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The Chair
Law and Order Committee
Parliament Buildings
PO Box 18041
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ADMINISTRATION OF COMMUNITY SENTENCES AND ORDERS BILL

Introduction

1. This submission is made by the Legislation Advisory Committee (LAC).
2. The LAC was established to provide advice to the Government on good legislative practice, legislative proposals, and public law issues. The LAC has produced and updates the *Legislation Advisory Committee Guidelines: Guidelines on the Process and Content of Legislation* (LAC Guidelines) as appropriate benchmarks for legislation. The LAC Guidelines have been adopted by Cabinet.
3. The terms of reference for the LAC include:
 - a. To scrutinise and make submissions to the appropriate body on aspects of Bills introduced into Parliament that affect public law or raise public law issues:

- b. To help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals confirm with the LAC Guidelines, and discouraging the promotion of unnecessary legislation.
4. The LAC wishes to draw the Committee's attention to certain aspects of this Bill on which consideration should be given to amendments, to better ensure that this Bill meets the provisions of the LAC Guidelines. These are as follows.

Clause 9

5. New section 20A(2)(d) of the Sentencing Act 2002 is potentially problematic, as it would allow the court imposing the second sentence to impose a more severe first sentence on the offender (after cancelling the original first sentence) than was initially imposed.
6. This "re-sentencing" could occur in circumstances where the second sentencing court does not have full information about the first offence and/or where the first sentence's appeal period has expired. While the second sentencing court must take into account the portion of the original first sentence that remains unserved (new section 20A(3)), this does not necessarily provide a sufficient safeguard, as it might simply mean a shorter, but more severe type of, sentence.
7. We suggest that a further subsection should be added to this section (or new section 20A(3) modified), which would be to the same effect as section 85 of the Sentencing Act 2002 (ie that the new sentence must not infringe the "totality principle", which essentially provides that the overall sentence is appropriate for the totality of the offending).

Clauses 14, 16 and 22

8. The use of the phrase "time ceases to run on the sentence" in these clauses is somewhat ambiguous. We understand that this amendment seeks to ensure that the offender does not get credited as having served their sentence for the period between when the application for variation or cancellation is lodged and when it is resolved by the courts. This is because during this time the offender may not be complying with the sentence (see para 9 of the Regulatory Impact Statement "Removing Legislative Barriers to Effectiveness and Efficiency in Corrections - Paper 3: Community Sentences and Orders" (RIS)).
9. However, sometimes the offender will be complying with the sentence during this time (for instance, if the probation officer applying for the variation or cancellation is mistaken), in which case this new provision will lead to an increased effective sentence (as the offender will in fact be serving the sentence, but time will have ceased to run on it).
10. We suggest that it would be clearer if the Bill adopted the same words as in section 345(1) of the Criminal Procedure Act 2011, which, when it comes into force, will govern the similar situation of when an offender's appeal will impact on their community-based sentence that they are supposed to be serving. That provision uses the phrase "sentence ceases to run",

which we consider to be preferable as it makes it clear that the sentence, and the time left to run on it, stops when the appeal/application is lodged.

Clause 32

11. The issue with new section 80ZG(3) of the Sentencing Act 2002 is similar to that raised in regard to clause 9, as this new provision would allow the court imposing the second sentence (of imprisonment) to impose more severe detention or post-detention conditions on the first sentence (of home detention).
12. We appreciate that the second sentencing court is being given this power because section 93(1) of the Sentencing Act 2002, which would usually allow it to impose such conditions on the (second) sentence of imprisonment, will not apply because the offender is resuming their (first) sentence of home detention.
13. However, we suggest that this should be made explicit and it should also be made clear that the additional or varied conditions being imposed on the first sentence (of home detention) must be what would have been imposed on the second sentence (of imprisonment) under section 93(1) if it had been possible.

Conclusion

14. Finally, the LAC note from the RIS that (at [34]) the Ministry of Justice, the New Zealand Police, the New Zealand Parole Board, the Ministry of Women's Affairs, Treasury, the State Services Commission and Te Puni Kōkiri have been consulted, and the Department of the Prime Minister and Cabinet have been informed. Despite the Bill being of a technical nature, the LAC queries whether the Bill should also be discussed with the Chief District Court Judge (if this has not already happened), as there may be practical workability issues that need to be considered.
15. The LAC does not wish to be heard on its submission.

Yours faithfully



Sir Grant Hammond
Chairman, Legislation Advisory Committee