



Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill

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Report of the Social Services and Community Committee

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Contents

Recommendation.....	2
About the bill as introduced.....	2
Reasons for recommending that the bill not proceed	3
New Zealand National Party minority view	5
Appendix.....	8

Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill

Recommendation

The Social Services and Community Committee has examined the Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill and recommends, by majority, that this bill not proceed.

About the bill as introduced

The bill would amend the Social Security Act 1964 by inserting a new Part 6. The new provisions would apply to offenders who receive a community-based sentence and who are receiving a benefit. There are four types of community-based sentence. They are:

- community work, which requires an offender to do a specified number of hours of unpaid work in the community for non-profit organisations
- supervision, which requires an offender to take specified rehabilitative programmes to address the cause of their offending
- community detention, which requires an offender to remain at an approved residence during certain time periods
- intensive supervision, which requires an offender to take rehabilitative programmes to address the causes of their offending and regularly report to a probation officer.

The bill would enable the Ministry of Social Development to withhold all, or part, of an offender's benefit if they repeatedly failed to comply with their sentence.

Under the bill as introduced, the Department of Corrections could not request that a benefit be withheld until it had exhausted all its options, other than prosecution, in attempting to get the offender to comply with their sentence. It would have to send two written warnings to the offender, two weeks apart, stating that their benefit may be stopped if they do not comply. If the offender did not start complying with their sentence within 14 days of receiving the second warning letter, Corrections could instruct the ministry to withhold all or part of their benefit.

The bill as introduced provides that the benefit could not be cut by more than 50 percent if the offender was caring for a dependent child.

The bill as introduced would not apply to those receiving New Zealand Superannuation or a veterans' pension.

Reasons for recommending that the bill not proceed

Non-compliance with community-based sentences

We were advised that, on average, 27,078 offenders are serving a community-based sentence. Over half of these sentences are community work. On average, about 5 percent of offenders serving a community-based sentence are prosecuted each month for a breach of their sentence conditions.

We sought information about the number of people who do not comply with community-based sentences, and how compliance rates compare between beneficiaries and non-beneficiaries. We focused on community-work sentences, following advice that benefit sanctions may be less effective for encouraging compliance with other sentences. In 2015, 33,120 people were required to complete a sentence of community work under section 58 of the Sentencing Act 2002. Of these, 5 percent (1,586 people) did not comply with their sentence.¹ Compliance rates were in fact higher for those receiving a benefit, at 77 percent, compared with 67 percent for those not receiving a benefit.

This bill focuses only on beneficiaries who fail to comply with community-based sentences. Given the small number of people on a benefit who breach a community-work sentence, the majority of us believe that this bill does not address an area of significant concern.

Potential to increase crime

Some submitters suggested that, rather than decreasing crime, benefit sanctions could increase the risk of reoffending. We were told that this could occur by creating circumstances where offenders could be marginalised and alienated from society and their support systems.

One submitter had asked offenders what they would do if their benefit was reduced. The offenders said that their confidence in the criminal justice and social welfare system would deteriorate considerably, and some of them would engage in unlawful activity to feed themselves and their children.

Effect on children and families

The majority of us are concerned that this bill could penalise children and families for the actions of a caregiver. More than half of the written submissions were concerned about the effect that reducing an offender's benefit payment could have on children and their wellbeing.

We heard from a submitter that cutting a sole-parent benefit by half would reduce a family's weekly income to about half the average weekly rent and less than the average weekly food bill. We were told that many families who rely on benefit payments already struggle to cover the basic costs of living. Reducing benefit payments could leave them unable to provide a healthy home, nutritious food, and educational opportunities for their children.

¹ The Department of Corrections calculates breach rates as court prosecution for non-compliance. Incidents of non-compliance that are not prosecuted will not be included in this figure.

Several submitters argued that the bill would contravene New Zealand's obligations under the United Nations Convention on the Rights of the Child. Articles 26 and 27 state that parties recognise:

- “for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law” (Article 26)
- “the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development” (Article 27).

We consider it important that families can support themselves and their children. The majority of us believe that preventing parents from adequately providing for their children could breach the rights of children.

We were advised that there is limited evidence about whether benefit sanctions encourage compliance with sentences. Therefore, the majority of us consider that the Ministry of Social Development should analyse the effect of current sanctions on children before a bill that imposes more sanctions is introduced.

Discrimination against beneficiaries

Submitters were concerned that the bill would discriminate against beneficiaries by punishing them differently from a non-beneficiary who committed the same offence. A person who does not receive a benefit and breaches a community sentence would not be subject to the same loss of income as a beneficiary. Several submitters asserted that the bill would breach human rights. Section 19 of the Bill of Rights Act 1990 affirms that everyone has the right to freedom from discrimination on the prohibited grounds in section 21 of the Human Rights Act 1993. Section 21(1)(k) of the Human Rights Act 1993 prohibits discrimination on the grounds of employment status.

We were advised that the Ministry of Justice provided advice to the Attorney-General about whether the bill was consistent with the Bill of Rights Act. The ministry found that the bill's objective to ensure compliance with community-based sentences was sufficiently important to justify some limitation on the right to freedom from discrimination. It concluded that the bill appeared to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

One submitter noted that a purpose of the bill is to enable the Department of Corrections to manage offenders without burdening the court system. Given this purpose, several submitters queried why the bill has no comparable financial penalties for wage earners who fail to comply with their community-based sentence.

Further, the majority of us are concerned that the welfare system is being used to punish offenders for breaches in the justice system. Over a third of submitters maintained that it is the courts' role to determine any breach of sentences and the appropriate penalty.

Almost half of the written submissions argued that the bill interferes with the right to a social security safety net, or maintained that the Government has a duty to provide food and shelter to everyone. The majority of us agree that the bill undermines the idea of collective social security.

The majority of us are concerned about beneficiaries affected by this bill who have a significant impairment, such as a brain injury, mental illness, or low literacy. We heard from a submitter that among younger offenders on community-based sentences:

- about 40 percent have foetal alcohol syndrome
- about 20 percent have head injuries
- about 80 percent are drug or alcohol dependent
- about 40 percent have mental health illnesses.

The majority of us consider that introducing financial sanctions for non-compliance risks further harm to this population. The majority of us do not believe that sending two written warnings to people who may have limited literacy would encourage them to re-comply with their sentence.

Effect of the bill on Māori

Some submitters considered that the bill would discriminate based on ethnicity because it would disproportionately affect Māori. A submitter reported that Ministry of Social Development data from June 2016 noted that about 35 percent of beneficiaries are Māori. This was despite them comprising only about 15 percent of the population.² Several submitters were concerned that that this disparity means that the bill would more likely affect Māori than other ethnicities.

Several submitters noted that Māori experience bias in a criminal setting, which can be exacerbated when agencies are given discretionary powers. They cited two separate 2003 studies that demonstrated this. One study found that Māori had a greater risk of conviction than others of similar socio-economic backgrounds. The other study of cannabis users in Christchurch found that Māori cannabis users were arrested at a rate out of proportion to their actual offending.

The majority of us believe that this bill could disproportionately affect Māori. Rather than punishing Māori families further, we encourage developing sustainable solutions that address high rates of offending and the underlying causes of crime.

New Zealand National Party minority view

National members of the Social Services and Community Committee support this Member's bill in the name of National MP Brett Hudson. We believe it should proceed to the House and submit this minority view to outline our position.

The intent of this Member's bill was consistent with the previous National-led Government's approach to welfare reforms, in particular social obligations. This was based on the principle of holding beneficiaries who had breached their obligations and responsibilities to account. There were also obligations to ensure families had both access and opportunity to enrol their children into early childhood education, health checks and enrolment of children with a local PHO (Primary Health Organisation), and also opportunities to find employment or else

² This figure refers to New Zealand's total population that is Māori.

training for parents and caregivers. We believed that addressing issues of poverty and hardship would require a multi-systemic approach—that is, health, education, law and order, and so on. It would also require a shared approach of responsibility with parents and caregivers and the Government, along with community providers working together to achieve the better outcomes we aspire to for all our children in New Zealand.

This bill seeks to provide the Department of Corrections (the department) with an additional tool to assist in the management of persons who have not complied with their community-based sentence and who have not responded to existing measures, short of prosecution, designed to encourage compliance.

By offering an alternative management tool to the department, this bill also serves the purpose of not subjecting offenders to the stigma that would arise from further criminal prosecution.

Accountability with discretion

Under the bill as introduced, the department could not request that a benefit be withheld until it had exhausted all its options, other than prosecution, in attempting to get the offender to comply with their sentence:

- It would have to send two written warnings to the offender, two weeks apart, stating that their benefit may be stopped if they do not comply.
- If the offender did not start complying with their sentence within 14 days of receiving the second warning letter, the department could instruct the ministry to withhold all or part of their benefit.
- The bill as introduced provides that the benefit could not be cut by more than 50 percent if the offender was caring for a dependent child.
- The bill as introduced would not apply to those receiving New Zealand Superannuation or a veterans' pension.

Reasons for recommending that the bill proceed

We received advice around the numbers—on average, 27,078 offenders are serving a community-based sentence. Over half of these sentences are community work. On average, about 5 percent of offenders serving a community-based sentence are prosecuted each month for a breach of their sentence conditions.

We would argue that this would equate to around 1,600 breaches which would still be significant enough to hold those beneficiaries to account, but more importantly this was part of a suite of tools that could be used by the Government to ensure compliance with compassion. In certain cases, not all, those breaching their community sentence conditions are symptomatic of bad behaviour that has often come at the cost of their family's wellbeing.

Submitters' concerns have been addressed

Some submitters had concerns that this bill would contravene New Zealand's obligations under the United Nations Convention on the Rights of the Child, as well as the Human Rights Act 1993, which prohibits discrimination on the grounds of employment status. Official advice we received was that there was no breach of these conventions and many of the

concerns were anecdotal with very little evidence that discrimination would result from the implementation of this bill.

Appendix

Committee procedure

The Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill was referred to the Social Services Committee of the 51st Parliament on 10 August 2016. The closing date for submissions was 28 September 2016. The committee received and considered 71 submissions from interested groups and individuals. It heard oral evidence from 10 submitters.

The bill was reinstated with this committee in the current Parliament. We met between 29 November 2017 and 21 March 2018 to consider it.

Both committees received advice from the Ministry of Social Development and the Department of Corrections.

Committee members

Gareth Hughes (Chairperson)
Darroch Ball
Simeon Brown (until 21 March 2018)
Hon Judith Collins (from 21 March 2018)
Hon Kris Faafoi
Hon Alfred Ngaro
Greg O'Connor
Maureen Pugh (from 21 March 2018)
Priyanca Radhakrishnan
Hon Louise Upston
Hon Michael Woodhouse (until 21 March 2018)

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.