



Corrections Amendment Bill

35—1

Report of the Justice Committee

February 2019

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Raymond Huo
Chairperson

Corrections Amendment Bill

Recommendation

The Justice Committee has examined the Corrections Amendment Bill. The votes were tied, and we were unable to reach agreement on whether to recommend that the bill be passed.

About the bill as introduced

The bill seeks to amend the Corrections Act 2004 to reflect operational best practice in the corrections system, and to clarify some legal ambiguities. The bill as introduced proposes the following main changes.

- **Prisoners at risk of self-harm:** The bill would require prisoners to be assessed when they are admitted to prison to determine whether they are at risk of self-harm. It prescribes the procedures for managing the care of prisoners who have been assessed to be at risk of self-harm.
- **Use of Police jails:** The Act currently provides for the short-term detention of prisoners in Police jails when there is a shortage of accommodation at local prisons. The bill as introduced would allow for a Police jail to be temporarily declared part of an established prison. This would mean that the resources of the Department of Corrections, rather than the Police, would be used to manage the extra capacity provided by the jail.
- **Using imaging technology searches to detect contraband:** Corrections officers are currently permitted to conduct searches to detect contraband on prisoners, staff, and visitors. The bill would extend the type of searches that can be used to include X-ray imaging searches. Safeguards are included in the bill to protect the privacy of prisoners, visitors, and staff, such as making it an offence to copy, photograph, or share the image produced by an image search.
- **Cell sharing:** The bill would make it clear that prisoners can be housed in shared cells. It would require assessment of a prisoner's suitability for this type of accommodation before they were placed in a shared cell. The bill would also require shared cells to have ventilation and heating appropriate for the number of occupants, alarm buttons, and privacy screening of the toilet and shower.
- **Decisions relating to a child's placement:** The bill would give mothers in prison the right to appeal a decision to deny or end the placement of their children in prison with them. The bill sets out the statutory process for a review of the decision.
- **New disciplinary offences created:** The bill would make it a disciplinary offence for a prisoner to:
 - use a psychoactive substance (as defined by the Psychoactive Substances Act 2013) in a prison
 - tattoo themselves or another prisoner

- have contact with, or attempt to have contact with, someone in breach of any court order or direction. Currently, such contact would only be a disciplinary offence if it was offensive, threatening, abusive, or intimidating.

Proposed amendments

As a committee we have been unable to reach agreement on any recommendations to the House. However, this report covers the main amendments to the bill as introduced that Labour members of the committee would recommend.

Use of Police jails

As introduced, the bill would allow for a Police jail to be temporarily declared a Department of Corrections facility. The purpose of this provision is to provide the department with extra capacity.

We were advised that prisoners accommodated in Police jails could be transferred to the nearest prison during the day to ensure access to minimum entitlements, facilities, and programmes.

However, we understand that the department's current capacity is likely to be sufficient. Because of this, Labour members of the committee, on advice from officials, would recommend removing the provisions in the bill relating to Police jails being operated by the Department of Corrections by removing clauses 4(1), 7, 8, 15 and 28(1).

National Party members of the committee consider that, given New Zealand's geography, the flexibility of using Police cells for prisoners may be appropriate in specific circumstances, and that the ministerial approval provides an appropriate check.

Powers and functions of health centre managers

Health centre managers are responsible for the provision of health care and treatment to people in custody. Prisons have found it difficult to manage situations that arise in evenings and weekends when the health centre manager is not on site. The bill provides that a health centre manager could delegate their powers to a staff member who is a registered doctor or nurse.

Labour members would recommend including mental health professionals in the group of people to whom a health centre manager could delegate their powers. To give effect to this, Labour members would recommend amending clauses 6 and 14 (proposed new sections 19B(2), 19B(3), and 61G) to refer to "registered health professional" instead of "medical practitioner or nurse". The new term is already defined in the Act.

Prisoners at risk of self-harm

Labour members would recommend some amendments to support a more individualised approach to strip-searching prisoners who are at risk of self-harm.

Labour members would recommend amending clause 14 to add new section 61E(1)(c) in the Act, which would require an at-risk management plan to specify the situations when a prisoner must be strip-searched.

Labour members, on advice of officials, would also recommend amending clause 14, proposed new section 61H(1), to remove the ability of the prison manager to designate a confined area of the prison for the accommodation of at-risk prisoners as an at-risk area. The prison manager would retain the ability to designate cells as at-risk areas.

Clause 25 in the bill as introduced would require that a prisoner must undergo a strip search each time they enter their cell. Labour members would recommend amending proposed new section 98(7A) to require a strip search either when a prisoner is first placed in an at-risk cell, or on occasions set out in the prisoner's at-risk management plan.

Decisions relating to a child's placement

The bill would give mothers in prison the right to reconsideration of a decision to end or deny the placement of their child in prison with them. Labour members would recommend amending the bill to require the department to tell a mother:

- the reasons why an application to have a child placed in her custody was denied or why a placement has ended
- the process to have a decision reconsidered.

To give effect to this, Labour members would recommend inserting clause 17(1), new section 81A(5A).

Prisoners' understanding of information

Clause 9 of the bill as introduced would require prison managers to provide newly admitted prisoners with certain information.

Research indicates that prisoners tend to have lower literacy than the general population, and that many speak English as a second language.

We are aware of concern about prisoners not being able to fully comprehend the information given to them under the requirements of clause 9, proposed new section 42(1). Labour members would therefore recommend inserting, as new section 42(3), a requirement that prison managers must, as far as practicable, provide information and advice in a form and language that is accessible and appropriate to prisoners.

Labour members would also recommend inserting new section 42(1)(f), requiring information about the complaints system operating at the prison to be given to recently received prisoners. This is consistent with Rule 54 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Use of mechanical restraints during hospital visits

Clause 20, proposed section 87(5)(b), would allow the use of mechanical restraints for more than 24 hours at a time when it is necessary to secure a prisoner who had been temporarily removed to a hospital outside the prison.

Labour members would recommend amending proposed section 87(5)(b) to make it clear that the use of mechanical restraints would be to prevent the prisoner's escape or to maintain public safety.

Search powers

Clause 21 would allow prisons to use imaging technology to detect and deter the possession of contraband. It also gives the department the power to require people being scanned to remove outer clothing and accessories to facilitate the search. However, the bill as introduced would not allow this power to be used when undertaking a metal detector search.

Labour members would recommend amending clause 21 to allow the department to require people subject to any type of electronic device search to remove outer clothing and accessories. In practice, if metal is detected during a scan, a person being scanned would be asked to remove items of clothing that may contain metal, such as belts or shoes. These items are often what the scanner has detected, rather than actual contraband.

Labour members would also recommend amending clause 23 to expand the department's power to conduct a scanner search to include any outer clothing or accessories that they may have removed.

Labour members would also recommend inserting clause 25A to set out what the Department of Corrections could do if a person refused to remove an item of outer clothing. Proposed new section 99(4A) would allow the department to refuse the person's admission, or to require them to leave the prison.

Destruction of prisoner call recordings

The Corrections Act allows the Department of Corrections to disclose recordings of prisoners' phone calls to an intelligence and security agency. However, there is an inconsistency as section 120 of the Act requires such recordings to be destroyed as soon as they are no longer needed as evidence in proceedings or disciplinary proceedings. Intelligence and security agencies would likely have to destroy these recordings as soon as they were received.

Labour members would recommend inserting clause 25D, amending section 120 of the Act, to permit an intelligence and security agency to retain recordings of prisoners' calls until they are no longer required by the agency to perform its functions.

We are also aware of another inconsistency related to the way different provisions in the Act work together to protect the privacy of prisoners who have their telephone calls recorded. There are two conflicting provisions which set out different thresholds for the department to meet before it can disclose recordings.

Labour members would therefore recommend inserting clause 25C to remove the reference to the Privacy Act 1993 from section 118(1) of the Act. The department would still be required to disclose recordings based on the higher threshold set out in section 117 of the Act.

New Zealand National Party view

The New Zealand National Party is disappointed that some initiatives that were originally proposed to be in this bill have been removed. We are especially concerned about the removal of provisions in relation to rehabilitation and Police cells.

First, the original intent of discussions undertaken in the previous Government on this bill had a strong emphasis on rehabilitation. Although the bill proposes management plans for prisoners sentenced to over two years' imprisonment, we would have sought specific mention of rehabilitation plans for these prisoners, as originally intended. At this time, when it is generally agreed that there is a need of rehabilitation for prisoners, it is very disappointing such plans are not incorporated into the bill. National members see this as a missed opportunity.

Secondly, for the use of Police jail cells, these clauses would have enabled the Minister of Corrections to declare a Police jail, or parts of a Police jail, to be temporarily included as a Corrections prison, operated by the department. Although the Government believes such a power is not required with perceived lower prison musters, the National Party believes giving the Minister of Corrections that flexibility is something that should have been retained in the bill.

Appendix

Committee process

The Corrections Amendment Bill was referred to the committee on 29 March 2018. The closing date for submissions was 17 May 2018. We received and considered 17 submissions from interested groups and individuals. We heard oral evidence from eight submitters.

We received advice from the Department of Corrections and the Parliamentary Counsel Office.

Committee membership

Dr Raymond Huo (Chairperson)
Ginny Andersen
Hon Maggie Barry
Chris Bishop
Hon Mark Mitchell
Greg O'Connor
Hon Dr Nick Smith
Dr Duncan Webb

Hon David Bennett replaced Hon Dr Nick Smith for some of our consideration.

Advice and evidence received

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