

[Act 2002 No 100]



New South Wales

Crimes Legislation Amendment (Criminal Justice Interventions) Bill 2002

Explanatory note

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

Overview of Bill

The object of this Bill is to enable certain programs developed to reduce offending behaviour, or to address problems that are conducive to offending behaviour, to be given a formal legislative basis of operation.

The Bill enables the regulations to declare a program of measures for dealing with offenders, or persons alleged to have committed an offence, to be an ***intervention program***. Regulations may be made for or with respect to the conduct and operation of intervention programs and other aspects of intervention programs.

Under the Bill, a person accused of an offence may be referred to an intervention program at four different points in proceedings for the offence:

- (a) as a condition of bail after being charged with the offence, or
-

- (b) as a condition of bail during an adjournment in court proceedings for the offence (before any finding as to guilt has been made), or
- (c) as a condition of bail after the person has pleaded guilty or been found guilty by the court, but before the person is sentenced for the offence, or
- (d) as a condition of being discharged from the offence, or as a condition of a good behaviour bond imposed as the sentence (or as part of the sentence) for the offence.

The types of programs that may be declared to be intervention programs include rehabilitation, training or education programs, or programs involving the victim of an offender or members of the community in dealing with the offender.

The Bill enhances the options available to courts for dealing with offenders and accused persons, and does not limit any existing powers of the courts. Under the Bill, courts may continue to impose bail conditions, or conditions of good behaviour bonds, for offenders or accused persons involving participation in treatment or rehabilitation programs whether or not the programs are declared to be intervention programs. However, a new sentencing option that enables courts to discharge an offender on condition that the offender enters into an agreement to participate in an intervention program is limited to programs that are declared to be intervention programs.

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, with the exception of a provision that transfers and renumbers some of the proposed amendments to the *Criminal Procedure Act 1986*. The transfer and renumbering is consequential on amendments to the *Criminal Procedure Act 1986* made by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001* that have not yet commenced.

Clause 2 (2) provides for the transfer and renumbering to take place on the commencement of the amendment made by Schedule 1 [2] to the proposed Act, or on the commencement of an amendment made by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*, whichever is the later.

Clause 3 is a formal provision giving effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Bail Act 1978* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Crimes (Sentencing Procedure) Act 1999* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to other Acts set out in Schedule 4.

Schedule 1 Amendments to the Criminal Procedure Act 1986

Schedule 1 [2] inserts a new Part 9 (sections 173–180) into the *Criminal Procedure Act 1986*. Division 1 (sections 173 and 174) sets out the objects of the proposed Part and some definitions. Division 2 (sections 175–177) of the proposed Part enables the regulations to declare that a program of measures is an *intervention program*.

There are limitations on the offences in respect of which intervention programs may be conducted (section 176). An intervention program may not be conducted in respect of an offence that must be dealt with on indictment (that is, that is not capable of being dealt with summarily). A number of other offences are also excluded from intervention programs, including certain offences involving wounding or grievous bodily harm, offences relating to sexual assault, child prostitution and child pornography, stalking, any offence involving the use of a firearm and drug supply offences.

Section 177 provides that a person is not eligible to participate in an intervention program if the person is being dealt with by the Children's Court for the offence, or if a penalty for the offence is imposed by a court other than the Children's Court under the sentencing provisions of the *Children (Criminal Proceedings) Act 1987* rather than under the general law applicable to adults. If the person is dealt with by a court other than the Children's Court under the general law applicable to adults, the person will be eligible to participate in an intervention program.

Division 3 (section 178) of the proposed Part expressly enables a court, before making a finding as to the guilt of an accused person, to adjourn proceedings and release the accused person on bail for the purpose of assessing the person's capacity and prospects for participation in an intervention program, or for the purpose of allowing the offender to participate in an intervention program.

If the accused person fails to comply with the bail conditions as to assessment or participation, it will be treated as a breach of a bail condition under the *Bail Act 1978*.

Division 4 (sections 179 and 180) contains miscellaneous provisions. Section 179 enables regulations to be made with respect to the provision or disclosure of information in connection with an intervention program or intervention plan to a court or other person, body or organisation, including the admissibility in evidence of statements, admissions, confessions or information made or given by an offender or accused person during participation in, or for the purposes of participation in, an intervention program.

Section 180 deals with the relationship of the Part to the *Bail Act 1978* and other legislation.

Schedule 1 [1] inserts definitions in the *Criminal Procedure Act 1986* that are consequential to the amendment made by Schedule 1 [2].

Schedule 1 [3] provides for the proposed Part to be transferred to another part of the *Criminal Procedure Act 1986*, and renumbered. This transfer and renumbering will take place on the commencement of certain other amendments to that Act made by the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*.

Schedule 1 [4] enables regulations of a savings and transitional nature to be made consequential on the enactment of the proposed Act.

Schedule 2 Amendments to the Bail Act 1978

Schedule 2 [3] amends section 36A of the *Bail Act 1978*. At present, section 36A enables a person accused of an offence to be granted bail on condition that the person agrees to an assessment of the person's capacity and prospects for drug or alcohol treatment or rehabilitation, or that the person agrees to participate in a drug or alcohol treatment or rehabilitation program. The amendment extends section 36A to enable bail conditions as to participation in or assessment for an intervention program or other treatment or rehabilitation program to be imposed.

An accused person may be granted bail on such conditions whether or not the person has pleaded guilty to the offence.

If the accused person fails to participate in the program or fails to comply with the requirements of the program, the breach will be dealt with as a breach of a bail condition (that is, the person may be arrested and brought before a court).

Schedule 2 [1] amends section 9B of the *Bail Act 1978* to create an exception to the presumption in favour of bail where at the time of the alleged offence the accused was participating in an intervention program as a condition of a discharge under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. **Schedule 2 [2]** makes a consequential amendment.

Schedule 2 [4] prevents a bail condition as to assessment for, or participation in, an intervention program being imposed by the Children's Court or by an authorised officer (a police officer who may grant bail to a person) if the person was under the age of 18 years at the time the offence was committed or alleged to have been committed. Schedule 2 [4] also makes an amendment consequential on Schedule 2 [3].

Schedule 2 [5] amends section 37 of the *Bail Act 1978*, which provides that bail is to be granted unconditionally unless conditions should be imposed for the purposes of promoting effective law enforcement, the protection and welfare of certain specially affected persons, or the protection and welfare of the community. The amendment adds reducing the likelihood of future offences being committed by promoting the treatment or rehabilitation of the accused person to the list of purposes for which bail conditions may be imposed.

Schedule 2 [6] inserts savings and transitional provisions consequential on the amendments.

Schedule 3 Amendments to Crimes (Sentencing Procedure) Act 1999

Schedule 3 [2] amends section 5 of the *Crimes (Sentencing Procedure) Act 1999* to require a court that imposes a sentence of imprisonment of less than 6 months to give its reasons for deciding not to make an order allowing the offender to participate in an intervention program or other treatment or rehabilitation program (in addition to the existing requirement for the court to give reasons why no penalty other than imprisonment is appropriate).

Schedule 3 [3] amends section 10 of the *Crimes (Sentencing Procedure) Act 1999*. At present, section 10 enables a court that finds a person guilty of an offence to refrain from convicting the person, and instead to dismiss the charge or to discharge the person on condition that the person enter into a good behaviour bond. The amendment enables the court to discharge the person on condition that the person undertake to participate in an intervention program and to comply with any plan arising out of an intervention program. These orders are called *intervention program orders* (see Schedule 2 [1]).

Explanatory note

If the court makes an intervention program order and the offender complies with the order (that is, the offender does not breach the program or plan), then the offender is discharged without a conviction.

Schedule 3 [4] inserts two new subsections into section 10. Proposed section 10 (2A) provides that an intervention program order may be made if the court is satisfied that it would reduce the likelihood of the offender committing further offences by promoting the treatment or rehabilitation of the person subject to the order. Proposed section 10 (2B) provides that intervention program orders are subject to proposed Part 8C of the *Crimes (Sentencing Procedure) Act 1999*.

Proposed Part 8C is inserted by **Schedule 3 [13]**. It deals with sentencing procedures for intervention program orders made under proposed section 10 (1) (c). Division 1 (section 100M) deals with the application of the proposed Part. Division 2 (sections 100N–100P) of the proposed Part places certain restrictions on the making of intervention program orders and requires a court to explain the obligations of an intervention program order and the consequences of a breach of the order. An order may not be made unless the court is satisfied:

- (a) that the offender is eligible to participate in the intervention program, and
- (b) that the offender is a suitable person to participate in the intervention program, and
- (c) that participation in the intervention program is available in the area in which the offender resides or intends to reside.

The Division enables a court to refer an offender for assessment of the offender's suitability to participate in an intervention program.

Division 3 (sections 100Q–100T) of the proposed Part provides for intervention program orders to be enforced in a similar manner to the enforcement of a good behaviour bond. That is, if the offender breaches the intervention program order, the offender may be called back to the court. The court may revoke the intervention program order and convict and sentence the offender for the original offence in respect of which the offender was referred to the intervention program.

Under the Division, an offender may at any time after entering into an agreement to participate in an intervention program decide not to proceed with the program. In that case, the court may revoke the intervention program order and re-sentence the offender for the offence in respect of which the intervention program order was made.

Schedule 3 [5] amends section 11 of the *Crimes (Sentencing Procedure) Act 1999*. At present, section 11 enables a court that finds a person guilty of an offence to defer sentencing and to grant bail for the purpose of assessing the offender's capacity and prospects for rehabilitation, or to allow the offender to demonstrate that rehabilitation has taken place, or for any other purpose that the court considers appropriate in the circumstances.

The amendment extends section 11 to enable the court also to defer sentencing for the purpose of assessing the offender's capacity and prospects for participation in an intervention program, or to enable the offender to participate in an intervention program.

Schedule 3 [6] provides that such an order may be made if the court is satisfied that it would reduce the likelihood of the person committing further offences by promoting the treatment or rehabilitation of the person.

Schedule 3 [7] makes it clear that a court may also defer sentencing under section 11 to allow an offender to participate in a program for treatment or rehabilitation that is not an intervention program.

Schedule 3 [8] and [9] amend section 24 to require a court to take certain matters into account if the court sentences an offender following:

- (a) a breach of an intervention program order, or
- (b) a deferral of sentencing under proposed section 11 (1) (b2) to allow participation in an intervention program, or
- (c) a decision not to participate in an intervention program or intervention plan.

Schedule 3 [11] and [12] insert new provisions (sections 95A, 95B and 99A) that enable a court that imposes a good behaviour bond on an offender to include a condition that the offender is to participate in an intervention program, or to participate in an intervention program and to comply with a plan arising out of the intervention program. Good behaviour bonds may be imposed:

- (a) instead of a sentence of imprisonment, under section 9 of the *Crimes (Sentencing Procedure) Act 1999*, or
- (b) as a condition of a conditional discharge, under section 10 of that Act, or
- (c) as a condition of a suspended sentence of imprisonment, under section 12 of that Act.

A good behaviour bond may not contain a condition as to participation in an intervention program unless the court is satisfied:

- (a) that the offender is eligible to participate in the intervention program, and

- (b) that the offender is a suitable person to participate in the intervention program, and
- (c) that the intervention program is available in the area in which the offender resides or intends to reside, and
- (d) that participation in the intervention program will reduce the likelihood of the offender committing further offences by promoting the treatment or rehabilitation of the offender.

An offender may at any time before commencing an intervention program or during the program decide not to proceed with the program or an intervention plan. In that case, the court may vary the conditions of the good behaviour bond, or impose further conditions, or revoke the good behaviour bond and re-sentence the offender for the offence in respect of which the intervention program order was made.

Schedule 3 [1] and [10] make consequential amendments. **Schedule 3 [14]** enables regulations of a savings and transitional nature to be made consequential on the enactment of the proposed Act. **Schedule 3 [15]** provides that an amendment made by the proposed Act to the *Crimes (Sentencing Procedure) Act 1999* applies to offences committed before or after the commencement of the amendment unless proceedings for the offence were commenced before the amendment commenced.

Schedule 4 Consequential and other amendments

Schedule 4.1 makes an amendment by way of statute law revision to the *Crimes (Local Courts Appeal and Review) Act 2001*, which has not yet commenced. The proposed amendment removes a provision that states the order of severity of various penalties. That provision is not required for the purposes of the *Crimes (Local Courts Appeal and Review) Act 2001*.

Schedule 4.2 [2] and [3] make amendments to the *Criminal Records Act 1991* that are consequential on the amendment made by Schedule 3 [3]. The proposed amendment provides that an intervention program order (which makes participation in an intervention program a condition of a discharge under section 10 of the *Crimes (Sentencing Procedure) Act 1999*) becomes spent for the purposes of the *Criminal Records Act 1991* on satisfactory completion of the conditions of the order. The proposed amendment also updates an outdated reference to a recognizance to be of good behaviour to a reference to a good behaviour bond.

Explanatory note

Schedule 4.2 [1] makes a consequential amendment. **Schedule 4.2 [4]** inserts a transitional provision consequent on the updating of the outdated reference to recognizances to be of good behaviour.