

The New Sentencing and Parole Act

1. INTRODUCTION	1
Rationale for the new legislation	2
Summary of the main changes to sentencing and parole as enacted by the Sentencing Act and the Parole Act	3
Comment by the authors	4
2. MATTERS WHICH WERE IN THE CRIMINAL JUSTICE ACT 1985 BUT WHICH HAVE NOW BEEN REPEALED UNDER THE SENTENCING ACT 2002	5
Suspended sentences of imprisonment	5
Corrective training	8
Sentencing guidelines in ss 5 and 6 of the Criminal Justice Act 1985	8
The sentence of periodic detention	8
Sentence of imprisonment followed by a community-based sentence	8
Section 7(1) of the Criminal Justice Act 1985	9
Home invasion provisions in the Crimes Act 1961	9
3. WHAT STAYS THE SAME – CRIMINAL JUSTICE ACT 1985	11
4. WHAT'S MERELY BEEN TINKERED WITH – SENTENCING ACT 2002	13
Discharge without conviction	13
Conviction and discharge; order to come up for sentence	13
Disqualification from holding a driver licence	13
Confiscation of a motor vehicle	14
Non-association order	14
5. PURPOSES AND PRINCIPLES OF SENTENCING	17
Purposes of sentencing	17
Weight to be given to any particular purpose: s 7(2)	17
Punishment not a purpose of sentencing	17
Principles of sentencing	18
Aggravating and mitigating factors	19
Additional aggravating factor: hate crimes	20
6. RESTORATIVE JUSTICE	23
7. GENERAL PROVISIONS RELATING TO THE IMPOSITION OF SENTENCES	27
Penalty changed between commission of offence and sentencing	27
Taking into account offer or agreement to make amends	27
Court must consider whether conviction needs to be entered or sentence imposed	28
Hierarchy of penalties – general provisions about imposition of reparation, fines, community-based sentences, and imprisonment	28
Court must consider reparation	29
Court must consider a fine	29
Reparation may take precedence over a fine	30
Court must consider imposing a community-based sentence	30
Factors the court must consider before imposing a sentence of imprisonment	30

Offender unlikely to comply with sentence other than imprisonment	31
Minimum age of imprisonment	31
Restrictions upon combining imprisonment with other sentences	31
<i>Fine plus imprisonment prohibited for same offence</i>	31
<i>Community-based sentence plus imprisonment prohibited</i>	31
<i>Community-based sentence prohibited where offender serving a sentence of imprisonment</i>	31
Restrictions upon combining community-based sentences with other sentences in respect of a particular offence	32
<i>Community-based sentences and fines</i>	32
Restrictions upon cumulative sentences	32
<i>Non-association order</i>	32
<i>Indeterminate sentence of imprisonment</i>	33
8. THE SENTENCING PROCESS	35
Adjournment	35
Pre-sentence reports	35
Person may speak to the court	36
Disclosure of pre-sentence report	37
Access to pre-sentence report	37
Legal representation	37
Reasons must be given for sentence	38
9. MONETARY PENALTIES	39
Fines	39
The Select Committee	39
Section 13	39
Power to impose a fine	40
Amount of the fine	40
Financial capacity of the offender	41
10. REPARATION	43
Reparation report	44
Reparation statistics	44
11. COMMUNITY-BASED SENTENCING	47
Supervision	48
Community work	48
12. PROOF OF DISPUTED FACTS	51
Submissions by the New Zealand Law Society	51
13. IMPRISONMENT	55
General	55
Should the court impose imprisonment	55
Length of term of imprisonment	56
What sentences may be imposed together with a sentence of imprisonment	56
Cumulative and/or concurrent sentences of imprisonment	56

Guidance on use of cumulative and concurrent sentences of imprisonment	57
Totality principle	57
Commencement of imprisonment	58
Pre-sentence detention is not to be taken into account in determining length of sentence	58
Decisions to be made at time of imposition of sentence of imprisonment	58
Sentence is two years' imprisonment or less	59
Sentencing court to impose conditions where term is two years or less	59
Home detention	59
<i>"Front end" – leave to apply must be granted unless inappropriate</i>	60
<i>"Back end"</i>	60
<i>Application for home detention – s 33 of the Parole Act</i>	61
<i>Report on suitability for home detention – s 34 of the Parole Act</i>	61
<i>Direction for detention on home detention – s 35 of the Parole Act</i>	61
<i>Detention conditions – s 36 of the Parole Act</i>	62
<i>Breach and recall</i>	63
<i>Effect of subsequent conviction on home detention – s 99 of the Sentencing Act</i>	63
<i>When home detention ends – s 40 of the Parole Act</i>	64
Sentence is in excess of two years' imprisonment	64
Parole eligibility	64
Court may order minimum period of imprisonment	65
Imprisonment of young persons	65
<i>Offender is under 17 – minimum age of imprisonment raised</i>	65
<i>Remand of young persons</i>	66
14. THE SENTENCING REGIME FOR MURDER	67
The Select Committee	67
The statutory provisions	68
15. PREVENTIVE DETENTION	71
16. THE TRANSITION PERIOD	73
Imposition of minimum period of imprisonment in relation to determinate sentence of imprisonment (s 152)	73
Preventive detention (s 153)	73
Murder (s 154)	73
Reparation or fine (s 148)	74
Community-based sentence (s 149 – 151)	74
Suspended sentences of imprisonment (s 155)	74
Order to come up if called upon for sentence (s 157)	75
Non-association orders, disqualification from driving and confiscation of vehicles (ss 158 – 159)	75
17. PAROLE	77
The New Zealand Parole Board	77
Procedure at hearings	78

Guiding principles – s 7 of the Parole Act	79
Abolition of final release date at two-thirds of sentence	79
Eligibility for parole	79
Postponement of consideration	80
Release on parole	80
Conditions of parole	81
<i>Suspension of parole conditions</i>	82
<i>Variation and discharge of parole conditions</i>	82
<i>Breach of parole conditions</i>	82
Release at statutory release date	82
Compassionate release	82
Actual release	83
Recall	83
When offender ceases to be on parole	84
Reviews and appeals from decisions	84
Determining key dates for post-commencement date sentences and transitional arrangements for offenders subject to pre-commencement date sentences – subparts 3 and 4 of the Parole Act	84
APPENDIX 1 – TEN QUESTIONS	87
APPENDIX 2 – SENTENCING ACT 2002	89