

Passed by both Houses



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2000

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93	2
4 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	2
Schedules	
1 Amendment of Crimes (Administration of Sentences) Act 1999	3
2 Amendment of Crimes (Sentencing Procedure) Act 1999	20

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Crimes (Administration of Sentences) Amendment Bill 2000

Act No , 2000

An Act to make miscellaneous amendments to the *Crimes (Administration of Sentences) Act 1999*; to amend the *Crimes (Sentencing Procedure) Act 1999* consequentially; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Administration of Sentences) Amendment Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 1.

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

The *Crimes (Sentencing Procedure) Act 1999* is amended as set out in Schedule 2.

Schedule 1 Amendment of Crimes (Administration of Sentences) Act 1999

(Section 3)

[1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

Chief Executive Officer, Corrections Health Service means the person for the time being holding office or acting as the Chief Executive Officer of the Corrections Health Service.

Corrections Health Service means the Corrections Health Service specified in Schedule 2 to the *Health Services Act 1997* and constituted as a statutory health corporation by that Act.

medical officer, in relation to a correctional centre, means a medical officer appointed for the correctional centre as referred to in section 236C.

[2] Section 3 (1)

Omit the definition of *law enforcement agency*. Insert instead:

law enforcement agency means any of the following:

- (a) the Police Service, or the police force of another State or a Territory,
- (b) the New South Wales Crime Commission,
- (c) the Australian Federal Police,
- (d) the National Crime Authority,
- (e) the Director of Public Prosecutions of New South Wales, of another State or a Territory or of the Commonwealth,
- (f) the Police Integrity Commission,
- (g) the Independent Commission Against Corruption,
- (h) the Department of Juvenile Justice,
- (i) a person or body prescribed by the regulations for the purposes of this definition.

[3] Section 6 Work performed by inmates

Omit “community service” from section 6 (1).

[4] Section 6 (2)

Insert “, or any work for the Department or a public or local authority,” after “community service work”.

[5] Section 19 Review of segregated or protective custody direction by Review Council

Omit section 19 (4). Insert instead:

- (4) The Review Council may reject the application if:
 - (a) the application does not, in the opinion of the Review Council, disclose substantial grounds for a review, or
 - (b) the Review Council has previously determined a review of the same direction under this Division and the application does not, in the opinion of the Review Council, disclose substantially different grounds for a review.

[6] Section 38 Absent inmates taken to be in custody

Insert “or other work” after “community service work” in section 38 (1) (a).

[7] Section 38 (2)

Omit “the custody” where firstly occurring. Insert instead “custody”.

[8] Sections 38 (4), 77 (5) and 249

Omit the definition of *correctional officer* wherever occurring.

Insert instead:

correctional officer includes:

- (a) a person employed on a temporary basis within the Department to perform some or all of the duties of a correctional officer, and
- (b) a person holding an authority under section 240 to perform escort duties.

[9] Section 39

Omit the section. Insert instead:

39 Powers of arrest

- (1) A police officer or correctional officer may, with or without a warrant, arrest an inmate:
 - (a) who has contravened, or has manifested an intention to contravene, a condition of a local leave order, local leave permit or interstate leave permit, or
 - (b) whose local leave order, local leave permit or interstate leave permit has been revoked, or
 - (c) who has not returned to a correctional centre at the expiry of the period specified in a local leave order, local leave permit or interstate leave permit, or
 - (d) who has escaped from custody.
- (2) The police officer or correctional officer is to convey the inmate to the nearest appropriate correctional centre.
- (3) If it appears to the Commissioner that any of the occurrences listed in subsection (1) in relation to an inmate have taken place, the Commissioner may issue a warrant for the inmate's arrest and return to a correctional centre.
- (4) A warrant under this section is sufficient authority for a police officer or correctional officer to whom the warrant is addressed to arrest the inmate named in the warrant, to convey the inmate to the correctional centre specified in the warrant and to deliver the inmate into the custody of the governor of that correctional centre.

[10] Section 59 Compensation for property damage

Omit "\$50" from section 59 (2). Insert instead "\$100".

[11] Section 72A

Insert after section 72:

72A Medical attention

An inmate must be supplied with such medical attendance, treatment and medicine as in the opinion of a medical officer is necessary for the preservation of the health of the inmate, of other inmates and of any other person.

[12] Section 73

Omit the section. Insert instead:

73 Compulsory medical treatment

- (1) A medical practitioner (whether that practitioner is a medical officer or not) may carry out medical treatment on an inmate without the inmate's consent if the Chief Executive Officer, Corrections Health Service is of the opinion, having taken into account the cultural background and religious views of the inmate, that it is necessary to do so in order to save the inmate's life or to prevent serious damage to the inmate's health.
- (2) Medical treatment carried out on an inmate under this section is, for all purposes, taken to have been carried out with the inmate's consent.
- (3) Nothing in this section relieves a medical practitioner from liability in respect of the carrying out of medical treatment on an inmate, being a liability to which the medical practitioner would have been subject had the treatment been carried out with the inmate's consent.
- (4) If the Chief Executive Officer, Corrections Health Service is not a medical practitioner, the reference to the Chief Executive Officer, Corrections Health Service in subsection (1) is taken to be a reference to a person, designated by the Chief Executive Officer for the purposes of that subsection, who is a medical practitioner.

[13] Section 75 Confiscation of property

Insert “(including any money)” after “property” in section 75 (1).

[14] Section 77 Attendance of inmates before courts and court officers

Insert “, a sheriff’s officer” after “a correctional officer” in section 77 (3).

[15] Section 77 (5)

Insert in appropriate order:

court includes the following:

- (a) the Children’s Court,
- (b) the Federal Court of Australia,
- (c) the Family Court of Australia,
- (d) the Federal Magistrates Court of Australia,
- (e) the Dust Diseases Tribunal,
- (f) any other court or body prescribed by the regulations for the purposes of this definition.

[16] Section 79 Regulations

Omit section 79 (e). Insert instead:

- (e) the physical, psychological and spiritual welfare of inmates while in custody and following their release,

[17] Section 79 (f)

Insert “under section 6” after “carry out”.

[18] Section 79 (h)

Omit “and the confiscation of property unlawfully in the possession of inmates”.

[19] Section 79 (h1)

Insert after section 79 (h):

- (h1) the forfeiture and disposal of an inmate's abandoned or unclaimed property (including money), or of unhygienic or otherwise dangerous property (including money) received from, or sent to, an inmate,

[20] Section 79 (x)

Omit "and chaplains".

[21] Section 79 (x1)

Insert after section 79 (x):

- (x1) the appointment of ministers of religion and other spiritual advisors for correctional centres,

[22] Section 82 Duration of periodic detention order

Insert at the end of section 82 (2):

- (3) Nothing in this section affects the operation of section 89.

[23] Section 89 Failure to report or reporting late extends term of sentence

Insert at the end of section 89 (7):

- (8) If an offender has failed to report for a detention period but during that detention period is taken into custody (whether in relation to the offence concerned or otherwise and whether as an inmate of a correctional centre or otherwise), the offender is for the purposes of this section taken to have reported late for that detention period without leave of absence.

[24] Section 93 Appeal to Parole Board from Commissioner's refusal to grant leave of absence

Omit "a Local Court" from section 93 (1). Insert instead "the Parole Board".

[25] Section 93 (3), (4) and (5)

Omit "Local Court" wherever occurring. Insert instead "Parole Board".

[26] Section 98 Application of Part 2 to periodic detention

Insert “, and the provisions of any regulations made under that Part,” after “regulations)” in section 98 (2) (a).

[27] Section 98 (2) (b)

Insert “or of the regulations under that Part” after “Part 2”.

[28] Part 5, heading

Insert “**and other work performed by offenders**” after “**Community service work**”.

[29] Section 114 Extension of period of community service order

Omit “the sentencing court” from section 114 (1).
Insert instead “a Local Court”.

[30] Section 115 Revocation of community service orders

Insert at the end of section 115 (2):

- (2A) The application cannot be made later than one month after the expiry of the relevant maximum period for the order.

[31] Section 116

Omit the section. Insert instead:

116 Summonses and warrants for attendance

- (1) The court to which an offender’s assigned officer makes an application:
- (a) for the extension of the period for which the offender’s community service order is to remain in force, or
 - (b) for the revocation of the offender’s community service order,
- may call on the offender to appear before it.
- (2) If the offender fails to appear, the court may:
- (a) issue a warrant for the offender’s arrest, or

(b) authorise an authorised justice to issue a warrant for the offender's arrest.

(3) If, however, at the time the assigned officer makes the application referred to in subsection (1), the court is satisfied that the location of the offender is unknown, the court may immediately:

(a) issue a warrant for the offender's arrest, or

(b) authorise an authorised justice to issue a warrant for the offender's arrest.

(4) In this section, *authorised justice* means a justice employed within the Attorney General's Department.

[32] Part 5, Division 2, heading

Insert “**and other work performed by offenders**” after “**community service work**”.

[33] Section 118 Definitions

Insert at the end of paragraph (d) of the definition of *community service work*:

, and

(e) other work performed by an offender outside a correctional centre in accordance with section 6 (2).

[34] Section 138 Decision of Parole Board

Insert at the end of the section:

(2) Nothing in subsection (1) affects the power of the Parole Board to amend or repeal an order as referred to in section 43 (2) of the *Interpretation Act 1987*.

[35] Section 163 Revocation of periodic detention order

Insert at the end of section 163 (1) (b):

, or

(c) if the offender has applied for the order to be revoked.

[36] Section 163 (1A) and (1B)

Insert at the end of section 163 (1):

- (1A) The Parole Board may revoke an offender's periodic detention order on the application of the Commissioner if it is satisfied that health reasons or compassionate grounds exist that justify its revocation.
- (1B) If a periodic detention order is revoked under subsection (1A), the Parole Board may, on the application of the Commissioner, make such other orders in relation to the offender as it considers appropriate.

[37] Section 165

Omit the section. Insert instead:

165 Parole Board may order home detention

- (1) If the Parole Board revokes a periodic detention order under this Division, it may make an order directing that the remainder of the sentence to which the periodic detention order relates (if that remainder is 18 months or less) is to be served by way of home detention.
- (2) Part 6 of the *Crimes (Sentencing Procedure) Act 1999* applies to and in respect of a home detention order under this section and such an order is taken to be a home detention order made under section 7 of that Act.
- (3) When, for the purposes of an order referred to in subsection (1), the Parole Board refers an offender for assessment in relation to a sentence of home detention, the Board may by order:
 - (a) stay the execution of the offender's sentence, and
 - (b) release the offender subject to such supervision as is prescribed by the regulations,until the Board decides whether or not to make the home detention order.

[38] Section 167 Revocation of home detention order

Insert at the end of section 167 (1) (b):

- , or
- (c) if the offender has applied for the order to be revoked,
or
 - (d) if a person with whom the offender resides during the period of the offender's home detention has withdrawn in writing, in the form prescribed by the regulations, his or her consent to the continued operation of the home detention order.

[39] Section 168A

Insert after section 168:

168A Parole Board may reinstate revoked home detention order

- (1) If:
 - (a) an offender's home detention order has been revoked under this Division or section 179, and
 - (b) the offender has, since that revocation, served at least three months of the offender's sentence by way of full-time detention,

the Parole Board may, on the application of the offender and subject to Part 6 of the *Crimes (Sentencing Procedure) Act 1999*, make an order reinstating the offender's revoked home detention order in respect of the remaining balance of the offender's sentence.

- (2) Before making an order referred to in subsection (1), the Parole Board must refer the offender to the Probation and Parole Service for assessment as to the suitability of the offender for home detention.

[40] Section 170 Revocation of parole order

Insert at the end of section 170 (1) (b):

- , or
- (c) if the offender has applied for the order to be revoked.

[41] Section 179 Consequential revocation of other orders

Insert “, except as provided by subsection (4)” after “section” in section 179 (2).

[42] Section 179 (4)

Insert at the end of section 179 (3):

- (4) Section 165 applies to a periodic detention order revoked under this section in the same way as it applies to a periodic detention order revoked under Division 1 of this Part.

[43] Section 179A

Insert after section 179:

179A Revocation of first of consecutive home detention orders—Parole Board to seek new assessment

- (1) If:
 - (a) an offender’s home detention order is revoked under this Part, and
 - (b) the offender is the subject of one or more other home detention orders yet to come into force (being an order or orders that the Parole Board has declined to revoke),the Parole Board must refer the offender to the Probation and Parole Service for assessment as to the suitability of the offender for home detention in accordance with Part 6 of the *Crimes (Sentencing Procedure) Act 1999* before the other order (or, if more than one, the first order that would commence) comes into force.
- (2) If, following the assessment, the Parole Board determines that the offender is not suitable for home detention, the Board must revoke the offender’s next home detention order.
- (3) Divisions 1, 2 and 3 do not apply to the revocation of a home detention order under this section.
- (4) No appeal lies against a revocation of a home detention order under this section.

[44] Sections 180 and 181

Omit “or Deputy Chairperson” from sections 180 (2) (a) and 181 (2) wherever occurring.

Insert instead “, Deputy Chairperson or Secretary”.

[45] Section 184 Divisions of Parole Board

Omit section 184 (2). Insert instead:

- (2) A Division is to consist of:
 - (a) one judicial member, and
 - (b) at least one community member, and
 - (c) either or both of the following:
 - (i) the Secretary of the Parole Board,
 - (ii) one or more official members.

[46] Section 192A

Insert after section 192:

192A Minister to table report

- (1) The Minister must, as soon as practicable after receiving the report referred to in section 192 (1), lay a copy of the report or cause it to be laid before both Houses of Parliament.
- (2) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (1), the Minister must present copies of the report to the Clerk of the House of Parliament.
- (3) A report presented to the Clerk of a House of Parliament:
 - (a) is taken on presentation, and for all purposes, to have been laid before the House of Parliament, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) for all purposes is taken to be a document published by order or under the authority of the House, and

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- (d) on the first sitting day of the House after receipt of the report by the Clerk, must be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, or
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly.

[47] Section 194

Omit the section. Insert instead:

194 Security of certain information

Nothing in this Act or the regulations requires a person to be provided with a copy of a report or another document (or any part of the report or document) if its provision to the person may, in the opinion of a judicial member:

- (a) adversely affect the security, discipline or good order of a correctional centre, or
- (b) endanger the person or any other person, or
- (c) jeopardise the conduct of any lawful investigation, or
- (d) prejudice the public interest.

[48] Section 195 Constitution of Review Council

Insert “at least 8, but not more than” after “consist of” in section 195 (2).

[49] Section 209 Annual reports

Insert at the end of section 209:

- (2) If a House of Parliament is not sitting when the Minister seeks to comply with subsection (1), the Minister must present copies of the report to the Clerk of the House of Parliament.
- (3) A report presented to the Clerk of a House of Parliament:
 - (a) is taken on presentation, and for all purposes, to have been laid before the House of Parliament, and
 - (b) may be printed by authority of the Clerk of the House, and

- (c) for all purposes is taken to be a document published by order or under the authority of the House, and
- (d) on the first sitting day of the House after receipt of the report by the Clerk, must be recorded:
 - (i) in the case of the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, or
 - (ii) in the case of the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly.

[50] Section 209A

Insert after section 209:

209A Security of certain information

Nothing in this Act or the regulations requires a person to be provided with a copy of a report or another document (or any part of the report or document) if its provision to the person may, in the opinion of a judicial member:

- (a) adversely affect the security, discipline or good order of a correctional centre, or
- (b) endanger the person or any other person, or
- (c) jeopardise the conduct of any lawful investigation, or
- (d) prejudice the public interest.

[51] Section 235B

Insert after section 235A:

235B Commissioner's instructions

The Commissioner may issue (and from time to time amend or revoke) instructions, not inconsistent with this Act or the regulations, or with the *Public Sector Management Act 1988* or the regulations made under that Act, to the staff of the Department (including correctional officers) with respect to the management and control of the Department.

[52] Part 11, Division 4

Insert after Division 3 of Part 11:

Division 4 Health

236A Functions of Corrections Health Service

The Corrections Health Service, in addition to any other functions conferred on it by or under this or any other Act or law, has the following functions:

- (a) to provide health services to offenders and other persons in custody within the meaning of section 249,
- (b) to monitor the provision of health services in managed correctional centres,
- (c) to prevent the spread of infectious diseases in, or in relation to, correctional centres,
- (d) to keep medical records of offenders and other persons in custody within the meaning of section 249,
- (e) to provide advice to the Commissioner on the diet, exercise, clothing, capacity to work and general hygiene of inmates.

236B CEO, Corrections Health Service to have access to centres

For the purpose of ensuring that the provisions of this Act and the regulations (in so far as they relate to the functions of the Corrections Health Service) are being complied with at a correctional centre (including a periodic detention centre), the Chief Executive Officer, Corrections Health Service, is to have free and unfettered access at all times to all parts of the correctional centre, to all medical records held at the correctional centre and to all offenders held in custody in the correctional centre.

236C Appointment of medical officers

- (1) The Chief Executive Officer, Corrections Health Service, may appoint one or more registered medical practitioners as medical officers for a correctional centre.

- (2) A registered medical practitioner may be appointed as a medical officer for one or more correctional centres.
- (3) A medical officer is subject to the direction and control of the Chief Executive Officer, Corrections Health Service.
- (4) A medical officer for a correctional centre is to attend the correctional centre as regularly and frequently as is necessary to comply with the medical officer's statutory obligations.
- (5) The Chief Executive Officer, Corrections Health Service is to keep such statistical records, and furnish to the Commissioner such returns, as the Commissioner may direct in relation to health services provided to inmates.
- (6) A person who held office as a medical officer for a correctional centre immediately before the commencement of this section is taken to hold office pursuant to an appointment under this section, and the appointment may be suspended or revoked accordingly.

[53] Section 244 Corrections Health Service

Omit section 244 (3).

[54] Schedule 1 Parole Board

Omit "non-judicial member of the Review Council" from clause 12 of Schedule 1.

Insert instead "person (who need not be a member of the Review Council)".

[55] Schedule 1, clause 14 (3)

Insert at the end of clause 14 (2):

- (3) Despite subclause (1), the Chairperson may convene up to 6 meetings a year of the Parole Board at which all community members may attend.

[56] Schedule 2 Serious Offenders Review Council

Insert at the end of clause 13 (2) of Schedule 2:

- (3) Despite subclause (1), the Chairperson may convene up to 6 meetings a year of the Review Council at which all community members may attend.

[57] Schedule 5 Savings, transitional and other provisions

Insert at the end of clause 1 (1) of Schedule 5:

Crimes (Administration of Sentences) Amendment Act 2000

[58] Schedule 5, clause 31

Insert at the end of clause 31 (2):

- (3) Division 2 of Part 6 (section 137 (1) (a) excepted) applies to the person.
- (4) The Parole Board must, not more than 30 days after the revocation of the offender's periodic detention order, consider whether or not the offender should be released on parole.
- (5) This clause does not operate to create a non-parole period for a sentence of imprisonment if the remainder of the term of the sentence is 6 months or less.

Note. Clause 31 (1) and (2) commenced on 3 April 2000.

[59] Schedule 5, Part 3

Insert after Part 2 of Schedule 5:

**Part 3 Provisions consequent on enactment of
Crimes (Administration of Sentences)
Amendment Act 2000**

60 Validation of certain Parole Board meetings

- (1) The participation by any person in any proceedings of the Parole Board at a meeting held after 10 August 2000 but before the commencement of the amending Act, is, if the participation would have been valid had the amendments made to clause 12 of Schedule 1 to the Act by the amending Act been in force at that time, validated by this clause.
- (2) In this clause, *amending Act* means the *Crimes (Administration of Sentences) Amendment Act 2000*.

Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999

(Section 4)

[1] Section 98 Proceedings for breach of good behaviour bond

Omit “and, if the offender does not appear, may issue a warrant for the offender’s arrest” from section 98 (1).

[2] Section 98 (1A) and (1B)

Insert at the end of section 98 (1):

(1A) If the offender fails to appear, the court may:

- (a) issue a warrant for the offender’s arrest, or
- (b) authorise an authorised justice to issue a warrant for the offender’s arrest.

(1B) If, however, at the time the court proposes to call on an offender to appear before it, the court is satisfied that the location of the offender is unknown, the court may immediately:

- (a) issue a warrant for the offender’s arrest, or
- (b) authorise an authorised justice to issue a warrant for the offender’s arrest.

[3] Section 98 (4)

Insert at the end of section 98 (3):

- (4) In this section, *authorised justice* means a justice employed within the Attorney General’s Department.