

**PERIODIC DETENTION OF PRISONERS (AMENDMENT)  
ACT 1992 No. 109**

**NEW SOUTH WALES**

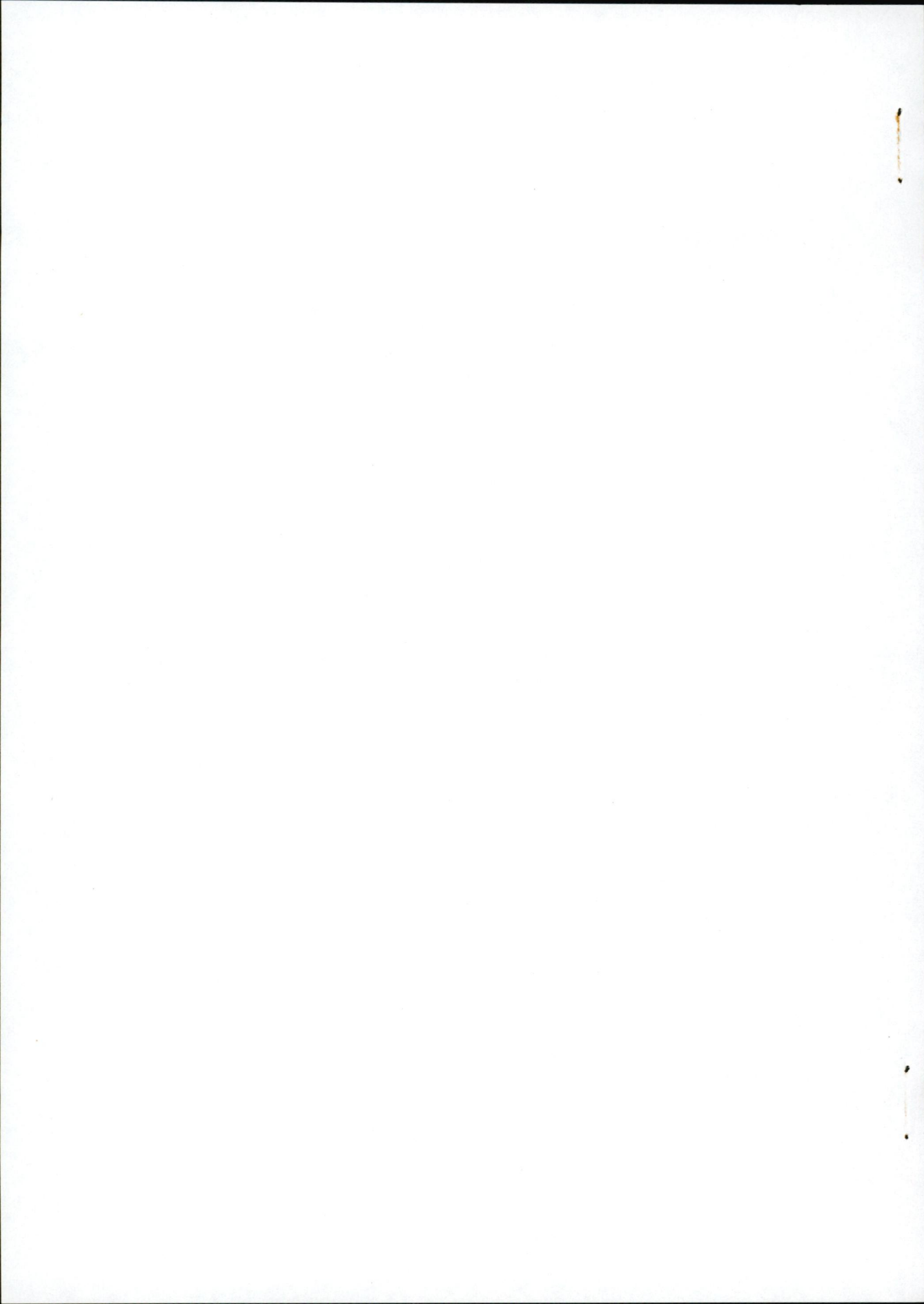


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Periodic Detention of Prisoners Act 1981 No. 18
4. Amendment of Justices Act 1902 No. 27

**SCHEDULE 1—AMENDMENTS**

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**PERIODIC DETENTION OF PRISONERS (AMENDMENT)  
ACT 1992 No. 109**

NEW SOUTH WALES



**Act No. 109, 1992**

An Act to amend the Periodic Detention of Prisoners Act 1981 with respect to the failure of periodic detainees to report as required by or under that Act and with respect to the granting of leave of absence to periodic detainees; and for other purposes. [Assented to 8 December 1992]

*Periodic Detention of Prisoners (Amendment) Act 1992 No. 109*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Periodic Detention of Prisoners (Amendment) Act 1992.

**Commencement**

2. The Act commences on a day to be appointed by proclamation.

**Amendment of Periodic Detention of Prisoners Act 1981 No. 18**

3. The Periodic Detention of Prisoners Act 1981 is amended as set out in Schedule 1.

**Amendment of Justices Act 1902 No. 27**

4. The Justices Act 1902 is amended by inserting in paragraph (a) of the definition of "penalty notice" in section 100I, in alphabetical order, the following matter:

Periodic Detention of Prisoners Act 1981, section 33B;

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Arrangement**):

Omit the section.

(2) Section 4 (**Definitions**):

(a) From paragraph (a) of the definition of "detention period" in section 4 (1), omit "imposed on the person or during any term by which the person's periodic detention has been extended by the operation of section 21 (1) or (2)", insert instead "to which the order applies".

(b) From section 4 (1), omit the definition of "Director-General", insert instead, in alphabetical order:

"**Commissioner**" means the Commissioner of Corrective Services;



*Periodic Detention of Prisoners (Amendment) Act 1992 No. 109*

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) From section 4 (1), omit the definition of “periodic detention”, insert instead:
- “periodic detention”**, in relation to a person in respect of whom an order for periodic detention is in force, means detention in prison for such number of detention periods as there are in the term of the person’s sentence of imprisonment;
- (d) In section 4 (2), after “11,”, insert “11A,”.
- (3) Sections 4, 9, 10, 11A, 12, 13, 16, 17, 22, 23, 25, 32, 33, 34: Omit “Director-General” wherever occurring, insert instead “Commissioner”.
- (4) Section 5 (**Power to order periodic detention**):
- (a) From section 5 (1), omit “the term of imprisonment to which it has sentenced him”, insert instead “the person’s sentence”.
- (b) Omit section 5 (7).
- (5) Section 5A:
- Omit the section, insert instead:
- Periodic detention may be ordered for less than 3 months for certain offences**
- 5A. (1) This section applies to:
- (a) an offence against this Act; and
- (b) an offence against the Summary Offences Act 1988; and
- (c) a domestic violence offence within the meaning of the Crimes Act 1900; and
- (d) an offence against section 562I of the Crimes Act 1900.
- (2) The powers of a court under section 5 may be exercised in respect of a person convicted of an offence to which this section applies and sentenced on conviction to imprisonment for a term of less than 3 months in the same way as if the person had been sentenced to imprisonment for a term of not less than 3 months and not more than 3 years.

*Periodic Detention of Prisoners (Amendment) Act 1992 No. 109*

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SCHEDULE 1—AMENDMENTS—*continued*

- (6) **Section 5B (Application of section 5 to concurrent and cumulative sentences):**  
 After section 5B (2), insert:  
 (2A) Any period for which the term of a sentence is extended by section 21 is to be disregarded for the purposes of subsection (2).
- (7) **Section 7 (Notice to be served):**  
 From section 7 (1) (b), omit “and during any term by which the person’s periodic detention may be extended by the operation of section 21 (1) or (2)”.
- (8) **Section 8 (Commencement of sentence):**  
 At the end of section 8, insert:  
 (2) The date on which a sentence of imprisonment the subject of an order under section 5B commences may, however, commence earlier than 7 days or later than 21 days after the date on which the sentence is imposed.
- (9) **Section 9 (Service of sentence):**  
 From section 9 (2), omit “and during any term by which the periodic detainee’s periodic detention has been extended by the operation of section 21 (1) or (2)”.
- (10) **Section 10 (Work etc.):**  
 From section 10 (1), omit “while the periodic detainee is serving any term of periodic detention”, insert instead “during any detention period”.
- (11) **Section 11:**  
 Omit the section, insert instead:  
**Exemption from serving detention periods in prison**  
 11. The Commissioner may, by order, exempt a periodic detainee from serving any detention period in prison if the periodic detainee is, by an order under section 10 (1) (b), directed to perform work outside a prison during that period.
- (12) **Section 11A (Variation of days of attendance):**  
 (a) From section 11A (1), omit “and during any term by which the periodic detainee’s periodic detention is extended by the operation of section 21 (1) or (2)”.

*Periodic Detention of Prisoners (Amendment) Act 1992 No. 109*

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) After section 11A (3), insert:
- (4) An order may not be made under this section so as to vary the number of detention periods that would be required to be served by the periodic detainee concerned if the order were not made.
- (13) Section 12 (**Variation of times of attendance**):  
Omit “and during any term by which the periodic detainee’s periodic detention has been extended by the operation of section 21 (1) or (2)” wherever occurring.
- (14) Section 13 (**Variation of prison at which sentence is to be served**):  
From section 13 (1), omit “or any term by which the person’s periodic detention has been extended by the operation of section 21 (1) or (2)”.
- (15) Section 14:  
Omit the section, insert instead:  
**Commissioner to give notice to periodic detainees of certain orders**  
14. On making an order under section 11, 11A, 12 or 13, the Commissioner must forthwith cause written notice of the terms of the order to be given to the periodic detainee to whom the order relates.
- (16) Section 15 (**Commencement of certain orders**):  
After “11,”, insert “11A,”.
- (17) Section 16 (**Revocation or amendment of certain orders**):  
After “11,”, insert “11A,”.
- (18) Section 17 (**Effect of complying with certain orders**):
- (a) In section 17 (1), after “11,”, insert “11A,”.
- (b) In section 17 (2), after “10,”, insert “11, 11A,”.
- (c) From section 17 (2), omit “the sentence of imprisonment that was imposed on him”, insert instead “the periodic detainee’s sentence of imprisonment”.



SCHEDULE 1—AMENDMENTS—*continued*

(19) Sections 20, 21:

Omit the sections, insert instead:

**Leave of absence**

20. (1) The Commissioner may, in accordance with the regulations, grant leave of absence to a periodic detainee for one or more detention periods:

- (a) for health reasons; or
- (b) on compassionate grounds; or
- (c) on the ground that the periodic detainee is in custody; or
- (d) for any other reason which to the Commissioner seems sufficient.

(2) Leave of absence may, in accordance with the regulations, be granted either before or after the detention period to which it relates.

(3) A Local Court may, on the application of a periodic detainee whose request for leave of absence for one or more detention periods has been refused, direct that leave of absence be granted in respect of all or any of those detention periods.

(4) An application must be made, in accordance with rules of court, within 21 days after the date on which the request to which it relates was refused.

(5) Subject to any order of the Local Court to the contrary, the making of an application does not stay the operation of section 21 (1) or (2) with respect to any detention period to which the application relates.

(6) An application is not to be considered by the Local Court unless it is satisfied that the application is not an abuse of process.

(7) Leave of absence is taken to have been granted for each detention period for which a direction under this section is made.

**Failure to report as required extends term of sentence**

21. (1) The term of the sentence of a periodic detainee who has failed to report, as required by or under this Act, for one or more detention periods (whether or not on leave of

*Periodic Detention of Prisoners (Amendment) Act 1992 No. 109*

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SCHEDULE 1—AMENDMENTS—*continued*

absence under section 20) is, by this subsection, extended by one week for each detention period for which the periodic detainee has failed to so report.

(2) The term of the sentence of a periodic detainee who has failed to report, as required by or under this Act, for one or more detention periods (otherwise than on leave of absence under section 20) is, by this subsection, further extended by one week for each detention period for which the periodic detainee has failed to so report.

(3) The term of a sentence may not be extended by subsection (2) by more than 2 weeks.

(4) Any extension of the term of a sentence by subsection (2) is in addition to any extension of the term of the sentence by subsection (1) with respect to the same failure to report.

(5) Subsection (2) does not have effect until the periodic detainee has been given written notice to the following effect:

- (a) that the periodic detainee has failed to report, as required by or under this Act;
- (b) that that subsection operates to extend the term of the periodic detainee's sentence as a result of the failure to report;
- (c) that the periodic detainee may apply to the Commissioner for leave of absence under section 20 with respect to any one or more of the detention periods concerned.

(6) The warrant issued under section 6 is sufficient warrant for the detention of the periodic detainee to whom it relates during any detention period occurring while the term of the periodic detainee's sentence is extended by this section.

**Commissioner may grant exemptions from extension of sentence**

21A. (1) The Commissioner may:

- (a) on the application of the periodic detainee or otherwise; and
- (b) for any reason which to the Commissioner seems sufficient,

*Periodic Detention of Prisoners (Amendment) Act 1992 No. 109*

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SCHEDULE 1—AMENDMENTS—*continued*

exempt a periodic detainee from the operation of section 21 (1) with respect to any one or more of the detention periods for which the periodic detainee has failed to report as required by or under this Act.

(2) The Commissioner must not refuse an application for an exemption unless:

- (a) the periodic detainee has been given written notice of the Commissioner's proposal to refuse the application; and
- (b) the periodic detainee has been given a reasonable opportunity to make representations, either orally or in writing, as to why the exemption should be granted; and
- (c) the Commissioner has taken any such representations into consideration.

**Periodic detention taken to have been served in certain circumstances**

21B. (1) The Commissioner may, for health reasons or on compassionate grounds, order that one or more detention periods yet to be served by a periodic detainee be regarded as having been served if satisfied that the periodic detainee is unlikely to be able to serve them within a reasonable time.

(2) In determining what is a reasonable time, the Commissioner must have regard to the number of detention periods yet to be served and the likely duration of the periodic detainee's inability to serve them.

(3) Any detention period to which an order under this section relates is taken to have been served by the periodic detainee in accordance with this Act.

**(20) Section 25 (Cancellation of orders for periodic detention otherwise than on subsequent conviction):**

After section 25 (3), insert:

(3A) Without limiting the generality of subsection (1), the court must, on the application of the Commissioner, cancel the order if it is satisfied:

- (a) that the person has, for 3 or more detention periods, failed to report, as required by or under this Act; and



*Periodic Detention of Prisoners (Amendment) Act 1992 No. 109*

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) that the failures to report occurred otherwise than on leave of absence under section 20 and are not the subject of an exemption under section 21A.
- (3B) The court may refuse to cancel the order if it is satisfied:
- (a) that leave of absence ought to have been granted under section 20, or an exemption ought to have been granted under section 21A, with respect to one or more detention periods; and
- (b) that the total number of detention periods for which the person has failed to report as referred to in subsection (3A) would, had the leave or exemption been granted with respect to those detention periods, be less than 3, in which case it must make a determination to that effect.
- (3C) If the court makes a determination under subsection (3B), leave of absence under section 20, or an exemption under section 21A, is taken to have been granted in accordance with the terms of the determination.
- (3D) The 3 or more detention periods referred to in subsections (3A) and (3B) need not be consecutive.
- (21) **Section 26 (Issue of warrant on cancellation of order for periodic detention):**  
Omit “the unexpired”, insert instead “any unexpired”.
- (22) **Section 27 (Effect of cancellation of order for periodic detention):**  
(a) In section 27 (1) (a), after “11,”, insert “11A,”.  
(b) Omit “the unexpired” wherever occurring, insert instead “any unexpired”.
- (23) **Section 28 (Periodic detainee taken to be a prisoner):**  
From section 28 (a), omit “or any term by which the periodic detainee’s periodic detention has been extended by the operation of section 21 (1) or (2)”.
- (24) **Section 29 (Calculation of proportion of sentence served):**  
(a) From section 29 (1), omit “imprisonment to which he was sentenced”, insert instead “the periodic detainee’s sentence of imprisonment”.



SCHEDULE 1—AMENDMENTS—*continued*

- (b) From section 29 (2), omit “the unexpired”, insert instead “any unexpired”.
- (25) Section 33 (**Offences**):
- (a) Omit section 33 (1) (a).
  - (b) From section 33 (2), omit “subsection (1) (a) or (b)”, insert instead “subsection (1) (b)”.
  - (c) Omit section 33 (2) (a).
  - (d) Omit section 33 (2) (c) (i).
- (26) Sections 33A, 33B:
- After section 33, insert:
- Proceedings for offences**
- 33A. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- Penalty notices for certain offences**
- 33B. (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.
- (4) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor is in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (5) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and

*Periodic Detention of Prisoners (Amendment) Act 1992 No. 109*

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) prescribe the penalty payable for the offence if dealt with under this section; and
  - (c) prescribe different penalties for different offences or classes of offences.
- (6) The penalty prescribed for an offence is not to exceed 2 penalty units.
- (7) This section does not limit the operation of this or any other Act in relation to proceedings that may be taken in respect of offences.
- (8) In this section, “**authorised officer**” means the Commissioner or any person authorised by the Commissioner for the purposes of this section.
- (27) Section 34 (**Regulations**):
- (a) After section 34 (1A), insert:
    - (1B) A regulation may declare that an offence against section 33 is an offence against discipline.
    - (1C) A regulation may provide that an offence against discipline is punishable:
      - (a) by caution or reprimand; or
      - (b) by deprivation of specified amenities or privileges for a period not exceeding 4 detention periods.
    - (1D) If a person is punished for an offence against discipline in a manner referred to in subsection (1C), the person is not liable to any further proceedings for the alleged offence.
- (28) Schedule 2 (**Savings and transitional provisions**):
- (a) Before clause 1, insert:

**Part 1—Preliminary**

**Regulations**

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following:

Periodic Detention of Prisoners (Amendment) Act 1992

(2) Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date.

*Periodic Detention of Prisoners (Amendment) Act 1992 No. 109*

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SCHEDULE 1—AMENDMENTS—*continued*

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

(b) After clause 1 (as inserted by paragraph (a)), insert:

**Part 2—Provisions consequent on the enactment of this Act**

- (c) Renumber existing clauses 1 and 2 as clauses 2 and 3, respectively.
- (d) After clause 5, insert:

**Part 3—Provisions consequent on the enactment of the Periodic Detention of Prisoners (Amendment) Act 1992**

**Definitions**

6. In this Part:

“the amending Act” means the Periodic Detention of Prisoners (Amendment) Act 1992.

**Leave of absence**

7. Section 20, as substituted by the amending Act, does not extend to a decision made by the Commissioner, before the commencement of the amending Act, to refuse leave of absence under that section.

**Extension of term of sentence**

8. Any extension of a periodic detainee’s periodic detention under section 21 that occurred before the commencement of the amending Act is taken to be an extension of the term of the periodic detainee’s sentence under section 21, as amended by the amending Act.



*Periodic Detention of Prisoners (Amendment) Act 1992 No. 109*

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SCHEDULE 1—AMENDMENTS—*continued*

**Detention periods taken to have been duly served**

9. Any order in force under section 21 (4) immediately before the commencement of the amending Act is taken to be an order under section 21B, as inserted by the amending Act.

**Cancellation of periodic detention otherwise than on subsequent conviction**

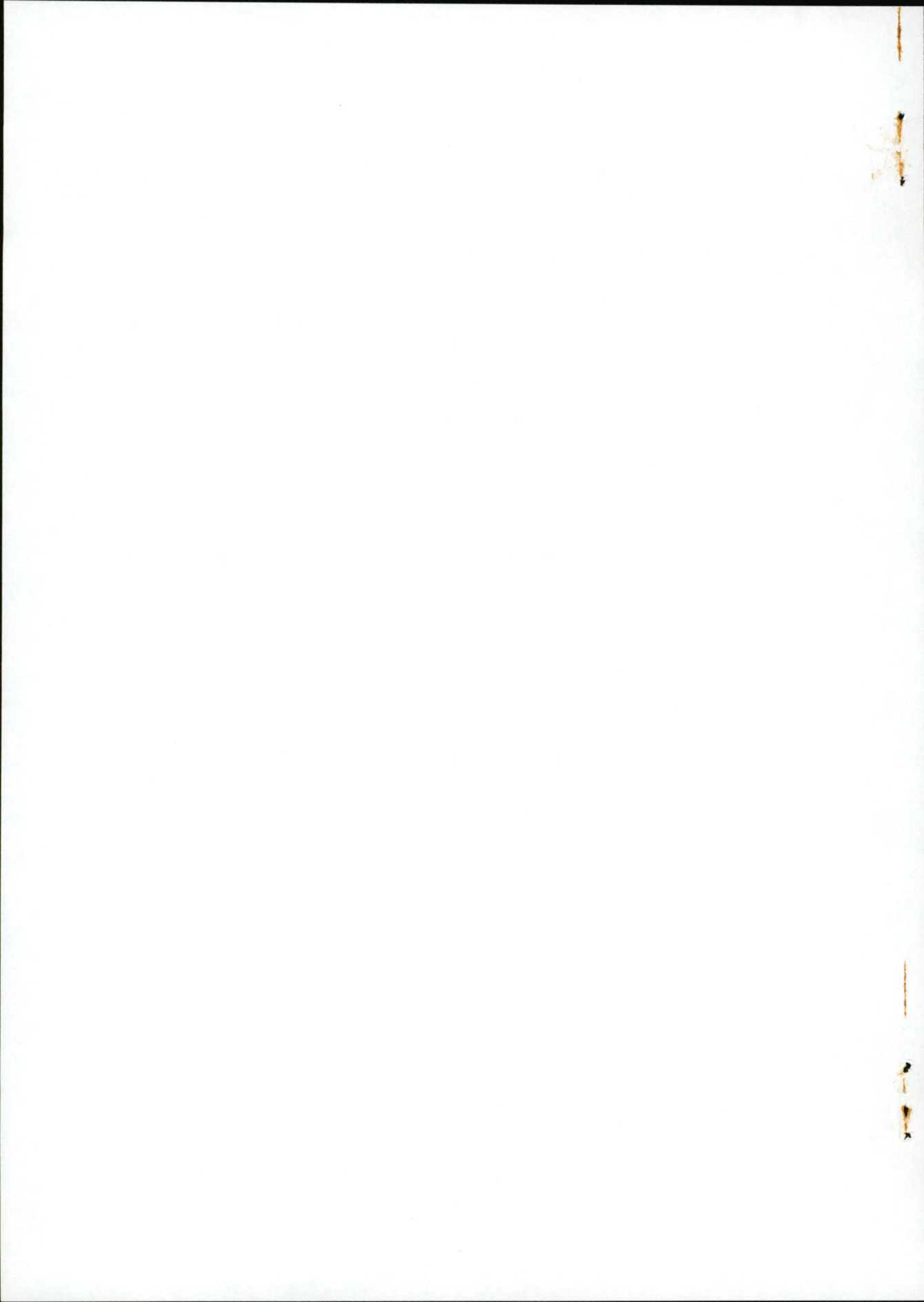
10. Section 25, as amended by the amending Act, does not extend to detention periods occurring before the commencement of the amending Act.

**Existing sentences**

11. This Act, as amended by the amending Act, extends to sentences of imprisonment imposed before the commencement of the amending Act.

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[*Minister's second reading speech made in—  
Legislative Assembly on 17 November 1992  
Legislative Council on 27 November 1992*]



FIRST PRINT

**PERIODIC DETENTION OF PRISONERS (AMENDMENT)  
BILL 1992**

NEW SOUTH WALES



**EXPLANATORY NOTE**

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Periodic Detention of Prisoners Act 1981 so as:

- (a) to enable the Commissioner of Corrective Services to grant leave of absence for any sufficient reason rather than, as is currently the case, for health reasons or on compassionate grounds only, and to enable a periodic detainee to appeal against the refusal of an application for leave of absence; and
- (b) to provide that a periodic detainee's failure to report to serve one or more detention periods will automatically result in his or her term of imprisonment being extended:
  - by one week for each occasion on which he or she fails to report; and
  - by an additional week (up to a maximum of 2 weeks over the whole of the sentence) if the failure to report occurs otherwise than with leave of absence or other proper reason,

and to require a court to cancel an order for periodic detention if the periodic detainee has failed on 3 or more occasions, without leave of absence or other proper reason, to report as required by or under the Act; and

- (c) to enable an order for periodic detention to be made in respect of a person who is convicted of an offence against the Act and sentenced to imprisonment for less than 3 months, despite section 5 (1) of the Act that otherwise prevents such an order being made; and
- (d) to enable offences against the Act and the regulations to be dealt with by way of penalty notice; and
- (e) to enable the regulations to declare that an offence against section 33 is an offence against discipline, and to provide that an offence against discipline may be punished by way of caution or reprimand or by way of deprivation of privileges or amenities; and

*Periodic Detention of Prisoners (Amendment) 1992*

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- (f) to enact savings and transitional provisions consequent on the enactment of the proposed Act; and
- (g) to enact other provisions of a minor, consequential or ancillary nature.

The Bill also makes a consequential amendment to the Justices Act 1902 in connection with the amendment relating to penalty notices.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the Periodic Detention of Prisoners Act 1981.

Clause 4 amends the Justices Act 1902 as a consequence of the amendment to the Periodic Detention of Prisoners Act 1981 relating to penalty notices.

#### SCHEDULE 1—AMENDMENTS

##### Leave of absence

Schedule 1 (19) substitutes section 20. The new section provides that the Commissioner may grant leave of absence, for certain specified reasons, in accordance with the regulations. The new section expressly authorises the retrospective granting of leave and enables a periodic detainee whose request for leave of absence is refused to appeal to a Local Court against the refusal.

Schedule 1 (20) amends section 25 so as to allow a court to have regard to whether leave of absence ought to have been granted in exercising its power to cancel an order for periodic detention on the ground that a person has failed to report as required by or under the Act.

Proposed clause 7 of Schedule 2 to the Act (Schedule 1 (28) (d)) provides that a right of appeal against the refusal of an application for leave of absence does not exist with respect to refusals that occurred before the commencement of the proposed Act.

##### Failure to report as required

Schedule 1 (19) replaces section 21 with 3 new sections, proposed sections 21, 21A and 21B.

The new section 21 provides that a periodic detainee's failure to report to serve one or more detention periods will automatically result in his or her term of imprisonment being extended by one week for each occasion on which he or she fails to report and by an additional week (up to a maximum of 2 weeks over the whole of the sentence) if the failure to report occurs otherwise than with leave of absence or other proper reason.

The new section 21A enables the Commissioner to grant exemptions from the extension of the term of a sentence by proposed section 21 and provides that an application for an exemption is not to be refused unless the applicant has been given an opportunity to make representations to the Commissioner in support of the application and the Commissioner has taken any such representations into consideration.



*Periodic Detention of Prisoners (Amendment) 1992*

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The new section 21B re-enacts the provisions of existing section 21 (4), (5) and (6). These provisions enable the Commissioner, for health reasons or on compassionate grounds, to order that one or more detention periods yet to be served by a periodic detainee be regarded as having been served.

Schedule 1 (20) amends section 25 so as to require a court, on the application of the Commissioner, to cancel an order for periodic detention if the periodic detainee has failed, without leave of absence or other proper reason, to report as required by or under the Act for 3 or more detention periods.

Schedule 1 (25) (a) amends section 33 so as to repeal the offence that currently exists of failing to report as required by or under the Act.

Proposed clause 10 of Schedule 2 to the Act (Schedule 1 (28) (d)) provides that the requirements of the amended section 25 do not extend to detention periods that occurred before the commencement of the proposed Act.

**Further orders for periodic detention**

Schedule 1 (5) substitutes section 5A. The new section re-enacts the provisions of existing section 5A (which allow terms of imprisonment of less than 3 months to be served by way of periodic detention in the case of certain offences) and extends the range of offences to include offences against the Act.

**Penalty notices**

Schedule 1 (26) inserts a proposed section 33B. The proposed section will enable offences against the Act and the regulations to be dealt with by way of penalty notice. A consequential amendment (clause 4) is made to the Justices Act 1902 to complement the proposed section.

**Offences against discipline**

Schedule 1 (27) amends section 34 so as to enable the regulations to declare that an offence against section 33 is an offence against discipline and to provide that an offence against discipline may be punished by way of caution or reprimand or by way of deprivation of privileges or amenities.

**Savings and transitional provisions**

Schedule 1 (28) amends Schedule 2 to the Act to add further savings and transitional provisions. In addition to the provisions referred to elsewhere in this explanatory note, there is a provision (proposed clause 1) which allows the regulations to make further provision of a savings or transitional nature consequent on the enactment of the proposed Act.

**Other amendments**

Schedule 1 effects other amendments, including the following:

- (a) proposed section 33A is inserted so as to provide that offences against the Act or the regulations are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone; and
- (b) references to the Director-General of Corrective Services are amended so as to refer instead to the Commissioner of Corrective Services; and

*Periodic Detention of Prisoners (Amendment) 1992*

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- (c) the arrangement provision (section 3) is repealed as a consequence of the current practice of printing Acts together with a comprehensive Table of Provisions; and
  - (d) references to periodic detention are amended to refer instead to terms of imprisonment.
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FIRST PRINT

**PERIODIC DETENTION OF PRISONERS (AMENDMENT)  
BILL 1992**

NEW SOUTH WALES



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**SCHEDULE 1—AMENDMENTS**

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**PERIODIC DETENTION OF PRISONERS (AMENDMENT)  
BILL 1992**

NEW SOUTH WALES



No. , 1992

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**A BILL FOR**

An Act to amend the Periodic Detention of Prisoners Act 1981 with respect to the failure of periodic detainees to report as required by or under that Act and with respect to the granting of leave of absence to periodic detainees; and for other purposes.

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*Periodic Detention of Prisoners (Amendment) 1992*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Periodic Detention of Prisoners (Amendment) Act 1992.

**5 Commencement**

2. The Act commences on a day to be appointed by proclamation.

**Amendment of Periodic Detention of Prisoners Act 1981 No. 18**

3. The Periodic Detention of Prisoners Act 1981 is amended as set out in Schedule 1.

**10 Amendment of Justices Act 1902 No. 27**

4. The Justices Act 1902 is amended by inserting in paragraph (a) of the definition of "penalty notice" in section 100I, in alphabetical order, the following matter:

Periodic Detention of Prisoners Act 1981, section 33B;

**15 SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 3 (**Arrangement**):

Omit the section.

(2) Section 4 (**Definitions**):

20 (a) From paragraph (a) of the definition of "detention period" in section 4 (1), omit "imposed on the person or during any term by which the person's periodic detention has been extended by the operation of section 21 (1) or (2)", insert instead "to which the order applies".

25 (b) From section 4 (1), omit the definition of "Director-General", insert instead, in alphabetical order:

"Commissioner" means the Commissioner of Corrective Services;

*Periodic Detention of Prisoners (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) From section 4 (1), omit the definition of “periodic detention”, insert instead:
- “periodic detention”**, in relation to a person in respect of whom an order for periodic detention is in force, means detention in prison for such number of detention periods as there are in the term of the person’s sentence of imprisonment; 5
- (d) In section 4 (2), after “11,”, insert “11A,”.
- (3) Sections 4, 9, 10, 11A, 12, 13, 16, 17, 22, 23, 25, 32, 33, 34: 10  
Omit “Director-General” wherever occurring, insert instead “Commissioner”.
- (4) Section 5 (**Power to order periodic detention**):
- (a) From section 5 (1), omit “the term of imprisonment to which it has sentenced him”, insert instead “the person’s sentence”. 15
- (b) Omit section 5 (7).
- (5) Section 5A:
- Omit the section, insert instead:
- Periodic detention may be ordered for less than 3 months for certain offences** 20
- 5A. (1) This section applies to:
- (a) an offence against this Act; and
- (b) an offence against the Summary Offences Act 1988; and
- (c) a domestic violence offence within the meaning of the Crimes Act 1900; and 25
- (d) an offence against section 562I of the Crimes Act 1900.
- (2) The powers of a court under section 5 may be exercised in respect of a person convicted of an offence to which this section applies and sentenced on conviction to imprisonment for a term of less than 3 months in the same way as if the person had been sentenced to imprisonment for a term of not less than 3 months and not more than 3 years. 30



*Periodic Detention of Prisoners (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

- (6) Section 5B (**Application of section 5 to concurrent and cumulative sentences**):  
 After section 5B (2), insert:  
 5           (2A) Any period for which the term of a sentence is extended by section 21 is to be disregarded for the purposes of subsection (2).
- (7) Section 7 (**Notice to be served**):  
 10           From section 7 (1) (b), omit “and during any term by which the person’s periodic detention may be extended by the operation of section 21 (1) or (2)”.
- (8) Section 8 (**Commencement of sentence**):  
 At the end of section 8, insert:  
 15           (2) The date on which a sentence of imprisonment the subject of an order under section 5B commences may, however, commence earlier than 7 days or later than 21 days after the date on which the sentence is imposed.
- (9) Section 9 (**Service of sentence**):  
 20           From section 9 (2), omit “and during any term by which the periodic detainee’s periodic detention has been extended by the operation of section 21 (1) or (2)”.
- (10) Section 10 (**Work etc.**):  
 25           From section 10 (1), omit “while the periodic detainee is serving any term of periodic detention”, insert instead “during any detention period”.
- (11) Section 11:  
 Omit the section, insert instead:  
**Exemption from serving detention periods in prison**  
 30           11. The Commissioner may, by order, exempt a periodic detainee from serving any detention period in prison if the periodic detainee is, by an order under section 10 (1) (b), directed to perform work outside a prison during that period.
- (12) Section 11A (**Variation of days of attendance**):  
 35           (a) From section 11A (1), omit “and during any term by which the periodic detainee’s periodic detention is extended by the operation of section 21 (1) or (2)”.

*Periodic Detention of Prisoners (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) After section 11A (3), insert:
- (4) An order may not be made under this section so as to vary the number of detention periods that would be required to be served by the periodic detainee concerned if the order were not made. 5
- (13) Section 12 (**Variation of times of attendance**):
- Omit “and during any term by which the periodic detainee’s periodic detention has been extended by the operation of section 21 (1) or (2)” wherever occurring. 10
- (14) Section 13 (**Variation of prison at which sentence is to be served**):
- From section 13 (1), omit “or any term by which the person’s periodic detention has been extended by the operation of section 21 (1) or (2)”. 15
- (15) Section 14:
- Omit the section, insert instead:
- Commissioner to give notice to periodic detainees of certain orders**
14. On making an order under section 11, 11A, 12 or 13, the Commissioner must forthwith cause written notice of the terms of the order to be given to the periodic detainee to whom the order relates. 20
- (16) Section 15 (**Commencement of certain orders**):
- After “11,”, insert “11A,”. 25
- (17) Section 16 (**Revocation or amendment of certain orders**):
- After “11,”, insert “11A,”.
- (18) Section 17 (**Effect of complying with certain orders**):
- (a) In section 17 (1), after “11,”, insert “11A,”.
- (b) In section 17 (2), after “10,”, insert “11, 11A,”. 30
- (c) From section 17 (2), omit “the sentence of imprisonment that was imposed on him”, insert instead “the periodic detainee’s sentence of imprisonment”.

*Periodic Detention of Prisoners (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

(19) Sections 20, 21:

Omit the sections, insert instead:

**Leave of absence**

5           20. (1) The Commissioner may, in accordance with the regulations, grant leave of absence to a periodic detainee for one or more detention periods:

- (a) for health reasons; or  
 (b) on compassionate grounds; or  
 10           (c) on the ground that the periodic detainee is in custody; or  
 (d) for any other reason which to the Commissioner seems sufficient.

15           (2) Leave of absence may, in accordance with the regulations, be granted either before or after the detention period to which it relates.

20           (3) A Local Court may, on the application of a periodic detainee whose request for leave of absence for one or more detention periods has been refused, direct that leave of absence be granted in respect of all or any of those detention periods.

25           (4) An application must be made, in accordance with rules of court, within 21 days after the date on which the request to which it relates was refused.

(5) Subject to any order of the Local Court to the contrary, the making of an application does not stay the operation of section 21 (1) or (2) with respect to any detention period to which the application relates.

30           (6) An application is not to be considered by the Local Court unless it is satisfied that the application is not an abuse of process.

(7) Leave of absence is taken to have been granted for each detention period for which a direction under this section is made.

35           **Failure to report as required extends term of sentence**

21. (1) The term of the sentence of a periodic detainee who has failed to report, as required by or under this Act, for one or more detention periods (whether or not on leave of



*Periodic Detention of Prisoners (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

absence under section 20) is, by this subsection, extended by one week for each detention period for which the periodic detainee has failed to so report.

(2) The term of the sentence of a periodic detainee who has failed to report, as required by or under this Act, for one or more detention periods (otherwise than on leave of absence under section 20) is, by this subsection, further extended by one week for each detention period for which the periodic detainee has failed to so report. 5  
10

(3) The term of a sentence may not be extended by subsection (2) by more than 2 weeks.

(4) Any extension of the term of a sentence by subsection (2) is in addition to any extension of the term of the sentence by subsection (1) with respect to the same failure to report. 15

(5) Subsection (2) does not have effect until the periodic detainee has been given written notice to the following effect:

(a) that the periodic detainee has failed to report, as required by or under this Act;

(b) that that subsection operates to extend the term of the periodic detainee's sentence as a result of the failure to report; 20

(c) that the periodic detainee may apply to the Commissioner for leave of absence under section 20 with respect to any one or more of the detention periods concerned. 25

(6) The warrant issued under section 6 is sufficient warrant for the detention of the periodic detainee to whom it relates during any detention period occurring while the term of the periodic detainee's sentence is extended by this section. 30

**Commissioner may grant exemptions from extension of sentence**

21A. (1) The Commissioner may:

(a) on the application of the periodic detainee or otherwise; and 35

(b) for any reason which to the Commissioner seems sufficient,

*Periodic Detention of Prisoners (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

5 exempt a periodic detainee from the operation of section 21  
(1) with respect to any one or more of the detention periods  
for which the periodic detainee has failed to report as  
required by or under this Act.

(2) The Commissioner must not refuse an application for  
an exemption unless:

10 (a) the periodic detainee has been given written notice of  
the Commissioner's proposal to refuse the application;  
and

(b) the periodic detainee has been given a reasonable  
opportunity to make representations, either orally or in  
writing, as to why the exemption should be granted;  
and

15 (c) the Commissioner has taken any such representations  
into consideration.

**Periodic detention taken to have been served in certain  
circumstances**

20 21B. (1) The Commissioner may, for health reasons or on  
compassionate grounds, order that one or more detention  
periods yet to be served by a periodic detainee be regarded as  
having been served if satisfied that the periodic detainee is  
unlikely to be able to serve them within a reasonable time.

25 (2) In determining what is a reasonable time, the  
Commissioner must have regard to the number of detention  
periods yet to be served and the likely duration of the  
periodic detainee's inability to serve them.

30 (3) Any detention period to which an order under this  
section relates is taken to have been served by the periodic  
detainee in accordance with this Act.

(20) **Section 25 (Cancellation of orders for periodic detention  
otherwise than on subsequent conviction):**

After section 25 (3), insert:

35 (3A) Without limiting the generality of subsection (1), the  
court must, on the application of the Commissioner, cancel  
the order if it is satisfied:

(a) that the person has, for 3 or more detention periods,  
failed to report, as required by or under this Act; and



*Periodic Detention of Prisoners (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) that the failures to report occurred otherwise than on leave of absence under section 20 and are not the subject of an exemption under section 21A.
- (3B) The court may refuse to cancel the order if it is satisfied: 5
- (a) that leave of absence ought to have been granted under section 20, or an exemption ought to have been granted under section 21A, with respect to one or more detention periods; and 10
- (b) that the total number of detention periods for which the person has failed to report as referred to in subsection (3A) would, had the leave or exemption been granted with respect to those detention periods, be less than 3, in which case it must make a determination to that effect. 15
- (3C) If the court makes a determination under subsection (3B), leave of absence under section 20, or an exemption under section 21A, is taken to have been granted in accordance with the terms of the determination.
- (3D) The 3 or more detention periods referred to in subsections (3A) and (3B) need not be consecutive. 20
- (21) **Section 26 (Issue of warrant on cancellation of order for periodic detention):**
- Omit “the unexpired”, insert instead “any unexpired”.
- (22) **Section 27 (Effect of cancellation of order for periodic detention):** 25
- (a) In section 27 (1) (a), after “11,”, insert “11A,”.
- (b) Omit “the unexpired” wherever occurring, insert instead “any unexpired”.
- (23) **Section 28 (Periodic detainee taken to be a prisoner):** 30
- From section 28 (a), omit “or any term by which the periodic detainee’s periodic detention has been extended by the operation of section 21 (1) or (2)”.
- (24) **Section 29 (Calculation of proportion of sentence served):**
- (a) From section 29 (1), omit “imprisonment to which he was sentenced”, insert instead “the periodic detainee’s sentence of imprisonment”. 35

*Periodic Detention of Prisoners (Amendment) 1992*SCHEDULE 1—AMENDMENTS—*continued*

(b) From section 29 (2), omit “the unexpired”, insert instead “any unexpired”.

(25) Section 33 (Offences):

5

(a) Omit section 33 (1) (a).

(b) From section 33 (2), omit “subsection (1) (a) or (b)”, insert instead “subsection (1) (b)”.

(c) Omit section 33 (2) (a).

(d) Omit section 33 (2) (c) (i).

10

(26) Sections 33A, 33B:

After section 33, insert:

**Proceedings for offences**

15

33A. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Penalty notices for certain offences**

20

33B. (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations for the purposes of this section.

25

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter dealt with by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

30

(3) If the penalty prescribed for an alleged offence is paid in accordance with this section, no person is liable to any further proceedings for the alleged offence.

(4) Payment in accordance with this section is not to be regarded as an admission of liability for the purposes of, nor is in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

35

(5) The regulations may:

(a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and



*Periodic Detention of Prisoners (Amendment) 1992*

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) prescribe the penalty payable for the offence if dealt with under this section; and
- (c) prescribe different penalties for different offences or classes of offences. 5
- (6) The penalty prescribed for an offence is not to exceed 2 penalty units.
- (7) This section does not limit the operation of this or any other Act in relation to proceedings that may be taken in respect of offences. 10
- (8) In this section, “**authorised officer**” means the Commissioner or any person authorised by the Commissioner for the purposes of this section.
- (27) Section 34 (**Regulations**):
- (a) After section 34 (1A), insert: 15
- (1B) A regulation may declare that an offence against section 33 is an offence against discipline.
- (1C) A regulation may provide that an offence against discipline is punishable:
- (a) by caution or reprimand; or 20
- (b) by deprivation of specified amenities or privileges for a period not exceeding 4 detention periods.
- (1D) If a person is punished for an offence against discipline in a manner referred to in subsection (1C), the person is not liable to any further proceedings for the alleged offence. 25
- (28) Schedule 2 (**Savings and transitional provisions**):
- (a) Before clause 1, insert:
- Part 1—Preliminary**
- Regulations** 30
1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following:
- Periodic Detention of Prisoners (Amendment) Act 1992
- (2) Such a provision may, if the regulations so provide, take effect on the date of assent to the Act concerned or a later date. 35

*Periodic Detention of Prisoners (Amendment) 1992***SCHEDULE 1—AMENDMENTS—*continued***

(3) To the extent to which such a provision takes effect on a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- 5 (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- 10 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

(b) After clause 1 (as inserted by paragraph (a)), insert:

15 **Part 2—Provisions consequent on the enactment of this Act**

- (c) Renumber existing clauses 1 and 2 as clauses 2 and 3, respectively.
- (d) After clause 5, insert:

20 **Part 3—Provisions consequent on the enactment of the Periodic Detention of Prisoners (Amendment) Act 1992**

**Definitions**

6. In this Part:

25 “the amending Act” means the Periodic Detention of Prisoners (Amendment) Act 1992.

**Leave of absence**

30 7. Section 20, as substituted by the amending Act, does not extend to a decision made by the Commissioner, before the commencement of the amending Act, to refuse leave of absence under that section.

**Extension of term of sentence**

35 8. Any extension of a periodic detainee’s periodic detention under section 21 that occurred before the commencement of the amending Act is taken to be an extension of the term of the periodic detainee’s sentence under section 21, as amended by the amending Act.

*Periodic Detention of Prisoners (Amendment) 1992*

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**SCHEDULE 1—AMENDMENTS—*continued***

**Detention periods taken to have been duly served**

9. Any order in force under section 21 (4) immediately before the commencement of the amending Act is taken to be an order under section 21B, as inserted by the amending Act.

5

**Cancellation of periodic detention otherwise than on subsequent conviction**

10. Section 25, as amended by the amending Act, does not extend to detention periods occurring before the commencement of the amending Act.

10

**Existing sentences**

11. This Act, as amended by the amending Act, extends to sentences of imprisonment imposed before the commencement of the amending Act.

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**PERIODIC DETENTION OF PRISONERS (AMENDMENT) BILL 1992**

**SECOND READING SPEECH - LEGISLATIVE COUNCIL**

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**MR PRESIDENT,**

**I MOVE,**

**THAT THIS BILL NOW BE READ A SECOND TIME.**

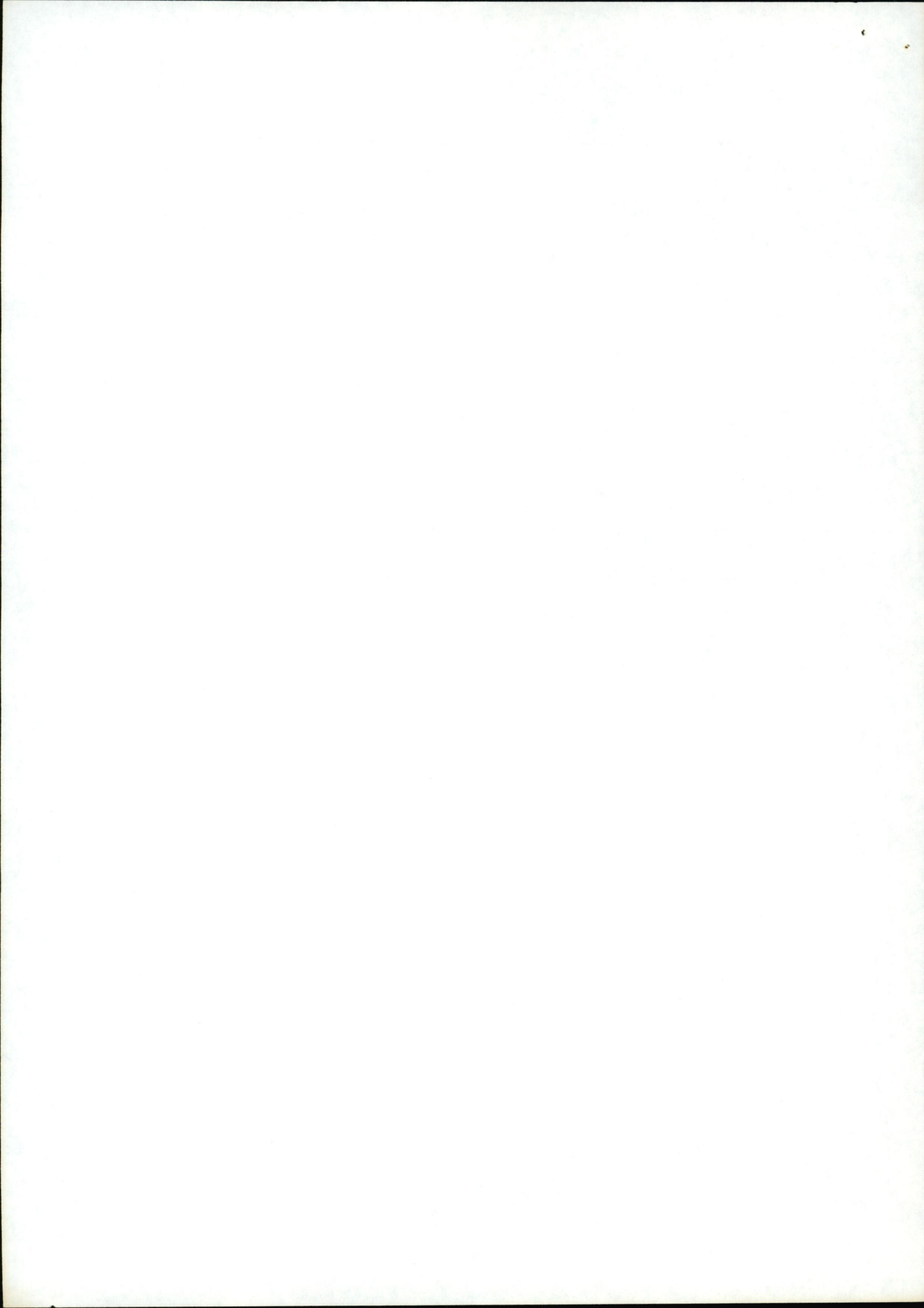
**THE PERIODIC DETENTION OF PRISONERS (AMENDMENT) BILL IS DESIGNED TO INTRODUCE SPECIFIC AND IMMEDIATE PENALTIES FOR CRIMINAL OFFENDERS WHO, WITHOUT LEGITIMATE REASON, FAIL TO REPORT TO SERVE THEIR SENTENCE OF PERIODIC DETENTION.**

**THE PROPOSED AMENDMENTS PRIMARILY ADDRESS THREE AREAS OF CONCERN:**

**FIRST, THE EFFECT OF A JUDICIAL DECISION WHICH RULED THAT THE PREVIOUS DEPARTMENTAL PRACTICE OF EXTENDING THE SENTENCE OF ALL DETAINEES WHO FAIL TO REPORT WAS INVALID;**

**SECOND, PUBLIC CONCERN REGARDING LEVELS OF ABSENTEEISM; AND**

**...2/...THIRD,**



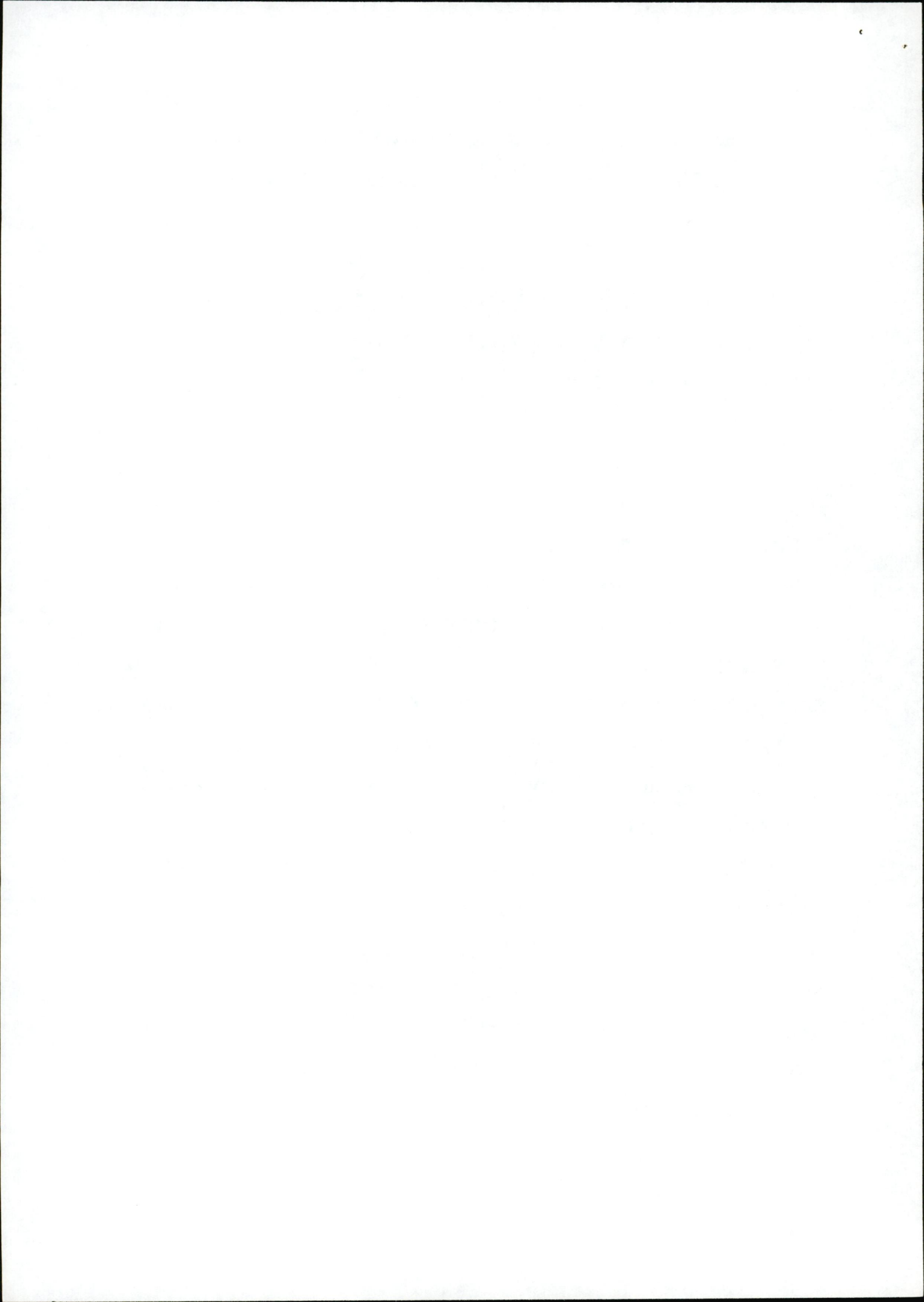


**THIRD, THE NEED TO INTRODUCE A SIMPLE AND EXPEDIENT MEANS OF PUNISHING DETAINEES WHO BREACH THE TERMS OF THEIR SENTENCE WITHOUT FURTHER RECOURSE TO THE COURTS.**

**BEFORE DETAILING THE SPECIFIC FEATURES OF THE LEGISLATION, I PROPOSE TO BRIEFLY OUTLINE THE REASONS BEHIND THE AMENDMENTS.**

**MR PRESIDENT,**

**PERIODIC DETENTION IS CLEARLY AND UNEQUIVOCALLY A SENTENCE OF IMPRISONMENT. IT INVOLVES THE COURT FIRST DETERMINING THAT IMPRISONMENT IS APPROPRIATE AND, THEREAFTER, DECIDING THAT THE SENTENCE NEED NOT BE SERVED BY WAY OF FULL TIME INCARCERATION. THE PROGRAM ENABLES OFFENDERS TO REMAIN IN THE COMMUNITY FOR 5 DAYS OF THE WEEK, ALLOWING, AMONGST OTHER MATTERS, EMPLOYMENT AND FAMILY COMMITMENTS TO BE MAINTAINED. THE PROGRAM RELIES UPON THE ABILITY AND PREPAREDNESS OF OFFENDERS TO REPORT OF THEIR OWN VOLITION TO A DETENTION CENTRE OR WORK SITE FOR 2 DAYS A WEEK TO SERVE THEIR SENTENCE. INEVITABLE INSTANCES OF ABSENTEEISM OCCUR, GENERALLY FOR VALID REASONS WHICH ARE IDENTIFIED AND RATIFIED BY THE DEPARTMENT OF CORRECTIVE SERVICES.**



PERIODIC DETENTION PROVIDES NEW SOUTH WALES JUDICIAL OFFICERS WITH THE ONLY IRREFUTABLE LEGISLATIVE ALTERNATIVE TO FULL TIME IMPRISONMENT FOR CRIMINAL OFFENDERS. OVER THE PAST FOUR YEARS THERE HAS BEEN AN INCREASING UTILISATION OF THE PROGRAM, ATTESTING TO THE FACT THAT IT IS VIEWED BY THE JUDICIARY AS A VIABLE SENTENCING OPTION FOR SOME OFFENDERS. AT PRESENT OVER 1200 OFFENDERS ARE SUBJECT TO SENTENCES OF PERIODIC DETENTION RANGING FROM THREE MONTHS TO THREE YEARS.

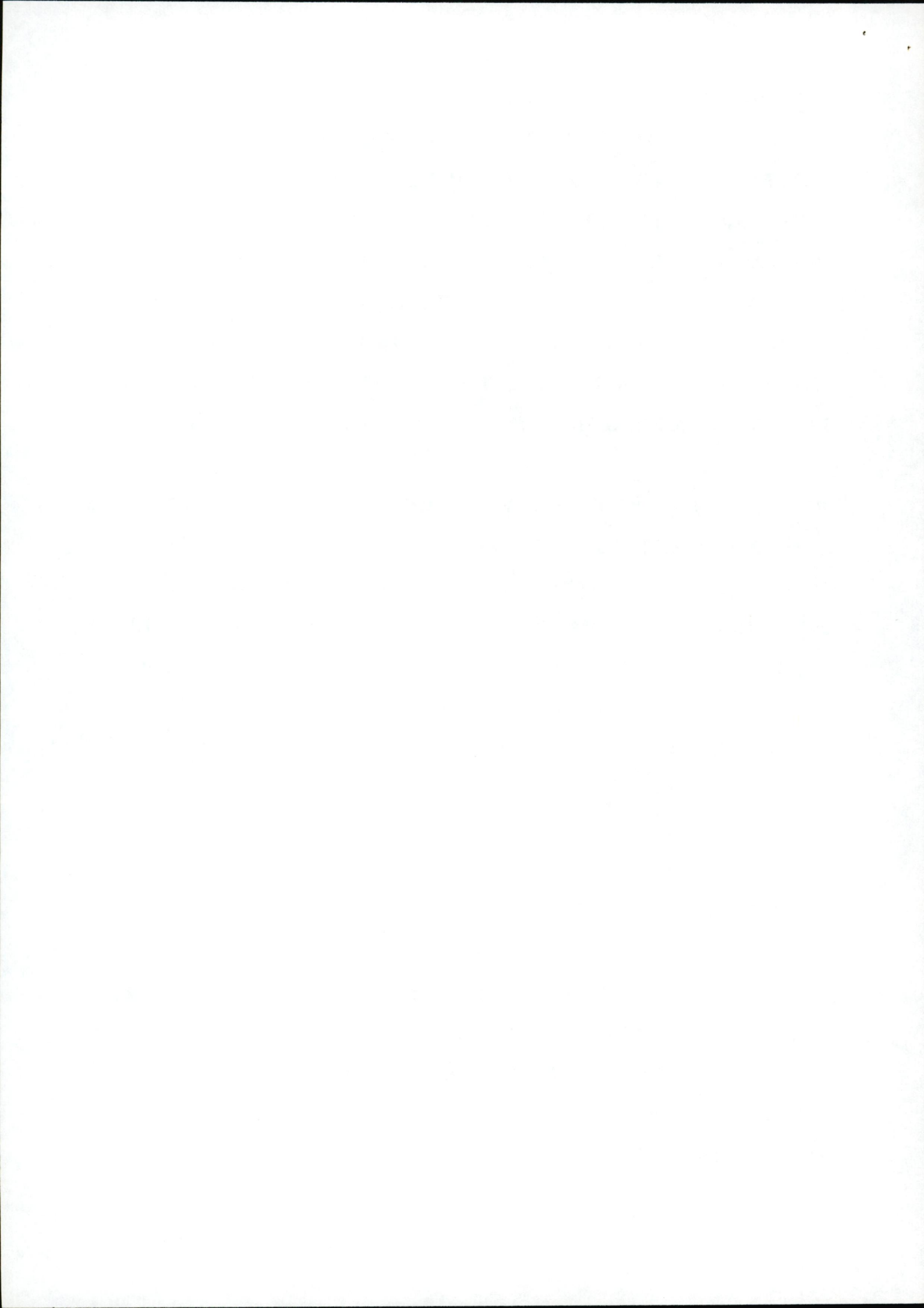
IN ADDITION TO PROVIDING PUNISHMENT, PERIODIC DETENTION PROVIDES RESTITUTION TO THE COMMUNITY THROUGH WORK UNDERTAKEN IN THE COMMUNITY. DURING 1990/91 MORE THAN 257,000 HOURS OF COMMUNITY SERVICE WORK WERE PERFORMED BY DETAINEES. THE PROGRAM IS ALSO RECOGNISED AS A COST EFFECTIVE FORM OF IMPRISONMENT, INVOLVING APPROXIMATELY ONE THIRD OF THE COST OF FULL TIME IMPRISONMENT.

MR PRESIDENT,

AN INTEGRAL FEATURE OF THE PROGRAM IS THE ABILITY OF THE COMMISSIONER OF CORRECTIVE SERVICES TO GRANT LEAVE OF ABSENCE TO DETAINEES, FOR HEALTH OR COMPASSIONATE REASONS, WHERE CIRCUMSTANCES PRECLUDE REPORTING FOR PERIODIC DETENTION.

...4/...IN SUCH SITUATIONS,

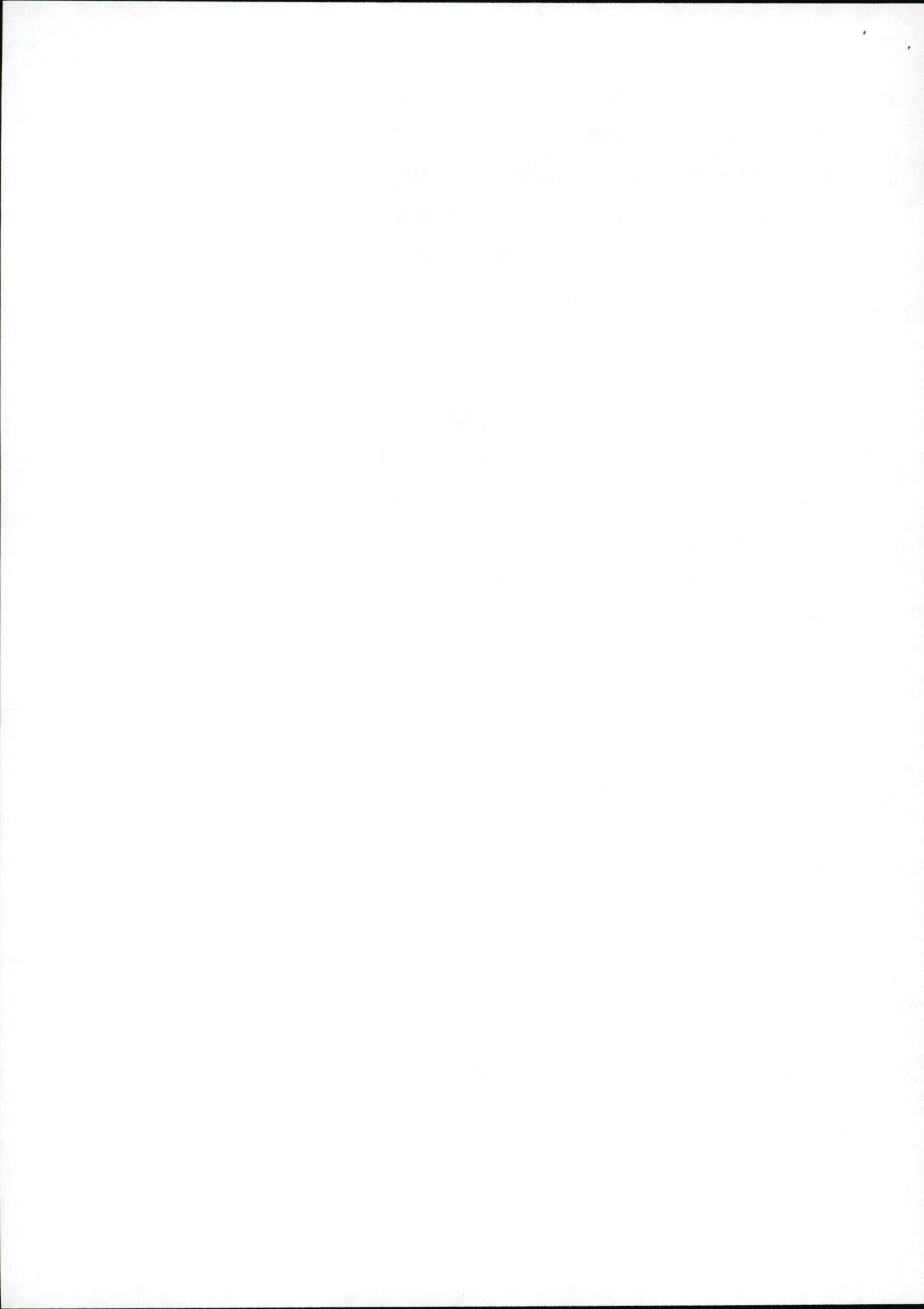




IN SUCH SITUATIONS, THE LEGISLATION ALLOWS FOR THE TERM OF SENTENCE TO BE EXTENDED IN ORDER TO ACCOMMODATE THE PERIOD MISSED. AS I WILL SHORTLY OUTLINE, THE REASONS FOR DETAINEES FAILING TO ATTEND MAY BE LEGITIMATE OR OTHERWISE, AND OFTEN FALL OUTSIDE THE PARAMETERS OF HEALTH OR COMPASSION.

THE PROVISIONS APPLICABLE TO THE GRANTING OF LEAVE OF ABSENCE NOW REQUIRE URGENT AMENDMENT AS A CONSEQUENCE OF A SUPREME COURT RULING BY HIS HONOUR, MR. JUSTICE HUNT, ON 17 JULY 1992. IN THE MATTER OF NOLAN V DEPARTMENT OF CORRECTIVE SERVICES HIS HONOUR HELD THAT THE DEPARTMENT DID NOT HAVE THE AUTHORITY TO EXTEND A SENTENCE OF PERIODIC DETENTION FOR THOSE DETAINEES WHO HAD NOT BEEN GRANTED LEAVE OF ABSENCE.

THE EFFECT OF THIS DECISION HAS BEEN TO INVALIDATE A LONG STANDING DEPARTMENTAL PRACTICE, WHEREBY ALL PERIODIC DETAINEES HAVE HAD THEIR TERM OF SENTENCE ADMINISTRATIVELY EXTENDED BY ANY PERIOD OF NON ATTENDANCE. ACCORDINGLY PERIODIC DETAINEES HAVE BEEN UNABLE TO BENEFIT FROM ANY FAILURE TO REPORT WHICH HAS NOT EVENTUATED IN ACTION TO, OR BY, THE COURT. THIS DEPARTMENTAL PRACTICE DEVELOPED AFTER AMENDMENTS WERE MADE TO THE ACT IN 1985 AND, UNTIL THE NOLAN CASE, HAD NOT BEEN PREVIOUSLY CHALLENGED.





**COUNSEL'S ADVICE, OBTAINED BY THE STATE CROWN SOLICITOR, HAS SUPPORTED THE DECISION OF MR. JUSTICE HUNT AND CONSEQUENTLY THE NEED FOR AMENDMENT TO THE ACT.**

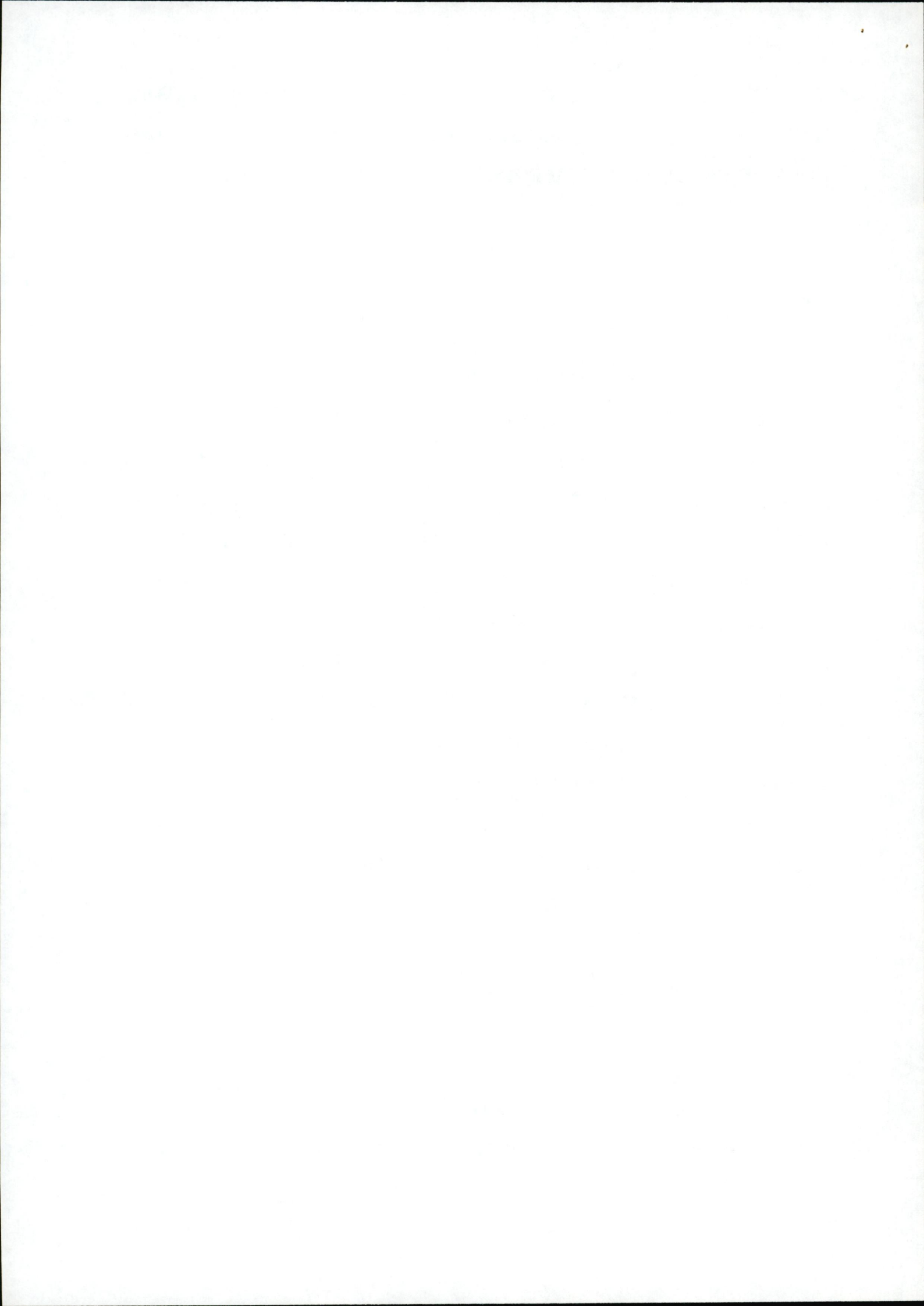
**MR PRESIDENT,**

**UNTIL SUCH AMENDMENT OCCURS, AN ANOMALY WILL REMAIN WHEREBY THOSE DETAINEES WHO CHOOSE TO AVOID THEIR OBLIGATIONS TO SERVE THEIR SENTENCE WILL NOT BE PENALISED FOR FAILURE TO REPORT, UNLESS THE COURT SO DETERMINES PRIOR TO EXPIRATION OF THE SENTENCE. HOWEVER, THOSE WHO HAVE LEGITIMATE GROUNDS FOR NOT REPORTING WILL AUTOMATICALLY HAVE THEIR SENTENCE EXTENDED. AT PRESENT IT IS NECESSARY FOR THE DEPARTMENT TO TAKE PROSECUTION ACTION IN RESPONSE TO EVERY INCIDENT OF FAILURE TO REPORT WHICH DOES NOT INVOLVE HEALTH OR COMPASSIONATE GROUNDS. THIS IS AN UNWIELDY PROCESS, DRAWING UNNECESSARILY UPON BOTH THE RESOURCES OF THE JUDICIARY, AND THE DEPARTMENTS OF COURTS ADMINISTRATION AND CORRECTIVE SERVICES.**

**MR PRESIDENT,**

**ONE OF THE KEY COMPONENTS OF THIS GOVERNMENT'S LAW AND ORDER POLICY HAS BEEN TO RESTORE TRUTH IN SENTENCING**

**...6/...AND THE CREDIBILITY**



AND THE CREDIBILITY OF THE NEW SOUTH WALES CRIMINAL JUSTICE SYSTEM.

WHILST THE SENTENCING ACT HAS ACHIEVED THAT PURPOSE IN RELATION TO OFFENDERS SENTENCED TO FULL TIME IMPRISONMENT, UNDERSTANDABLE CONCERN HAS BEEN RAISED REGARDING LEVELS OF ABSENTEEISM OF THOSE OFFENDERS SENTENCED BY THE COURTS TO PERIODIC DETENTION.

I ACKNOWLEDGE THAT THERE IS A CONTINUING NEED TO REDUCE LEVELS OF ABSENTEEISM IN PERIODIC DETENTION. HOWEVER, BEFORE DETAILING HOW THE GOVERNMENT INTENDS TO ADDRESS THIS MATTER WITHIN THIS BILL, IT IS APPROPRIATE TO PRESENT A MORE QUALIFIED PERSPECTIVE OF NON ATTENDANCE THAN THAT GENERALLY REPORTED BY CRITICS OF THE PROGRAM.

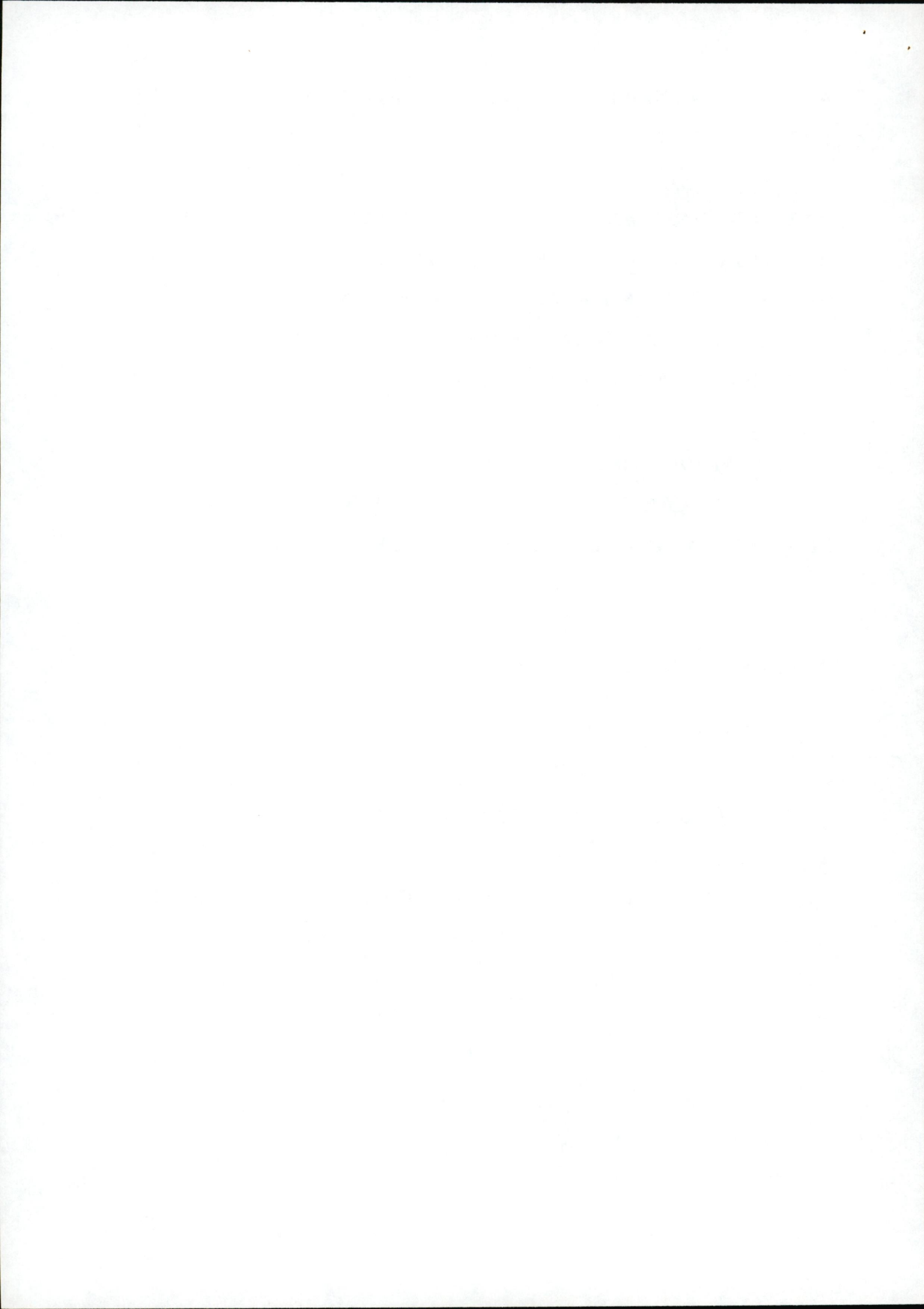
MR PRESIDENT,

AS AT 1 NOVEMBER, 1992, THERE WERE 1201 OFFENDERS SUBJECT TO A CURRENT ORDER OF PERIODIC DETENTION. OF THIS NUMBER, 806 (67%) REPORTED AS REQUIRED FOR PERIODIC DETENTION. IN OTHER WORDS APPROXIMATELY 33% OF OFFENDERS WERE RECORDED AS HAVING FAILED TO ATTEND FOR PERIODIC DETENTION.

THE REASONS FOR NON ATTENDANCE FOR THE WEEK ENDING 1 NOVEMBER, 1992, WERE AS FOLLOWS:

...7/...FIRSTLY,

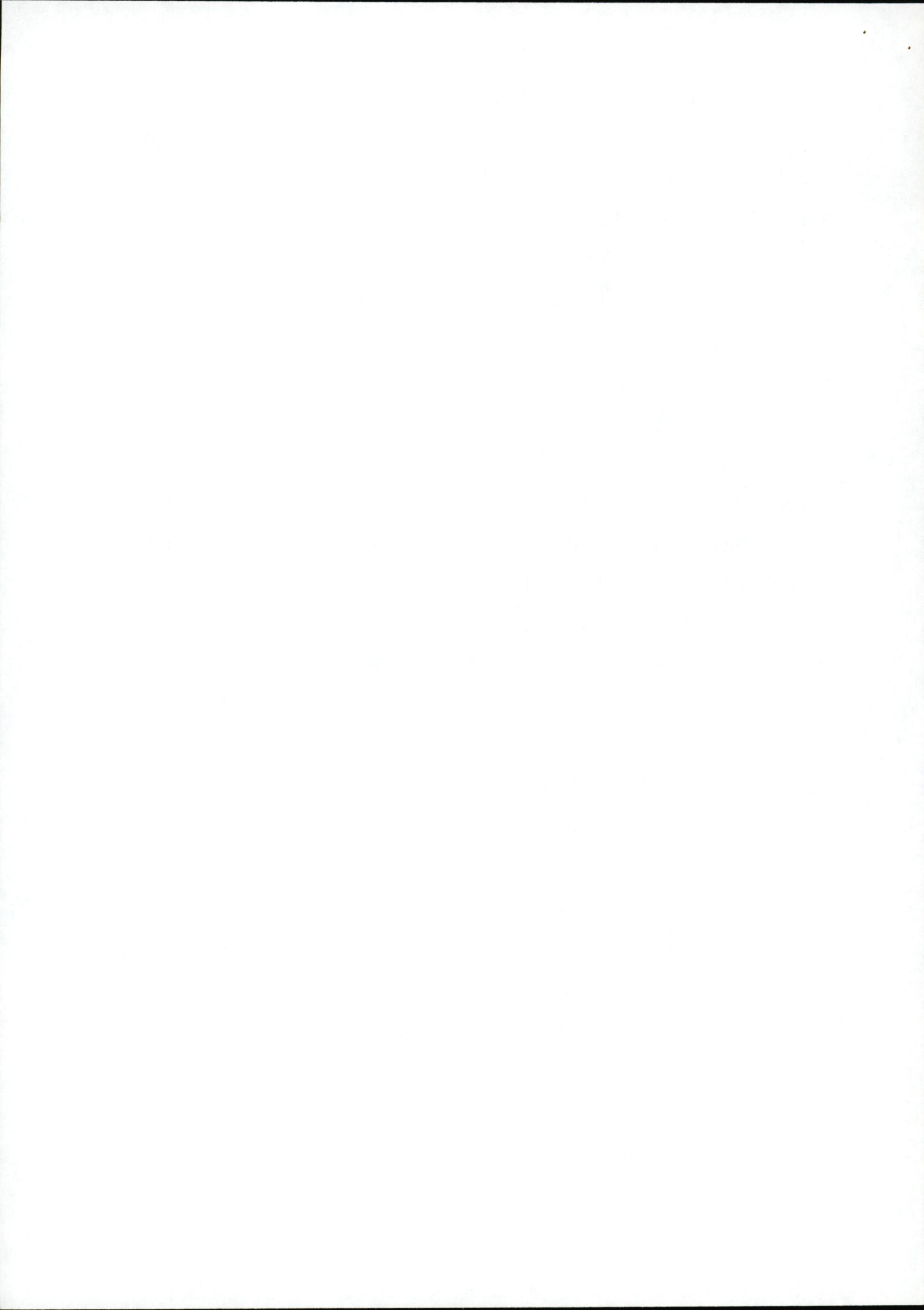




FIRSTLY, 54 DETAINEES, REPRESENTING 4.5% OF THE TOTAL 1201 DETAINEES REQUIRED TO REPORT, WERE IN CUSTODY SERVING FULL TIME SENTENCES. A FURTHER 19, REPRESENTING 1.6% OF THE TOTAL, HAD LODGED AN APPEAL AGAINST THEIR PERIODIC DETENTION SENTENCE AND HAD BEEN GRANTED BAIL. 119 DETAINEES, ACCOUNTING FOR APPROXIMATELY 10% OF ALL DETAINEES SUBJECT TO ORDERS FOR PERIODIC DETENTION, WERE GRANTED LEAVE FOR SICKNESS REASONS. A FURTHER 28 DETAINEES WERE GRANTED LEAVE ON COMPASSIONATE GROUNDS. 175 DETAINEES, THAT IS 14.6% OF THE TOTAL, WERE IDENTIFIED AS BEING ABSENT WITHOUT LEAVE. HOWEVER 80 OF THESE DETAINEES WERE ALREADY SUBJECT TO LEGAL ACTION FOR HAVING FAILED TO REPORT.

PUT SIMPLY, UPON REVIEW OF THE ABOVE OFFENDERS WHO FAILED TO REPORT, OTHER THAN THOSE ALREADY SUBJECT TO COURT ACTION FOR BREACH OF SENTENCE, LESS THAN 8% OF DETAINEES FAILED TO REPORT WITHOUT REASONABLE CAUSE. A RECENT REPORT PUBLISHED BY THE NEW SOUTH WALES JUDICIAL COMMISSION ENTITLED "A CRITICAL REVIEW OF PERIODIC DETENTION IN NEW SOUTH WALES" PRESENTED A SIMILAR APPRAISAL OF RELEVANT ABSENTEEISM LEVELS FOR THE PROGRAM. IT QUESTIONED THE APPROPRIATENESS OF QUOTING AN ACCUMULATED FIGURE, AS IS OFTEN THE PRACTICE BY OPPOSITION MEMBERS IN REPORTING TO THE MEDIA.

...8/...IN AUGUST, 1992,





IN AUGUST, 1992, DEPARTMENTAL ADMINISTRATIVE RULES AND GUIDELINES WERE REVISED TO MINIMISE THE LIKELIHOOD OF THE ABUSE OF ABSENTEEISM ON THE GROUNDS OF SICKNESS. DETAINEES ARE NOW REQUIRED TO ADVISE THEIR MEDICAL PRACTITIONERS OF THE NEED TO PROVIDE CERTIFICATION REGARDING THEIR INABILITY TO TRAVEL AND REPORT FOR PERIODIC DETENTION RATHER THAN PROVISION OF NON SPECIFIC CERTIFICATES AS WAS PREVIOUSLY THE CASE. THIS HAS SINCE HAD A POSITIVE EFFECT ON ABSENTEEISM RATES FOR THE PROGRAM.

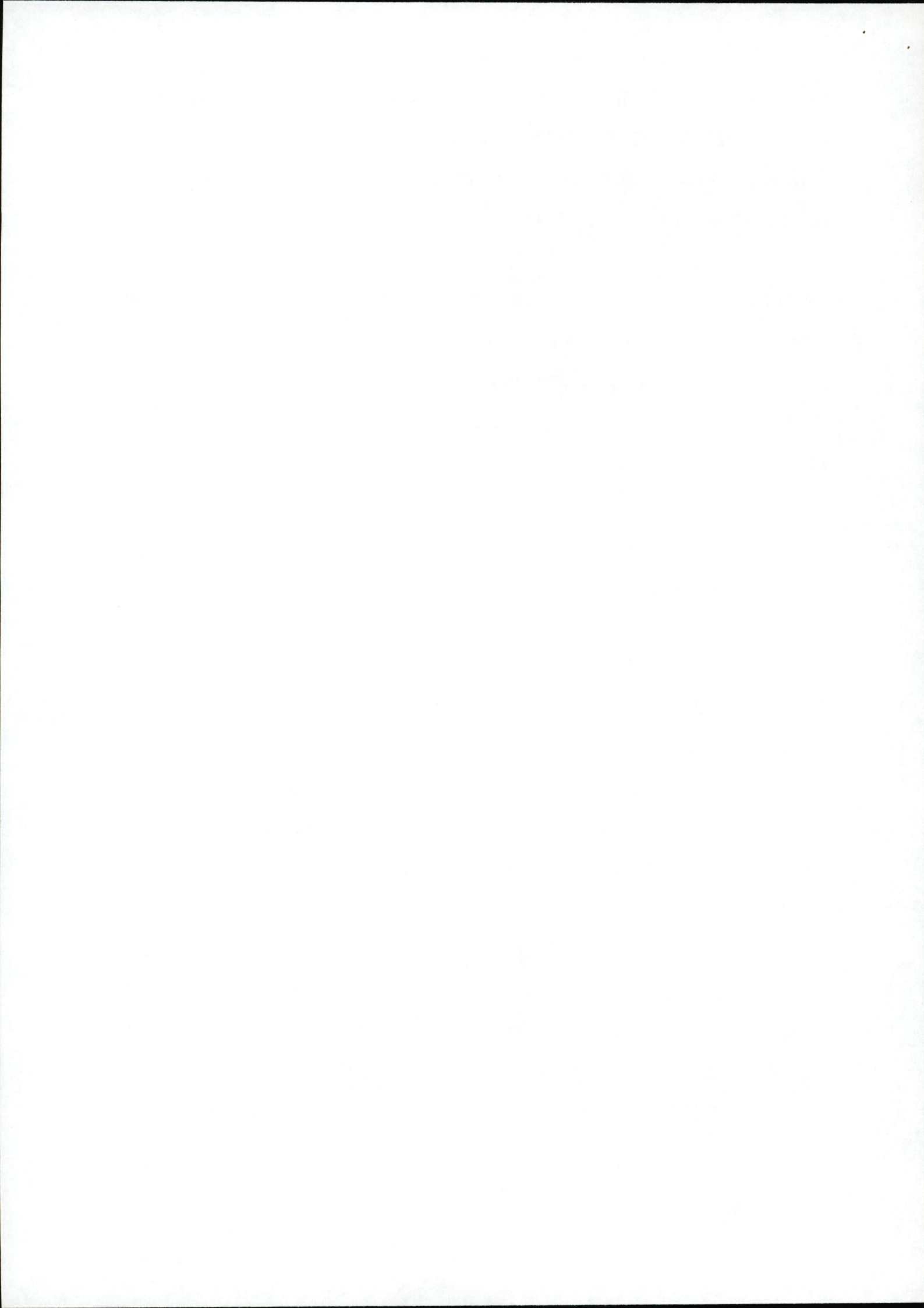
MR PRESIDENT,

I TURN NOW TO A MORE DETAILED DESCRIPTION OF THE BILL AND ADDRESS THE FOUR MOST SIGNIFICANT AMENDMENTS TO THE LEGISLATION.

THE FIRST AMENDMENT EXPANDS THE COMMISSIONER'S AUTHORITY TO APPROVE LEAVE OF ABSENCE.

AS I PREVIOUSLY INDICATED, SECTION 20 OF THE PERIODIC DETENTION OF PRISONERS ACT PROVIDES THAT LEAVE OF ABSENCE CAN ONLY BE GRANTED FOR HEALTH REASONS OR ON COMPASSIONATE GROUNDS. THIS IS CONSIDERED OVERLY RESTRICTIVE AND DOES NOT TAKE INTO ACCOUNT JUSTIFIED

...9/...SITUATIONS



**SITUATIONS WHERE A DETAINEE FAILS TO REPORT FOR REASONS OUTSIDE HIS OR HER CONTROL.**

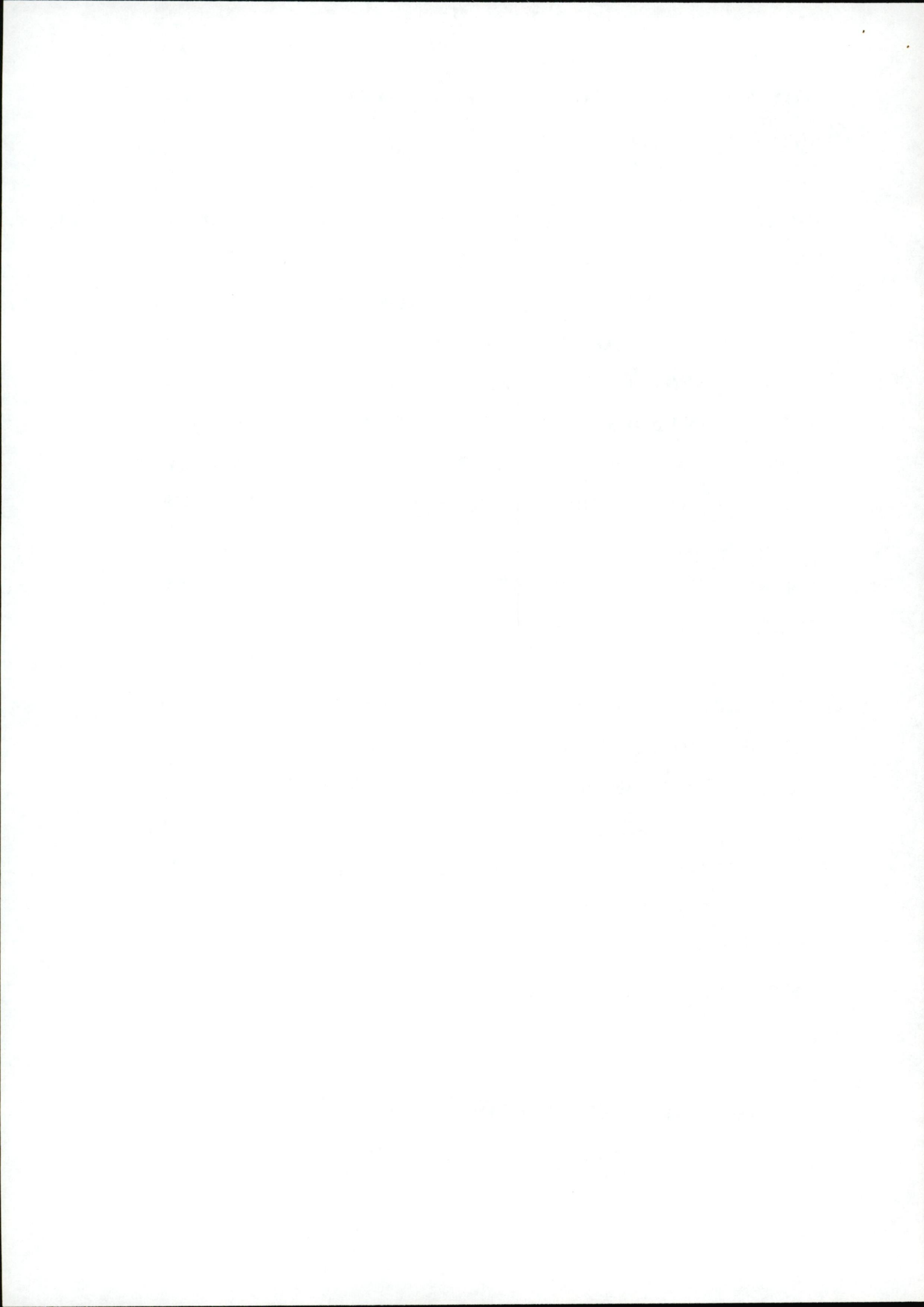
**FOR EXAMPLE, SITUATIONS WHERE A DETAINEE IS HELD IN CUSTODY IN A POLICE CELL OR IS SERVING A SENTENCE INTERSTATE, ABSENCES DUE TO MOTOR VEHICLE OR PUBLIC TRANSPORT BREAKDOWN OR SICKNESS OF A DEPENDENT CHILD, MUST PRESENTLY BE REFERRED TO THE COURT FOR PROSECUTION UNDER SECTION 33 OF THE ACT. THIS IS ARGUABLY AN UNNECESSARY ACTION TO ACHIEVE WHAT IS EFFECTIVELY AN ADMINISTRATIVE DECISION. FREQUENTLY, THE CIRCUMSTANCES ARE SUCH THAT THE COURT EITHER DECLINES TO RECORD A CONVICTION OR IMPOSES A PENALTY OF LITTLE CONSEQUENTIAL EFFECT.**

**SECTION 20 WILL BE AMENDED TO PROVIDE GREATER DISCRETION FOR THE COMMISSIONER TO GRANT LEAVE OF ABSENCE. WHERE LEAVE OF ABSENCE IS NOT GRANTED TO A DETAINEE BY THE COMMISSIONER, RESULTING IN THE DETAINEE BEING RECORDED AS ABSENT WITHOUT LEAVE, THE DETAINEE WILL HAVE A RIGHT TO APPEAL TO A LOCAL COURT AGAINST THIS DECISION.**

**THE SECOND AMENDMENT INTRODUCES SPECIFIC SANCTIONS FOR FAILURE TO REPORT.**

**PRESENT OPPORTUNITIES TO IMPOSE PENALTIES ON PERIODIC DETAINEES WHO FAIL TO REPORT ARE LIMITED AND RELIANT**

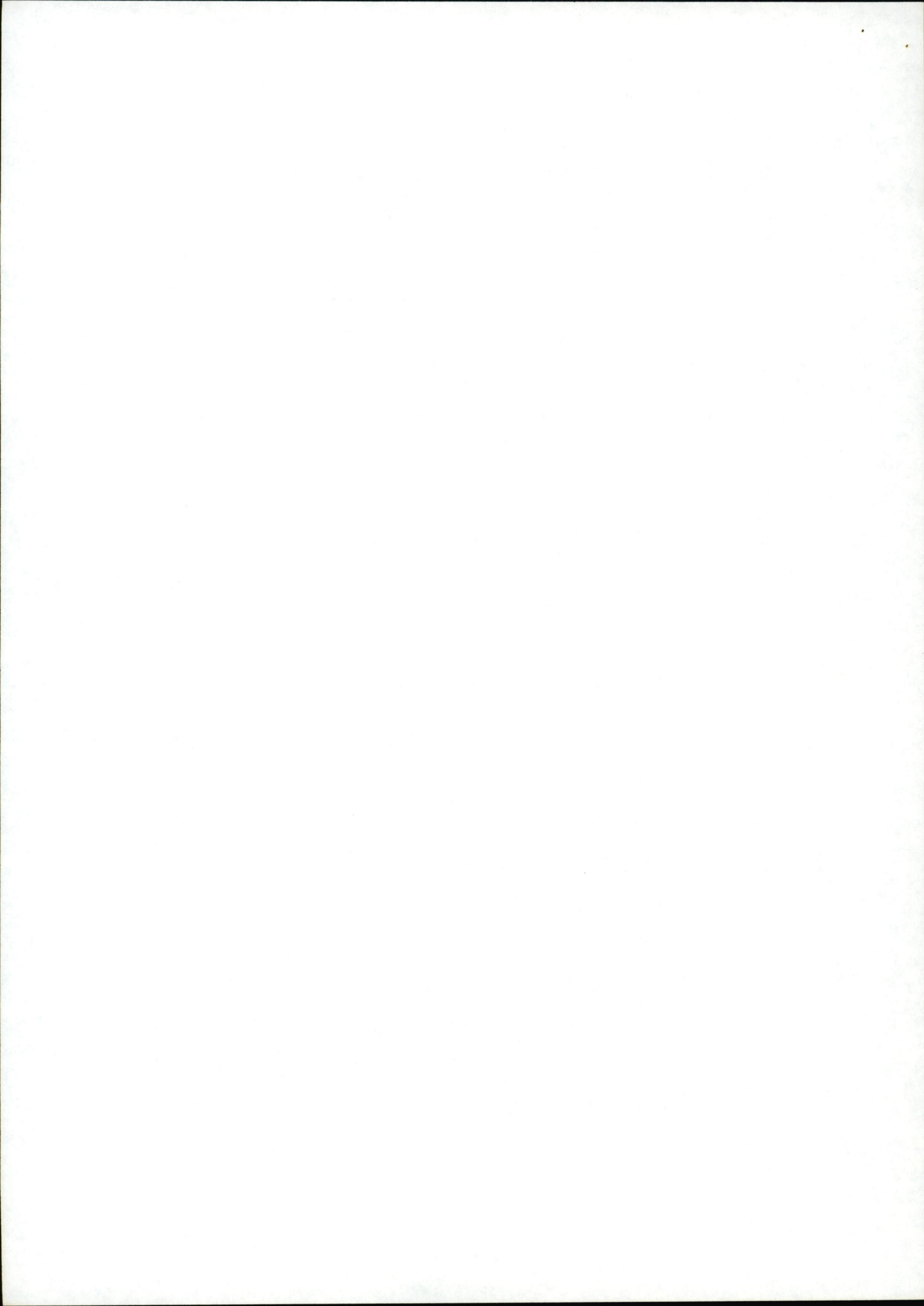




UPON THE PROGRESS OF MATTERS THROUGH THE COURT SYSTEM. WHILST PROSECUTION ACTION IS NOW IMMEDIATELY INITIATED BY THE DEPARTMENT OF CORRECTIVE SERVICES WHEN IT IS DETERMINED THAT A DETAINEE HAS FAILED TO REPORT WITHOUT VALID REASON, PENALTIES IMPOSED ARE OFTEN TOO LITTLE AND TOO LATE TO HAVE ANY REAL DETERRENT EFFECT. THE LACK OF AN EXPEDIENT AND DIRECT DISCIPLINARY MEASURE LEAVES OPEN THE OPPORTUNITY FOR MANIPULATION AND ABUSE OF THE CRIMINAL JUSTICE SYSTEM.

IN THE EVENT THAT A DETAINEE FAILS TO REPORT AS REQUIRED, IT IS NOW PROPOSED THAT THE TERM OF THE SENTENCE WILL BE AUTOMATICALLY EXTENDED BY ONE WEEK FOR EACH OCCASION OF FAILURE TO REPORT. THIS ADDRESSES THE CONSEQUENCES OF THE NOLAN DECISION.

MOREOVER, AS A DIRECT PENALTY FOR FAILURE TO REPORT WITHOUT REASONABLE GROUNDS, THE TERM OF THE SENTENCE WILL BE FURTHER INCREASED BY ONE WEEK. A MAXIMUM OF TWO OCCASIONS, AMOUNTING TO A POSSIBLE TWO WEEKS INCREASE IN SENTENCE, IS TO APPLY. IF A DETAINEE FAILS TO REPORT AS REQUIRED FOR A THIRD OCCASION, THE COURT, UPON THE APPLICATION OF THE DEPARTMENT, WILL BE REQUIRED TO CANCEL THE ORDER FOR PERIODIC DETENTION. AS INDICATED EARLIER, THE OFFENDER WILL BE REQUIRED TO SERVE THE UNEXPIRED PORTION OF THE SENTENCE BY WAY OF FULL TIME IMPRISONMENT.



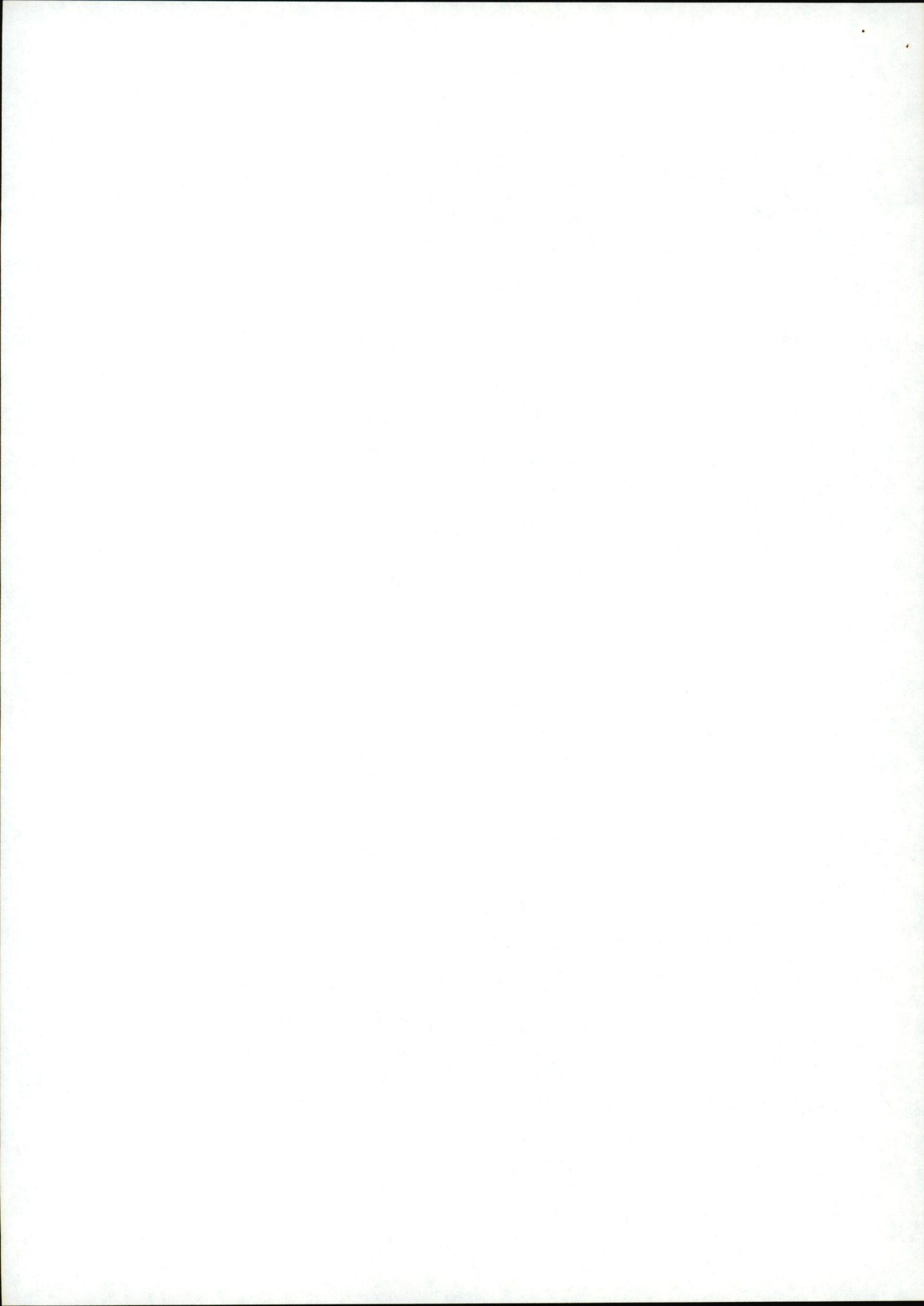
TO USE AN ANALOGY TO MAKE IT CLEAR TO ALL AND SUNDRY, IN FUTURE FOR PERIODIC DETENTION, UNLESS THERE ARE JUSTIFIED GROUNDS FOR FAILURE TO REPORT, THREE STRIKES AND THE DETAINEE IS OUT OF THE GAME.

I WILL NOW TURN TO THE MATTER OF SANCTIONS FOR MINOR OFFENCES AND BREACHES OF DISCIPLINE.

OFFENCES AGAINST DISCIPLINE COMMITTED BY PERIODIC DETAINEES ARE ALSO PRESENTLY DEALT WITH BY THE COURT THROUGH THE PROVISIONS OF SECTION 33 OF THE ACT. PENALTIES, IN SUCH INSTANCES, INCLUDE A FINE OF UP TO \$1000 OR IMPRISONMENT FOR A TERM NOT EXCEEDING 12 MONTHS. IN MANY INSTANCES, AN OFFENCE AGAINST DISCIPLINE DOES NOT WARRANT PROSECUTION ACTION BY THE DEPARTMENT OR A PUNISHMENT APPROACHING THE MAXIMUM PENALTIES AVAILABLE. HOWEVER, IN ORDER TO ENSURE GOOD ORDER AND DISCIPLINE WITHIN THE PROGRAM, REFERRAL TO THE COURT MUST OCCUR.

IT IS PROPOSED THAT, RATHER THAN REFERRAL TO THE COURT, THE COMMISSIONER OF CORRECTIVE SERVICES, OR DELEGATED SENIOR OFFICERS, WILL HAVE THE AUTHORITY TO DEAL WITH MINOR OFFENCES COMMITTED BY PERIODIC DETAINEES BY WAY OF REPRIMAND OR CAUTION, DETERMINATION OF LOSS OF PRIVILEGES OR THE IMPOSITION OF A FINE. AS WITH THE





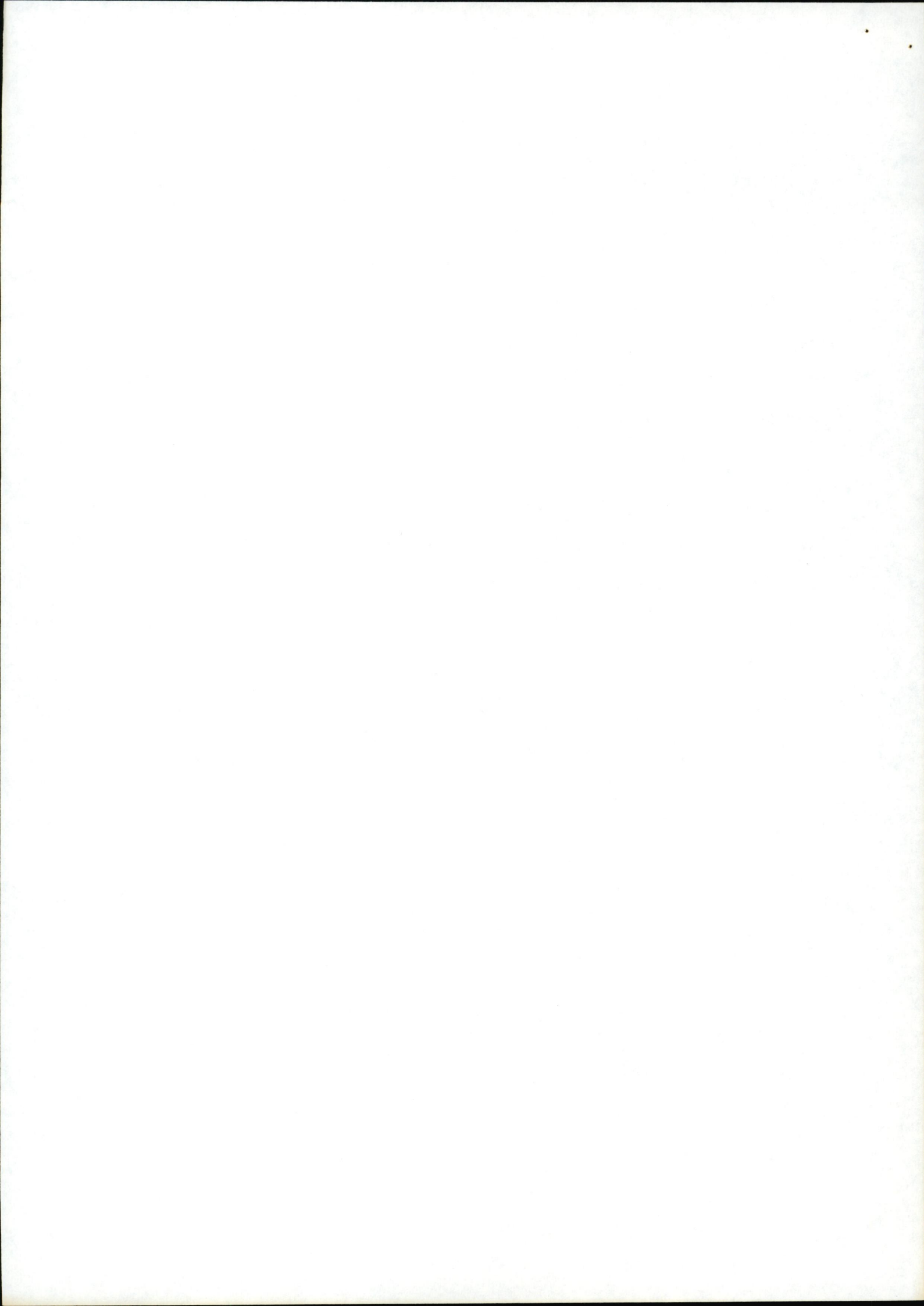
ADJUDICATION OF MINOR OFFENCES BY GOVERNORS FOR FULL TIME INMATES IN CUSTODY, THE RULES OF NATURAL JUSTICE WILL APPLY.

REGULATIONS WILL PROVIDE FOR A RANGE OF OFFENCES AGAINST EITHER THE ACT OR DISCIPLINE TO BE DEALT WITH IN THIS WAY, ENSURING THAT ONLY THE MORE SERIOUS MATTERS WILL BE REFERRED TO THE COURT FOR THE IMPOSITION OF AN APPROPRIATE PENALTY.

THE IMPOSITION OF A FINE BY CORRECTIONAL AUTHORITIES WILL BE ADMINISTERED THROUGH THE PENALTY NOTICE SYSTEM, WITH A LIMITATION OF TWO PENALTY UNITS TO APPLY. IN VIEW OF THE ENHANCED ABILITY OF THE DEPARTMENT TO DIRECTLY PENALISE DETAINEES, THOSE DETAINEES WHO ARE AGGRIEVED BY THE DECISION TO IMPOSE A FINE, WILL HAVE A RIGHT TO ALTERNATIVELY ATTEND A LOCAL COURT FOR DETERMINATION OF A SUITABLE PENALTY BY A MAGISTRATE.

FINALLY IT IS PROPOSED TO AMEND SECTION 5A OF THE ACT TO EXPAND JUDICIAL SENTENCING OPTIONS FOR OFFENCES AGAINST THE ACT.

WHERE PROSECUTION ACTION IS INITIATED BY THE DEPARTMENT WITH RESPECT TO BREACH OF AN ORDER OR THE COMMISSION OF AN OFFENCE AGAINST THE ACT, OFTEN IT MAY BE APPROPRIATE FOR THE COURT TO CONSIDER A FURTHER SHORT TERM



SENTENCE OF PERIODIC DETENTION. HOWEVER, THIS IS PRESENTLY PRECLUDED THROUGH THE APPLICATION OF SECTION 5(1) OF THE ACT WHICH PLACES A MINIMUM RESTRICTION OF THREE MONTHS FOR MOST SENTENCES OF PERIODIC DETENTION. IT IS APPROPRIATE THAT THE JUDICIARY HAVE THE PENALTY OPTION OF IMPOSING LESS THAN THREE MONTHS FOR THOSE DETAINEES WHO COMMIT OFFENCES AGAINST THE ACT.

MR PRESIDENT,

I CONCLUDE BY RE-ITERATING THAT THE CENTRAL PURPOSE OF THIS LEGISLATION IS TO REDUCE ABSENTEEISM AND SO ENHANCE COMMUNITY CREDIBILITY IN PERIODIC DETENTION AS A SENTENCING SANCTION.

IT IS DESIGNED TO ALLOW IMMEDIATE PENALTIES TO BE IMPOSED ON THOSE OFFENDERS SENTENCED TO PERIODIC DETENTION WHO FAIL TO COMPLY WITH THEIR SENTENCE WITHOUT REASONABLE CAUSE AND REMOVES THE NEED TO REFER DECISIONS RELATING TO THE ADMINISTRATION OF THE PROGRAM BACK INTO THE COURT SYSTEM.

I AM CONFIDENT THAT THE PROPOSED CHANGES ARE IN THE BEST INTERESTS OF THE COMMUNITY AND THE CRIMINAL JUSTICE SYSTEM.

I COMMEND THE BILL.



