

[Act 1999 No 92]



New South Wales

Crimes (Sentencing Procedure) Bill 1999

Explanatory note

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

The *Crimes (Administration of Sentences) Bill 1999* and the *Crimes Legislation Amendment (Sentencing) Bill 1999* are cognate with this Bill.

Overview of Bill

This Bill, the *Crimes (Administration of Sentences) Bill 1999* and the *Crimes Legislation Amendment (Sentencing) Bill 1999* comprise a package of cognate Bills that:

- (a) repeal and re-enact (in the proposed *Crimes (Sentencing Procedure) Act 1999* and the proposed *Crimes (Administration of Sentences) Act 1999*) the provisions of various Acts dealing with the sentencing of offenders and the administration of sentences imposed on offenders, and

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

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- (b) transfer to the *Criminal Procedure Act 1986* the provisions of various Acts dealing with criminal procedure, and
- (c) transfer to the *Crimes Act 1900* and the *Summary Offences Act 1988* various offences created by the provisions of other Acts, and
- (d) abolish the distinction between offences that are felonies and offences that are misdemeanours, and
- (e) abolish the punishment of penal servitude and the punishment of imprisonment with hard or light labour.

The object of this Bill is to re-enact provisions of the following Acts in relation to the sentencing of offenders:

- (a) the *Community Service Orders Act 1979*,
- (b) the *Crimes Act 1900*,
- (c) the *Criminal Procedure Act 1986*,
- (d) the *Home Detention Act 1996*,
- (e) the *Justices Act 1902*,
- (f) the *Periodic Detention of Prisoners Act 1981*,
- (g) the *Sentencing Act 1989*.

The re-enacted provisions are substantially the same as those they replace, except as follows:

- (a) the proposed Act introduces “suspended sentences” as a sentencing option,
- (b) the proposed Act requires courts that impose sentences of imprisonment of 6 months or less to give reasons for their decisions to impose imprisonment and not some lesser punishment,
- (c) the proposed Act requires courts that impose sentences of imprisonment to determine the total sentence first, and then to determine the minimum (non-parole) term of the sentence,
- (d) the proposed Act replaces recognizances (both common law and statutory) with good behaviour bonds.

The Bill also deals with savings and transitional matters.

Outline of provisions

Part 1 Preliminary

This Part contains the following formal provisions (**clauses 1–3**):

Clause 1 specifies 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 defines certain words and expressions used in the proposed Act and provides that notes in the proposed Act do not form part of the proposed Act.

Part 2 Penalties that may be imposed

Division 1 General

This Division (**clauses 4 and 5**) deals with general matters concerning the imposition of penalties, and includes the following provisions:

Clause 4 specifies the penalty to be imposed for an offence, both where the offence is created by a provision that specifically provides for the penalty to be imposed and where it is not.

Clause 5 requires a court to consider alternatives to imprisonment where the court is considering sentencing an offender to imprisonment for 6 months or less, and provides that Part 4 applies to all sentences of imprisonment.

Division 2 Alternatives to full-time detention

This Division (**clauses 6 and 7**) deals with the forms of imprisonment that may be imposed as alternatives to full-time detention, and includes the following provisions:

Clause 6 empowers a court to make a periodic detention order (similar to a court's current powers under the *Periodic Detention of Prisoners Act 1981*), and provides that the power to make such an order is subject to proposed Part 5.

Clause 7 empowers a court to make a home detention order (similar to a court's current powers under the *Home Detention Act 1996*), and provides that the power to make such an order is subject to proposed Part 6.

Division 3 Non-custodial alternatives

This Division (**clauses 8–13**) deals with the non-custodial alternatives to full-time detention, and includes the following provisions:

Clause 8 empowers a court to make a community service order (similar to a court's current powers under the *Community Service Orders Act 1979*), and provides that the power to make such an order is subject to proposed Part 7.

Clause 9 empowers a court to impose a good behaviour bond as a penalty on its own. Clauses 10 and 12 provide for other circumstances in which a good behaviour bond may be imposed. The power conferred by this clause is similar to a court's current power under section 30 of the *Imperial Acts Application Act 1969* and, in relation to apprehended violence, under section 547 of the *Crimes Act 1900*. The clause also provides that the power to impose a good behaviour bond is subject to proposed Part 8.

Clause 10 empowers a court to dismiss a charge or to grant an offender a conditional discharge (similar to a court's current powers under section 556A of the *Crimes Act 1900*). The condition of a conditional discharge is to be that the offender enters into a good behaviour bond.

Clause 11 empowers a court to defer passing sentence by means of an adjournment of proceedings for up to 12 months (similar to an existing "Griffith bond").

Clause 12 empowers a court to impose a suspended sentence and, during the term of the suspension, a good behaviour bond. The nature of the suspended sentence is that the sentence does not come into force unless the offender breaches the terms of a good behaviour bond.

Clause 13 prevents a court from imposing both a community service order and a good behaviour bond in relation to the same offence.

Division 4 Fines

This Division (**clauses 14–17**) deals with fines, and includes the following provisions:

Clause 14 empowers a court to impose a fine as an additional penalty to a good behaviour bond.

Clause 15 empowers a court to impose a fine as an additional or alternative penalty to imprisonment for offences that are dealt with on indictment (similar to a court's current powers under section 440AA of the *Crimes Act 1900*).

Clause 16 empowers a court to impose a fine on a body corporate where an offence provision provides a penalty only by way of imprisonment (similar to a court's current powers under section 360A of the *Crimes Act 1900*).

Clause 17 (equivalent to current section 56 of the *Interpretation Act 1987*) specifies the value of a penalty unit (currently \$110).

Division 5 Miscellaneous

This Division (**clauses 18–20**) re-enacts current sections 54, 55 and 57 of the *Interpretation Act 1987*, and includes the following provisions:

Clause 18 provides for the construction of statutory provisions relating to penalties.

Clause 19 states the effect of an alteration of a penalty imposed by an Act or statutory rule.

Clause 20 excludes double jeopardy in circumstances where a single act or omission can give rise to an offence under the laws of New South Wales and an offence under the laws of the Commonwealth or some other State or Territory.

Part 3 Sentencing procedures generally

Division 1 General

This Division (**clauses 21–25**) deals with general matters concerning sentencing procedures, and includes the following provisions:

Clause 21 empowers a court to impose, in relation to an offence for which a penalty is fixed by an Act or statutory rule, a lesser penalty than that so fixed (similar to a court's current powers under section 553 of the *Crimes Act 1900*).

Clause 22 requires a court to take a guilty plea into account (similar to current section 439 of the *Crimes Act 1900*).

Clause 23 empowers a court to reduce a penalty where the offender has assisted law enforcement authorities in the prevention, detection or investigation of an offence (similar to current section 442B of the *Crimes Act 1900*).

Clause 24 requires a court to take into account time spent on remand and time spent complying with requirements under a community service order or good behaviour bond.

Clause 25 prohibits a Local Court from making certain orders when an offender is not before the court (similar to current sections 75E and 80AA of the *Justices Act 1902*).

Division 2 Victim impact statements

This Division (**clauses 26–30**) re-enacts current Part 6A of the *Criminal Procedure Act 1986*, and includes the following provisions:

Clause 26 defines certain words and expressions used in the proposed Division.

Clause 27 limits the application of the Division to certain matters before the Supreme Court, the District Court or a Local Court.

Clause 28 specifies the time when a victim impact statement may be received by the relevant court.

Clause 29 specifies that the giving of victim impact statements is not mandatory.

Clause 30 specifies formal requirements governing the making of a victim impact statement.

Division 3 Taking further offences into account

This Division (**clauses 31–35**) re-enacts current Part 6 of the *Criminal Procedure Act 1986*, and includes the following provisions:

Clause 31 defines certain words and expressions used in the proposed Division.

Clause 32 allows a prosecutor to file a list of additional charges in court after an offender has been found guilty of an offence.

Clause 33 allows a court to take into account outstanding charges in relation to an offender.

Clause 34 allows a court to make orders and directions relating to offences when considering charges that are admitted by the offender.

Clause 35 is a provision with respect to the consequences of taking charges into account.

Division 4 Sentencing guidelines

This Division (**clauses 36–42**) re-enacts current Part 8 of the *Criminal Procedure Act 1986*, and includes the following provisions:

Clause 36 defines certain words and expressions used in the proposed Division.

Clause 37 empowers the Court of Criminal Appeal to give a guideline judgment on the application of the Attorney General.

Clause 38 empowers the Senior Public Defender, or his or her nominee, to intervene in proceedings on an application for a guideline judgment.

Clause 39 empowers the Director of Public Prosecutions, or his or her representative, to intervene in proceedings on an application for a guideline judgment.

Clause 40 preserves the power and jurisdiction of the Court of Criminal Appeal to give guideline judgments apart from the proposed Division.

Clause 41 empowers the Court of Criminal Appeal to make rules with respect to applications and proceedings under the proposed Division.

Clause 42 sets aside any limitation on the evidence that may be considered by the Court of Criminal Appeal in giving a guideline judgment but restricts the use of such evidence in any appeal proceedings in relation to the sentencing of the offender to whom the appeal relates.

Division 5 Correction and adjustment of sentences

This Division (**clause 43**) re-enacts current Part 7 of the *Criminal Procedure Act 1986*.

Clause 43 enables a court to re-open criminal proceedings in order to correct or adjust any sentence that has been imposed in the proceedings that is contrary to law.

Part 4 Sentencing procedures for imprisonment

Division 1 Setting terms of imprisonment

This Division (**clauses 44–54**) re-enacts current Part 2 of the *Sentencing Act 1989*, and includes the following provisions:

Clause 44 requires a court that imposes a sentence of imprisonment to set the term of the sentence and then a non-parole period for the sentence.

Clause 45 allows a court to decline to set a non-parole period in certain circumstances.

Clause 46 prohibits a court from setting a non-parole period when imposing a sentence of imprisonment of 6 months or less.

Clause 47 provides for a sentence of imprisonment to commence on the day on which it is imposed (subject to any stay of execution referred to in clause 80) unless the court imposing the sentence otherwise directs. A court's direction may back-date a sentence, or may post-date it to make it consecutive with some other sentence being served or yet to be served.

Clause 48 requires a court to specify when a sentence of imprisonment is to commence and when the offender to whom it relates becomes eligible for parole (if the sentence includes a non-parole period) or when the sentence expires (if the sentence does not include a non-parole period).

Clause 49 restricts the term of a sentence of imprisonment that may be imposed for an offence to the maximum term of imprisonment provided by law for the offence.

Clause 50 requires a court to make a parole order for a sentence of imprisonment for a term of 3 years or less if the sentence has a non-parole period.

Clause 51 empowers a court to impose conditions on a parole order made by it.

Clause 52 empowers an appeal court to vary any non-parole period that has been set for a sentence of imprisonment by the court of trial.

Clause 53 requires a court that imposes more than one sentence of imprisonment to set a term, and a non-parole period, for each sentence.

Clause 54 excludes certain sentences from the operation of the proposed Division.

Division 2 Concurrent and consecutive sentences

This Division (**clauses 55–60**) re-enacts current section 444 of the *Crimes Act 1900*, and includes the following provisions:

Clause 55 provides that multiple sentences are to be presumed to be served concurrently unless there is a direction to the contrary.

Clause 56 provides that sentences for assault committed by convicted inmates of correctional centres are presumed to be consecutive unless there is a direction to the contrary.

Clause 57 provides that sentences for escape from lawful custody committed by inmates of correctional centres must be consecutive.

Clause 58 limits the sentencing powers of a Local Court in relation to offenders who are already serving terms of imprisonment so as to ensure that the effect of a sentence imposed by a Local Court will not result in an offender spending more than 3 years in a correctional centre at any one time (except in certain circumstances).

Clause 59 provides for the adjustment of the commencement of a consecutive sentence when an earlier sentence is quashed or varied.

Clause 60 provides for the application of the proposed Division to unexpired interstate sentences of imprisonment.

Division 3 Miscellaneous

This Division (**clauses 61–63**) deals with miscellaneous matters, and includes the following provisions:

Clause 61 provides for mandatory life sentences for certain offences (similar to current section 431B of the *Crimes Act 1900*).

Clause 62 empowers a court to issue warrants of commitment.

Clause 63 requires offenders to be photographed and fingerprinted.

Part 5 Sentencing procedures for periodic detention orders

Division 1 Preliminary

This Division (**clauses 64 and 65**) deals with miscellaneous matters, and includes the following provisions:

Clause 64 applies the proposed Part to circumstances in which a court is considering, or has made, a periodic detention order.

Clause 65 defines certain words and expressions used in the proposed Part.

Division 2 Restrictions on power to make periodic detention orders

This Division (**clauses 66** and **67**) deals with restrictions on making periodic detention orders, and includes the following provisions:

Clause 66 restricts the making of such an order for an offender by reference to the offender's age (the minimum age is 18) and the suitability of the offender for periodic detention, and requires the offender to sign an undertaking to comply with the obligations relating to periodic detention (similar to the restrictions under current section 5 of the *Periodic Detention of Prisoners Act 1981*).

Clause 67 restricts the making of such an order if to do so would result in the offender being subject to more than 3 years periodic detention from the time the order is made (similar to the restrictions under current section 5B of the *Periodic Detention of Prisoners Act 1981*).

Division 3 Assessment reports

This Division (**clauses 68** and **69**) deals with assessment reports, and includes the following provisions:

Clause 68 empowers a court to refer an offender for assessment as to the offender's suitability for periodic detention.

Clause 69 provides for the assessment of an offender by the Probation and Parole Service consequent to such a referral.

Division 4 Miscellaneous

This Division (**clauses 70–73**) deals with miscellaneous matters concerning the making of a periodic detention order, and includes the following provisions:

Clause 70 requires a court to specify a commencement date for the term of periodic detention that is between 7 and 21 days after the date on which the order is made.

Clause 71 requires a court to explain the order to the offender.

Clause 72 requires a court to give written notice to the offender and to the Commissioner of Corrective Services of the terms of the order.

Clause 73 empowers a court to issue warrants of commitment.

Part 6 Sentencing procedures for home detention orders

Division 1 Preliminary

This Division (**clauses 74 and 75**) deals with miscellaneous matters, and includes the following provisions:

Clause 74 applies the proposed Part to circumstances in which a court is considering, or has made, a home detention order.

Clause 75 defines certain words and expressions used in the proposed Part.

Division 2 Restrictions on power to make home detention orders

This Division (**clauses 76–79**) deals with restrictions on making home detention orders, and includes the following provisions:

Clause 76 prevents such an order being made in relation to certain offences (similar to the restrictions under current section 6 of the *Home Detention Act 1996*).

Clause 77 prevents such an order being made in relation to an offender who has a criminal history that includes convictions for certain offences (similar to the restrictions under current section 7 of the *Home Detention Act 1996*).

Clause 78 restricts the making of such an order for an offender by reference to the suitability of the offender for home detention, and requires the offender to sign an undertaking to comply with the obligations relating to home detention (similar to the restrictions under current section 8 of the *Home Detention Act 1996*).

Clause 79 restricts the making of such an order if to do so would result in the offender being subject to more than 18 months home detention from the time the order is made (similar to the restrictions under current section 5 of the *Home Detention Act 1996*).

Division 3 Assessment reports

This Division (**clauses 80 and 81**) deals with assessment reports, and includes the following provisions:

Clause 80 empowers a court to refer an offender for assessment as to the offender's suitability for home detention, and provides for a stay of execution of the offender's sentence while the assessment is being carried out.

Clause 81 provides for the assessment of an offender by the Probation and Parole Service consequent to such a referral.

Division 4 Miscellaneous

This Division (**clauses 82 and 83**) deals with miscellaneous matters concerning the making of a home detention order, and includes the following provisions:

Clause 82 empowers a court to impose conditions on the order in relation to the offender's home detention.

Clause 83 requires a court to explain the order to the offender.

Part 7 Sentencing procedures for community service orders

Division 1 Preliminary

This Division (**clauses 84 and 85**) deals with miscellaneous matters, and includes the following provisions:

Clause 84 applies the proposed Part to circumstances in which a court is considering, or has made, a community service order.

Clause 85 defines certain words and expressions used in the proposed Part.

Division 2 Restrictions on power to make community service orders

This Division (**clauses 86 and 87**) deals with restrictions on making community service orders, and includes the following provisions:

Clause 86 restricts the making of such an order for an offender by reference to the suitability of the offender for community service, and requires the offender to sign an undertaking to comply with the obligations relating to community service work (similar to the restrictions under current section 6 of the *Community Service Orders Act 1979*).

Clause 87 restricts the making of such an order if to do so would result in the offender being subject to more than 500 hours' community service work from the time the order is made (similar to the restrictions under current section 7 of the *Community Service Orders Act 1979*).

Division 3 Assessment reports

This Division (**clauses 88 and 89**) deals with assessment reports, and includes the following provisions:

Clause 88 empowers a court to refer an offender for assessment as to the offender's suitability for community service.

Clause 89 provides for the assessment of an offender by the Probation and Parole Service consequent to such a referral.

Division 4 Miscellaneous

This Division (**clauses 90–93**) deals with miscellaneous matters concerning the making of a community service order, and includes the following provisions:

Clause 90 empowers a court to impose conditions on the order in relation to the offender's community service work.

Clause 91 empowers a court to recommend in the order that the community service work should include removal of graffiti from buildings, vehicles, vessels and places.

Clause 92 requires a court to explain the order to the offender.

Clause 93 requires a court to give written notice to the offender and to the Commissioner of Corrective Services of the terms of the order.

Part 8 Sentencing procedures for good behaviour bonds

This Part (**clauses 94–100**) deals with the sentencing procedures for good behaviour bonds, and includes the following provisions:

Clause 94 applies the proposed Part to circumstances in which a court is considering, or has made, an order that provides for an offender to enter into a good behaviour bond.

Clause 95 empowers a court to impose conditions on a good behaviour bond.

Clause 96 requires a court to explain a good behaviour bond to the offender.

Clause 97 sets out the procedure to be followed if the offender fails to enter into a good behaviour bond as directed by a court.

Clause 98 sets out the procedure to be followed if there is a suspected breach of a good behaviour bond, and specifies the action that may be taken if such a breach is found to have occurred.

Clause 99 specifies the consequences that follow if a good behaviour bond is revoked.

Clause 100 provides that action for breach of a good behaviour bond may be taken under the proposed Part even if the term of the bond has expired.

Part 9 Miscellaneous

This Part (**clauses 101–105**) deals with miscellaneous matters, and includes the following provisions:

Clause 101 abolishes any previous powers courts have had to require persons to enter into recognizances of good behaviour, or to keep the peace.

Clause 102 preserves the prerogative of mercy.

Clause 103 empowers the Governor to make regulations for the purposes of the proposed Act.

Clause 104 gives effect to a Schedule of savings, transitional and other provisions.

Clause 105 requires the proposed Act to be reviewed at the end of 5 years after it is assented to.

Schedules

Schedule 1 sets out provisions relating to applications to the Supreme Court for setting a term, and a non-parole period, for an existing life sentence (similar to current section 13A of the *Sentencing Act 1989*). It sets out certain procedural matters including matters that the Court is to take into account when considering such an application, the effect of a determination made in relation to such an application and the making of an appeal against such a determination.

Schedule 2 contains provisions of a savings and transitional nature consequent on the enactment of the proposed Act and the enactment of the proposed *Crimes Legislation Amendment (Sentencing) Act 1999*.