



New South Wales

# Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Bill 2013

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Crimes (Sentencing Procedure) Act 1999* to enable the provisional sentencing of children who are convicted of murder.

## 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 the date of assent to the proposed Act.

## Schedule 1      Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

**Schedule 1 [1]** provides for a new scheme for the provisional sentencing of children who are convicted of murder.

The new scheme allows a court that imposes a sentence on an offender for the offence of murder to impose the sentence as a provisional sentence if:

- (a) the offender was less than 16 years of age when the offence was committed, and
- (b) the offender is less than 18 years of age when the provisional sentence is imposed, and
- (c) the sentence proposed to be imposed for the offence is or includes a term of imprisonment, and
- (d) the court is of the opinion that it is not appropriate to impose an ordinary sentence on the offender because the information presently available does not permit a satisfactory assessment of whether the offender has or is likely to develop a serious personality or psychiatric disorder, or a serious cognitive impairment, such that the court cannot satisfactorily assess either or both of the following matters:
  - (i) whether the offender is likely to re-offend,
  - (ii) the offender's prospects of rehabilitation.

The court may have regard to a case plan or proposed case plan for the offender in deciding whether or not it is appropriate to impose a provisional sentence.

A provisional sentence is subject to periodic review and redetermination. That is, the provisional sentence is not the final sentence of the offender.

A court that imposes a provisional sentence is to conduct progress reviews of the offender's case, at least once every 2 years, for the purpose of deciding whether it is appropriate to impose a final sentence on the offender.

A court may, after conducting a progress review:

- (a) impose a final sentence on the offender, or
- (b) decline to impose a final sentence on the offender.

A final sentence must be imposed no later than 5 years after the date the provisional sentence is imposed and at least one year before the end of the non-parole period for the provisional sentence.

Any term of imprisonment imposed under the final sentence is not to exceed the term of imprisonment imposed under the provisional sentence.

Both provisional sentences and final sentences are subject to appeal under the *Criminal Appeal Act 1912*. On appeal against a provisional sentence, a court may substitute a new provisional sentence or substitute a final sentence.

**Schedule 1 [2]** enables savings and transitional regulations to be made as a consequence of any Act that amends the *Crimes (Sentencing Procedure) Act 1999*.

**Schedule 1 [3]** extends the new provisional sentencing scheme to offences committed before the commencement of the scheme.

## **Schedule 2      Amendment of Criminal Appeal Act 1912 No 16**

**Schedule 2** makes a consequential amendment that ensures that both provisional and final sentences imposed under the new scheme can be appealed as a sentence under the *Criminal Appeal Act 1912*.





New South Wales

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New South Wales

# **Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Bill 2013**

No. , 2013

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## **A Bill for**

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* to enable the provisional sentencing of children who are convicted of murder; and for related purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Act 2013</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6



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<b>Schedule 1</b>	<b>Amendment of Crimes (Sentencing Procedure) Act 1999 No 92</b>	1
		2
<b>[1] Part 4, Division 2A</b>		3
Insert after Division 2:		4
<b>Division 2A</b>	<b>Provisional sentencing for child offenders</b>	5
<b>60A</b>	<b>Definitions</b>	6
	In this Division:	7
	<i>case plan</i> means a plan of management for an offender.	8
	<i>final sentence</i> means a sentence imposed as a final sentence under this Division.	9
	<i>ordinary sentence</i> means a sentence imposed otherwise than under the powers conferred by this Division.	10
	<i>person responsible for the detention of the offender</i> means:	11
	(a) in the case of an offender detained or proposed to be detained in a detention centre—the Director-General of the Department of Attorney General and Justice, or	12
	(b) in the case of an offender detained or proposed to be detained in a mental health facility (within the meaning of the <i>Mental Health Act 2007</i> )—the Director-General of the Ministry of Health, or	13
	(c) in the case of an offender detained or proposed to be detained in a correctional centre—the Commissioner of Corrective Services or, if no person holds that position, the Director-General of the Department of Attorney General and Justice.	14
	<i>progress review</i> —see section 60E.	15
	<i>provisional sentence</i> means a sentence imposed as a provisional sentence under this Division.	16
<b>60B</b>	<b>Power to impose provisional sentence</b>	17
	(1) A court that imposes a sentence on an offender for the offence of murder may impose a sentence for that offence as a provisional sentence if:	18
	(a) the offender was less than 16 years of age when the offence was committed, and	19
	(b) the offender is less than 18 years of age when the provisional sentence is imposed, and	20

(c)	the sentence proposed to be imposed for the offence is or includes a term of imprisonment, and	1 2
(d)	the court is of the opinion that it is not appropriate to impose an ordinary sentence on the offender because the information presently available does not permit a satisfactory assessment of whether the offender has or is likely to develop a serious personality or psychiatric disorder, or a serious cognitive impairment, such that the court cannot satisfactorily assess either or both of the following matters:	3 4 5 6 7 8 9 10
	(i) whether the offender is likely to re-offend,	11
	(ii) the offender's prospects of rehabilitation.	12
(2)	A court may impose a sentence as a provisional sentence of its own motion or on application of a party to the proceedings.	13 14
(3)	A reference in this Division to a sentence for the offence of murder includes a reference to an aggregate sentence for the offence of murder and for one or more other offences.	15 16 17
<b>60C</b>	<b>Case plan to be provided</b>	18
(1)	A court that is considering imposing a provisional sentence on an offender may request a person responsible for the detention of the offender to provide information on the case plan or proposed case plan for the offender.	19 20 21 22
(2)	The court may have regard to the case plan, in addition to any other relevant evidence provided by a party to the proceedings, in deciding whether or not it is appropriate to impose a provisional sentence.	23 24 25 26
<b>60D</b>	<b>Effect of provisional sentence</b>	27
(1)	A provisional sentence is subject to review and redetermination under this Division.	28 29
(2)	The other Divisions of this Part apply in respect of a provisional sentence in the same way as they apply in respect of an ordinary sentence.	30 31 32
(3)	A provisional sentence is not a sentence for an indeterminate period, for the purposes of Division 1, merely because it is subject to review and redetermination under this Division.	33 34 35

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<b>60E</b>	<b>Progress reviews</b>	1
(1)	A court that imposes a provisional sentence on an offender is to review the offender's case from time to time for the purpose of deciding whether it is appropriate to impose a final sentence.	2 3 4
(2)	Such a review is a <i>progress review</i> .	5
(3)	The court may conduct a progress review on application of a party to the proceedings in which the provisional sentence was imposed or of its own motion.	6 7 8
(4)	A progress review may be conducted as often as the court considers appropriate but must be conducted at least once every 2 years after the provisional sentence is imposed.	9 10 11
(5)	The court that conducts the progress review is, if practicable, to be constituted in the same way as the court that imposed the provisional sentence.	12 13 14
(6)	A progress review is to be conducted in the presence of the offender.	15 16
<b>60F</b>	<b>Progress reports to be provided by person responsible for detention of an offender</b>	17 18
(1)	When a progress review is conducted by a court, the person responsible for the detention of the offender who is the subject of the progress review is to provide a report to the court about the offender's progress.	19 20 21 22
(2)	The report is to include the following:	23
(a)	an assessment of the care and treatment of the offender while in custody,	24 25
(b)	an assessment of the offender's psychiatric, cognitive and psychological development since the provisional sentence was imposed,	26 27 28
(c)	such other matters as the court requires to be addressed in the report.	29 30
(3)	A court that conducts a progress review may also request any other person who, or body that, has responsibilities with respect to the care and treatment of the offender to provide information about the offender.	31 32 33 34
(4)	A court that conducts a progress review may have regard to the information obtained under this section, in addition to any other relevant evidence provided by a party to the proceedings, in deciding whether or not it is appropriate at that time to impose a final sentence on the offender.	35 36 37 38 39

<b>60G</b>	<b>Final sentence</b>	1
(1)	A court may, after conducting a progress review:	2
(a)	impose a final sentence on the offender, or	3
(b)	decline to impose a final sentence on the offender.	4
(2)	A court imposes a final sentence by:	5
(a)	setting aside the provisional sentence and substituting instead another sentence as the final sentence for the offender, or	6 7 8
(b)	confirming the provisional sentence as the final sentence for the offender.	9 10
(3)	If the court sets aside the provisional sentence:	11
(a)	the term of imprisonment imposed under the final sentence is not to exceed the term of imprisonment imposed under the provisional sentence, and	12 13 14
(b)	the non-parole period (if any) set for the final sentence is not to exceed the non-parole period set for the provisional sentence, and	15 16 17
(c)	the final sentence imposed is taken to have commenced on the day on which the provisional sentence commenced.	18 19
(4)	Subject to this Division, this Part applies to a final sentence in the same way as it applies to an ordinary sentence.	20 21
(5)	A final sentence is not subject to review and redetermination under this Division.	22 23
(6)	A decision to decline to impose a final sentence on an offender is not a sentence and, accordingly, is not subject to appeal under the <i>Criminal Appeal Act 1912</i> .	24 25 26
(7)	A court that conducts a further progress review after having declined to impose a final sentence on an offender is to conduct that review as a fresh hearing in relation to the question of whether it is appropriate to impose a final sentence on the offender.	27 28 29 30 31
<b>60H</b>	<b>Time limit for imposition of final sentence</b>	32
(1)	A final sentence must be imposed on an offender who is the subject of a provisional sentence before the expiry of the initial custodial period.	33 34 35

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- (2) The *expiry of the initial custodial period* is: 1
- (a) the date that is 5 years after the date the provisional 2  
sentence is imposed, or 3
- (b) the date that is one year before the date the non-parole 4  
period (if any) for the provisional sentence ends, 5  
whichever happens first. 6
- (3) A final sentence is not invalid merely because it is imposed after 7  
the expiry of the initial custodial period. 8

**60I Appeals** 9

- (1) On appeal against a provisional sentence, a court hearing the 10  
appeal that has power to vary the provisional sentence and 11  
substitute a new sentence (however expressed) may: 12
- (a) substitute a new provisional sentence, or 13
- (b) substitute a final sentence. 14
- (2) If a provisional sentence is varied and a new provisional sentence 15  
is imposed by a court on appeal: 16
- (a) the functions of the court under this Division with respect 17  
to progress reviews and the imposition of a final sentence 18  
on the offender are to be exercised by the court that first 19  
imposed a provisional sentence on the offender, and not 20  
the appeal court, and 21
- (b) a reference in this Division to the date on which the 22  
sentence is imposed is a reference to the date on which a 23  
provisional sentence for the relevant offence was first 24  
imposed (and not the date a new provisional sentence was 25  
imposed by the appeal court), and 26
- (c) a reference in this Division to a term of imprisonment 27  
imposed, or non-parole period set, under a provisional 28  
sentence is a reference to a term of imprisonment imposed, 29  
or non-parole period set, under the new provisional 30  
sentence as imposed by the appeal court. 31
- (3) To avoid doubt, a court that imposes a provisional sentence that 32  
is varied on appeal can set aside the provisional sentence (as 33  
varied on appeal) under section 60G and substitute another 34  
sentence as the final sentence for the offender in accordance with 35  
this Division. 36

**Note.** Appeals against provisional sentences can be made to the Court 37  
of Criminal Appeal under the *Criminal Appeal Act 1912*. If the Court of 38  
Criminal Appeal varies the provisional sentence, the original sentencing 39  
court (and not the Court of Criminal Appeal) must conduct progress 40

Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Bill 2013

Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

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	reviews and impose a final sentence. The final sentence can also be appealed under the <i>Criminal Appeal Act 1912</i> .	1 2
<b>[2]</b>	<b>Schedule 2 Savings, transitional and other provisions</b>	3
	Insert at the end of clause 1 (1):	4
	any Act that amends this Act	5
<b>[3]</b>	<b>Schedule 2</b>	6
	Insert at the end of the Schedule with appropriate Part and clause numbers:	7
<b>Part</b>	<b>Provision consequent on enactment of Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Act 2013</b>	8 9 10 11
	<b>Provisional sentencing</b>	12
	Division 2A of Part 4, as inserted by the <i>Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Act 2013</i> , applies in respect of any sentence imposed after the commencement of that Division (including for an offence committed before that commencement).	13 14 15 16 17

