

[Act 2002 No 74]



New South Wales

Crimes Legislation Amendment (Periodic and Home Detention) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Crimes (Administration of Sentences) Act 1999* so as:
 - (i) to require an application for leave of absence with respect to periodic detention to be lodged before the beginning of the relevant detention period, and
 - (ii) to make it clear that if the Parole Board revokes a periodic detention order on health or compassionate grounds, the Parole Board may only make such other orders as are sought by the Commissioner of Corrective Services (the *Commissioner*), and

* Amended in committee—see table at end of volume.

Explanatory note

- (iii) to provide for the mandatory revocation of a periodic detention order or home detention order made by the Parole Board if the offender concerned is subsequently sentenced to imprisonment by way of full-time detention, and
 - (iv) to require the Commissioner to apply for revocation of a periodic detention order if the offender concerned is absent without leave for 3 consecutive detention periods, and to restrict the power of the Parole Board to defer making a decision on such an application, and
 - (v) to clarify that the Parole Board's power to revoke a periodic detention order if the offender concerned is absent without leave for 3 detention periods applies not only to detention periods during the same sentence but also to detention periods during consecutive sentences, and
 - (vi) to enable the Parole Board to reinstate a periodic detention order that it has revoked if the offender concerned has served at least 3 months' full-time detention and has been reassessed as suitable for periodic detention, and
 - (vii) to provide that where the Parole Board has made a home detention order following its revocation of a periodic detention order, and is considering whether to reinstate the home detention order following the offender having spent at least 3 months in full-time detention, the Parole Board may instead reinstate the original periodic detention order, and
 - (viii) to clarify the power of the Parole Board to make a home detention order following its revocation of a periodic detention order, and
 - (ix) to enable the Parole Board to make a temporary release order with respect to an offender whose periodic detention order it has revoked pending its decision as to whether or not to make a home detention order with respect to the offender, and
 - (x) to restrict the Parole Board's power to rescind the revocation of a periodic detention order or home detention order in certain circumstances, and
 - (xi) to make a number of minor, consequential and ancillary amendments to that Act, and
 - (xii) to enact savings and transitional provisions with respect to the matters referred to above, and
- (b) to amend the *Crimes (Sentencing Procedure) Act 1999* so as:
- (i) to provide that a person who has served a sentence of imprisonment of more than 6 months by way of full-time detention is ineligible for consideration for periodic detention in respect of any subsequent sentence of imprisonment, and

- (ii) to ensure that a court that deals with an offender contrary to the recommendations of an assessment report as to the offender's suitability for periodic detention or home detention must indicate to the offender, and make a formal record of, its reasons for doing so, and
- (iii) to prevent a court that has previously referred an offender for assessment for periodic detention from referring the offender for assessment for home detention unless it has formally decided not to make a periodic detention order for the offender, and
- (iv) to enact savings and transitional provisions with respect to the matters referred to above.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes (Administration of Sentences) Act 1999* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999* set out in Schedule 2.

Schedule 1 Amendment of Crimes (Administration of Sentences) Act 1999

Applications for leave of absence for periodic detention

Schedule 1 [2] amends section 87 by substituting subsection (3) and inserting new subsections (4), (5) and (6). The existing subsection (3) allows an application for leave of absence for a detention period to be made either before, or up to 7 days after, the beginning of the detention period. New subsection (3) will require an application for leave of absence for a detention period to be made before the beginning of that period. New subsections (4), (5) and (6) will allow an offender who is unable to report for a detention period to apply for leave by giving telephone notice of his or her inability to report before the beginning of the detention period, and following up the telephone notice with a document explaining the circumstances of the inability to report or, if those circumstances involve illness or injury, a doctor's certificate.

Ancillary orders following revocation of a periodic detention order on health or compassionate grounds

Schedule 1 [4] amends section 163 (1B) by restricting the kinds of order that may be made by the Parole Board on revoking a periodic detention order on health or compassionate grounds to those kinds of order that have been sought by the Commissioner when applying for revocation of the periodic detention order.

Mandatory revocation of periodic detention orders and home detention orders where offender subsequently subject to full-time detention

Schedule 1 [5] inserts new subsection (1C) into section 163 so as to require the Parole Board to revoke any periodic detention order that it has reinstated if the offender concerned is subsequently sentenced to full-time detention.

Schedule 1 [12] inserts new subsection (6) into section 167 so as to require the Parole Board to revoke any home detention order that it has made or reinstated if the offender concerned is subsequently sentenced to full-time detention.

Mandatory revocation of periodic detention order following 3 consecutive absences without leave

Schedule 1 [7] inserts new subsections (2A), (2B) and (2C) into section 163. New subsection (2A) requires the Commissioner to make an application for revocation of an offender's periodic detention order if the offender has failed to report for 3 or more consecutive detention periods without leave. New subsection (2B) clarifies what "consecutive" means in proposed subsection (2A). New subsection (2C) clarifies the circumstances in which an offender is taken to have failed to report for a detention period.

Schedule 1 [8] inserts new subsections (3A) and (3B) into section 163 so as to restrict the power of the Parole Board to defer making a decision with respect to an application made by the Commissioner under proposed section 163 (2A).

Absences can span concurrent and consecutive sentences

Schedule 1 [6] substitutes section 163 (2) (a) so as clarify that the Parole Board's power to revoke an offender's periodic detention order (where the offender is absent without leave for 3 detention periods) applies not only to detention periods during the same sentence but also to detention periods during consecutive sentences.

Reinstatement of revoked periodic detention orders

Schedule 1 [9] inserts a new section 164A. The new section parallels existing section 168A by allowing an offender's periodic detention order to be reinstated if, having served at least 3 months of his or her sentence by way of full-time detention following revocation of the order, the offender is reassessed and found to be suitable for periodic detention. In addition, the new section prohibits the reinstatement of a revoked periodic detention order if the offender is the subject of an uncommenced sentence of imprisonment to be served by way of full-time detention.

Schedule 1 [14] inserts a new subsection (1A) into section 168A. The new subsection allows the Parole Board to reinstate an offender's original periodic detention order (previously revoked and replaced with a home detention order under section 165 that has itself been subsequently revoked) as an alternative to reinstating the revoked home detention order.

Schedule 1 [17] inserts new subsections (3) and (4) into section 168A. New subsection (3) clarifies the manner in which certain provisions of the *Crimes (Sentencing Procedure) Act 1999* are to be applied with respect to the assessment of an offender for reinstated periodic detention. Subsection (4) prohibits the reinstatement of a revoked periodic detention order if the offender is subject to a sentence of imprisonment by way of full-time detention that is yet to commence.

Consequential amendments to sections 168A are made by **Schedule 1 [13], [15] and [16]**.

Schedule 1 [3] makes a consequential amendment to the heading to Part 7.

Making of home detention order following Parole Board's revocation of periodic detention order

Schedule 1 [10] substitutes section 165. Like the existing section, the new section empowers the Parole Board to impose a home detention order on a person whose periodic detention order it has revoked. However, the new section prevents the Parole Board from converting a periodic detention order to a home detention order if the offender is subject to a sentence of imprisonment by way of full-time detention that is yet to commence.

The new section also makes it clear that the Parole Board may only convert a periodic detention order to a home detention order if the remainder of the offender's term of sentence is 18 months or less, including any period during which the offender is eligible to be released on parole.

A consequential amendment to section 3 is made by **Schedule 1 [1]**.

Explanatory note

Schedule 1 [11] inserts a new section 165AA. The new section allows the Parole Board, having revoked an offender's periodic detention order, to make a temporary release order releasing the offender from custody pending its decision as to whether or not to make a home detention order. If such an order is made, the offender's sentence of imprisonment is extended by the length of time for which the offender is released from custody.

Review of revocation of periodic detention orders

Schedule 1 [18] inserts new subsection (1A) into section 175 so as to prohibit the Parole Board from rescinding the revocation of a periodic detention order in certain circumstances.

Issue of warrants by Parole Board

Schedule 1 [19] and [20] amend section 181, consequential on other amendments to be made by the proposed Act, so as to extend the power of the Parole Board to issue warrants committing an offender to a correctional centre.

Savings, transitional and other provisions

Schedule 1 [21] enables regulations of a savings or transitional nature to be made by the Governor. **Schedule 1 [22]** inserts specific savings and transitional provisions consequential to the proposed Act into the Principal Act.

Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999

Effect of prior full-time detention on eligibility for periodic detention

Schedule 2 [1] inserts new section 65A so as to provide that an offender who has previously served more than 6 months by way of full-time detention in respect of any one sentence of imprisonment (whether in New South Wales or elsewhere) is ineligible for consideration for periodic detention in relation to any subsequent sentence of imprisonment.

Obligation on courts to record reasons for not following assessment reports with respect to periodic detention and home detention

Schedule 2 [2] inserts new subsections (4) and (5) into section 66. New subsection (4) requires a court to indicate to an offender, and make a record of, its reasons for making a periodic detention order despite an assessment report that

Explanatory note

states that the offender is not suitable for periodic detention or for refusing to make such an order despite an assessment report that states that the offender is suitable for periodic detention. Subsection (5) provides that a periodic detention order is not invalidated by a court's failure to comply with such a requirement.

Schedule 2 [3] inserts new subsections (7) and (8) into section 78. New subsection (7) requires a court to indicate to an offender, and make a record of, its reasons for making a home detention order despite an assessment report that states that the offender is not suitable for home detention or for refusing to make such an order despite an assessment report that states that the offender is suitable for home detention. Subsection (8) provides that a home detention order is not invalidated by a court's failure to comply with such a requirement.

Prohibition on court referring offender for suitability as to home detention

Schedule 2 [4] inserts new subsection (1A) into section 80 so as to prohibit an offender who has been referred for assessment for periodic detention from being subsequently referred for assessment for home detention unless the court concerned has decided not to make a periodic detention order with respect to the offender.

Savings and transitional provisions

Schedule 2 [5] enables regulations of a savings or transitional nature to be made by the Governor.