



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]).

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.

Crimes Legislation Amendment (Criminal Justice Interventions) Bill 2002

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.

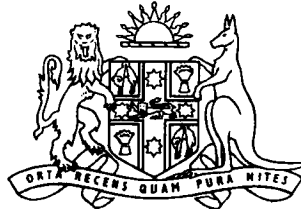


New South Wales

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New South Wales

Crimes Legislation Amendment (Criminal Justice Interventions) Bill 2002

No , 2002

A Bill for

An Act to amend the *Criminal Procedure Act 1986*, the *Bail Act 1978*, the *Crimes (Sentencing Procedure) Act 1999* and other legislation to make provision with respect to criminal justice intervention programs; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002*.

2 Commencement

(1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).

(2) Schedule 1 [3] commences on:

- (a) the day on which Schedule 1 [2] commences, or
- (b) the day on which Schedule 1 [140] to the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001* commences, whichever is the later.

3 Amendment of Criminal Procedure Act 1986 No 209

The *Criminal Procedure Act 1986* is amended as set out in Schedule 1.

4 Amendment of Bail Act 1978 No 161

The *Bail Act 1978* is amended as set out in Schedule 2.

5 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

The *Crimes (Sentencing Procedure) Act 1999* is amended as set out in Schedule 3.

6 Amendment of other Acts

The Acts specified in Schedule 4 are amended as set out in that Schedule.

Schedule 1 Amendment of Criminal Procedure Act 1986

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

intervention plan—see section 174.

intervention program—see section 174.

[2] Part 9

Insert after Part 8:

Part 9 Intervention programs

Note. This Part provides for the recognition and operation of certain programs for dealing with accused persons and offenders, known as *intervention programs*. An accused person or offender may be referred for participation in an intervention program at several points in criminal proceedings against the person, as follows:

- (a) a court that grants bail to a person may impose a condition of bail under section 36A of the *Bail Act 1978* that the person enter into an agreement to subject himself or herself to an assessment of the person's capacity and prospects for participation in an intervention program or other program for treatment or rehabilitation, or that the person enter into an agreement to participate in an intervention program (and to comply with any plan arising out of the program) or other program for treatment or rehabilitation,
- (b) a court may adjourn criminal proceedings against a person before any finding as to guilt is made and grant bail to the person for the purpose of assessing the person's capacity and prospects for participation in an intervention program or to allow the person to participate in an intervention program (and to comply with any plan arising out of the program) under this Act,
- (c) a court that finds a person guilty of an offence may make an order requiring the person to participate in an intervention program (and to comply with any plan arising out of the program) under section 10 of the *Crimes (Sentencing Procedure) Act 1999*,
- (d) participation in an intervention program (and compliance with any plan arising out of the program) may be made a condition of a good behaviour bond under section 9 or 10 of the *Crimes (Sentencing Procedure) Act 1999*, or of a suspended sentence under section 12 of that Act,

(e)	sentencing of an offender may be deferred for the purpose of assessing an offender for participation in an intervention program, or for allowing an offender to participate in an intervention program (and to comply with any plan arising out of the program) under section 11 of the <i>Crimes (Sentencing Procedure) Act 1999</i> .	1 2 3 4 5
Division 1	Preliminary	6
173	Objects	7
(1)	The objects of this Part are:	8
(a)	to provide a framework for the recognition and operation of programs of certain alternative measures for dealing with persons who have committed an offence or are alleged to have committed an offence, and	9 10 11 12 13
(b)	to ensure that such programs apply fairly to all persons who are eligible to participate in them, and that such programs are properly managed and administered, and	14 15 16
(c)	to reduce the likelihood of future offending behaviour by facilitating participation in such programs.	17 18
(2)	In enacting this Part, Parliament recognises that:	19
(a)	the rights of victims should be protected and maintained in accordance with the Charter of Victims Rights set out in the <i>Victims Rights Act 1996</i> , and	20 21 22
(b)	the successful rehabilitation of offenders contributes to the maintenance of a safe, peaceful and just society.	23 24
174	Definitions	25
(1)	In this Part:	26
	<i>intervention plan</i> means a plan, agreement or arrangement arising out of the participation of an offender or an accused person in an intervention program.	27 28 29
	<i>intervention program</i> means a program of measures declared to be an intervention program under section 175.	30 31
(2)	Notes included in this Part are explanatory notes and do not form part of this Part.	32 33

Division 2	Intervention programs	1
175	Declaration and regulation of intervention programs	2
(1)	The regulations may declare that a program of measures for dealing with offenders or accused persons that is described in the regulations is an <i>intervention program</i> for the purposes of this Part.	3 4 5 6
(2)	The purposes of such a program may include any of the following:	7 8
(a)	promoting the treatment or rehabilitation of offenders or accused persons,	9 10
(b)	promoting respect for the law and the maintenance of a just and safe community,	11 12
(c)	encouraging and facilitating the provision by offenders of appropriate forms of remedial actions to victims and the community,	13 14 15
(d)	promoting the acceptance by offenders of accountability and responsibility for their behaviour,	16 17
(e)	promoting the reintegration of offenders into the community.	18 19
(3)	The regulations may make provision for or with respect to the following matters:	20 21
(a)	subject to section 176, the offences in respect of which an intervention program may be conducted,	22 23
(b)	subject to section 177, eligibility to participate in an intervention program,	24 25
(c)	the nature and content of the measures constituting an intervention program,	26 27
(d)	the purposes and objectives of an intervention program, and the principles guiding an intervention program,	28 29
(e)	assessment of the suitability of a person to participate in an intervention program, or of a person's capacity or prospects for participation in an intervention program,	30 31 32
(f)	the conduct of investigations and the preparation of reports as to a person's suitability, capacity or prospects for participation in an intervention program,	33 34 35

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| (g) | the provision of reports as to a person's suitability, capacity or prospects for participation in an intervention program, | 1
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| (h) | the persons, bodies or organisations who may participate in an intervention program or intervention plan (in addition to the offender or accused person), | 4
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| (i) | the role of particular persons, bodies or organisations in the conduct of an intervention program or intervention plan, | 7
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| (j) | restrictions or conditions on participation in an intervention program (including legal representation of offenders or accused persons who participate in an intervention program), | 10
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| (k) | the development and implementation of intervention plans arising out of an intervention program, including restrictions or conditions on intervention plans, | 14
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16 |
| (l) | procedures for notification of courts or other persons, bodies or organisations of a decision of a person not to participate in, or to continue to participate in, an intervention program or intervention plan, | 17
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| (m) | the content and keeping of records in connection with an intervention program or intervention plan, | 21
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| (n) | the monitoring and evaluation of, or research into, the operation and effect of an intervention program or intervention plan, | 23
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25 |
| (o) | the issuing of guidelines with respect to the conduct or operation of an intervention program or intervention plan, | 26
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| (p) | authorising the participation of persons who are in custody in an intervention program or intervention plan, | 29
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| (q) | any other matter relating to the conduct or operation of an intervention program or intervention plan. | 31
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| (4) | The operation of an intervention program may be limited by the regulations to a specified part or parts of New South Wales, or for a specified period or periods (or both). | 33
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| (5) Nothing in this section prevents the development, conduct or operation of programs of measures for the treatment or rehabilitation of offenders or accused persons that are not intervention programs. | 1
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| 176 Offences in respect of which an intervention program may be conducted | 5
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| (1) The offences in respect of which an intervention program may be conducted are, except as provided by subsection (2): | 7
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| (a) summary offences, and | 9 |
| (b) indictable offences that may be dealt with summarily under this Act or another law prescribed by the regulations for the purposes of this subsection. | 10
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| (2) An intervention program may not be conducted in respect of any of the following offences: | 13
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| (a) an offence under section 35 (Malicious wounding or infliction of grievous bodily harm) or 35A (1) (Maliciously cause dog to inflict grievous bodily harm) of the <i>Crimes Act 1900</i> , | 15
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| (b) an offence under Division 10 (Offences in the nature of rape, offences relating to other acts of sexual assault etc) or 15 (Child prostitution and pornography) of Part 3 of the <i>Crimes Act 1900</i> , | 19
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| (c) an offence under section 562AB (Stalking or intimidation with intent to cause fear of physical or mental harm) of the <i>Crimes Act 1900</i> , | 23
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| (d) an offence under section 578B (Possession of child pornography) or 578C (2A) (Publishing child pornography) of the <i>Crimes Act 1900</i> , | 26
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| (e) any offence involving the use of a firearm, | 29 |
| (f) an offence under section 23 (1) (b) or (2) (b) (Offences with respect to prohibited plants), 25 (Supply of prohibited drugs) or 25A (Offence of supplying prohibited drugs on an ongoing basis) of the <i>Drug Misuse and Trafficking Act 1985</i> , | 30
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| (g) any other offence prescribed by the regulations for the purposes of this subsection. | 35
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177	Eligibility of certain persons to participate in intervention program	1
	A person is not eligible to participate in an intervention program in respect of an offence while the person is being dealt with for the offence:	2
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	(a) by the Children's Court under Part 3 (Criminal proceedings in the Children's Court) of the <i>Children (Criminal Proceedings) Act 1987</i> (including after the person has been remitted to the Children's Court under section 20 of that Act), or	5
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	(b) by any other court in accordance with Division 4 of Part 3 of that Act.	10
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Division 3	Adjournment of criminal proceedings in connection with intervention program	12
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178	Court may adjourn proceedings to allow accused person to be assessed for or to participate in intervention program	14
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	(1) Before a finding as to the guilt of an accused person in respect of an offence is made, a court may make an order adjourning proceedings against the accused person to a specified date, and granting bail to the person in accordance with the <i>Bail Act 1978</i> , for either or both of the following purposes:	16
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	(a) assessing the person's capacity and prospects for participation in an intervention program,	21
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	(b) allowing the person to participate in an intervention program.	23
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	Note. Section 36A of the <i>Bail Act 1978</i> enables a court to grant bail to a person on either or both of the following conditions:	25
		26
	(a) that the person enter into an agreement to subject himself or herself to an assessment of the person's capacity and prospects for participation in an intervention program or other program for treatment or rehabilitation,	27
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	(b) that the person enter into an agreement to:	31
	(i) participate in an intervention program and to comply with any intervention plan arising out of the program, or	32
		33
	(ii) participate in any other program for treatment or rehabilitation.	34
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	(2) The maximum period for which proceedings may be adjourned under this section is 12 months from the date of the making of the order.	36
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(3) This section does not limit any power that a court has, apart from this section, to adjourn proceedings or to grant bail in relation to any period of adjournment.	1 2 3
(4) This section does not limit the kinds of purposes for which a court may adjourn proceedings or grant bail, so that an order adjourning proceedings may be made for the purpose of allowing an offender to participate in a program for treatment or rehabilitation that is not an intervention program.	4 5 6 7 8
Division 4 Miscellaneous	9
179 Regulations with respect to the provision or disclosure of information in connection with intervention programs	10 11
(1) The regulations may make provision for or 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.	12 13 14 15
(2) Without limiting subsection (1), the regulations may make provision for or with respect to the following matters:	16 17
(a) the admissibility of such information in evidence in any criminal or civil proceedings, including the admissibility in evidence of any statement, confession, admission or information made or given by an offender or accused person during participation in, or for the purposes of participation in, an intervention program or intervention plan,	18 19 20 21 22 23 24
(b) the protection of a person, body or organisation from civil or criminal liability or disciplinary proceedings resulting from the provision of such information,	25 26 27
(c) the compellability of a person, body or organisation to disclose such information or to produce a document containing such information before a court, tribunal or committee.	28 29 30 31
(3) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent the provision of information referred to in subsection (1) in accordance with the regulations.	32 33 34 35

(4) The regulations made under this section may create offences punishable by a penalty not exceeding 50 penalty units.	1 2
180 Relationship with other legislation	3
(1) The <i>Bail Act 1978</i> prevails in the event of an inconsistency between that Act and this Part.	4 5
(2) This Part does not affect any jurisdiction conferred on any court under any other Act or law.	6 7
(3) This Part does not derogate from the functions of any person or court dealing with an offence or alleged offence to take any other action in relation to an offence or alleged offence, under any other Act or law.	8 9 10 11
[3] Part 9 (as inserted by item [2] of this Schedule)	12
Transfer Part 9 to the end of Chapter 7, renumber the Part with appropriate Part and section numbers, and appropriately renumber:	13 14
(a) the references to section 174 in the definitions of <i>intervention program</i> and <i>intervention plan</i> in section 3 (1), and	15 16
(b) the reference to section 175 in the definition of <i>intervention program</i> in section 174, and	17 18
(c) the reference to section 176 in section 175 (3) (a), and	19
(d) the reference to section 177 in section 175 (3) (b).	20
[4] Schedule 2 Savings, transitional and other provisions	21
Insert at the end of clause 1 (1):	22
<i>Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002</i>	23 24

Schedule 2 Amendment of Bail Act 1978

(Section 4)

[1] Section 9B Additional exceptions to presumption in favour of bail

Insert “or an intervention program order” after “good behaviour bond” in section 9B (1) (d).

[2] Section 9B (4)

Insert after section 9B (3):

(4) In this section:

intervention program order has the same meaning as in the *Crimes (Sentencing Procedure) Act 1999*.

[3] Section 36A Additional bail conditions for persons benefiting from assessment, treatment or rehabilitation or intervention program

Omit section 36A (1) and (2). Insert instead:

(1) This section applies in circumstances in which the authorised officer or court to whom an application for the granting of bail is made is of the opinion that the person to whom the application relates would benefit from:

(a) undergoing assessment for participation in an intervention program or other program for treatment or rehabilitation, or

(b) participating in an intervention program or other program for treatment or rehabilitation.

(2) In circumstances in which this section applies, either or both of the following conditions may be imposed on the grant of bail:

(a) that the person enter into an agreement to subject himself or herself to an assessment of the person’s capacity and prospects for participation in an intervention program or other program for treatment or rehabilitation,

-
- (b) that the person enter into an agreement to:
 - (i) participate in an intervention program and to comply with any intervention plan arising out of the program, or
 - (ii) participate in any other program for treatment or rehabilitation.
- [4] Section 36A (6) and (7)**
- Insert after section 36A (5):
- (6) Despite subsection (2), neither the Children's Court nor an authorised officer may impose either of the following conditions on a grant of bail to a person who was under the age of 18 years at the time that the offence was committed or alleged to have been committed:
 - (a) that the person enter into an agreement to subject himself or herself to an assessment of the person's capacity and prospects for participation in an intervention program,
 - (b) that the person enter into an agreement to participate in an intervention program and to comply with any intervention plan arising out of the program.
 - (7) In this section:

intervention program and *intervention plan* have the same meanings as they have in the *Criminal Procedure Act 1986*.
- [5] Section 37 Restrictions on imposing bail conditions**
- Insert at the end of section 37 (1) (c):
- , or
 - (d) reducing the likelihood of future offences being committed by promoting the treatment or rehabilitation of an accused person.

[6] Schedule 1 Savings and transitional provisions	1
Insert after Part 9:	2
 Part 10 Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002	 3 4
20 Bail conditions	5
(1) Any condition imposed on a grant of bail under section 36A, being a condition in force immediately before the commencement of Schedule 2 [3] to the <i>Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002</i> , is taken to have been imposed under that section as amended by Schedule 2 [3] to that Act.	6 7 8 9 10 11
(2) Sections 36A and 37, as amended by the <i>Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002</i> , extend to an offence alleged to have been committed before the commencement of the amendments if a person is charged with the offence on or after that commencement.	12 13 14 15 16

Schedule 3	Amendment of Crimes (Sentencing Procedure) Act 1999	1
		2
	(Section 5)	3
[1] Section 3 Interpretation		4
Insert in alphabetical order in section 3 (1):		5
<i>intervention plan</i> has the same meaning as in the <i>Criminal Procedure Act 1986</i> .		6
		7
<i>intervention program</i> has the same meaning as in the <i>Criminal Procedure Act 1986</i> .		8
		9
<i>intervention program order</i> means an order referred to in section 10 (1) (c).		10
		11
[2] Section 5 Penalties of imprisonment		12
Omit section 5 (2). Insert instead:		13
(2) A court that sentences an offender to imprisonment for 6 months or less must indicate to the offender, and make a record of, its reasons for doing so, including:		14
		15
(a) its reasons for deciding that no penalty other than imprisonment is appropriate, and		16
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(b) its reasons for deciding not to make an order allowing the offender to participate in an intervention program or other program for treatment or rehabilitation (if the offender has not previously participated in such a program in respect of the offence for which the court is sentencing the offender).		18
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[3] Section 10 Dismissal of charges and conditional discharge of offender		25
Omit section 10 (1). Insert instead:		26
(1) Without proceeding to conviction, a court that finds a person guilty of an offence may make any one of the following orders:		27
		28
(a) an order directing that the relevant charge be dismissed,		29

(b)	an order discharging the person on condition that the person enter into a good behaviour bond for a term not exceeding 2 years,	1 2 3
(c)	an order discharging the person on condition that the person enter into an agreement to participate in an intervention program and to comply with any intervention plan arising out of the program.	4 5 6 7
[4]	Section 10 (2A) and (2B)	8
	Insert after section 10 (2):	9
(2A)	An order referred to in subsection (1) (c) 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.	10 11 12 13
(2B)	Subsection (1) (c) is subject to Part 8C.	14
[5]	Section 11 Deferral of sentencing for rehabilitation, participation in an intervention program or other purposes	15 16
	Insert after section 11 (1) (b):	17
(b1)	for the purpose of assessing the offender's capacity and prospects for participation in an intervention program, or	18 19 20
(b2)	for the purpose of allowing the offender to participate in an intervention program, or	21 22
[6]	Section 11 (2A)	23
	Insert after section 11 (2):	24
(2A)	An order referred to in subsection (1) (b2) 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.	25 26 27 28
	Note. Section 36A of the <i>Bail Act 1978</i> enables a court to grant bail to a person on either or both of the following conditions:	29 30
(a)	that the person enter into an agreement to subject himself or herself to an assessment of the person's capacity and prospects for participation in an intervention program or other program for treatment or rehabilitation,	31 32 33 34

- (b) that the person enter into an agreement to:
 - (i) participate in an intervention program and to comply with any intervention plan arising out of the program, or
 - (ii) participate in any other program for treatment or rehabilitation.

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[7] Section 11 (4)

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Insert after section 11 (3):

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- (4) Subsection (1) (b1) and (b2) do not limit the kinds of purposes for which an order may be made under subsection (1), so that an order may be made under that subsection for the purpose of allowing an offender to participate in a program for treatment or rehabilitation that is not an intervention program, or to be assessed for participation in such a program.

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[8] Section 24 Court to take other matters into account

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Omit “or good behaviour bond” from section 24 (b).

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Insert instead “, good behaviour bond or intervention program order”.

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[9] Section 24 (c) and (d)

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Insert at the end of section 24 (b):

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, and

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- (c) in the case of an offender who is being sentenced as a result of deciding not to participate in, or to continue to participate in, an intervention program or intervention plan under an intervention program order or good behaviour bond, anything done by the offender in compliance with the offender’s obligations under the intervention program order or good behaviour bond, and
- (d) in the case of an offender who is being sentenced following an order under section 11 (1) (b2):
 - (i) anything done by the offender in compliance with the offender’s obligations under the order, and
 - (ii) any recommendations arising out of the offender’s participation in the intervention program or intervention plan.

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[10] Section 25 Local Court not to impose certain penalties if offender is absent	1 2
Insert after section 25 (1) (f):	3
(g) an intervention program order.	4
[11] Sections 95A and 95B	5
Insert after section 95:	6
95A Intervention program as condition of good behaviour bond	7
(1) A good behaviour bond may contain a condition requiring the offender to participate in an intervention program and to comply with any intervention plan arising out of the program.	8 9 10
(2) A good behaviour bond may not contain such a condition unless the court is satisfied:	11 12
(a) that the offender is eligible to participate in the intervention program in accordance with the terms of the program, and	13 14 15
(b) that the offender is a suitable person to participate in the intervention program, and	16 17
(c) that the intervention program is available in the area in which the offender resides or intends to reside, and	18 19
(d) that participation by the offender would reduce the likelihood of the offender committing further offences by promoting the treatment or rehabilitation of the offender.	20 21 22 23
(3) This section does not limit the power of a court under section 95 (c) to impose a condition on a good behaviour bond as to participation in any program for treatment or rehabilitation that is not an intervention program.	24 25 26 27
(4) This section does not limit the kinds of conditions that may be imposed on an offender by means of any other order or direction under this or any other Act, so that such an order or direction may include a condition of a kind referred to in subsection (1) or (3).	28 29 30 31 32

95B Referral of offender for assessment

Before a court makes an order providing for an offender to enter into a good behaviour bond that contains a condition referred to in section 95A (1), the court may refer the offender for assessment as to the suitability of the offender to participate in an intervention program.

Note. Regulations may be made for or with respect to the assessment of the suitability of a person to participate in an intervention program under the *Criminal Procedure Act 1986*.

[12] Section 99A

Insert after section 99:

99A Right to decide not to participate in intervention program

- (1) An offender may, at any time after entering into a good behaviour bond that contains a condition referred to in section 95A (1) (including after the commencement of the intervention program concerned), decide not to participate or to continue to participate in the intervention program or any intervention plan arising out of the program.
- (2) Such a decision is to be made in accordance with the terms of the intervention program.
- (3) If the offender makes such a decision, the sentencing court or any court of like jurisdiction may call on the offender to appear before it.
- (4) If the offender fails to appear, the court may take any action referred to in section 98 (1A) or (1B).
- (5) A court may, when an offender appears before it following a decision not to participate or to continue to participate in an intervention program or intervention plan:
 - (a) vary the conditions of the good behaviour bond or impose further conditions on the bond, or
 - (b) revoke the good behaviour bond.
- (6) A court that revokes a good behaviour bond under subsection (5) may re-sentence the offender for the offence for which the good behaviour bond was imposed.

(7)	This Act applies to the sentencing of an offender under this section in the same way as it applies to the sentencing of an offender on a conviction.	1 2 3
(8)	An offender who under this section is sentenced by a court for an offence has the same rights of appeal as the offender would have had if the offender had been sentenced by that court on being convicted of the offence.	4 5 6 7
[13] Part 8C		8
	Insert before Part 9:	9
	Part 8C Sentencing procedures for intervention program orders	10 11
	Division 1 Preliminary	12
100M Application		13
	This Part applies in circumstances in which a court is considering, or has made, an intervention program order.	14 15
	Division 2 Restrictions on power to make intervention program orders	16 17
100N Suitability of offender for intervention program		18
	An intervention program order may not be made with respect to an offender unless the court is satisfied:	19 20
	(a) that the offender is eligible to participate in the intervention program in accordance with the terms of the program, and	21 22 23
	(b) that the offender is a suitable person to participate in the intervention program, and	24 25
	(c) that the intervention program is available in the area in which the offender resides or intends to reside.	26 27

100O	Referral of offender for assessment	1
	Before a court sentences an offender, the court may refer the offender for assessment as to the suitability of the offender to participate in an intervention program.	2
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	Note. Regulations may be made for or with respect to the assessment of the suitability of a person to participate in an intervention program under the <i>Criminal Procedure Act 1986</i> .	5
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100P	Explanation of intervention program order	8
(1)	A court that makes an intervention program order must ensure that all reasonable steps are taken to explain to the offender (in language that the offender can readily understand):	9
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(a)	the offender's obligations under the order, and	12
(b)	the consequences that may follow if the offender fails to comply with those obligations.	13
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(2)	An intervention program order is not invalidated by a failure to comply with this section.	15
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Division 3	Enforcement of intervention program order	17
100Q	Procedure following failure to enter into agreement	18
	If:	19
(a)	a court makes an order that provides for an offender to enter into an agreement to participate in an intervention program, and	20
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(b)	the offender fails to enter into such an agreement in accordance with the order,	23
		24
	the court may sentence the offender, or convict and sentence the offender, as if the order had not been made.	25
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100R	Proceedings for breach of order	27
(1)	If it suspects that an offender may have failed to comply with an intervention program order:	28
		29
(a)	the court that made the order, or	30
(b)	any other court of like jurisdiction,	31
	may call on the offender to appear before it.	32

(2)	If the offender fails to appear, the court may take any action referred to in section 98 (1A) or (1B).	1 2
(3)	If it is satisfied that an offender appearing before it has failed to comply with an intervention program order, a court:	3 4
(a)	may decide to take no action with respect to the failure to comply, or	5 6
(b)	may revoke the intervention program order.	7
100S	Consequences of revocation of order	8
(1)	If a court revokes an intervention program order under this Division, the court may convict and sentence the offender for the offence in respect of which the offender entered into the agreement to participate in the intervention program.	9 10 11 12
(2)	This Act applies to the sentencing of an offender under this section in the same way as it applies to the sentencing of an offender on a conviction.	13 14 15
(3)	An offender who under this section is sentenced by a court for an offence has the same rights of appeal as the offender would have had if the offender had been sentenced by that court on being convicted of the offence.	16 17 18 19
100T	Right to decide not to participate in intervention program	20
(1)	An offender may, at any time after entering into an agreement under section 10 (1) (c) (including after the commencement of the intervention program concerned) decide not to participate or to continue to participate in the intervention program or any intervention plan arising out the program.	21 22 23 24 25
(2)	Such a decision is to be made in accordance with the terms of the intervention program.	26 27
(3)	If the offender makes such a decision, the sentencing court or any court of like jurisdiction, may call on the offender to appear before it.	28 29 30
(4)	If the offender fails to appear, the court may take an action referred to in section 98 (1A) or (1B).	31 32

(5)	A court may, when an offender appears before it following a decision not to participate or to continue to participate in an intervention program or intervention plan:	1
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(a)	revoke the intervention program order, and	4
(b)	make another order under section 10 (other than an intervention program order), or convict and sentence the offender for the offence in respect of which the intervention program order was imposed.	5
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(6)	This Act applies to the sentencing of an offender under this section in the same way as it applies to the sentencing of an offender on a conviction.	9
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(7)	An offender who under this section is sentenced by a court for an offence has the same rights of appeal as the offender would have had if the offender had been sentenced by that court on being convicted of the offence.	12
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[14]	Schedule 2 Savings, transitional and other provisions	16
	Insert at the end of clause 1 (1):	17
	<i>Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002</i>	18
		19
[15]	Schedule 2, Part 8	20
	Insert at the end of the Schedule:	21
	Part 8 Provisions consequent on Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002	22
		23
		24
47	Application	25
	An amendment to this Act made by the <i>Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002</i> extends	26
	to an offence committed before the commencement of the amendment unless proceedings (other than committal proceedings) for the offence were commenced before the commencement of the amendment.	27
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Schedule 4	Consequential and other amendments	1
	(Section 6)	2
4.1	Crimes (Local Courts Appeal and Review) Act 2001 No 120	3
	Section 3 Definitions	4
	Omit section 3 (4).	5
4.2	Criminal Records Act 1991 No 8	6
[1]	Section 4 Definitions	7
	Insert in alphabetical order in section 4 (1):	8
	<i>intervention program</i> has the same meaning as in the <i>Criminal Procedure Act 1986</i> .	9
		10
[2]	Section 8 When is a conviction spent?	11
	Omit section 8 (4) (a). Insert instead:	12
	(a) the discharging of, or the making of an order releasing,	13
	the offender conditionally on entering into a good	14
	behaviour bond for a specified period, on participating	15
	in an intervention program or on other conditions	16
	determined by the court, or	17
[3]	Section 8 (4)	18
	Omit “satisfactory completion of the period or satisfactory compliance with	19
	the conditions, or both”.	20
	Insert instead “satisfactory completion of the period or satisfactory	21
	compliance with the program (including any intervention plan arising out	22
	of the program) or conditions”.	23

[4] Section 8 (7)	1
Insert after section 8 (6):	2
(7) A reference in subsection (4) (a) (as substituted by the <i>Crimes</i>	3
<i>Legislation Amendment (Criminal Justice Interventions)</i>	4
<i>Act 2002</i>) to a good behaviour bond includes a reference to a	5
recognizance to be of good behaviour made before the	6
commencement of the <i>Crimes (Sentencing Procedure)</i>	7
<i>Act 1999</i> .	8