

[Act 1996 No 78]



Home Detention Bill 1996

Explanatory note

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

Overview of Bill

The object of this Bill is to provide for home detention as a means of serving a sentence of full-time imprisonment for a term of up to 18 months.

An offender must be sentenced to a term of full-time imprisonment before being assessed for suitability for home detention as a means of serving the sentence. It is intended that an offender serving a sentence by way of home detention will be confined to his or her home for specified periods, but that at other times the offender may leave home for purposes approved by a supervisor. While detained at home the offender will be subject to constraints, such as a prohibition on alcohol consumption, and will be subject to a high level of monitoring.

Home detention is intended to divert offenders from incarceration in prison and is not intended to be an alternative to periodic detention, community service orders or non-custodial alternatives such as a fine or bond. It will not be available for offenders convicted of murder, manslaughter and certain other offences.

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

Outline of provisions

Part 1 Preliminary

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

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 defines certain words and expressions used in the proposed Act.

Clause 4 defines in detail the objects of the proposed Act.

Part 2 Home detention orders

Clause 5 describes the prison sentences that can be served by way of home detention.

Clause 6 provides that home detention is not available as a means of serving a prison sentence for murder, manslaughter, armed robbery and other specified offences.

Clause 7 provides that home detention is not available to offenders with certain criminal or other histories. Offenders who have at any time been convicted of certain serious offences, or who have within the previous 5 years been convicted of a domestic violence assault or against whom certain apprehended violence orders have been made, are not eligible for home detention.

Clause 8 specifies other conditions precedent to the making of a home detention order, such as the consent of the offender and of the persons with whom the offender would reside, and prohibits the making of such an order without due assessment of the suitability of the offender for home detention and in certain circumstances.

Clause 9 allows the court to refer an offender to the Probation and Parole Service for assessment of suitability for home detention.

Clause 10 sets out the matters to be taken into account on an assessment of an offender's suitability for home detention. Essentially, the assessment must consider the likely effects of home detention on the offender and any persons co-habiting with the offender and whether the offender can be adequately monitored, and whether the order is otherwise workable, in light of the offender's past and present employment, domestic and other circumstances.

Clause 11 provides that a home detention order may be made by the court that referred the offender for assessment or by a court of similar jurisdiction. If the court declines to make the order, the sentence of imprisonment stands and must be served in prison.

Part 3 Operation of home detention orders

Clause 12 requires an offender to enter into an undertaking as to the offender's obligations under the home detention order.

Clause 13 describes the conditions governing home detention. They consist of standard conditions prescribed by the regulations together with any additional conditions imposed by the court or by the Parole Board.

Clause 14 describes what happens when the conditions applicable to home detention are breached. The regulations will provide applicable sanctions, and a home detention order may, on the application of the supervisor, be revoked by the Parole Board for a breach of conditions.

Clause 15 empowers the Board to summon the offender to appear before it and requires the Board, on available evidence, to determine whether a breach has occurred that warrants revocation of the home detention order. An offender who is at large may be apprehended under a warrant of the Board.

Clause 16 empowers the Board, if it considers that it is proper to do so in the circumstances of the case, to revoke a home detention order. The offender will be returned to prison to serve a term equivalent to the remainder of the fixed or minimum term of the offender's sentence.

Clause 17 requires the Board to give notice to the offender concerned of the revocation by the Board of a home detention order applying to the offender.

Clause 18 requires the Board to review a decision to revoke a home detention order if the offender has given notice that he or she wishes the Board to review the decision.

Clause 19 allows an appeal to the Court of Criminal Appeal where the offender alleges that the Board's decision was based on misinformation or irrelevant information.

Clause 20 makes provision for the issue of warrants under the proposed Act.

Part 4 Miscellaneous

Clause 21 provides that a home detention order expires when the sentence of imprisonment in respect of which it was made expires or when the offender is released on parole, whichever first occurs. In the normal course of events, home detention will finish with the offender being released on parole at the end of the fixed or minimum term of the sentence.

Clause 22 states that eligibility for parole and other provisions of the law relating to parole are not affected by the proposed Act.

Clause 23 allows a court, in sentencing an offender for another offence, to revoke any home detention order in force in respect of the offender.

Clause 24 provides for the service of notices for the purposes of the proposed Act.

Clause 25 allows regulations to be made in aid of the proposed Act.

Clause 26 provides that proceedings for an offence under the proposed Act or the regulations may be taken summarily before a Local Court.

Clause 27 is a formal provision giving effect to a schedule of consequential amendments to the *Bail Act 1978*.

Clause 28 provides for review of the proposed Act after a period of 18 months in operation.

Schedule 1 makes consequential amendments to the *Bail Act 1978*.