2002**

**3 Principal Act**

This Part amends the Sentencing Act 2002.

*Definitions*

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**4 Section 4 amended (Interpretation)**

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

**category 3 offence** and **category 4 offence** have the meanings given to them in section 6 of the Criminal Procedure Act 2011

**digital communication** has the meaning given in section 4 of the Harmful Digital Communications Act 2015

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**guilty plea mitigating factor**, in relation to an offender, means the mitigating factor in section 9(2)(b)

**livestream** has the meaning given in section 119A of the Films, Videos, and Publications Classification Act 1993

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**mitigating factor** means a mitigating factor in relation to the offence, a personal mitigating factor in relation to the offender, or any other mitigating factor,—

(a) in section 9(2); or

(b) under section 9(4)(a)

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**personal mitigating factor**, in relation to an offender, means—

(a) a mitigating factor in section 9(2) that is any of the following:

(i) the age of the offender (section 9(2)(a));

(ii) whether and when the offender pleaded guilty (section 9(2)(b));

(iii) that the offender has, or had at the time the offence was committed, diminished intellectual capacity or understanding (section 9(2)(e));

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(iv) any remorse shown by the offender, except to the extent that it relates to anything described in section 10 (section 9(2)(f));

(v) 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 (section 9(2)(fa)):

(vi) any evidence of the offender’s previous good character (section 9(2)(g)); or

(b) a mitigating factor under section 9(4)(a) that the court considers is personal to the offender

**post**, in relation to a record of offending, means to upload, transfer, send, publish, share, or otherwise disseminate that record

**remorse mitigating factor**, in relation to an offender,—

(a) means the mitigating factor in section 9(2)(f); but

(b) excludes anything described in section 10

**youth mitigating factor**, in relation to an offender, means the mitigating factor in section 9(2)(a) to the extent that it relates to the offender’s youth.

*Replacement principle to better recognise victim’s needs*

**5 Section 8 amended (Principles of sentencing or otherwise dealing with offenders)**

Replace section 8(f) with:

(f) must take into account any information provided to the court—

(i) to help to recognise the victim’s needs in the court’s sentencing or otherwise dealing with the offender according to law; and

(ii) concerning the interests of the victim (for example, about the effects of the offending on the victim); and

**Example: information to which paragraph (f) applies**

Information to which paragraph (f) applies

Information in a victim impact statement (see sections 17AA, 17AB, and 21 of the Victims’ Rights Act 2002) whose purpose is to—

- enable the victim to provide information to the court about the effects of the offending on the victim; and
- assist the court in understanding the victim’s views about the offending; and
- inform the offender about the impact of the offending from the victim’s perspective.

Aggravating and mitigating factors: overview

**5A New section 8A and cross-headings inserted**

After section 8, insert:

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Aggravating and mitigating factors: overview**8A Overview of aggravating and mitigating factors**Aggravating and mitigating factors in cases of any kind

- (1) Section 9 is about aggravating and mitigating factors that the court must or may take into account in sentencing or otherwise dealing with an offender. 5

Aggravating and mitigating factors in some cases involving violence or neglect

- (2) Section 9A is about aggravating and mitigating factors that the court must or may take into account in sentencing or otherwise dealing with an offender in a case involving violence against, or neglect of, a child under the age of 14 years.

Sentence reductions under personal mitigating factors in cases of any kind 10

- (3) **Sections 9B to 9R** are about the following sentence reductions:

(a) sentence of any type reduced under youth mitigating factor (**sections 9B to 9EA**):

(b) specified sentence reduced under guilty plea mitigating factor (**sections 9F to 9J**): 15

(c) sentence of any type reduced under remorse mitigating factor (**sections 9K to 9NA**):

(d) sentence of imprisonment reduced under all applicable personal mitigating factors (**sections 9O to 9Q**).

Aggravating and mitigating factors in cases of any kind 20*New aggravating factors***6 Section 9 amended (Aggravating and mitigating factors)**New heading above section 9(1)

- (1AAA) Above section 9(1), insert:

Aggravating factors 25

*Adult offender ~~convicted as~~ actually committed, or was party to, offence committed by that child or young person actually committed, or was party to, and offender livestreamed or posted their offending online*

- (1) After section 9(1)(ca), insert:

~~(cb) that the offender (being aged 18 years or over) was convicted as a party (within the meaning of section 66 of the Crimes Act 1961) to an offence committed by a child or a young person (as both those terms are defined in section 2(1) of the Oranga Tamariki Act 1989):~~ 30

(cb) that the offender was aged 18 years or over when they actually committed, or were a party to (within the meaning of section 66(1)(b), (c), or (d) or (2) of the Crimes Act 1961), the offence, and— 35

- (i) 1 or more other people also actually committed, or also were a party to (within that meaning), the offence; and
- (ii) they then were each, or included, a child or a young person (as both those terms are defined in section 2(1) of the Oranga Tamariki Act 1989): 5
- (cc) that the offender did 1 or more of the following in relation to the offending for which they are being sentenced, with no justification in the public interest, and that glorified the offending:
- (i) they livestreamed all or part of the offending on an Internet site or an online application or similar: 10
- (ii) they posted all or part of a record of the offending on an Internet site or an online application or similar:
- (iii) they distributed all or part of a record of the offending to others by means of a digital communication:
- Public transport passenger service workers, sole charge workers, and people whose home and business are connected* 15
- (2) After section 9(1)(fb), insert:
- (fc) that the victim was a public transport passenger service worker acting in the course of his or her duty:
- (fd) that 1 or both of the following apply to the victim: 20
- (i) the victim was working alone:
- (ii) the victim was working in a business that was physically joined to, or that was located next to, the dwelling place of a victim:
- New heading above section 9(2)*
- (2A) Above section 9(2), insert: 25
- Mitigating factors*
- (2B) In section 9(2)(f), delete “as”.
- New heading to section 9(4)*
- (2C) Above section 9(4), insert:
- Taking into account other aggravating or mitigating factor* 30
- New heading to section 9(4A)*
- (2D) Above section 9(4A), insert:
- Definitions of terms used in this section*
- (3) After section 9(4A), insert:
- (4B) In **subsection (1)(fc)**, **public transport passenger service worker** means a driver, pilot, or crew member in, or a worker who otherwise assists in any way, a service for the carriage of passengers for hire or reward by means of any 35

mode of (air, land, sea or other water, or other) transport available to the public generally.

*Sentence reductions for under personal mitigating factors ~~personal to offender~~  
in cases of any kind*

7	<b>New sections 9B to <del>9G</del>9R and cross-headings inserted</b>	5
	After section 9A, insert:	
	<b>9B Reductions for youth of offender</b>	
	<i>Recording reductions, and informing of general rule's effect</i>	
	(1) <del>The court must perform the duties specified in <b>subsection (2)</b> if reducing a sentence of any type for offending under the mitigating factor taken into account under section 9(2)(a) to the extent that it relates to the offender's youth (the <b>youth factor</b>), whether or not 1 or both of the following exist:</del>	10
	(a) <del>earlier offending of any kind by the same offender;</del>	
	(b) <del>a sentence reduction for earlier offending under the youth factor.</del>	
	(2) <del>The duties mentioned in <b>subsection (1)</b> are to —</del>	15
	(a) <del>make an entry in the permanent court record, in relation to the offending, to the effect that the offender has had a sentence reduction under the youth factor; and</del>	
	(b) <del>inform the offender (using any words that the court thinks fit) that a sentence for any later offending by them will not be reduced under the youth factor, unless a reduction under that factor is needed to avoid a sentence that is manifestly unjust.</del>	20
	<i>Sentence to which general rule in this section applies</i>	
	(3) <del>The general rule in <b>subsection (5)</b> applies if the court is considering whether to reduce a sentence for offending under mitigating factors taken into account by the court.</del>	25
	(4) <del>However, that general rule applies only if the court has, for earlier offending by the same offender when they were of or over the age of 18 years, that is of the same or a different kind, and that is after this section's commencement, —</del>	
	(a) <del>imposed a sentence of any type; and</del>	30
	(b) <del>reduced that sentence under the youth factor.</del>	
	<i>General rule: no reduction to sentence under youth factor</i>	
	(5) <del>The court must not reduce the sentence under the youth factor.</del>	
	<i>Exception: duty to make reduction to avoid manifestly unjust sentence</i>	
	(6) <del>However, if the application of that general rule would result in a sentence that is manifestly unjust, the court must reduce the sentence under the youth factor only to the extent necessary to avoid that manifestly unjust sentence.</del>	35

*Sentence of any type reduced under youth mitigating factor***9B General rule: no reduction to sentence**

- (1) This section applies if—
- (a) offending of any kind is committed, in whole, after the commencement of this section, by an offender of or over the age of 18 years; and 5
  - (b) the court in a sentencing for the offending—
    - (i) imposed a sentence of any type on the offender; and
    - (ii) reduced that sentence under the youth mitigating factor; and
  - (c) further offending of any kind (whether of a kind that is the same as, or different from, the offending) is committed, in whole, after the sentencing for the offending, by the offender. 10
- (2) In imposing a sentence of any type on the offender for the further offending, the court must not reduce that sentence under the youth mitigating factor.
- (3) This section is subject to **sections 9C and 9R.**

**9C Exception: duty to avoid sentence being manifestly unjust** 15

If the application of the general rule in **section 9B** would result in a sentence that is manifestly unjust, the court must reduce the sentence under the youth mitigating factor to the extent needed to avoid the sentence being manifestly unjust.

**9D Duty to record sentence reduction** 20

If a sentence of any type for offending of any kind is reduced under the youth mitigating factor, the court must make an entry in the permanent court record, in relation to the offending, to the effect that the offender has had a sentence reduction under the youth mitigating factor.

**9E Duty to inform offender of effect of general rule** 25

If a sentence of any type for offending of any kind is reduced under the youth mitigating factor, the court must inform the offender of the effect of the general rule in **section 9B.**

**9EA Effect of failure to record or inform**

- (1) A failure by the court to perform 1 or both of the duties in **sections 9D and 9E** does not affect the validity of, and is not in itself grounds for an appeal against,— 30
- (a) the sentence for the offending; or
  - (b) a sentence imposed on the offender later for any other offending.
- (2) A failure by the court to perform 1 or both of the duties in **sections 9D and 9E** does not limit the court's duty to comply with **section 9B.** 35

**9C Reductions for whether and when offender pleaded guilty**

*Sentence to which general rule in this section applies*

- (1) ~~The general rule in **subsection (2)** applies if the court is considering whether to reduce a sentence for offending under mitigating factors taken into account by the court, and the sentence is —~~ 5

- (a) ~~a sentence of imprisonment; or~~  
 (b) ~~a sentence of any other type, and to which the court considers it appropriate to apply this section.~~

*General rule: sliding scale of maximum reductions to sentence*

- (2) ~~A reduction to the sentence under the mitigating factor taken into account under section 9(2)(b) (the **guilty plea factor**) must not exceed the applicable maximum percentage set out in the following table:~~ 10

<b>Item</b>	<b>If the defendant enters a plea of guilty or communicates a willingness to plead guilty</b>	<b>the maximum reduction is</b>
1	at the first reasonable opportunity	25%
2	at the case review hearing (see sections 54 to 59 of the Criminal Procedure Act 2011)	20%
3	at or before the first trial callover (if proceedings have been adjourned for a trial callover under that Act)	15%
4	20 or more working days (as defined in section 5 of that Act) before the scheduled start date for the trial	10%
5	less than 20 working days (as so defined) before the scheduled start date for the trial, or during the trial	5%

*Exception: court may depart from scale up to 25% of sentence*

- (3) ~~However, the court may, if it considers it appropriate, make a reduction to the sentence under the guilty plea factor that —~~ 15

- (a) ~~exceeds the applicable maximum percentage in item 2, 3, 4, or 5 of the table in **subsection (2)**; but~~  
 (b) ~~does not exceed 25%.~~

*Duties in making sentence reduction under guilty plea factor*

- (4) ~~In making a reduction to the sentence under the guilty plea factor (regardless of when the defendant enters a plea of guilty or communicates to the court a willingness to plead guilty), the court —~~ 20

- (a) ~~is permitted, but not required, to consider the matters specified in **section 9D** to the extent that they are applicable in the case; and~~  
 (b) ~~must record in the sentencing notes (using any words that the court thinks fit) the following (if applicable):~~ 25  
 (i) ~~the fact that the court has made a reduction that is subject to, and that complies with, **subsection (2)**;~~

- (ii) ~~the fact that the court has made, the reasons for, and the extent of, a departure that is subject to, and that complies with, **subsection (3)**.~~

*Specified sentence reduced under guilty plea mitigating factor*

**9F Specified sentence** 5

**Sections 9G to 9J** apply only to a sentence (in those sections called **the sentence**) that is—

- (a) a sentence of imprisonment for offending of any kind; or
- (b) a sentence of any other type for offending of any kind, and to which the court considers it appropriate to apply those sections. 10

**9G General rule: sliding scale of maximum reductions**

(1) A reduction to the sentence under the guilty plea mitigating factor must not exceed the applicable maximum percentage set out in the following table:

<u>Item</u>	<u>When defendant enters plea of guilty or communicates willingness to plead guilty</u>	<u>Maximum reduction</u>
<u>1</u>	<u>At the first reasonable opportunity</u>	<u>25%</u>
<u>2</u>	<u>At the case review hearing (see sections 54 to 59 of the Criminal Procedure Act 2011)</u>	<u>20%</u>
<u>3</u>	<u>At or before the first trial callover (if proceedings have been adjourned for a trial callover under that Act)</u>	<u>15%</u>
<u>4</u>	<u>20 or more working days (as defined in section 5 of that Act) before the scheduled start date for the trial</u>	<u>10%</u>
<u>5</u>	<u>Less than 20 working days (as so defined) before the scheduled start date for the trial, or during the trial</u>	<u>5%</u>

(2) This section is subject to **sections 9H and 9R**.

**9H Exception: departing from scale up to 25% of sentence** 15

The court may, if it considers it appropriate, make a reduction to the sentence under the guilty plea mitigating factor that—

- (a) exceeds the applicable maximum percentage in **item 2, 3, 4, or 5** of the table in **section 9G**; but
- (b) does not exceed 25%. 20

**9I Duty to state certain matters**

If the court makes a reduction to the sentence under the guilty plea mitigating factor, the court must state (using any words that it thinks fit)—

- (a) how it has applied the sliding scale in **section 9G**; and
- (b) reasons for, and the extent of, a departure under **section 9H**. 25

**9D9J Matters that ~~must be~~ court may considered if applicable**

~~For the purposes of section 9C(4)(a), the matters are —~~ In making a reduction to the sentence under the guilty plea mitigating factor, the court may consider the following matters to the extent that they are applicable in the case:

- (a) whether and when the defendant received information— 5
  - (i) as part of criminal disclosure; and
  - (ii) that helped enable the defendant to plead fully and fairly:
- (b) how much the plea prevented, for victims and witnesses, any further trauma, further stress, and further inconvenience:
- (c) how much the plea saved public resources (for example, of the court, legal aid, and the prosecution, ~~and the Public Defence Service~~): 10
- (d) any matter outside the defendant's control that prevented the defendant from earlier entering a guilty plea or communicating a willingness to plead guilty:
- (e) whether and when the defendant received independent legal advice: 15
- (f) whether and when the defendant pleaded guilty to materially amended charges:
- (g) whether the defendant disputed the facts of the case, and the outcome of that dispute ~~was not resolved in favour of the defendant~~:
- (h) any other matter that the court thinks fit to consider in making a sentence reduction under the guilty plea mitigating factor. 20

**9E Reductions for remorse shown by offender**

~~Recording reductions, and informing of general rule's effect~~

- (1) ~~The court must perform the duties specified in subsection (2) if reducing a sentence of any type for offending under the mitigating factor taken into account under section 9(2)(f) except to the extent that it relates to anything as described in section 10 (the remorse factor), whether or not 1 or both of the following exist:~~ 25
  - (a) ~~earlier offending of any kind by the same offender:~~
  - (b) ~~a sentence reduction for earlier offending under the remorse factor.~~ 30
- (2) ~~The duties mentioned in subsection (1) are to —~~
  - (a) ~~make an entry in the permanent court record, in relation to the offending, to the effect that the offender has had a sentence reduction under the remorse factor; and~~
  - (b) ~~inform the offender (using any words that the court thinks fit) that a sentence for any later offending by them will not be reduced under the remorse factor, unless a reduction under that factor is needed to avoid a sentence that is manifestly unjust.~~ 35

*Sentence to which general rule in this section applies*

~~(3) The general rule in **subsection (5)** applies if the court is considering whether to reduce a sentence for offending under mitigating factors taken into account by the court.~~

~~(4) However, that general rule applies only if the court has, for earlier offending by the same offender, of the same or a different kind, and after this section's commencement,—~~ 5

~~(a) imposed a sentence of any type; and~~

~~(b) reduced that sentence under the remorse factor.~~

*General rule: no reduction to sentence under remorse factor*

~~(5) The court must not reduce the sentence under the remorse factor.~~ 10

*Exception: duty to make reduction to avoid manifestly unjust sentence*

~~(6) However, if the application of that general rule would result in a sentence that is manifestly unjust, the court must reduce the sentence under the remorse factor only to the extent necessary to avoid that manifestly unjust sentence.~~ 15

*Sentence of any type reduced under remorse mitigating factor***9K General rule: no reduction to sentence**

(1) This section applies if—

(a) offending of any kind is committed, in whole, after the commencement of this section, by an offender; and 20

(b) the court in a sentencing for the offending—

(i) imposed a sentence of any type on the offender; and

(ii) reduced that sentence under the remorse mitigating factor; and

(c) further offending of any kind (whether of a kind that is the same as, or different from, the offending) is committed, in whole, after the sentencing for the offending, by the offender. 25

(2) In imposing a sentence of any type on the offender for the further offending, the court must not reduce that sentence under the remorse mitigating factor.

(3) This section is subject to **sections 9L and 9R.**

**9L Exception: duty to avoid sentence being manifestly unjust** 30

If the application of the general rule in **section 9K** would result in a sentence that is manifestly unjust, the court must reduce the sentence under the remorse mitigating factor to the extent needed to avoid the sentence being manifestly unjust.

<b><u>9M</u></b>	<b><u>Duty to record sentence reduction</u></b>	
	<u>If a sentence of any type for offending of any kind is reduced under the remorse mitigating factor, the court must make an entry in the permanent court record, in relation to the offending, to the effect that the offender has had a sentence reduction under the remorse mitigating factor.</u>	5
<b><u>9N</u></b>	<b><u>Duty to inform offender of effect of general rule</u></b>	
	<u>If a sentence of any type for offending of any kind is reduced under the remorse mitigating factor, the court must inform the offender of the effect of the general rule in <b>section 9K</b>.</u>	
<b><u>9NA</u></b>	<b><u>Effect of failure to record or inform</u></b>	10
(1)	<u>A failure by the court to perform 1 or both of the duties in <b>sections 9M and 9N</b> does not affect the validity of, and is not in itself grounds for an appeal against,—</u>	
	(a) <u>the sentence for the offending; or</u>	
	(b) <u>a sentence imposed on the offender later for any other offending.</u>	15
(2)	<u>A failure by the court to perform 1 or both of the duties in <b>sections 9M and 9N</b> does not limit the court’s duty to comply with <b>section 9K</b>.</u>	
<b><u>9F</u></b>	<b><u>Reductions for all mitigating factors personal to offender</u></b>	
	<i>Sentence to which general rule in section applies</i>	
(1)	<del>The general rule in <b>subsection (2)</b> applies if the court is considering whether to reduce a sentence of imprisonment for offending under mitigating factors taken into account by the court.</del>	20
	<i>General rule: reductions must not exceed 40% of sentence</i>	
(2)	<del>Reductions to the sentence under all mitigating factors personal to the offender taken into account under section 9(2) or (4)(a) (all <b>personal factors</b>) must not exceed 40% of the sentence.</del>	25
	<b><u>Example — reductions subject to 40% cap</u></b>	
	A reduction —	
	• <del>under the mitigating factor taken into account under section 9(2)(b) (the guilty plea factor); and so</del>	30
	• <del>also subject to <b>section 9C</b> (sliding scale, etc).</del>	
	<i>Duty if court would have made sentence reductions that exceed cap</i>	
(3)	<del>If, but for the application of that general rule, the court would have made total reductions under all personal factors that exceed 40% of the sentence, the court must state in the sentencing notes, with reasons, the reductions that it would have made.</del>	35

*~~Exception: duty to exceed cap to avoid manifestly unjust sentence~~*

- (4) ~~However, if the application of that general rule would result in a sentence that is manifestly unjust, the court must make reductions to the sentence under all personal factors that exceed 40% of the sentence only to the extent necessary to avoid that manifestly unjust sentence.~~

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*Sentence of imprisonment reduced under all applicable personal mitigating factors: 40% cap***9O General rule: total reductions must not exceed 40% of sentence**

- (1) If a sentence of imprisonment for offending of any kind is reduced under 1 or more personal mitigating factors, total reductions under all those personal mitigating factors must not exceed 40% of the sentence.
- (2) This section is subject to **sections 9P and 9R.**
- (3) This section does not apply to the mitigating factor that the offender assisted the authorities to maintain the law in respect of an offence.

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**Example**

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*Assisting authorities to maintain law in respect of offence*

The offender assisted the authorities in relation to the prevention, detection, investigation, prosecution, or punishment of an offence.

- (4) However, for the purposes of the 40% cap in this section, total reductions to the sentence under 1 or more personal mitigating factors—
- (a) include a youth mitigating factor reduction to it only if one is available under **sections 9B to 9EA:**
- (b) include a guilty plea mitigating factor reduction to it only to the extent that one is available under **sections 9F to 9J:**
- (c) include a remorse mitigating factor reduction to it only if one is available under **sections 9K to 9NA.**

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**9P Exception: duty to avoid sentence being manifestly unjust**

If the application of the general rule in **section 9O** would result in a sentence that is manifestly unjust, the court must make total reductions to the sentence under all personal mitigating factors that exceed 40% of the sentence to the extent needed to avoid the sentence being manifestly unjust.

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**9Q Duty to state, with reasons, total reductions court would have made**

If, but for the application of the general rule in **section 9O**, the court would have made total reductions under all personal mitigating factors that exceed 40% of the sentence, the court must state, with reasons, the reductions that it would have made.

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*Sentence reductions: general exceptions***9G9R Other exceptions to section 9B, 9C, 9E, or 9F Discharge, etc, or minimum, or mandatory, sentence or order****Section 9B, 9C, 9E, or 9F 9B, 9G, 9K, or 9O** does not apply—

- (a) if the court considers that the offending would be more appropriately dealt with by—
- (i) discharging the offender without conviction under section 106; or
  - (ii) convicting and discharging the offender under section 108; or
  - (iii) convicting the offender and ordering the offender, under section 110, to come up for sentence if called on; or
- (b) to the extent that applying that section would be inconsistent with legislation that requires any minimum, or mandatory, sentence to be imposed, or order to be made, for the offending.

*Limit on imprisonment of person under 18 years*

- 8 Section 18 replaced (Limit on imprisonment of person under 18 years)** 15  
Replace section 18 with:

**18 Limit on imprisonment of person under 18 years***Offender under age of 18 years when they committed particular offence*

- (1) The general rule in **subsection (2)** applies to an offender who, at the time of the commission of an offence, was under the age of 18 years. 20

*General rule: no sentence of imprisonment in respect of offence*

- (2) No court may impose a sentence of imprisonment on the offender in respect of the offence.

*Exception: particular offence is specified serious offence*

- (3) However, that general rule does not apply if the offence is— 25
- (a) a category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; or
  - (b) a category 4 offence.

*Exception: offender is already serving sentence of imprisonment*

- (4) However, that general rule does not apply if the offender is already serving a sentence of imprisonment for any other offence that they committed, in whole or in part, before, with, or after; the offence mentioned in **subsection (1)**. 30

*Permitted combinations of sentences***9 Section 19 amended (Permitted combinations of sentences)**

Replace section 19(1) with:

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*Application*

- (1) This section applies only if the court is considering imposing a combination of sentences of different types, and imposing the combination—
- (a) for 1 or more offences; and
  - (b) on an offender who is not serving a sentence of imprisonment; and
  - (c) on a single occasion.

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*Combination may be imposed only if permitted by this section*

- (1A) The combination may be imposed only if it is permitted by this section.

*Permitted combinations of sentences**Aggravating and mitigating factors*

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**9A Section 31 amended (General requirement to give reasons)**

In section 31(4), after “section 9”, insert “or 9A”.

*Arrest without warrant if home detention residence  
no longer available or suitable*

**10 New section 80GA inserted (Arrest without warrant if home detention residence no longer available or suitable)**

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After section 80G, insert:

**80GA Arrest without warrant if home detention residence no longer available or suitable***Power to arrest without warrant*

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- (1) Any constable or probation officer may arrest, without warrant, an offender if the constable or officer believes on reasonable grounds that—
- (a) the offender’s home detention residence is no longer available or suitable because of a change in circumstances; and
  - (b) a suitable alternative residence has not been decided under section 80FA(1); and
  - (c) a suitable provisional home detention residence has not been approved under section 80FA(2) or (3)(a); and
  - (d) **subsection (2), (3), or (4)** applies to the offender.

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*Offenders to whom section applies*

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- (2) This subsection applies to the offender if—
- (a) an application for an order under section 80F(4) has been made in respect of the offender; and
  - (b) it is not practicable to obtain promptly a warrant to arrest the offender under section 72(2B) (*see* section 80F(6)) or 80F(4A); and

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- (c) a risk to any person's safety exists because of the offender remaining at, leaving, or returning to the offender's home detention residence that is no longer available or suitable because of a change in circumstances.
- (3) This subsection applies to the offender if—
- (a) an application for an order under section 80F(4) has not been made in respect of the offender; and 5
- (b) it is not practicable for a probation officer to make promptly an application of that kind; and
- (c) a risk to any person's safety exists because of the offender remaining at, leaving, or returning to the offender's home detention residence that is no longer available or suitable because of a change in circumstances. 10
- (4) This subsection applies to the offender if—
- (a) neither **subsection (2)** nor **subsection (3)** applies to the offender; and
- (b) a risk to any person's safety exists because of the offender remaining at, leaving, or returning to the offender's home detention residence that is no longer available or suitable because of a change in circumstances. 15
- Offender to be brought before court, which may bail or remand in custody*
- (5) An offender arrested under this section must be brought as soon as possible before the court, which may under section 80F(4A)(b) (if it applies) or this subsection (if section 80F(4A)(b) does not apply) bail the offender, or remand them in custody, until whichever of the following occurs first: 20
- (a) an application for an order under section 80F(4) in respect of the offender has been made and determined:
- (b) a suitable alternative residence is decided under section 80FA(1):
- (c) a suitable provisional home detention residence is approved under section 80FA(2) or (3)(a). 25
- Offender may be released as soon as possible if suitable residence available*
- (5A) Despite **subsection (5)**, an offender arrested under this section need not be detained in order to be brought as soon as possible before the court, and may instead be released as soon as possible, if— 30
- (a) a suitable residence is decided under section 80FA(1); or
- (b) a suitable provisional home detention residence is approved under section 80FA(2) or (3)(a).
- Meaning of application for order under section 80F(4)*
- (6) ~~An~~ ~~In~~ this section, an **application for an order under section 80F(4)**, ~~in this section,~~ means an application— 35
- (a) made under section 80F(1) by the offender or a probation officer; and

- (b) based on grounds that are, or include, the grounds stated in section 80F(1)(c) (namely, that the home detention residence is no longer available or suitable because of a change in circumstances); and
- (c) on which the court may, if satisfied that the grounds on which it is based have been established, make an order under section 80F(4).

5

*Arrest of offender failing to attend judicial monitoring hearing*

**11 New section 80ZLA inserted (Arrest of offender failing to attend judicial monitoring hearing)**

After section 80ZL, insert:

**80ZLA Arrest of offender failing to attend judicial monitoring hearing**

10

The Judge may issue a warrant to arrest an offender and bring them before the Judge if the Judge is satisfied that—

- (a) the Judge made an order under section 80ZK that the offender attend before the Judge; and
- (b) the order has been given to the offender, as required by section 80ZL(1); and
- (c) the order given to the offender was accompanied by a notice setting out the time and place of the attendance, as required by section 80ZL(2); and
- (b) the offender has failed to attend at that time and place.

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*Further offences (offences committed on bail, in custody, or on parole)*

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**12 Section 84 amended (Guidance on use of cumulative and concurrent sentences of imprisonment)**

- (1) Before section 84(1), insert:

*Sentencing for all offences for which offender is being sentenced*

- (2) Replace section 84(3) with:

25

*Definition of further offence for purposes of this section*

- (3) In this section, a **further offence**, for an offender, means an offence committed while the offender was—

- (a) on bail; or
- (b) in custody under a court direction, a court order, or a sentence; or
- (c) released on parole.

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*Sentencing for offences that are, or include, further offences*

- (4) If the offences for which an offender is being sentenced are, or include, further offences, then—

- (a) subsections (1) and (2) apply to all the offences for which the offender is being sentenced; and
- (b) **subsection (5)** applies to the further offences for which an offender is being sentenced.
- (5) It is generally appropriate for the further offences for which an offender is being sentenced to be cumulative on the sentences for the offences for which the offender is being, or has been, sentenced that are not further offences. 5
- Considerations in determining if offences are connected series of offences*
- (6) In determining for the purpose of this section whether 2 or more offences (whether further offences, or offences that are not further offences) committed by 1 offender are a connected series of offences, the court may consider— 10
- (a) the time at which they occurred; or
- (b) the overall nature of the offending; or
- (c) any other relationship between the offences that the court considers relevant. 15

*Protection orders*

**13 Section 106 amended (Discharge without conviction)**

After section 106(2), insert:

- (2A) A court discharging an offender under this section may make a protection order under section 123B. 20

**14 Section 123B amended (Protection order)**

Replace section 123B(1)(a) with:

- (a) an offender is convicted of, or is under section 106 discharged without conviction for, a family violence offence; and

**Examples—~~convicted of family violence offence~~** 25

*Convicted of family violence offence*

The offender is convicted of a family violence offence and is discharged, under section 108.

The offender is convicted of a family violence offence and is ordered to appear for sentence if called on, under section 110. 30

*Forfeiture of weapons*

**15 New section 142R inserted (Forfeiture of weapons)**

After section 142Q, insert:

*Forfeiture of weapons***142R Forfeiture of weapons**

- (1) This section applies to a weapon that the court is satisfied that an offender used in committing, or in facilitating the commission of, an offence.
- (2) The court may order that a weapon to which this section applies— 5
- (a) is forfeited to the Crown; or
- (b) must be destroyed, or otherwise disposed of, as the court directs.
- (3) This section does not affect duties or powers of the court, or any person, under any other law, about the forfeiture, destruction, or other disposal of any weapon, or any other thing of any kind, used in committing, or in facilitating the commission of, an offence. 10

*Transitional, savings, and related provisions***16 Schedule 1AA amended**

In Schedule 1AA,—

- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and 15
- (b) make all necessary consequential amendments.

**Part 2****Amendment to Family Court Rules 2002****17 Principal rules**

This Part amends the Family Court Rules 2002. 20

*Protection orders***18 Rule 431B amended (Information requested by sentencing court for purposes of section 123B of Sentencing Act 2002)**

In rule 431B(1)(a), after “convicts an offender of”, insert “, or under section 106 of the Sentencing Act 2002 discharges an offender without conviction for,”. 25

**Schedule**  
**New Part 6 inserted into Schedule 1AA of Sentencing Act 2002**

s 16

<b>Part 6</b>		
<b>Provisions relating to Sentencing (Reform) Amendment Act 2024</b>		<b>5</b>
<b>21</b>	<b>Definitions for this Part</b> In this Part, unless the context otherwise requires,— <b>amendment Act</b> means the Sentencing (Reform) Amendment Act 2024 <b>commencement</b> means the amendment Act's commencement.	
<b>22</b>	<b>Application of amendments</b> <i>Amendments apply only to offences committed, in whole, after commencement</i> (1) An amendment made to this Act by the amendment Act applies only to an offence committed, in whole, on or after commencement. <i>Other offences remain subject to Act as in force pre-commencement</i> (2) An offence committed, in whole or in part, before commencement remains subject to this Act as in force before commencement. <i>Exception (application of new section 18)</i> (3) <u>However, this clause is subject to <b>clause 23</b>.</u>	<b>10</b>
<b>23</b>	<b>Application of new section 18</b> (1) <b>Section 18</b> (as inserted by the amendment Act) applies only in sentencing an offender for an offence committed, in whole, on or after commencement. (2) However, in applying <b>subclause (1)</b> ,— (a) the other offence mentioned in <b>section 18(4)</b> (as so inserted) may be one committed, in whole or in part, before, on, or after commencement; and (b) the sentence of imprisonment mentioned in <b>section 18(4)</b> (as so inserted) imposed for that other offence may be one imposed before, on, or after commencement.	<b>15</b>
<b>24</b>	<b><u>SValidity of sentence imposed after commencement not <del>invalid-affected</del>, and grounds for appeal against it do not exist, just because it is subject to new law but wrongly imposed under old law</u></b> (1) This clause applies to a sentence that is— (a) imposed after commencement; and	<b>20</b>          <b>25</b>          <b>30</b>

- (b) subject under this Part (*see* **clauses 22 and 23**) to an amendment made to this Act by the amendment Act; and
- (c) wrongly imposed under this Act as in force before commencement, rather than under that amendment.
- (2) The validity of the sentence is not ~~invalid-affected~~, and grounds for an appeal against it do not exist, just because it was wrongly imposed under this Act as in force before commencement. 5

Compare: 2011 No 81 s 401

### Legislative history

16 September 2024  
24 September 2024

Introduction (Bill 77-1)  
First reading and referral to Justice Committee