Sentencing (Reinstating Three Strikes) Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

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

About the bill as introduced

The Sentencing and Parole Reform Act 2010 enacted the previous three strikes regime by amending the Sentencing Act 2002 and the Parole Act 2002. The regime imposed escalating penalties for repeated convictions for specified violent and sexual offences under the Crimes Act 1961. In 2022, the Three Strikes Legislation Repeal Act 2022 repealed the 2010 regime.

The bill would reinstate the three strikes regime, retaining its main elements while making the regime clearer and more workable. It would amend the Sentencing Act 2002, the Criminal Procedure Act 2011, the Criminal Procedure (Mentally Impaired Persons) Act 2003, the Evidence Act 2006, and the Parole Act 2002.

The bill aims to strongly denounce repeat serious offending and increase public confidence that this conduct has serious consequences. It would increase certainty about the consequences of reoffending and may deter reoffending.

The bill provides for a 3-stage regime of escalating penalties for repeat serious violent and sexual offenders. It would:

- cover 42 qualifying offences, which are most of the serious violent and sexual offences in the Crimes Act
- apply to offenders who received a qualifying sentence of more than 24 months' imprisonment
- provide for warnings to be issued to offenders at each stage

- require a sentence to be served without parole for a stage-2 offence and the maximum penalty be imposed for a stage-3 offence (which must be served without parole)
- require offenders who commit murder to receive life imprisonment with a specified mandatory period of imprisonment of 17 years at stage-2 and 20 years at stage-3
- allow offenders to receive a reduced sentence if they plead guilty to a stage-3 offence (and stage-2 murder)
- provide that manifest injustice exceptions apply to the regime's mandatory sentencing consequences
- prescribe procedures for the three strikes regime.

The bill would also amend the Parole Act to reinstate provisions that were erroneously removed by the Repeal Act. The provisions confirm that offenders sentenced under section 103(2A) of the Sentencing Act to a life sentence without parole do not have a parole eligibility date and cannot be released on parole.

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. In response to submissions we received on the bill, the Associate Minister of Justice wrote to us inviting us to consider some changes to the bill. We have done so and discuss these proposed changes below, alongside our recommended amendments.

Amendments to the Sentencing Act

Qualifying sentence threshold

Clause 7 of the bill would insert new sections 86J to 86X into the Sentencing Act. Proposed new section 86J contains the definitions for the new sections. It defines a "qualifying sentence" as a sentence that is a determinate sentence of imprisonment of more than 24 months or an indeterminate sentence of imprisonment. An offender must receive a qualifying sentence to be issued a warning for a stage-1 offence and to be subject to mandatory sentencing consequences at stages 2 and 3.

We note that the previous regime applied on conviction regardless of the seriousness of the offending, which sometimes resulted in highly disproportionate penalties. We understand that the bill includes the qualifying sentence threshold to ensure that the regime targets more serious offending and does not capture lower-level offending. Further, it aligns with the threshold in the Sentencing Act and Parole Act. Those Acts

distinguish between a short-term sentence, which is subject to automatic release and eligibility for home detention, and a long-term sentence, which is subject to the parole regime.

Many submitters commented on the qualifying sentence requirement, expressing a range of views. Numerous submitters supported the requirement as a way of excluding lower-level offending. Although some submitters proposed that the threshold be increased, others suggested that it should be removed or lowered. Several submitters considered that the threshold should only apply at certain stages of the regime.

A majority of us consider that the threshold should be lowered for offenders at stage-1 and recommend amending the definition of "qualifying sentence" accordingly. Under our proposed amendment, at stage-1 an offender would receive a warning when sentenced to more than 12 months' imprisonment. The threshold of more than 24 months' imprisonment would be retained for stage-2 and stage-3. A majority of us think that this approach would ensure that more offenders are brought into the regime, and would address submitters' concerns about the threshold level. Retaining the more than 24 months' threshold for the second and third stages would also ensure that the regime continues to target serious offending.

Substituting a term of imprisonment with home detention

Sections 80I to 80K of the Sentencing Act provide that an offender who receives a short-term sentence of imprisonment may subsequently apply for the sentence to be cancelled and substituted with a sentence of home detention. These provisions apply when, at the time of sentencing, the court would have sentenced the offender to a sentence of home detention if a suitable residence had been available.

We note that a sentence that was cancelled and substituted with home detention would no longer meet the qualifying sentence threshold. We therefore recommend inserting section 86U(2)(aa) to make it clear that an offender in this situation would cease to have a record of a first warning. That subsection relates to when an offender would cease to have a record of a warning.

Warnings for sentences of imprisonment of more than 12 but not more than 24 months for stage-2 offences

We recognise that there could be situations where offenders who received a first warning were subsequently sentenced to a term of imprisonment of more than 12 but not more than 24 months for a stage-2 offence. We acknowledge that this would not result in a subsequent warning or loss of eligibility for parole because the sentence imposed is not more than 24 months. However, we still consider that it is necessary to provide an additional first warning in these situations because an offender could cease to have a record of a first warning under any of the circumstances in section 86U(2). This could leave them without a first warning even if they had committed a later offence that met the threshold for a first warning. Giving an additional first warning would provide an opportunity to reinforce to offenders the consequences that they may face if they reoffend and receive a qualifying sentence. Therefore, we recom-

mend inserting new section 86KA to allow for these scenarios. We also recommend a consequential amendment as new section 86U(2A) (Continuing effect of warnings).

Administration of warnings

Proposed new section 86M(1) states that the warning that the court is required to give an offender must be given to them at the time of sentencing. Proposed new sections 86M(3) and (3AA) provide that the procedure set out in new section 86M(3A) applies when a court quashes or sets aside a non-qualifying sentence on appeal, substitutes it with a qualifying sentence, and the offender is not before the court when the appeal decision is delivered. Proposed new section 86M(3A) states the appeal court must send the case back to the original sentencing court for them to give the offender a warning. To give the warning, new section 86M(3B) requires the original sentencing court to summons the offender to appear as soon as reasonably practicable after the appeal decision is delivered. If the offender failed to appear, the original sentencing court would need to issue an arrest warrant as soon as reasonably practicable, to bring the offender before the court to be given the warning.

We were advised that cases are expected to be infrequent where an appeal court considers that a sentence is erroneous and increases it so that a qualifying sentence is imposed for the first time on appeal. However, for such cases, we recommend amending sections 86K(1) and 86L(1) and inserting section 86KA(1) to make it clear that an appeal court could issue a warning if the offender was already before that court. This could include by audiovisual link.

Imposition of minimum penalties

Proposed new sections 86P and 86S specify the applicable penalties when a court imposes a sentence of life imprisonment for murder at stage-2 or stage-3 respectively. Proposed new section 86R(2) sets out the penalties that would apply for offences other than murder at stage-3. For each section, the court would be required to impose minimum sentences or non-parole periods of imprisonment, and loss of parole eligibility for section 86R, unless it would be manifestly unjust to do so. The court would be required to give written reasons if they did not impose the minimum period (under sections 86P(4) and 86S(4)) or order that a sentence be served without parole (under section 86R(4)).

Proposed new section 86R would not preclude a court from imposing a sentence of preventive detention. New section 86R(6)(b) would prohibit a court from imposing a minimum period of imprisonment that was less than it would have imposed under section 86R(2). The exception to this would be if the court was satisfied that imposing the minimum period would be manifestly unjust. Section 86R(7) would require a court to give written reasons if it exercised the manifestly unjust provision.

We recommend amending sections 86P(4), 86R(4), 86R(7), and 86S(4) to remove the requirement for reasons to be given in writing. We understand that this would better reflect existing judicial practice regarding how reasons are provided: sentencing is conducted orally and sentencing notes are transcribed from the oral remarks.

Guidance on applying the manifestly unjust exception

Proposed new section 86T provides guidance for courts when determining whether it would be manifestly unjust to impose a sentence or make an order under certain provisions of the bill. We propose several amendments to this section to make its intent clearer.

Proposed new section 86T(1)(b), which applies the guidance to the manifest injustice exception in section 102 of the Sentencing Act, would apply when an offender was convicted of murder as a stage-2 or stage-3 offence. Section 102 requires an offender convicted of murder to be sentenced to life imprisonment unless, given the circumstances of the offence and the offender, the sentence would be manifestly unjust. We note that the bill is not intended to change existing approaches to the exception in section 102. Therefore, we recommend removing section 86T(1)(b).

Proposed new section 86T(3)(a) states that the court must not determine that imposing a sentence or making an order would be manifestly unjust merely because 1 or more of the mitigating factors listed in section 9(2) of the Sentencing Act applied. We recommend inserting section 86T(4) to make it clear that section 86T would not prevent the court from considering mitigating factors.

Continuing effect of warnings

Proposed new section 86U provides that an offender would continue to have a record of a first or subsequent warning regardless of whether they had completed the related sentence. However, if, following an appeal, the conviction was quashed or set aside or a sentence was replaced with a non-qualifying sentence, the offender would cease to have a record of the relevant warning.

We sought advice on how the bill would function in response to pardons. We received advice that two types of prerogative relief could be relevant to the new three strikes regime. A free pardon has the effect of removing all criminal consequences for an act. Although it does not quash a conviction, it has a comparable effect because it removes all criminal liability. This includes any sentence, as well as the possibility of a substituted sentence and a retrial. A conditional pardon has the effect of altering a sentence. Although this power is effectively no longer used, it is possible that a conditional pardon could reduce a qualifying sentence or substitute it with a non-qualifying one. Accordingly, we recommend inserting section 86U(2)(c) and (2A)(d) to address the status of warnings when free and conditional pardons are granted. A warning would cease to apply if the offender was granted either a free pardon or a conditional pardon for which they were not required to serve either a qualifying sentence (under section 86U(2)(c)) or a sentence of above 12 months' imprisonment (under section 86U(2A)(d)) for the related offence.

Carrying over strikes from the previous regime

Clause 11 would amend Schedule 1AA of the Sentencing Act, which contains transitional, savings, and related provisions. Clause 11(2) would insert new Part 5 into Schedule 1AA of the Sentencing Act. The new part states that the amendments that

the bill makes to the Sentencing Act would not apply to offences committed before the legislation commenced.

A number of submitters wanted strike warnings issued under the previous regime to be carried over. A majority of us consider that offenders with previous strike warnings who continue to offend should not avoid the consequences of the regime only because the previous legislation was repealed. These members agree that warnings issued under the previous regime should be recognised and treated as if they had been given under the new regime. However, they should only apply to warnings for sentences that meet the new qualifying sentence threshold. This is so the regime consistently targets serious offending, regardless of when it occurred. A majority of us recommend amending new Part 5 of Schedule 1AA to this effect.

We note that a first warning under the previous regime would generally be equivalent to one under the new regime. A final warning under the previous regime would generally be equivalent to a subsequent warning under the new regime. However, in some cases, the warnings might not be equivalent because only certain warnings under the previous regime would meet the threshold under the new regime. To clarify these scenarios, a majority of us recommend inserting clauses 19 and 20 to, as a general rule:

- treat as equivalent first warnings under both regimes, as well as final warnings under the previous regime and subsequent warnings under the new regime
- allow for situations where warnings are not equivalent because a previous warning does not meet the new threshold.

We understand that warnings under the new regime could also be administered and recorded slightly differently than previous warnings. We recommend inserting clause 22 to provide that warnings issued under the previous regime that meet the threshold for inclusion in the new regime are validly made regardless of whether they are administered differently.

We also recommend inserting definitions for the applicable terms used in Schedule 1AA of the Sentencing Act, as clause 16 of Schedule 1AA.

Proposed new sections 86U and 86V deal with when a warning would cease after an appeal, and how the cessation would affect later qualifying sentences. We note that appeals against sentences and convictions under the previous regime may be ongoing, or may be scheduled to begin before or after the bill commences. These appeals could affect the status of warnings from the previous regime that are reactivated under the previous regime. We recommend inserting clause 21 to clarify that sections 86U and 86V also apply, with any necessary modifications, to warnings recorded under the previous regime.

Amendments to the Criminal Procedure (Mentally Impaired Persons) Act

Power to commit an offender to a hospital or facility

Subpart 2 of Part 2 of the bill would amend the Criminal Procedure (Mentally Impaired Persons) Act 2003. Clause 16 would amend section 34 of that Act, which relates to the power of a court to commit an offender to a hospital or facility if convicted of an imprisonable offence. Orders made under section 34(1)(a) are imposed on an offender alongside a sentence. Orders made under section 34(1)(b) are imposed on an offender instead of a sentence. We were advised that orders under section 34(1)(b) are typically only used for cases of less serious offending because the offender does not receive a sentence.

As amended by clause 16, section 34 would prevent a court from making an order under section 34(1)(b) when it would have otherwise imposed a qualifying sentence. A court could still make an order under section 34(1)(b) if it would have imposed a sentence below the qualifying sentence threshold.

We understand that this provision is intended to clarify what orders should be available for three strikes cases under section 34. Orders under section 34(1)(a) should remain available in all cases (where the relevant criteria are met). Orders under section 34(1)(b) should only be used for cases of less serious offending and should not be used where the mandatory consequences apply. We recommend amending the bill to make it clear that the limit on orders under section 34(1)(b) would only apply to offenders at stages 2 and 3 of the regime (where mandatory consequences apply). No limit on section 34(1)(b) orders at stage 1 is required because there is no mandatory penalty at that stage.

When the amendments to the Act would commence

As introduced, the bill does not contain a transitional provision to indicate how the changes to the Criminal Procedure (Mentally Impaired Persons) Act would apply to offences committed before the new regime commenced. We recommend inserting such a provision as clause 16A, which would insert a new Part into Schedule 1AA of the Criminal Procedure (Mentally Impaired Persons) Act to specify that the changes should only apply to offences committed after the new regime came into force.

New Zealand Labour Party differing view

The Labour Party does not support this bill.

Most fundamentally there is no evidential foundation that a “three strikes” sentencing regime reduces crime and victimisations. It is clear that this is another example of the Government implementing harmful policies on the basis of coalition promises to the ACT Party rather than being committed to evidence-based justice policies. No evidence showing that the bill would work as intended was presented to the committee. In contrast:

- The bill's Regulatory Impact Statement (RIS) provided: "the Ministry of Justice prefers the status quo rather than a new three strikes regime due to: lack of evidence that the proposal would be effective at addressing repeated serious violent offending or sustainably improving public confidence in the justice system, risk of unintended consequences which have been observed in such systems internationally and in New Zealand's own experience with the former regime, known downsides such as cost and issues with consistency of legal obligations, including under the Treaty of Waitangi, the current sentencing system already has the capability to respond to serious repeat offending, and disproportionate impact of a three strikes regime on population groups, particularly disproportionately harmful impacts on Māori".[1]
- The Children's Commissioner opposed the bill and stated: "We are deeply concerned about the significantly inequitable and detrimental impacts that this Bill will highly likely have on whānau Māori, and therefore mokopuna Māori and their rights, interests and wellbeing, should it pass into law. The negative intergenerational impacts for Māori that this Bill will very likely perpetuate must not be underestimated – this Bill passing into law, would be, in our view, inconsistent with an intergenerational approach of upholding the promise of Te Tiriti o Waitangi".[2]
- The New Zealand Bar Association opposed the bill and stated "The Bar Association opposes the re-instatement of the Three Strikes regime, which limits judicial discretion and cuts against a key principle of sentencing — that each offender is dealt with in accordance with his or her individual circumstances".[3]
- The New Zealand Law Society opposed the bill and stated "there is inadequate evidence to suggest that a three strikes sentencing regime provides general deterrence or increases public confidence in the criminal justice system. It is not likely to achieve its purposes".[4]
- The Pacific Lawyers Association opposed the bill and stated "the Bill's purpose and principles are manifestly unjust and create perverse outcomes for Pasifika and Māori communities. The PLA firmly believes in maintaining the status quo as existing legislation effectively addresses the need to denounce and deter offender conduct".[5]
- The Human Rights Commission opposed the bill and stated "The Bill is contrary to the [UN Committee Against Torture's] recommendations. Reintroduction of the three strikes regime is likely to be viewed as regressive on the inter-

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1 At para 80.

2 Submission p6.

3 Submission p1.

4 Submission p1.

5 Submission p5.

national human rights stage, and receive negative comment from such Committees and member states".[6]

- Te Hunga Rōia Māori o Aotearoa / The Māori Law Society opposed the bill and stated "The Bill represents a significant breach of Te Tiriti o Waitangi and its principles. The Bill in its current form is also highly unlikely to meet its stated purposes, and it is proceeding despite a lack of evidence that the three-strikes regime will deter serious crime".[7]
- The Law Association opposed the bill and stated "the Three Strikes Legislation poses significant concerns for the legal community, the judiciary, and the broader societal fabric. The past repeal of this law was based on sound evidence and careful consideration of its impacts, including the ineffectiveness in reducing serious offending, the undue restriction on judicial discretion, the disproportionate impact on Māori communities, and its conflict with the Bill of Rights Act".[8]

This is only a small selection of the many thoughtful and evidence-informed submissions which opposed the bill. Of the submitters who came from law societies, human rights groups (including Crown agencies), and Māori organisations, none supported the bill.

We are also deeply concerned with the process by which this bill was passed. This select committee was given a truncated period to hear submissions on it. Further, after submissions had closed the Minister interfered with the select committee process by directing the committee to make changes to the bill. This interference by the Executive into a parliamentary process is contrary to the comity that is expected between branches of government and makes a mockery of a collaborative and constructive select committee process. It was particularly offensive that the Minister saw fit to publicly announce the direction to the select committee before the committee had the opportunity to discuss the changes.

The bill is not consistent with the Crown's obligations under the Treaty of Waitangi. The Regulatory Impact Statement itself recognises this when it states in respect of the bill:[9]

> [T]he disproportionate impact on Māori would result in divergent effective rights. In general, Māori offenders will be more likely to be sentenced in a disproportionate manner than non-Māori. This is likely to erode trust and confidence in the justice system, especially, but not exclusively, among Māori. Under the current criminal justice settings, Māori are still disproportionately represented. It could therefore be argued that the Crown has failed to recognise

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6 Submission p6.

7 Submission p1.

8 Submission p4.

9 At paras 73 and 74.

> its obligations to protect the rights and privileges of Māori, thus potentially being inconsistent with the Crown's obligations of Article Three of the Treaty.

This Government does not appear to be interested in meeting its obligation to Māori under the Treaty.

The fact that the changes demanded by the Minister increase the severity of the bill and make it retrospective exacerbate this gross breach of good procedure. These are significant changes that were inserted by the Minister after the opportunity for the public to make submissions meaning that there was zero genuinely public input into critical parts of this bill.

The Minister claimed that the reason for the change was that: "We've heard from many people, especially through emails to my office, which has stated that this [the new regime] has not gone far enough…".[10] An Official Information Act request reveals there were in fact three emails addressed to the Minister which raised the issue.[11] This is reflective of the unprincipled approach to policy making that this Government has in the justice sector.

This bill differs from its predecessor in issuing a "strike" only where there is a "qualifying sentence" of one year for a first strike or two years for a second strike. While we agree that issuing a strike offence for minor offending is inappropriate, the fact is that having a bright line sentence will lead to perverse outcomes. There is a direction in the bill that judges should not sentence with the three strikes regime in mind. In fact it is impossible for judges (and prosecutors) to not be aware of the consequences of a particular sentence and while they may state that it is not a relevant consideration in decision making, it will inevitably be part of the background against which decisions are made.

The bill will require that a person sentenced to a second-strike offence will serve the entire sentence without parole. Parole is an important part of the justice and corrections system. It provides a meaningful incentive for prisoners to embark on rehabilitative programmes and cooperate within the corrections system. To remove parole in some circumstances creates an inconsistency within the system which will make it less effective overall.

The bill requires that a person convicted of a third strike will serve the maximum sentence for the offence without parole. The current law requires that a maximum sentence is reserved for those cases where "if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate" (section 8 Sentencing Act 2002). This reflects the fundamental principle that sentencing should be proportionate to the sentence. The

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[10] https://www.rnz.co.nz/news/national/531471/three-strikes-bill-government-wants-tougher-version-of-the-law

[11] Letter and accompanying documents of 20 Nov 2024 from Hon Nicole McKee to Hon Duncan Webb ref COIA 66.

bill cuts across this and will inevitably (and intentionally) lead to sentences that are disproportionate.

The bill provides a limited discretion where its provisions would create a manifest injustice. While this is an improvement on its predecessor, it is difficult to comprehend how the imposition of an intentionally disproportionate sentence is not manifestly unjust in any case where it is substantially greater than would be imposed under the normal and established sentencing rules. The incoherence of this position is highlighted in clause 86T(3)(b) which states that a sentence is not to be considered manifestly unjust merely because it is disproportionate—unless it is grossly so.

This is an intentional contravention of the right to be free from disproportionately severe punishment. Section 9 of the New Zealand Bill of Rights Act 1990 provides "Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment." The Minister of Justice has shown his cavalier attitude to human rights in relation to three strikes legislation when he stated "she's talked about the distorting effect of this Act, that it leads to disproportionate sentences. Well, hold the phone, people. That is the exact point of the legislation".[12] That is more than disappointing.

In introducing this bill the Minister said "We are ensuring the new three-strikes regime is not retrospective. Strikes from the previous regime will not be carried across into this new regime. This is important because we are making changes to what was in place before".[13] She changed her mind—the Minister did a U-turn on this matter halfway through the select committee process and the regime will now be retrospective.

The retrospectivity of this bill is an affront to constitutional principle. The New Zealand Bill of Rights Act provides that every person has: "the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty".[14] Before this bill is passed there are no people in New Zealand who have active "strikes". After this bill is passed there will be many people with one or two strikes. This means that the possible penalties for offences will be retrospectively increased.

What is more, there is no intention on the part of the Government to inform people who currently believe that they have no strikes that this will change. One of the underlying objectives of the bill is to deter offenders from reoffending by warning them of the increased consequences due to them having a first or second strike. It is fundamentally inconsistent with the deterrence model which underpins the bill to revive strikes from many years ago without informing the people who were subject to those strikes of the potential for increased sentences due to the reactivation.

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[12] Hansard 9 August 2022.

[13] Hansard 25 Jun 2024.

[14] Section 25(g).

Because the threshold for a strike is different under the bill from the old legislation it will be necessary for someone to review all records of earlier strikes and determine whether they meet the threshold for a strike under the existing legislation. We are not confident that this will be done consistently, effectively, or in a timely manner.

There are numerous operational challenges with this legislation. For example, the nonsensical situation created by clause 86KA whereby a person who has a first strike and is convicted of a strikable offence and sentenced to between 12 months and 24 months is to be given a "second first warning" to cover off the possibility that "first first warning" is rendered ineffective due to a successful appeal.

The court which issues a strike is required to provide an explanation of its effect in writing to the sentenced offender. However, the bill provides that if the explanation is not provided in writing (but only orally in court) the strike still stands—which in effect means that the "obligation" to provide an explanation is illusory. Given the importance of the explanation in informing the offender (and if the law is to be effective, deterring the offender) this free pass where there is no written explanation given is deeply concerning.

The bill recognises that there will be instances where a court overlooks the need to give a warning. In such a case the bill in clause 86M gives the court an indefinite right to recall the offender to administer the warning—including a power to arrest. We consider that such an indefinite right is not appropriate.

In conclusion, this bill will not have the effect of reducing crime and victims, it is in breach of the Crown's obligations under the Treaty of Waitangi, it breaches constitutional principles against retrospectivity in criminal law, it is in breach of the New Zealand Bill of Rights guarantee of freedom from unjust and disproportionate punishment, and it is operationally unworkable.

Green Party of Aotearoa New Zealand differing view

The Green Party does not support this legislation.

Appendix

Committee process

The Sentencing (Reinstating Three Strikes) Amendment Bill was referred to the committee on 25 June 2024.

We called for submissions on the bill with a closing date of 23 July 2024. We received and considered submissions from 749 interested groups and individuals. We heard oral evidence from 41 submitters at hearings by videoconference and in Wellington.

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

Cameron Brewer

Tākuta Ferris

Paulo Garcia

Dr Tracey McLellan

Rima Nakhle

Tamatha Paul

Todd Stephenson

Hon Dr Duncan Webb

Related resources

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

Key to symbols used in reprinted bill

As reported from a select committee

<u>text inserted unanimously</u>

~~text deleted unanimously~~

Hon Nicole McKee

Sentencing (Reinstating Three Strikes) Amendment Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sentencing (Reinstating Three Strikes) Amendment Act **2024**.

2 Commencement

(1) This Act comes into force 6 months after Royal assent.

(2) However, **sections 20(2), 22(2), and 23** come into force on the day after Royal assent.

Part 1
Amendments to Sentencing Act 2002

3 Principal Act

This Part amends the Sentencing Act 2002.

4 Section 4 amended (Interpretation)

(1) In section 4(1), definition of **minimum period of imprisonment**, after "86,", insert "**86P(2), 86S(2),**".

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

permanent court record has the same meaning as in section 5 of the Criminal Procedure Act 2011

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

In section 8, insert as subsections (2) and (3):

(2) In addition, in sentencing an offender for a stage-2 offence or a stage-3 offence, the court must, if a manifestly unjust exception applies, nevertheless regard the offence as worthy of a stern sentencing response.

(3) In this section,—

manifestly unjust exception means an exception set out in **section 86O(2), 86P(2), 86R(2), (3), or (6), or 86S(2)**~~, or 102(1)~~

stage-2 offence has the same meaning as in **section 86J**

stage-3 offence has the same meaning as in **section 86J**.

6 New section 82A inserted (Additional consequences for certain repeated offending must not be taken into account in determining length of sentence)

After section 82, insert:

82A Additional consequences for certain repeated offending must not be taken into account in determining length of sentence

(1) In determining the length of a sentence of imprisonment to be imposed on an offender for a stage-3 offence that is murder, a stage-2 offence, or a stage-1 offence, the court must not take into account the consequences that the offender may face under **sections 86K to 86T**.

(2) In this section, **stage-1 offence**, **stage-2 offence**, and **stage-3 offence** have the same meanings as in **section 86J**.

7 New sections 86J to 86X and cross-heading inserted

Before the cross-heading above section 87, insert:

Additional consequences for certain repeated offending

86J Interpretation

In this section and in **sections 86K to 86X**, unless the context otherwise requires,—

qualifying offence means an offence against any of the provisions of the Crimes Act 1961 listed in **Schedule 1AB**

qualifying sentence means~~ a sentence that is,—~~

~~(a) a determinate sentence of imprisonment of more than 24 months; or~~

~~(b) an indeterminate sentence of imprisonment~~

(a) for a stage-1 offence, a sentence that is—

(i) a determinate sentence of imprisonment of more than 12 months; or

(ii) an indeterminate sentence of imprisonment:

(b) for a stage-2 offence or stage-3 offence, a sentence that is—

(i) a determinate sentence of imprisonment of more than 24 months; or

(ii) an indeterminate sentence of imprisonment

record of first warning, in relation to an offender, means a record of a warning that the offender has under **section 86K(3) or 86KA(4)** (including, without limitation, a relevant reactivated warning under **clause 19** of Schedule 1AA)

record of subsequent warning, in relation to an offender, means a record of a warning that the offender has under **section 86L(3)** (including, without limitation, a relevant reactivated warning under **clause 19** of Schedule 1AA)

stage-1 offence means a qualifying offence committed by an offender when the offender—

(a) did not have a record of first warning; and

(b) was at least 18 years old

stage-2 offence means a qualifying offence committed by an offender when the offender—

(a) had a record of first warning (in relation to 1 or more offences); but

(b) did not have a record of subsequent warning

stage-3 offence means a qualifying offence committed by an offender when the offender had a record of subsequent warning (in relation to 1 or more offences).

86K Warnings: first warning to be given ~~when~~ if qualifying sentence imposed for stage-1 offence

(1) This section applies if ~~a court imposes a qualifying sentence on an offender for a stage-1 offence.~~—

(a) a court imposes a qualifying sentence on an offender for a stage-1 offence (including on an appeal, but only if the offender does not have a record of first warning in relation to the offence); and

(b) the offender is before the court when it imposes the sentence.

(1A) This section also applies if an offender appears before a court under **section 86M(2) or (3B)** in relation to a stage-1 offence.

(2) The court must—

(a) warn the offender of the possible consequences if the offender receives a further qualifying sentence for any qualifying offence committed after

that warning (whether or not that further qualifying offence is different in kind from any ~~stage-1~~ qualifying offence for which a ~~qualifying~~ sentence of imprisonment is being, or has been, imposed on the offender); and

(b) make an entry in the permanent court record, in relation to the stage-1 offence, to the effect that the offender has been warned under **paragraph (a)**.

(3) On and after the making of the entry under **subsection (2)(b)**, the offender has, in relation to the stage-1 offence, a record of first warning (subject to **section 86U(2)**).

86KA Warnings: first warning to be given if sentence of imprisonment of between 12 and 24 months imposed for stage-2 offence

(1) This section applies if—

(a) a court imposes a determinate sentence of imprisonment of more than 12 months but not more than 24 months on an offender for a stage-2 offence (including on an appeal, but only if the offender does not have a record of first warning or a record of subsequent warning in relation to the offence); and

(b) the offender is before the court when it imposes the sentence.

(2) This section also applies if an offender appears before a court under **section 86M(2) or (3B)** in relation to a stage-2 offence for which a determinate sentence of imprisonment of more than 12 months but not more than 24 months has been imposed on the offender.

(3) The court must—

(a) warn the offender of the possible consequences if the offender subsequently receives a qualifying sentence for any qualifying offence committed after that warning (whether or not that qualifying offence is different in kind from any qualifying offence for which a sentence of imprisonment is being, or has been, imposed on the offender); and

(b) make an entry in the permanent court record, in relation to the stage-2 offence, to the effect that the offender has been warned under **paragraph (a)**.

(4) On and after the making of the entry under **subsection (3)(b)**, the offender has, in relation to the stage-2 offence, a record of first warning (subject to **section 86U(2A)**).

86L Warnings: subsequent warning to be given ~~when~~ if qualifying sentence imposed for stage-2 offence or stage-3 offence

(1) This section applies if ~~a court imposes a qualifying sentence on an offender for a stage-2 offence or a stage-3 offence.~~—

(a) a court imposes a qualifying sentence on an offender for a stage-2 offence or a stage-3 offence (including on an appeal, but only if the offender does not have a record of subsequent warning in relation to the offence); and

(b) the offender is before the court when it imposes the sentence.

(1A) This section also applies if an offender appears before a court under **section 86M(2) or (3B)** in relation to—

(a) a stage-2 offence for which a qualifying sentence has been imposed on the offender; or

(b) a stage-3 offence.

(2) The court must—

(a) warn the offender of the possible consequences if the offender receives a further qualifying sentence for any qualifying offence committed after that warning (whether or not that further qualifying offence is different in kind from any qualifying offence for which a ~~qualifying~~ sentence of imprisonment is being, or has been, imposed on the offender); and

(b) make an entry in the permanent court record, in relation to the stage-2 offence or the stage-3 offence, to the effect that the offender has been warned under **paragraph (a)**.

(3) On and after the making of the entry under **subsection (2)(b)**, the offender has, in relation to the stage-2 offence or the stage-3 offence, a record of subsequent warning (subject to **section 86U(2)**).

86M Warnings: administration

(1) A warning that a court is required to give to an offender under **section 86K, 86KA, or 86L** must be given to the offender at the time of sentencing if the offender is before the court at that time.

~~(2) However, if a court omits to give a warning required under **section 86K or 86L** to an offender at the time of sentencing, the court must,—~~

~~(a) as soon as is reasonably practicable after becoming aware of the omission, issue a summons to bring the offender before the court; and~~

~~(b) if the offender fails to appear before the court in answer to the summons, as soon as is reasonably practicable after that failure, issue a warrant to arrest the offender to bring him or her before the court.~~

~~(3) If, on an appeal, a court quashes or sets aside a sentence, not being a qualifying sentence, imposed on an offender for a qualifying offence and imposes a qualifying sentence in substitution for it, the court must, if the offender is not before the court when it imposes the qualifying sentence,—~~

~~(a) as soon as is reasonably practicable after imposing the qualifying sentence, issue a summons to bring the offender before the court; and~~

~~(b) if the offender fails to appear before the court in answer to the summons, as soon as is reasonably practicable after that failure, issue a warrant to arrest the offender to bring him or her before the court.~~

(2) However, if a court, at the time of sentencing, omits to give a warning required under **section 86K, 86KA, or 86L** to an offender who was before the court at that time, the court must,—

(a) if the court is the court that first sentenced the offender for the relevant qualifying offence,—

(i) as soon as is reasonably practicable after becoming aware of the omission, issue a summons to bring the offender before the court; and

(ii) if the offender fails to appear before the court in answer to the summons, as soon as is reasonably practicable after that failure, issue a warrant to arrest the offender to bring them before the court; or

(b) if the court is not the court that first sentenced the offender for the relevant qualifying offence, as soon as is reasonably practicable after becoming aware of the omission, remit the proceeding to the court that first sentenced the offender for the relevant qualifying offence for a warning to be given to the offender.

(3) **Subsection (3A)** applies if,—

(a) on an appeal, a court quashes or sets aside a sentence, not being a sentence for which a warning was required to be given under **section 86K, 86KA, or 86L**, imposed on an offender for a qualifying offence and imposes another sentence in substitution for it; and

(b) the offender is not before the court at the time that it imposes the substituted sentence; and

(c) the substituted sentence is a sentence for which the court would have been required to give the offender a warning under **section 86K, 86KA, or 86L** if the offender had been before the court at that time.

(3AA) **Subsection (3A)** also applies if,—

(a) on an appeal, a court quashes or sets aside a determinate sentence of imprisonment of more than 12 months but not more than 24 months imposed on an offender for a stage-2 offence and imposes a qualifying sentence in substitution for it; and

(b) the offender is not before the court at the time that it imposes the substituted sentence.

(3A) If this subsection applies, the court that heard the appeal must remit the proceeding to the court that first sentenced the offender for the relevant offence for a warning to be given to the offender.

(3B) A court to which a proceeding is remitted under **subsection (2) or (3A)** must,—

(a) as soon as is reasonably practicable after the proceeding is remitted to it, issue a summons to bring the offender before the court; and

(b) if the offender fails to appear before the court in answer to the summons, as soon as is reasonably practicable after that failure, issue a warrant to arrest the offender to bring them before the court.

(4) If an offender appears before a court under **subsection (2) or (3B)**, the court must, despite **subsection (1)**, when the offender so appears, give the warning and make the entry required under **section 86K, 86KA, or 86L** (whichever applies).

(5) A Judge need not use a particular form of words in giving a warning required under **section 86K, 86KA, or 86L**.

86N Notice of possible consequences of receiving ~~further~~ subsequent qualifying sentence for qualifying offence

(1) A court that gives an offender a warning required under **section 86K, 86KA, or 86L** must also give the offender a written notice that sets out the possible consequences if the offender subsequently receives a ~~further~~ qualifying sentence for any qualifying offence committed after the giving of the warning.

(2) The written notice may be given at the time, or as soon as is reasonably practicable after, the warning is given.

(3) Failure to give a written notice in accordance with this section does not affect the validity of—

(a) any sentence imposed, order made, or warning given by a court; or

(b) any record of first warning or record of subsequent warning.

86O Stage-2 offences: loss of parole eligibility when determinate sentence of imprisonment of more than 24 months imposed for offence other than murder

(1) This section applies if a court imposes a determinate sentence of imprisonment of more than 24 months on an offender for a stage-2 offence other than murder.

(2) The court must order that the offender serve the sentence without parole unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to make the order (*see* **section 86T**).

(3) If, but for the application of this section, the court would have ordered under section 86 that the offender serve a minimum period of imprisonment in relation to the sentence imposed for the stage-2 offence, the court must state, with reasons, the minimum period of imprisonment that it would have imposed.

(4) If, but for the application of this section, the court would not have made an order under section 86, the court must state that it would not have made such an order.

86P Stage-2 offences: imposition of minimum period of imprisonment when life imprisonment imposed for murder

(1) This section applies if—

(a) a court imposes a sentence of imprisonment for life on an offender for a murder that is a stage-2 offence; and

(b) the court does not make an order under section 103(2A) requiring the offender to serve the sentence without parole.

(2) The court must, unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so (*see* **section 86T**), make an order imposing a minimum period of imprisonment of at least—

(a) 15 years, if the offender pleaded guilty to the murder and none of the circumstances set out in **section 104(1A)** apply:

(b) 17 years, in any other case.

(3) If the court makes an order under **subsection (2)**, the court must state, with reasons, the minimum period of imprisonment that it would, but for the application of this section, have imposed.

(4) If the court does not make an order under **subsection (2)**, the court must give ~~written~~ reasons for not doing so.

86Q Stage-3 offences: transfer of proceedings to High Court

(1) A proceeding against a defendant charged with a stage-3 offence must be transferred to the High Court when the proceeding is adjourned for trial or trial call-over under section 57 of the Criminal Procedure Act 2011 or, as the case may be, under section 36 of that Act, and the proceeding from that point, including the trial, must be in the High Court.

(2) Only the High Court, or the Court of Appeal or the Supreme Court on an appeal, and no other court, may sentence an offender for a stage-3 offence.

(3) **Subsections (1) and (2)** override any legislation to the contrary.

86R Stage-3 offences: imposition of minimum sentence and loss of parole eligibility for offence other than murder

When this section applies

(1) This section applies if a court would, in the absence of this section, have imposed a qualifying sentence on an offender for a stage-3 offence other than murder.

Minimum term of imprisonment

(2) The court must, unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so (*see* **section 86T**), sentence the offender to imprisonment for—

Offence other than manslaughter

(a) the maximum term of imprisonment prescribed for the offence, if—

(i) the offence is not manslaughter; and

(ii) the offender did not plead guilty to the offence:

(b) at least 80% of the maximum term of imprisonment prescribed for the offence, if—

(i) the offence is not manslaughter; and

(ii) the offender pleaded guilty to the offence:

Manslaughter

(c) a term of at least 10 years, if—

(i) the offence is manslaughter; and

(ii) the offender did not plead guilty to the offence:

(d) a term of at least 8 years, if—

(i) the offence is manslaughter; and

(ii) the offender pleaded guilty to the offence.

Order to serve sentence without parole

(3) When the court sentences the offender for the offence, the court must order that the offender serve the sentence without parole unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to make the order (*see* **section 86T**).

Reasons: general

(4) If the court does not make an order under **subsection (3)**, the court must give ~~written~~ reasons for not doing so.

(5) If the court sentences the offender to at least the relevant minimum term of imprisonment set out in **subsection (2)(a) to (d)**, the court must state, with reasons, the sentence and the minimum period of imprisonment (if any) that it would, but for the application of this section, have imposed.

Preventive detention not precluded

(6) Despite **subsection (2)**, this section does not preclude the court from imposing, under section 87, a sentence of preventive detention on the offender and, if the court imposes such a sentence on the offender,—

(a) **subsections (2) to (4)** do not apply; and

(b) the minimum period of imprisonment that the court imposes on the offender under section 89(1) must not be less than the term of imprison-

ment that the court would have imposed under **subsection (2)**, unless the court is satisfied that, given the circumstances of the offence and the offender, the imposition of that minimum period would be manifestly unjust (*see* **section 86T**).

Reasons: preventive detention

(7) If, in reliance on **subsection (6)(b)**, the court imposes a minimum period of imprisonment that is less than the term of imprisonment that the court would have imposed under **subsection (2)**, the court must give ~~written~~ reasons for doing so.

86S Stage-3 offences: imposition of minimum period of imprisonment when life imprisonment imposed for murder

(1) This section applies if—

(a) a court imposes a sentence of imprisonment for life on an offender for a murder that is a stage-3 offence; and

(b) the court does not make an order under section 103(2A) requiring the offender to serve the sentence without parole.

(2) When the court sentences the offender for the murder, the court must, unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so (*see* **section 86T**), make an order imposing a minimum period of imprisonment of at least—

(a) 18 years, if the offender pleaded guilty to the murder:

(b) 20 years, in any other case.

(3) If the court makes an order under **subsection (2)**, the court must state, with reasons, the minimum period of imprisonment that it would, but for the application of this section, have imposed.

(4) If the court does not make an order under **subsection (2)**, the court must give ~~written~~ reasons for not doing so.

86T Guidance on application of manifestly unjust exception in certain provisions

(1) This section applies to a court when determining whether it would be manifestly unjust to impose a sentence, or make an order,~~—~~ under **section 86O(2), 86P(2), 86R(2), (3), or (6), or 86S(2)**.

~~(a) under **section 86O, 86P, 86R, or 86S**; or~~

~~(b) in the case of an offender who is convicted of a murder that is a stage-2 offence or a stage-3 offence, under section 102.~~

(2) The court must give ~~due~~ particular consideration to—

(a) denouncing the conduct in which the offender was involved; and

(b) deterring the offender or other persons from committing the same or a similar offence; and

(c) protecting the community from the offender.

(3) The court must not determine that imposing the sentence or making the order would be manifestly unjust merely because—

(a) ~~of the applicability of~~ any 1 or more of the mitigating factors listed in section 9(2) are applicable in the case; or

(b) it would be disproportionate, unless it would be grossly disproportionate.

(4) Nothing in **subsection (3)** prevents the court from taking into account the mitigating factors listed in section 9(2), to the extent that they are applicable in the case, when determining whether imposing the sentence or making the order would be manifestly unjust.

86U Continuing effect of warnings

(1) An offender continues to have a record of first warning or a record of subsequent warning in relation to an offence regardless of whether the offender has served or otherwise completed the sentence imposed on the offender for the offence to which the record relates.

(2) ~~However,~~ Despite **subsection (1)**, an offender ceases to have a record of first warning in relation to a stage-1 offence or a record of subsequent warning in relation to ~~an~~ a stage-2 offence or a stage-3 offence if ~~a court,~~—

(a) a court, on an appeal,—

(i) quashes or sets aside the conviction for the offence to which the relevant record relates; or

(ii) quashes or sets aside the sentence imposed for the offence to which the relevant record relates and does not impose a qualifying sentence in substitution for it; or

(aa) a court cancels the sentence imposed for the offence to which the relevant record relates and substitutes a sentence of home detention under section 80K(4); or

(b) a court imposes a new sentence under section 180 of the Criminal Procedure Act 2011 (which relates the correction of erroneous sentences) for the offence to which the relevant record relates and the new sentence is not a qualifying sentence~~.~~; or

(c) the offender is—

(i) granted a free pardon for the offence to which the relevant record relates; or

(ii) because of having fulfilled the conditions of a conditional pardon, not required to serve a qualifying sentence for the offence to which the relevant record relates.

(2A) Despite **subsection (1)**, an offender ceases to have a record of first warning in relation to a stage-2 offence if—

(a) a court, on an appeal,—

(i) quashes or sets aside the conviction for the offence to which the record relates; or

(ii) quashes or sets aside the sentence imposed for the offence to which the record relates and does not impose a determinate sentence of imprisonment of more than 12 months but not more than 24 months in substitution for it; or

(b) a court cancels the sentence imposed for the offence to which the record relates and substitutes a sentence of home detention under section 80K(4); or

(c) a court imposes a new sentence under section 180 of the Criminal Procedure Act 2011 for the offence to which the record relates and the new sentence is not a determinate sentence of imprisonment of more than 12 months but not more than 24 months; or

(d) the offender is—

(i) granted a free pardon for the offence to which the record relates; or

(ii) because of having fulfilled the conditions of a conditional pardon, not required to serve a sentence of imprisonment of more than 12 months for the offence to which the record relates.

(2B) If an offender ceases to have a record of subsequent warning in relation to a stage-2 offence because **subsection (2)(a)(ii)** applies and the court that heard the appeal imposes a determinate sentence of imprisonment of more than 12 months but not more than 24 months in substitution for the quashed or set aside sentence, then—

(a) that court must order that the record of subsequent warning be replaced by a record of first warning; and

(b) the replacement record of first warning is treated as having taken effect on the date on which the record of subsequent warning took effect.

(3) If an offender ~~ceases to have a record of first warning in relation to at least 1 offence but continues to have a record of subsequent warning in relation to 1 (but not more than 1) offence~~ continues to have 1 (but not more than 1) record of subsequent warning after every record of first warning that the offender had has ceased, then—

(a) the appropriate court must order that the record of subsequent warning be replaced by a record of first warning; and

(b) that replacement record of first warning is treated as having taken effect on the date on which the record of subsequent warning took effect.

(4) If an offender ~~ceases to have a record of first warning in relation to at least 1 offence but continues to have a record of subsequent warning in relation to more than 1 offence~~ continues to have more than 1 record of subsequent warning after every record of first warning that the offender had has ceased, then—

(a) the appropriate court must order that each record of subsequent warning that took effect on the earliest date on which the offender had a record of subsequent warning be replaced by a record of first warning; and

(b) those replacement records of first warning are treated as having taken effect on that date.

(5) In this section and in **section 86V**, **appropriate court** means,—

(a) in the case of an offender who ceases, under **subsection (2)(a) or (2A)(a)**, to have a record of first warning or a record of subsequent warning in relation to an offence, the court that heard the appeal:

(b) in the case of an offender who ceases, under **subsection (2)(aa) or (2A)(b)**, to have a record of first warning in relation to an offence, the court that cancelled the sentence and substituted a sentence of home detention:

(c) in the case of an offender who ceases, under **subsection (2)(b) or (2A)(c)**, to have a record of first warning or a record of subsequent warning in relation to an offence, the court that imposed the new sentence:

(d) in the case of an offender who ceases, under **subsection (2)(c) or (2A)(d)**, to have a record of first warning or a record of subsequent warning in relation to an offence, the court that first sentenced the offender for the offence.

86V How cessation of record affects later sentences

(1) This section applies if,—

(a) under **section 86U~~(2)~~**, an offender ceases to have a record of first warning or a record of subsequent warning or both (the **previous record**); and

(b) the offender continues to be subject to a qualifying sentence that was imposed on the offender for a qualifying offence committed when the offender had the previous record (a **later qualifying sentence**).

~~(2) The court that heard the appeal or imposed the new sentence must—~~

~~(a) take the actions described in **subsection (3)** that are applicable to the case; or~~

~~(b) in the case of an appeal, remit the matter to the court that sentenced the offender with a direction to take those actions.~~

(2) If the appropriate court is the High Court, the appropriate court must—

(a) take the actions described in **subsection (3)** that are applicable to the case; or

(b) remit the matter to the court that imposed the later qualifying sentence with a direction to take those actions.

(2A) If the appropriate court is not the High Court, the appropriate court must, unless the later qualifying sentence was imposed by a higher court than the appropriate court,—

(a) take the actions described in **subsection (3)** that are applicable to the case; or

(b) remit the matter to the court that imposed the later qualifying sentence with a direction to take those actions.

(2B) If the appropriate court is the District Court and the later qualifying sentence was imposed by a higher court, the High Court must, on the application of the offender, take the actions described in **subsection (3)** that are applicable to the case.

(3) The ~~appropriate court must take the following~~ actions are as follows:

(a) if the later qualifying sentence would not have been imposed but for the previous record, the court must set aside the later qualifying sentence and replace it with a sentence that the court would have imposed had the offender not been subject to the previous record:

(b) if any order relating to the later qualifying sentence would not have been made but for the previous record, the court must cancel the order and, where appropriate, replace it with an order that the court would have made had the offender not been subject to the previous record:

(c) if the court considers it just to make any consequential orders, the court must make those orders.

86W Appeal against orders relating to imprisonment

For the purposes of Part 6 of the Criminal Procedure Act 2011, an order under **section 86O(2), 86P(2), 86R(3), or 86S(2)** is a sentence.

86X Sections 86K to 86T prevail over inconsistent provisions

(1) This section applies to a provision—

(a) in **sections 86K to 86T**; and

(b) that is inconsistent with another provision in this Act or in the Parole Act 2002.

(2) The provision prevails over the other provision, to the extent of the inconsistency.

8 Section 89 amended (Imposition of minimum period of imprisonment)

Before section 89(3), insert:

(2A) If a sentence of preventive detention is imposed for a stage-3 offence (as defined in **section 86J**), subsections (1) and (2) are subject to **section 86R(6)**.

9 Section 103 amended (Imposition of minimum period of imprisonment or imprisonment without parole if life imprisonment imposed for murder)

In section 103(7), replace "section 104" with "**sections 86P, 86S,** and 104".

10 Section 104 amended (Imposition of minimum period of imprisonment of 17 years or more)

(1) Replace section 104(1) with:

(1) The court must make an order under section 103 imposing a minimum period of imprisonment of at least 17 years if any 1 or more of the circumstances set out in **subsection (1A)** apply, unless the court is satisfied that it would be manifestly unjust to do so.

(1A) The circumstances are as follows:

- (a) the murder was committed in an attempt to avoid the detection, prosecution, or conviction of any person for any offence or in any other way to attempt to subvert the course of justice:
- (b) the murder involved calculated or lengthy planning, including making an arrangement under which money or anything of value passes (or is intended to pass) from one person to another:
- (c) the murder involved the unlawful entry into, or unlawful presence in, a dwelling place:
- (d) the murder was committed in the course of another serious offence:
- (e) the murder was committed with a high level of brutality, cruelty, depravity, or callousness:
- (f) the murder was committed as part of a terrorist act (as defined in section 5(1) of the Terrorism Suppression Act 2002):
- (g) the deceased was a constable or a prison officer acting in the course of their duty:
- (h) the deceased was particularly vulnerable because of their age, health, or any other factor:
- (i) the offender has been convicted of 2 or more counts of murder, whether or not arising from the same circumstances:
- (j) any other exceptional circumstances exist.

(2) In section 104(2), replace "section 103(2A)" with "**section 86P(2), 86S(2),** or 103(2A)".

11 Schedule 1AA amended

(1) In Schedule 1AA, Part 4, before clause 13, insert:

13AAA Interpretation

In this Part, **stage-2 or stage-3 offence** means a stage-2 offence or a stage-3 offence as those terms were defined in section 86A immediately before that section was repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022.

(2) In Schedule 1AA,—

(a) insert the Part set out in **Schedule 1** of this Act as the last Part; and

(b) make all necessary consequential amendments.

12 New Schedule 1AB inserted

After Schedule 1AA, insert the **Schedule 1AB** set out in **Schedule 2** of this Act.

Part 2
Amendments to other Acts

Subpart 1—Amendment to Criminal Procedure Act 2011

13 Principal Act

Section 14 amends the Criminal Procedure Act 2011.

14 Section 180 amended (Court may correct erroneous sentence)

Replace section 180(4) with:

(4) In this section, **sentence** includes—

(a) an order, and references to the imposition of a sentence include references to the making of an order:

(b) a record of first warning and a record of subsequent warning (as those terms are defined in **section 86J** of the Sentencing Act 2002), and references to the imposition of a sentence include references to the giving and recording of a warning of either kind.

Subpart 2—Amendments to Criminal Procedure (Mentally Impaired Persons) Act 2003

15 Principal Act

~~**Section 16** amends~~ **Sections 16 and 16A** amend the Criminal Procedure (Mentally Impaired Persons) Act 2003.

16 Section 34 amended (Power of court to commit offender to hospital or facility on conviction)

After section 34(5), insert:

(6) No order may be made under subsection (1)(b) in respect of an offender who is convicted of a ~~qualifying offence~~ stage-2 offence, or a stage-3 offence, for which the court would, in the absence of ~~this section~~ that paragraph, have imposed a qualifying sentence.

(7) In this section, ~~**qualifying offence** and~~ **qualifying sentence**, **stage-2 offence**, and **stage-3 offence** have the same meanings as in **section 86J** of the Sentencing Act 2002.

16A Schedule 1AA amended

In Schedule 1AA,—

(a) insert the Part set out in **Schedule 2A** of this Act as the last Part; and

(b) make all necessary consequential amendments.

Subpart 3—Amendment to Evidence Act 2006

17 Principal Act

Section 18 amends the Evidence Act 2006.

18 Section 139 amended (Evidence of convictions, acquittals, and other judicial proceedings)

Before section 139(1)(c), insert:

(ba) a record of first warning or a record of subsequent warning (as those terms are defined in **section 86J** of the Sentencing Act 2002) made in respect of a person:

Subpart 4—Amendments to Parole Act 2002

19 Principal Act

Sections 20 to 23 amend the Parole Act 2002.

20 Section 20 amended (Parole eligibility date)

(1) After section 20(4), insert:

(4A) An offender (**offender A**) who is subject to a sentence (**sentence A**) that he or she is required, by an order made under **section 86O(2) or 86R(3)** of the Sentencing Act 2002, to serve without parole—

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

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

(4B) If offender A is also subject to 1 or more other sentences in respect of which no order under **section 86O(2) or 86R(3)** of the Sentencing Act 2002 has been made, the full term of sentence A must be treated as the non-parole period of sentence A for the purpose of determining the parole eligibility date (if any) of each of those other sentences.

(2) After section 20(4), insert:

(5) If an offender is required, by an order made under section 103(2A) of the Sentencing Act 2002, to serve a sentence of imprisonment for life without parole, the offender may not be released on parole.

21 Section 25 amended (Early referral and consideration for parole)

In section 25(5)(b), replace "section 86, section 89, or section 103" with "section 86, **86O(2), 86P(2), 86R(3), 86S(2),** 89, or 103".

22 Section 84 amended (Non-parole periods)

(1) In section 84(2), after "86,", insert "**86P(2), 86S(2),**".

(2) Replace section 84(3) with:

(3) The non-parole period of a sentence of imprisonment for life is 10 years, unless the court—

(a) has imposed a minimum term of imprisonment in respect of that sentence; or

(b) has made an order under section 103(2A) of the Sentencing Act 2002 in respect of that sentence.

(3A) An offender who is subject to an order made under section 103(2A) of the Sentencing Act 2002 is not eligible for parole in respect of the following sentences:

(a) the sentence to which the order relates:

(b) any other sentence to which the offender is subject when the order is made:

(c) any sentence that is later imposed on the offender.

(3) Before section 84(5)(b), insert:

(ab) every sentence in respect of which an order under **section 86O(2) or 86R(3)** of the Sentencing Act 2002 has been made must be treated as if it had a non-parole period equal to its full term; and

23 Schedule 1 amended

In Schedule 1,—

(a) insert the Parts set out in **Schedule 3** of this Act as the last Parts; and

(b) make all necessary consequential amendments.

Schedule 1
New Part 5 inserted into Schedule 1AA of Sentencing Act 2002

s 11(2)

Part 5
Provisions relating to Sentencing (Reinstating Three Strikes) Amendment Act 2024

16 Interpretation

In this Part,—

amendment Act means the Sentencing (Reinstating Three Strikes) Amendment Act **2024**

commencement date means the date on which the amendment Act, other than **sections 20(2), 22(2), and 23**, comes into force

~~**new rules** means this Act as in force on the commencement date~~

~~**old rules** means this Act as in force immediately before 16 August 2022.~~

current, for a warning under the old regime, means that the record—

(a) has not ceased, or been cancelled, under section 86F of the old regime, when that section was in force; and

(b) would not have ceased, or have been cancelled, under that section if it were in force—

(i) on and after 16 August 2022; and

(ii) until the commencement date

new regime means **sections 86J to 86X** (additional consequences for certain repeated offending), and related legislation, as in force on and after the commencement date

old regime means sections 86A to 86I (additional consequences for repeated serious violent offending), and related legislation, as in force—

(a) on and after 1 June 2010; and

(b) until immediately before 16 August 2022

reactivated warning means a warning under the old regime that under **clause 19** is taken to be the equivalent warning under the new regime

warning under the new regime, in relation to an offender, means a record under the new regime that is—

(a) a record of first warning (as defined in **section 86J** of the new regime); or

(b) a record of subsequent warning (as defined in **section 86J** of the new regime)

warning under the old regime, in relation to an offender, means a record under the old regime that, immediately before the commencement date, is current (as defined in this clause), and is—

(a) a record of first warning (as defined in section 86A of the old regime); or

(b) a record of final warning (as defined in section 86A of the old regime).

17 Offences affected by amendments

General rule: new regime applies only to new offences

(1) The amendments made to this Act by the amendment Act do not apply to any offence committed, whether in whole or in part, before the commencement date.

Exception: old regime warnings reactivated under new regime

(2) However, **subclause (1)** is subject to **clauses 19 to 22**.

18 No entitlement to compensation

A person is not entitled to compensation of any kind on account of any difference between ~~the old rules and the new rules.~~—

(a) this Act as in force immediately before 16 August 2022; and

(b) this Act as in force on the commencement date.

Warnings under old regime reactivated under new regime

19 Warning under old regime reactivated unless exception applies

General rule

(1) A warning under the old regime is taken to be the equivalent warning under the new regime (*see* **clause 20**).

Exception: for stage-1 offence without qualifying sentence

(2) **Subclause (1)** does not apply if the warning under the old regime is for a stage-1 offence for which the sentence imposed is not a qualifying sentence as defined in **paragraph (a)** of the definition of that term in **section 86J** of the new regime.

Exception: for stage-2 offence without qualifying sentence

(3) **Subclause (1)** does not apply if the warning under the old regime is for a stage-2 offence for which the sentence imposed is not a qualifying sentence as defined in **paragraph (b)** of the definition of that term in **section 86J** of the new regime.

Exception: for stage-2 offence with qualifying sentence for stage-1 offence

(4) **Subclause (3)** is subject to the exception in **subclause (5)**.

(5) **Subclause (1)** does apply to the warning under the old regime (*see also* **clause 20(2) and (3)**) if that warning is for a stage-2 offence and the offender has both of the following warnings under the old regime:

(a) a warning for a stage-1 offence to which **subclause (2)** applies; and

(b) a warning for a stage-2 offence for which the sentence imposed—

(i) is not a qualifying sentence as defined in **paragraph (b)** of the definition of that term in **section 86J** of the new regime; but

(ii) is a qualifying sentence as defined in **paragraph (a)** of the definition of that term in **section 86J** of the new regime.

20 Equivalent warning under new regime

General rule: for stage-1 offence, or stage-2 offence, with qualifying sentence

(1) The equivalent warning under the new regime is set out in the following table:

Item	Warning and sentence under old regime	Equivalent under new regime
1	Record of first warning under section 86B(3) of the old regime for a stage-1 offence for which the sentence imposed is a qualifying sentence under **paragraph (a)** of the definition of that term in **section 86J** of the new regime	Record of first warning under **section 86K(3)**
2	Record of final warning under section 86C(3) or 86E(8) of the old regime for a stage-2 offence for which the sentence imposed is a qualifying sentence under **paragraph (b)** of the definition of that term in **section 86J** of the new regime	Record of subsequent warning under **section 86L(3)**

Exception: for stage-2 offence with qualifying sentence for stage-1 offence

(2) **Subclause (1)** is subject to the exception in **subclause (3)**.

(3) A warning under the old regime that is a record of final warning is taken to be a record of first warning under **section 86K(3)** of the new regime if the offender has both of the following warnings under the old regime:

(a) a record of first warning that is not a reactivated warning under **clause 19(2)**; and

(b) a record of final warning that is a reactivated warning under **clause 19(5)**.

21 How new regime applies to reactivated warning

(1) The new regime applies, with any necessary modifications, to a reactivated warning.

(2) In particular, the following sections of the new regime apply, with any necessary modifications, to a reactivated warning:

(a) **section 86U** (continuing effect of warnings); and

(b) **section 86V** (how cessation of record affects later sentences).

(3) **Subclause (2)** does not limit the generality of **subclause (1)**.

22 Differences in giving or recording of warnings

Clauses 19 to 21 apply regardless of any difference—

(a) between the old regime and the new regime; and

(b) related to the giving or recording of warnings.

Schedule 2
New Schedule 1AB inserted into Sentencing Act 2002

s 12

Schedule 1AB
Qualifying offences

s 86J

Provision of Crimes Act 1961	Subject matter
s 128B	Sexual violation
s 129(1)	Attempted sexual violation
s 129(2)	Assault with intent to commit sexual violation
s 129A(1)	Sexual connection with consent induced by threat
s 131(1)	Sexual connection with dependent family member under 18 years
s 131(2)	Attempted sexual connection with dependent family member under 18 years
s 132(1)	Sexual connection with child
s 132(2)	Attempted sexual connection with child
s 132(3)	Indecent act on child
s 134(1)	Sexual connection with young person
s 134(2)	Attempted sexual connection with young person
s 134(3)	Indecent act on young person
s 135	Indecent assault
s 138(1)	Exploitative sexual connection with person with significant impairment
s 138(2)	Attempted exploitative sexual connection with person with significant impairment
s 142A	Compelling indecent act with animal
s 144A	Sexual conduct with children and young people outside New Zealand
s 172	Murder
s 173	Attempted murder
s 174	Counselling or attempting to procure murder
s 175	Conspiracy to murder
s 177	Manslaughter
s 188(1)	Wounding with intent to cause grievous bodily harm
s 188(2)	Wounding with intent to injure
s 189(1)	Injuring with intent to cause grievous bodily harm
s 189A	Strangulation or suffocation
s 191(1)	Aggravated wounding
s 191(2)	Aggravated injury

Provision of Crimes Act 1961	Subject matter
s 198(1)	Discharging firearm or doing dangerous act with intent to do grievous bodily harm
s 198(2)	Discharging firearm or doing dangerous act with intent to injure
s 198A(1)	Using firearm against law enforcement officer, etc
s 198A(2)	Using firearm with intent to resist arrest or detention
s 198B	Commission of crime with firearm
s 200(1)	Poisoning with intent to cause grievous bodily harm
s 201	Infecting with disease
s 208	Abduction for purposes of marriage or civil union or sexual connection
s 209	Kidnapping
s 232(1)	Aggravated burglary
s 234	Robbery
s 235	Aggravated robbery
s 236(1)	Causing grievous bodily harm with intent to rob, or assault with intent to rob in specified circumstances
s 236(2)	Assault with intent to rob

Schedule 2A
New Part 3 inserted into Schedule 1AA of Criminal Procedure (Mentally Impaired Persons) Act 2003

s 16A

Part 3
Provision relating to Sentencing (Reinstating Three Strikes) Amendment Act 2024

6 Offences affected by amendment

(1) The amendment made to section 34 of this Act by **section 16** of the amendment Act does not apply to any offence committed, whether in whole or in part, before the commencement date.

(2) In this clause,—

amendment Act means the Sentencing (Reinstating Three Strikes) Amendment Act **2024**

commencement date means the date on which the amendment Act, other than **sections 20(2), 22(2), and 23**, comes into force.

Schedule 3
New Parts 3 and 4 inserted into Schedule 1 of Parole Act 2002

s 23

Part 3
Provision relating to Three Strikes Legislation Repeal Act 2022

7 Treatment of persons serving sentence of life imprisonment without parole for murder on commencement of Three Strikes Legislation Repeal Act 2022

(1) This clause applies to a person who,—

(a) before the repeal Act came into force, was convicted of murder and sentenced to imprisonment for life; and

(b) immediately before the repeal Act came into force, was subject to an order made under section 103(2A) of the Sentencing Act 2002.

(2) A person to whom this clause applies—

(a) is not, and has never been, affected by the amendments to sections 20 and 84 made by sections 18 and 19 of the repeal Act; and

(b) may not be released on parole so long as the order remains in force.

(3) In this clause, **repeal Act** means the Three Strikes Legislation Repeal Act 2022.

Part 4
Provisions relating to Sentencing (Reinstating Three Strikes) Amendment Act **2024**

8 Interpretation

In this Part,—

amendment Act means the Sentencing (Reinstating Three Strikes) Amendment Act **2024**

commencement date means the date on which **sections 20(2), 22(2), and 23** of the amendment Act come into force.

9 Retrospective application of section 20(5)

Section 20(5) (as inserted by **section 20(2)** of the amendment Act) applies on and from 16 August 2022 as if it were in force on and from that date.

10 Retrospective application of section 84(3) and (3A)

Section 84(3) and (3A) (as inserted by **section 22(2)** of the amendment Act) apply on and from 16 August 2022 as if they were in force on and from that date.

Legislative history

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