

Electronic Monitoring of Offenders Legislation Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Electronic Monitoring of Offenders Legislation Bill and recommends that it be passed with the amendments shown.

Introduction

This bill, as introduced, seeks to amend the Parole Act 2002 and the Sentencing Act 2002 to enable the monitoring of offenders released from a sentence of two years or less and of offenders sentenced to intensive supervision.

Consistency with New Zealand Bill of Rights Act 1990

The Attorney-General has a statutory responsibility under the New Zealand Bill of Rights Act 1990 (NZBORA) to bring any provision of a bill that appears inconsistent with the rights and freedoms contained in the NZBORA to the House's attention.

This bill would effectively restate and facilitate the existing ability to impose electronic monitoring as a condition of an extended supervision order (ESO) on released offenders.

The Attorney-General believes the bill's interaction with the ESO regime place unjustifiable limitations on offenders' rights and protections under the NZBORA. The rights affected are those of freedom of movement, against unreasonable search and seizure, and against double jeopardy. This is consistent with other opinions the Attorney-General has issued about legislation relating to ESOs in the past.

Recent changes to Parliament's Standing Orders require select committees to consider the Attorney-General's opinion. As part of our consideration of the bill, we asked officials from the Ministry of Justice's Bill of Rights Vetting Team to give evidence on behalf of the Attorney-General.

After hearing the reasoning behind the Attorney-General's opinion, we believe that the limitations this bill places on the rights of potentially dangerous offenders are justified when assessed against protecting the safety of the public.

We also believe the public has a right to the degree of safety that electronic monitoring of an offender subject to an ESO would provide and that this is in keeping with the public's rights to life and security.

In our view, it is simply not logical to allow offenders who pose a high risk of reoffending to be released unsupervised into the community, without the protections provided by the ESO regime.

We would, therefore, prefer an approach that more effectively balances whether the limitation of the rights of high-risk offenders by ESOs are justifiable under the NZBORA against the rights of the public to protection from the risk such offenders pose if released unsupervised into the community. We consider that the bill achieves this.

Several submitters also noted that electronic monitoring in itself is not a complete solution to ensure public safety, but it contributes to a suite of measures that contribute to public safety.

Monitoring of offenders temporarily released or removed from prison

We recommend inserting new Part 1AA, setting out amendments to the Corrections Act 2004. New clauses 2B and 2C would amend sections 63 and 64 respectively to clarify that offenders' conditions of temporary release from custody or removal from prison could include electronic monitoring.

Prisoners have for many years been temporarily released or granted escorted absences from prison for several recognised purposes, such as funerals, medical treatment, and work experience.

The amendments would clarify that such temporary release and removal situations may include a requirement that a prisoner submit to electronic monitoring for the duration of their temporary release or removal from prison.

We also recommend a new clause 2D, inserting new section 64A, which would set out the purposes of electronic monitoring, conditions for its use, and limits on the use of the information obtained. This section would be consistent with similar provisions in the Sentencing and Parole Acts.

Monitoring prisoners located outside the secure perimeter of a prison

We recommend a new clause 2E, inserting new section 65A to provide that prisoners who are permitted to reside or engage in work outside the secure perimeter of the prison, such as those residing in external self-care units and those employed on work parties, may be required to submit to the electronic monitoring of their whereabouts.

This would provide explicit authority for GPS monitoring of prisoners outside the perimeter and give an additional assurance that the prisoners are where they are supposed to be. Like new section 64A, it would also set out the purposes of electronic monitoring and limit the use of the information obtained.

Appendix

Committee process

The Electronic Monitoring of Offenders Legislation Bill was referred to the committee on 4 June 2015. The closing date for submissions was 30 July 2015. We received and considered eight submissions from interested groups and individuals. We heard two submissions in Wellington.

We heard evidence from the Ministry of Justice, who represented the Attorney-General on the Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electronic Monitoring of Offenders Legislation Bill.

We received advice from the Department of Corrections.

Committee membership

Kanwaljit Singh Bakshi (Chairperson)

Todd Barclay

Mahesh Bindra

David Clendon

Kelvin Davis

Hon Phil Goff

Ian McKelvie

Lindsay Tisch

Jonathan Young

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Peseta Sam Lotu-liga

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Electronic Monitoring of Offenders Legislation Act **2015**.

2 Commencement

This Act comes into force on the day that is 3 months after the date on which it receives the Royal assent. 5

Part 1AA Amendments to Corrections Act 2004

2A Principal Act

This **Part** amends the Corrections Act 2004 (the **principal Act**).

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2B Section 63 amended (Temporary release from custody)

After section 63(1), insert:

- (1A) The conditions that may be imposed by the chief executive under subsection (1) include, without limitation, a condition requiring the person who is temporarily released from custody to submit to the electronic monitoring of compliance with any temporary release conditions that relate to his or her whereabouts.

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2C Section 64 amended (Temporary removal from prison)

In section 64, insert as **subsection (2)**:

- (2) The conditions that may be imposed by the chief executive under **subsection (1)(c)** include, without limitation, a condition requiring the person who is to be removed to submit to the electronic monitoring of compliance with any temporary removal conditions that relate to his or her whereabouts.

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2D New section 64A inserted (Electronic monitoring for persons temporarily released from custody or temporarily removed from prison)

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After section 64, insert:

64A Electronic monitoring for persons temporarily released from custody or temporarily removed from prison

- (1) This section applies to electronic monitoring imposed as a condition under section 63 or 64.
- (2) The purposes of an electronic monitoring condition are—
- (a) to deter the person who is subject to electronic monitoring from breaching a condition that relates to his or her whereabouts; and
 - (b) to monitor compliance with a condition that relates to his or her whereabouts.
- (3) Information about a person that is obtained through electronic monitoring may be used both for the purposes specified in **subsection (2)** and for the following purposes:
- (a) to verify compliance with conditions that relate to the whereabouts of the person;
 - (b) to detect non-compliance with conditions that relate to the whereabouts of the person and the commission of offences;
 - (c) to provide evidence of non-compliance with conditions that relate to the whereabouts of the person and of the commission of offences;
 - (d) to verify that the person who is subject to the electronic monitoring condition has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.

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- (4) A person who is subject to an electronic monitoring condition may be required to have electronic monitoring equipment attached to his or her body.
- (5) Where there is evidence indicating that the person who is subject to the electronic monitoring condition may have tampered with or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately, the person is deemed to be unlawfully at large unless there is evidence that he or she is not unlawfully at large.

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2E New section 65A and cross-heading inserted (Electronic monitoring of prisoners employed in work or accommodated outside secure perimeter)

After section 65, insert:

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Electronic monitoring of prisoners employed in work or accommodated outside secure perimeter

65A Electronic monitoring of prisoners employed in work or accommodated outside secure perimeter

- (1) This section applies to a prisoner who—
- (a) is employed in work directed or provided by the prison manager under section 66 that is outside the secure perimeter, whether or not it is also outside the prison; or
- (b) is accommodated in a building that is outside the secure perimeter but still within the prison.
- (2) However, this section does not apply to a prisoner who has been temporarily released from custody or temporarily removed from prison under section 62.
- (3) The prison manager may require the prisoner to submit to electronic monitoring of his or her whereabouts while the prisoner is outside the secure perimeter (in this section, an **electronic monitoring condition**).
- (4) The purposes of an electronic monitoring condition are—
- (a) to deter the prisoner from attempting to escape from lawful custody; and
- (b) to help locate and arrest a prisoner who escapes from lawful custody; and
- (c) to deter and detect the commission of offences against section 128(1)(e).
- (5) Information about a prisoner that is obtained through an electronic monitoring condition may be used both for the purposes in **subsection (4)** and for the following purposes:
- (a) to verify that the prisoner has not escaped from lawful custody;
- (b) to detect that the prisoner has escaped from lawful custody, and the commission of offences;
- (c) to provide evidence of escape from lawful custody, and the commission of offences;

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- (d) to verify that the prisoner has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately.
- (6) A prisoner who is subject to an electronic monitoring condition may be required to have electronic monitoring equipment attached to his or her body. 5
- (7) Where there is evidence indicating that the prisoner who is subject to the electronic monitoring condition may have tampered with or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately, the prisoner is deemed to be unlawfully at large unless there is evidence that he or she is not unlawfully at large. 10

Part 1

Amendments to Parole Act 2002

3 Principal Act

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

4 Section 15 amended (Special conditions) 15

- (1) In section 15(3), replace “a special condition” with “special conditions”.
- (2) Replace section 15(3)(f) with:
- (f) conditions requiring the offender to submit to the electronic monitoring of compliance with any release conditions or conditions of an extended supervision order, imposed under paragraph (ab) or (e), that relate to the whereabouts of the offender: 20

5 Section 15A amended (Electronic monitoring)

Replace section 15A(3) with:

- (3) An offender who is subject to an electronic monitoring condition—
- (a) may be required to have electronic monitoring equipment attached to his or her body; and 25
- (b) must comply with written instructions from a probation officer that are reasonably necessary for the effective administration of the electronic monitoring (for example, an instruction to regularly charge the equipment); and 30
- (c) breaches the electronic monitoring condition if he or she does not comply with those written instructions.

Part 2

Amendments to Sentencing Act 2002

6 Principal Act

This **Part** amends the Sentencing Act 2002 (the **principal Act**).

6A New section 4A inserted (Transitional, savings, and related provisions) 5

After section 4, insert:

4A Transitional, savings, and related provisions

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

7 Section 26 amended (Pre-sentence reports) 10

After section 26(2)(h), insert:

- (i) in the case of a proposed sentence of intensive supervision or possible release conditions for a proposed sentence of imprisonment for 24 months or less, the opinion of the chief executive of the Department of Corrections as to whether— 15
 - (i) a condition that prohibits the offender from entering or remaining in specified places or areas at specified times or at all times (a **whereabouts condition** in this paragraph) would facilitate or promote the objective of reducing the risk of the offender reoffending while subject to the sentence or release conditions; and 20
 - (ii) a whereabouts condition would facilitate or promote the objective of rehabilitating and reintegrating the offender; and
 - (iii) ~~either or both of those objectives would warrant a condition requiring the offender to submit to electronic monitoring of his or her~~ a further condition requiring the offender to submit to electronic monitoring of his or her compliance with a whereabouts condition is warranted, having regard to the likelihood of non-compliance with the whereabouts condition. 25

8 ~~New section 26AB inserted (Pre-sentence reports when considering electronic monitoring condition as release condition for sentence of imprisonment for 24 months or less or as condition of sentence of intensive supervision)~~ 30

After section 26A, insert:

26AB Pre-sentence reports when considering electronic monitoring condition as release condition for sentence of imprisonment for 24 months or less or as condition of sentence of intensive supervision

- (1) The court may direct a probation officer to prepare a pre-sentence report for the court in accordance with **subsection (2)** if the court is considering imposing electronic monitoring as—
 - (a) a release condition for a sentence of imprisonment for 24 months or less;
 - (b) a condition of a sentence of intensive supervision.
- (2) The pre-sentence report must include the opinion of the chief executive of the Department of Corrections as to whether—
 - (a) a condition that prohibits the offender from entering or remaining in specified places or areas at specified times or at all times (a **whereabouts condition** in this subsection) would facilitate or promote the objective of reducing the risk of the offender reoffending; and
 - (b) a whereabouts condition would facilitate or promote the objective of rehabilitating and reintegrating the offender; and
 - (c) either or both of those objectives would warrant a condition requiring the offender to submit to electronic monitoring of his or her compliance with the whereabouts condition.
- (3) A pre-sentence report under this section is in addition to other pre-sentence reports required under this Act.

9 Section 54I amended (Other special conditions)

- (1) After section 54I(3)(e), insert:
 - (f) a condition that the offender must, when required to do so by a probation officer, submit to the electronic monitoring of compliance with any conditions of his or her sentence imposed under paragraph (e) that prohibit the offender from entering or remaining in specified places or areas at specified times or at all times:
- (2) In section 54I(4)(b), delete “; or”.
- (3) Repeal section 54I(4)(c).

10 New section 54IA inserted (Electronic monitoring)

After section 54I, insert:

54IA Electronic monitoring

- (1) This section applies to electronic monitoring imposed as a condition under **section 54I(3)(f)**.
- (2) The purposes of an electronic monitoring condition are—

- (a) to deter the offender from breaching a whereabouts condition imposed under section 54I(3)(e) that prohibits the offender from entering or remaining in specified places or areas at specified times or at all times; and
- (b) to monitor compliance with a whereabouts condition imposed under section 54I(3)(e) that prohibits the offender from entering or remaining in specified places or areas at specified times or at all times. 5
- (3) The court must not impose an electronic monitoring condition unless it has had regard to the opinion of the chief executive of the Department of Corrections in a pre-sentence report provided under section 26 or **26AB**.
- (4) Information about an offender that is obtained through an electronic monitoring condition may be used both for the purposes referred to in **subsection (1)(2)** and for the following purposes: 10
- (a) to verify compliance with conditions imposed under section 54I(3)(e) that prohibit the offender from entering or remaining in specified places or areas at specified times or at all times, a whereabouts condition: 15
- (b) to detect non-compliance with conditions imposed under section 54I(3)(e) that prohibit the offender from entering or remaining in specified places or areas at specified times or at all times, a whereabouts condition and the commission of offences:
- (c) to provide evidence of non-compliance with any conditions imposed under section 54I(3)(e) that prohibit the offender from entering or remaining in specified places or areas at specified times or at all times, a whereabouts condition and the commission of offences: 20
- (d) to verify that the offender has not tampered or otherwise interfered with the ability of the electronic monitoring equipment to operate effectively and accurately. 25
- (5) An offender who is subject to an electronic monitoring condition—
- (a) may be required to have electronic monitoring equipment attached to his or her body; and
- (b) must comply with written instructions from a probation officer that are reasonably necessary for the effective administration of the electronic monitoring (for example, an instruction to regularly charge the equipment); and 30
- (c) fails to comply with the electronic monitoring condition if he or she does not comply with those written instructions. 35
- (6) The annual report of the Department of Corrections must include the following information about the use of electronic monitoring in the year reported on:
- (a) the number of offenders who were at any time subject to an electronic monitoring condition:

- (b) the average number of offenders who were subject to an electronic monitoring condition and the average duration of the condition:
- (c) the percentage of offenders who, while subject to an electronic condition, were—
- (i) convicted for failing to comply with the condition; or
 - (ii) convicted of any other offence:
- (d) a description of the processes and systems that relate to electronic monitoring and that were in place during the year reported on.
- (7) In this section, **whereabouts condition** means a condition imposed under **section 54I(3)(e)** that prohibits an offender from entering or remaining in specified places or areas at specified times or at all times.
- 11 Section 80E amended (Electronic monitoring)**
- In section 80E(1), after “electronic monitoring condition”, insert “imposed as a condition under section 80C(2)(d)”.
- 12 Section 93 amended (Imposition of conditions on release of offender sentenced to imprisonment for short term)**
- (1) In section 93(2B), replace the definition of **special conditions** with:
- special conditions** includes, without limitation, conditions of a kind described in section 15(3) of the Parole Act 2002, other than a residential restriction condition referred to in section 15(3)(ab) of that Act
- (2) After section 93(3), insert:
- (3A) ~~The court must not impose an electronic monitoring condition under **section 54I(3)(f)** described in **section 15(3)(f)** of the Parole Act 2002 unless it has had regard to the opinion of the chief executive of the Department of Corrections in a pre-sentence report provided under section 26 of **26AB**.~~
- 13 ~~Transitional provision regarding variation or substitution of special conditions imposed before commencement of this Act~~**
- (1) ~~This section applies to sentences imposed before the commencement of this Act.~~
- (2) ~~To avoid doubt, an electronic monitoring condition may be imposed or substituted under section 54K or 94 of the principal Act.~~
- 13 New Schedule 1AA inserted**
- Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

Schedule
New Schedule 1AA inserted

s 13

Schedule 1AA
Transitional, savings, and related provisions

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s 4A

Part 1
Provisions relating to Part 2 of the Electronic Monitoring of
Offenders Legislation Act 2015

- 1 Interpretation** 10
- In this Part, commencement date means the date on which **Part 2 of the Electronic Monitoring of Offenders Legislation Act 2015** comes into force.
- 2 Varying special conditions for sentence of intensive supervision imposed before commencement date** 15
- (1) This clause applies to a sentence of intensive supervision imposed before the commencement date.
- (2) An electronic monitoring condition may be imposed in the circumstances specified in **subclause (3)** even though such a condition—
- (a) was not available as a special condition before the commencement date; and 20
- (b) could not have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence of intensive supervision was imposed.
- (3) The circumstances are as follows: 25
- (a) if the court imposes additional special conditions under section 54K(3)(a):
- (b) if the court cancels a sentence and substitutes a sentence of intensive supervision (that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed). 30
- 3 Varying release conditions for sentence of imprisonment of not more than 24 months imposed before commencement date**
- (1) This clause applies to a sentence of imprisonment of not more than 24 months imposed before the commencement date. 35

- (2) An electronic monitoring condition may be imposed in the circumstances specified in **subclause (3)** even though such a condition—
- (a) was not available before the commencement date; and
 - (b) could not have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence of imprisonment of not more than 24 months was imposed. 5
- (3) The circumstances are as follows:
- (a) if the court imposes an additional release condition under section 94(3)(a):
 - (b) if the court discharges a release condition and substitutes another release condition under section 94(3)(b). 10

Legislative history

12 May 2015
4 June 2015

Introduction (Bill 18–1)
First reading and referral to Law and Order Committee