



Protection for First Responders and Prison Officers Bill

64—1

Report of the Justice Committee

April 2021

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Ginny Andersen
Chairperson

Protection for First Responders and Prison Officers Bill

Recommendation

The Justice Committee has examined the Protection for First Responders and Prison Officers Bill and recommends, by majority, that the bill not be passed.

Introduction

This bill is a Member's bill in the name of Hon Mark Mitchell. It seeks to amend the Crimes Act 1961, the Sentencing Act 2002, and the Summary Offences Act 1981.

Currently, Sections 9 and 10 of the Summary Offences Act specify penalties for assault on another person or on a police officer, prison officer, or traffic officer. These offences have a maximum sentence of six months' imprisonment or a fine not exceeding \$4,000. The bill aims to strengthen the stance against any assault on a prison officer or first responder.¹

The bill's purposes are to deter offenders, to assure the public that the safety of officers and first responders is being preserved, to reduce the number of assaults against officers and first responders, and to provide officers and first responders with the confidence they need to do their jobs. The bill would:

- create a new offence of "injuring a first responder or prison officer with intent"
- require a minimum sentence of imprisonment of six months for those convicted of the new offence, and require that any sentence of imprisonment be imposed cumulatively on any determinate sentence
- expand the existing offence of assaulting a police officer, prison officer, or traffic officer in the Summary Offences Act to apply to first responders.

Submissions received

We received 74 submissions on this bill, and heard oral submissions from 17 organisations and individuals. About 41 submissions supported the bill and 30 opposed it. Many of the submissions in support of the bill asked for the definition of first responder to include other groups of workers, such as nurses and surf lifesavers. Those opposing the bill generally regarded it as too punitive. Some submitters commented that the desired effect, of reducing assaults on first responders, would not be achieved by increasing the penalty for the offence. Others thought this approach would act as an effective deterrent.

¹ The term "first responder" is not used in existing legislation, but would be defined by the bill as a constable (within the meaning of section 4 of the Policing Act 2008) or an emergency services worker (within the meaning of section 92(4) of the Health and Safety at Work Act 2015).

Thanking all first responders and prison officers

We would like to express our appreciation for the work of all first responders and prison officers in New Zealand. The service they provide to our country is exceptional, and we recognise their dedication and hard work.

How the bill's provisions would interact with the current hierarchy of offending

Clause 4 of the bill would insert new section 189A into the Crimes Act to create a new offence. It would specify that a person would be liable to imprisonment for up to 10 years if they either intentionally or recklessly injured a first responder or prison officer who was acting in the course of their duty.

Currently, sections 188 to 189 of the Crimes Act provide a hierarchy of offending that takes into account the degree of harm a person intended, the nature of that intent, and the degree of harm that resulted. For example, if a person intending to injure another person, either wilfully or recklessly wounds or causes grievous bodily harm, they are liable to imprisonment for up to 7 years. In the same circumstances, if a person intending to injure, either wilfully or recklessly causes an injury, they are liable to a term of imprisonment of up to 5 years.

The new offence created by the bill refers to the situation where a person injures a first responder. However, the bill does not distinguish, as the Act currently does, whether the intention was to injure, or wound/cause grievous bodily harm. It also puts intentional and reckless assaults on the same footing, with a maximum penalty of 10 years, focusing only on the degree of harm that resulted—that a first responder was injured. This means that, should the bill come into effect, if someone assaulted a prison officer intending to injure them, but caused grievous bodily harm, they would be charged under the existing offence in Section 188(2) and be liable for up to 7 years. If they assaulted a prison officer under the same circumstances, but caused the lesser harm of “injury”, they would be liable for up to 10 years’ imprisonment under the new offence.

We consider that it is unclear how the new offences provided by the bill would interact with the current hierarchy of offending specified in the Crimes Act.

Ability of a court to consider totality of offending and impose an appropriate sentence

Clause 6 of the bill would insert new section 85A into the Sentencing Act to specify that, if a court finds an offender guilty of the new offence, it must impose a minimum sentence of six months imprisonment, unless the imposition of that sentence would be manifestly unjust.

Generally, New Zealand law does not allow the imposition of mandatory sentences, with the exception of the presumption for a sentence of life imprisonment for murder. There are no offences for which a court must impose a minimum mandatory sentence; that is, a period of imprisonment of at least a specified length.

The bill’s proposals represent a significant departure for New Zealand sentencing policy. They are also inconsistent with approaches taken by the Sentencing Act 2002. Section 85 of

the Act requires the court to ensure that the total period of imprisonment is not out of proportion to the gravity of the overall offending. This is part of the general approach that the court must focus on the individual circumstances of the offence and the offender and not adopt a mechanical approach to sentencing. Sections 8(g) and 16 of the Act also specify that the court must impose the least restrictive outcome and aim, where possible, to keep the offender in the community.

We consider that the bill's provisions imposing minimum mandatory sentencing would limit judicial discretion and the ability of the court to consider the crime and impose an appropriate sentence. We believe judicial discretion is essential in ensuring that imposed penalties are not disproportionately unjust.

Imposition of cumulative sentencing

Supplementary Order Paper No 219 would amend clause 6 of the bill to insert new section 85B. This would provide that the mandatory minimum sentence of imprisonment required under new section 85A would be imposed cumulatively on an offender's existing determinate sentence if the offence occurred during an offender's imprisonment under that sentence. The SOP provides that the court could choose not to impose the sentence cumulatively on any other determinate sentence if it considered that to do so would be manifestly unjust.

We have concerns about the bill's requirement for the minimum mandatory sentence to be imposed cumulatively on any other determinate sentence. We believe it would limit the court's ability to take into account the specific circumstances of the offender and offending and determine an appropriate punishment. Section 83 of the Sentencing Act already provides for the court to impose a cumulative sentence if it considers this appropriate. Similar to the bill's provision of minimum mandatory sentencing, the requirement for cumulative sentencing would limit judicial discretion and the court's ability to impose penalties that are not disproportionately unjust.

Some of us considered that, should the bill be amended to have its minimum mandatory sentencing provision removed, any sentence imposed by the court for assault on a first responder or prison officer should still be cumulatively imposed on an offender's existing determinate sentence.

Conclusion

Some amendments to the bill have been proposed in supplementary order papers or by members in committee. They include the removal of the bill's minimum mandatory sentencing provisions and better alignment of the bill's offence penalties with the current hierarchy of offences prescribed in the Crimes Act. We consider that adopting these amendments would mean that the bill would effectively make no material changes to existing legislation.

The courts are already required to consider whether the victim of a crime was a constable, prison officer, or an emergency health or fire services provider acting in the course of his or her duty. Section 9(1)(fa) and (fb) of the Sentencing Act specifies that the courts must take this into account as an aggravating factor when determining the sentence of an offender. We

note that this factor can also be applied across a spectrum of offending, and not just to the assault offences specified in this bill.

We consider that taking into account these aggravating factors while allowing the courts discretion in determining appropriate sentences within the current hierarchy of offending already enables the courts to take a firm stance against any assault on first responders or prison officers.

This committee recognises and upholds the importance of first responders and prison officers in preventing crime, harm, injury, and death to New Zealanders. However, the majority of us consider that the harsher penalties prescribed by this bill would not introduce any deterrent effect and would not better protect our first responders and prison officers.

For these reasons, we recommend by majority that the bill not be passed.

New Zealand National Party differing view

National supports this bill with amendments. We believe it is right to create a new offence for injuring a first responder or prison officer with intent. While the fact that it is a first responder or prison officer who has been assaulted is already an aggravating factor at sentencing, this offence would more formally recognise the value of such people carrying out a critical public service and may also result in higher sentences in this area and therefore greater deterrence. We have appended the amendments that National members support.

In terms of specific aspects of the bill:

- We support extending the first responders covered from only those within section 92(4) of the Health and Safety at Work Act 2015 (basically ambulance and FENZ workers) to include authorised officers within section 24 of the Policing Act 2008 and GPs and hospital workers. We note that there were other suggestions for inclusion but the line has to be drawn somewhere and with our proposed extensions we believe we cover the main first responders New Zealanders would want covered.
- We do not support a mandatory minimum sentence for this new offence.
- We do support a cumulative sentence for this new offence.

Petition of Anna Maria.E.F Coervers and Petition of Hon Clare Curran

Anna Maria.E.F Coervers' petition requested that the House of Representatives amend the Protection for First Responders and Prison Officers Bill to give registered nurses the same protection as first responders under that bill.

Hon Clare Curran's petition requested that the House of Representatives reject the Protection for First Responders and Prison Officers Bill and work to provide solutions that prevent first responders from being harmed in the first place, and note the online petition of Aaron Hendry and 159 others in support of this.

We considered the matters raised by both petitions and have taken these into account in our consideration of the bill.

Appendix A

Committee procedure

The Protection for First Responders and Prison Officers Bill was referred to the Justice Committee of the 52nd Parliament on 10 December 2019. It was reinstated with this committee in the 53rd Parliament on 26 November 2020.

The closing date for submissions was 12 February 2020. The committee received and considered 74 submissions from interested groups and individuals. It heard oral evidence from 17 submitters at hearings in Wellington.

We received advice on the bill from the Ministry of Justice. The Parliamentary Counsel Office assisted with legal drafting.

Committee members

Ginny Andersen (Chairperson)
Hon Simon Bridges
Simeon Brown
Dr Emily Henderson
Nicole McKee
Willow-Jean Prime
Hon Dr Nick Smith
Vanushi Walters
Arena Williams

Advice and evidence received

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

Appendix B

Amendments supported by New Zealand National Party members

Protection for First Responders and ~~Prison~~ Corrections Officers Bill

Proposed amendments for the consideration of the select committee

Key:

- this is inserted text
- **this is deleted text**

Note: This version of the Bill shows amendments to the Bill that have been prepared by the PCO for the purposes of select committee consideration. This version does—

- NOT have official status in terms of unamended text
- NOT show whether amendments might in due course be voted as majority or unanimous amendments
- NOT have the status of an as-reported back version of the Bill.

Darroch Ball

Protection for First Responders and ~~Prison~~ Corrections Officers Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Protection for First Responders and ~~Prison~~Corrections Officers Act **2018**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendment to Crimes Act 1961

3 Principal Act

This Part amends the Crimes Act 1961 (the **principal Act**).

4 ~~New section 189A inserted (Injuring first responder or prison officer with intent)~~

After section 189, insert:

~~189A Injuring first responder or prison officer with intent~~

- (1) ~~Every one is liable to imprisonment for a term not exceeding 10 years who—~~
- ~~(a) intentionally injures a first responder or prison officer who is acting in the execution of their duty; or~~
 - ~~(b) being reckless as to whether their conduct may lead to that result, injures a first responder or prison officer who is acting in the execution of their duty.~~
- (2) ~~In this section,—~~
first responder means—

~~(a) a constable (within the meaning of section 4 of the Policing Act 2008);
or~~

~~(b) an emergency services worker (within the meaning of section 92(4) of the Health and Safety at Work Act 2015)~~

~~**prison officer** means an officer within the meaning of section 3(1) of the Corrections Act 2004; and includes a security officer within the meaning of that section.~~

4 New section 189B inserted (Injuring corrections officer or first responder with intent)

After section 189A, insert:

189B Injuring corrections officer or first responder with intent

(1) A person is liable to imprisonment for a term not exceeding 10 years who—

(a) intentionally injures a corrections officer or first responder who is acting in the execution of their duty; or

(b) with reckless disregard for the safety of others, injures a corrections officer or first responder who is acting in the execution of their duty.

(2) In this section,—

corrections officer means an officer within the meaning of section 3(1) of the Corrections Act 2004, and includes a security officer within the meaning of that section

emergency services worker includes a person who has a legal duty (under any enactment, employment agreement, other binding agreement or arrangement, or other source), at the scene of an emergency, to provide 1 or more of the following:

(a) ambulance services, or first aid or medical or paramedical care;

(b) designated services (as defined in section 6 of the Fire and Emergency New Zealand Act 2017)

first responder means—

(a) a constable (within the meaning of section 4 of the Policing Act 2008);
or

(b) an emergency services worker

scene of an emergency includes—

(a) the physical location (whether on land or water, or in the air) where an emergency has occurred or is occurring;

(b) a hospital or other emergency facility (whether temporary or permanent) that is used or is being used to provide first aid or medical or paramedical care;

- (c) a vehicle or vessel or an aircraft that is used or is being used to provide ambulance services, or first aid or medical or paramedical care.

Part 2

Amendment to Sentencing Act 2002

5 Principal Act

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

6 ~~New section 85A and cross-heading inserted~~

After section 85, insert:

Imposition of minimum period of imprisonment for offence against section 189A of Crimes Act 1961

~~85A Imposition of minimum period of imprisonment for offence against section 189A of Crimes Act 1961~~

- (1) ~~This section applies if a court finds an offender guilty of an offence against section 189A of the Crimes Act 1961.~~
- (2) ~~The court must impose a minimum sentence of 6 months imprisonment unless, given the circumstances of the offence and the offender, a sentence of imprisonment would be manifestly unjust.~~
- (3) ~~If a court does not impose a sentence of imprisonment on an offender in accordance with **subsection (2)**, it must give written reasons for not doing so.~~

6 New section 86AAA and cross-heading inserted

After section 86, insert:

Imposition of cumulative sentences of imprisonment in certain cases

86AAA Cumulative sentences of imprisonment for offences against section 189B of Crimes Act 1961

- (1) This section applies if, at the time of sentencing, the offender is detained under an existing determinate sentence of imprisonment.
- (2) The court must direct that any sentence of imprisonment imposed for an offence against **section 189B** of the Crimes Act 1961 is to be imposed cumulatively on any other determinate sentence of imprisonment, unless the court considers that would be manifestly unjust.

Part 3

Amendment to Summary Offences Act 1981

7 **Principal Act**

This Part amends the Summary Offences Act 1981 (the **principal Act**).

8 ~~Section 10 amended (Assault on Police, prison, or traffic officer)~~

- (1) ~~In the heading to section 10, replace “Police, prison” with “first responder, prison officer”.~~
- (2) ~~In section 10, replace “constable” with “first responder”.~~
- (3) ~~In section 10, insert as subclause (2):~~
- (2) ~~In this section, **first responder** means—~~
 - (a) ~~a constable (within the meaning of section 4 of the Policing Act 2008);~~
~~or~~
 - (b) ~~an emergency services worker (within the meaning of section 92(4) of the Health and Safety at Work Act 2015).~~

8 **Section 10 replaced (Assault on Police, prison, or traffic officer)**

Replace section 10 with:

10 Assault on corrections officer, first responder, or traffic officer

- (1) A person is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$4,000 who assaults a corrections officer, first responder, or traffic officer, acting in the execution of their duty.
- (2) In this section,—

corrections officer means an officer within the meaning of section 3(1) of the Corrections Act 2004, and includes a security officer within the meaning of that section

emergency services worker includes a person who has a legal duty (under any enactment, employment agreement, other binding agreement or arrangement, or other source), at the scene of an emergency, to provide 1 or more of the following:

 - (a) ambulance services, or first aid or medical or paramedical care;
 - (b) designated services (as defined in section 6 of the Fire and Emergency New Zealand Act 2017)

first responder means—

 - (a) a constable (within the meaning of section 4 of the Policing Act 2008);
or
 - (b) an emergency services worker

scene of an emergency includes—

- (a) the physical location (whether on land or water, or in the air) where an emergency has occurred or is occurring:
- (b) a hospital or other emergency facility (whether temporary or permanent) that is used or is being used to provide first aid or medical or paramedical care:
- (c) a vehicle or vessel or an aircraft that is used or is being used to provide ambulance services, or first aid or medical or paramedical care.