

Sentencing (Reinstating Three Strikes) Amendment Bill

Government Bill

Explanatory note

General policy statement

The Sentencing (Reinstating Three Strikes) Amendment Bill (the **Bill**) reinstates the legislative regime for sentencing repeat serious offenders (the **three-strikes regime**) known as the three-strikes law. The Bill achieves this through amendments to the Sentencing Act 2002, the Criminal Procedure Act 2011, the Criminal Procedure (Mentally Impaired Persons) Act 2003, the Evidence Act 2006, and the Parole Act 2002.

The Bill is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy implemented by the Bill is to reverse the repeal of the previous three-strikes regime by the Three Strikes Legislation Repeal Act 2022, while making improvements to ensure that the regime is clear and workable.

The Government is reinstating the three-strikes regime to strongly denounce repeat serious offending and, in so doing, to increase public confidence that such conduct has very serious consequences. The Bill will increase certainty for offenders about the consequences of reoffending and may reduce offending through incapacitation and deterrence.

The Bill responds to increases in reported violent crime to Police between 2019 and 2024 (New Zealand Police, *Recorded Crime Victims Statistics*). It will hold repeat serious violent and sexual offenders to account for the harm they cause and will contribute to the Government's commitment to ensure that there are 20,000 fewer victims of violent crime by 2029.

The Bill provides for a 3-stage regime of escalating penalties for repeat serious violent and sexual offenders. The Bill has the following main features:

- the regime will cover 42 qualifying offences, which are most of the serious violent and sexual offences in the Crimes Act 1961:
- the consequences in the regime will apply only if the court finds that a sentence of imprisonment of more than 24 months would apply (or an indeterminate sentence in some cases):
- warnings will be given at each stage. Second or subsequent strikes carry a requirement that a sentence be served without parole. Third or subsequent strikes carry the maximum penalty for that offence, which is to be served without parole:
- offenders who commit murder will receive life imprisonment with a specified mandatory period of imprisonment of 17 years (at second strike) and 20 years (at third strike):
- a manifest injustice exception, guided by principles in the Bill, will apply to all mandatory elements of the regime:
- a limited exception will allow the court to reduce the term of imprisonment when the offender pleads guilty:
- the regime will apply only to individuals aged 18 years or older at the time of offending:
- the regime will not apply retrospectively; it will apply only to offences committed on or after the commencement date of the amendments made by the Bill to the Sentencing Act 2002. Strikes from the previous three-strikes regime will not be carried across to the new regime:
- clarification of the availability of mental health orders under the Criminal Procedure (Mentally Impaired Persons) Act 2003 for three-strikes offenders.

The Bill also amends the Parole Act 2002 to reinstate provisions that were erroneously removed by the Three Strikes Legislation Repeal Act 2022. The relevant provisions confirm that offenders sentenced under section 103(2A) of the Sentencing Act 2002 to a life sentence without parole will not have a parole eligibility date and will not be released on parole. These changes will have retrospective effect.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=65>

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 11 April 2024 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>
- <https://www.treasury.govt.nz/publications/legislation/regulatory-impact-assessments>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. It provides for most of the Bill to come into force 6 months after Royal assent. This 6-month delay is to allow sufficient time for activities necessary to support a smooth implementation of the three-strikes regime. However, the remedial amendments to the Parole Act 2002 come into force on the day after Royal assent.

Part 1

Amendments to Sentencing Act 2002

Clause 3 provides that *Part 1* amends the Sentencing Act 2002 (the **principal Act**).

Clause 4 amends section 4(1), which provides definitions of terms used in the Act. *Subclause (2)* consequentially amends the definition of minimum period of imprisonment. *Subclause (3)* inserts a definition of permanent court record.

Clause 5 amends section 8, which provides sentencing principles for courts, to require courts, in cases where it would be manifestly unjust to impose the additional consequences that are available under the three-strikes regime, to nevertheless regard repeated serious offending covered by the regime as worthy of a stern sentencing response.

Clause 6 inserts *new section 82A* to provide that courts must not take into account the additional consequences that offenders may face under the three-strikes regime (such as the loss of eligibility for parole) when determining sentence length.

Clause 7 inserts *new sections 86J to 86X* and a new cross-heading.

New section 86J provides definitions of terms used in those new sections. To become liable to additional consequences under the three-strikes regime, an offender must receive a qualifying sentence for a qualifying offence. A qualifying sentence is defined as a sentence that is a determinate sentence of imprisonment of more than 24 months or an indeterminate sentence of imprisonment. The definition of qualifying offence encompasses most serious violent and sexual offences in the Crimes Act 1961, including murder, manslaughter, and sexual violation.

A qualifying offence may be a stage-1 offence, a stage-2 offence, or a stage-3 offence. A stage-1 offence is a qualifying offence committed by an offender who, at the time of committing the offence, had not received a previous warning under the three-strikes regime and was at least 18 years old. A stage-2 offence is a qualifying offence committed by an offender after having received a first warning, but not a subsequent warning, under the regime. A stage-3 offence is a qualifying offence committed by an offender after having received a subsequent warning under the regime.

New sections 86K and 86L provide that, if a court imposes qualifying sentence on an offender for a qualifying offence, the court must warn the offender of the possible consequences of receiving a further such sentence for any subsequent qualifying offence. First warnings are given under *new section 86K* and are given to offenders who receive a qualifying sentence for a stage-1 offence. Subsequent warnings are given under *new section 86L* and are given to offenders who receive a qualifying sentence for a stage-2 offence or a stage-3 offence. *New section 86M* contains further particulars relating to the administration of warnings.

New section 86N applies to a court that gives an offender a warning under *new section 86K or 86L*. The new section requires the court to also give the offender a written notice that sets out the possible consequences if the offender receives a further qualifying sentence for any qualifying offence committed after the giving of the warning.

New section 86O requires a court that imposes a determinate sentence of imprisonment of more than 24 months on an offender for a stage-2 offence other than murder to order that the offender serve the sentence without parole, unless that would be manifestly unjust.

New section 86P requires a court that imposes a sentence of life imprisonment for a murder that is a stage-2 offence to impose a minimum period of imprisonment of at least 15 years (if the offender pleads guilty) or at least 17 years (if not), unless that would be manifestly unjust.

New section 86Q requires proceedings against a defendant charged with a stage-3 offence to be transferred to the High Court.

New section 86R generally requires a court that is sentencing an offender for stage-3 offence other than murder to impose the maximum term of imprisonment prescribed for the offence (if the offender does not plead guilty) or at least 80% of the maximum term (if the offender pleads guilty). However, in the case of manslaughter, the court must impose a sentence of at least 8 years (if the offender pleads guilty) or at least 10 years (if not).

New section 86R also generally requires the sentencing court to order that the offender serve the sentence without parole. Both the requirement to impose a minimum term of imprisonment and the requirement to order that it be served without parole are subject to a manifestly unjust exception. A sentence of preventive detention is not precluded by the new section.

New section 86S requires a court that imposes a sentence of life imprisonment for a murder that is a stage-3 offence to impose a minimum period of imprisonment of at

least 18 years (if the offender pleads guilty) or at least 20 years (if not), unless that would be manifestly unjust.

New section 86T sets out some guidance for courts relating to the application of the manifestly unjust exception in the three-strikes regime. Courts must give due consideration to denunciation, deterrence, and protection of the community. A court must not determine that imposing a sentence or making an order would be manifestly unjust merely because 1 or more mitigating factors are applicable. Nor may a court determine that imposing a sentence or making an order would be manifestly unjust merely because it would be disproportionate, unless it would be grossly so.

New section 86U clarifies that an offender's record of first warning or record of subsequent warning continues regardless of the completion of the sentence imposed for the offence to which it relates. However, in the case of the underlying conviction being set aside, or an excessive or erroneous sentence being replaced with a new non-qualifying sentence, the offender ceases to have the relevant record of warning.

New section 86V sets out the actions that courts must take if an offender who ceases to have a record of first warning or a record of subsequent warning continues to be subject to a later qualifying sentence.

New section 86W clarifies that a non-parole order under *new section 86O(2)* or *86R(3)* or an order under *new section 86P(2)* or *86S(2)* imposing a minimum period of imprisonment may be the subject of an appeal.

New section 86X provides that *new sections 86K to 86T* prevail over other provisions in the principal Act and the Parole Act 2002 that are inconsistent.

Clause 8 amends section 89, which relates to the imposition of a minimum period of imprisonment on an offender sentenced to preventive detention. The amendment prevents a court that imposes a sentence of preventive detention on an offender for a stage-3 offence from imposing a minimum period of imprisonment that is shorter than the term of imprisonment that the court would have imposed if it had imposed a determinate sentence of imprisonment.

Clauses 9 and 10 amend sections 103 and 104, which relate to the imposition of a minimum period of imprisonment for murder. *Clauses 9 and 10(2)* make consequential amendments. *Clause 10(1)* rewrites section 104(1) and breaks it up into 2 subsections to aid the clarity of *new section 86P(2)(a)*, which cross-refers to the circumstances listed in *new section 104(1A)*.

Clause 11 amends Schedule 1AA, which contains transitional, savings, and related provisions. *Subclause (1)* makes a consequential amendment to Part 4. *Subclause (2)* inserts *new Part 5*, which provides that the amendments made to the principal Act apply only to offences committed after the Bill comes into force.

Clause 12 inserts *new Schedule 1AB*, which lists the 42 qualifying offences.

Part 2

Amendments to other Acts

Subpart 1—Amendment to Criminal Procedure Act 2011

Clause 13 provides that *clause 14* amends the Criminal Procedure Act 2011.

Clause 14 amends section 180, which enables courts to correct erroneous sentences, to enable corrections relating to the giving and recording of warnings under the three-strikes regime.

Subpart 2—Amendment to Criminal Procedure (Mentally Impaired Persons) Act 2003

Clause 15 provides that *clause 16* amends the Criminal Procedure (Mentally Impaired Persons) Act 2003.

Clause 16 amends section 34 to preclude a court from making an order under subsection (1)(b) instead of passing sentence in the case of an offender convicted of a qualifying offence for which the court would, in the absence of section 34, have imposed a qualifying sentence. A court is not precluded from making an order under subsection (1)(b) in the case of an offender convicted of a qualifying offence for which the court, in the absence of section 34, would not have imposed a qualifying sentence.

A court is also not precluded from making an order under subsection (1)(a) in respect of an offender who is convicted of a qualifying offence and is subject to additional consequences under the three-strikes regime. That is, a court may make an order under subsection (1)(a) in respect of an offender who is convicted of a qualifying offence, in addition to sentencing the offender to a term of imprisonment with additional consequences imposed under the three-strikes regime.

Subpart 3—Amendment to Evidence Act 2006

Clause 17 provides that *clause 18* amends the Evidence Act 2006.

Clause 18 amends section 139, which relates to evidence of convictions, acquittals, and other judicial proceedings, to enable evidence of a record of a warning under the three-strikes regime, if admissible, to be given by a certificate purporting to be signed by a Judge, a registrar, or other officer having custody of the relevant court records.

Subpart 4—Amendments to Parole Act 2002

Clause 19 provides that *clauses 20 to 23* amend the Parole Act 2002.

Clause 20 amends section 20, which gives the date on and after which an offender is eligible for parole. *Subclause (1)* inserts *new subsections (4A) and (4B)*, which clarify that an offender who is required by a court order to serve a determinate sentence of imprisonment without parole may not be released before completion of that sentence. *Subclause (2)* inserts *new subsection (5)*, which clarifies that an offender who is required by a court order to serve a sentence of life imprisonment without parole for murder may not be released on parole.

Clause 21 amends section 25, which relates to early referral and consideration for parole, to clarify that an offender who is subject to a non-parole order or a minimum period of imprisonment under the three-strikes regime may not be considered for parole under that section.

Clause 22 amends section 84, which relates to non-parole periods. *Subclause (1)* amends subsection (2) to clarify that the non-parole period of a sentence in respect of which a court has imposed a minimum period of imprisonment under the three-strikes regime is the minimum period imposed.

Subclause (2) replaces subsection (3) with *new subsections (3) and (3A)* to clarify that an offender who is required by a court order to serve a sentence of life imprisonment without parole for murder may not be released on parole.

Subclause (3) amends subsection (5) to clarify that an offender who is required by a court order to serve a determinate sentence of imprisonment without parole may not be released before completion of that sentence.

Clause 23 inserts *new Parts 3 and 4* into Schedule 1, which contains transitional, savings, and related provisions. *New Part 3* clarifies that a person who was serving a sentence of life imprisonment without parole for murder on the commencement of the Three Strikes Legislation Repeal Act 2022 (the **repeal Act**) may not be released on parole. *New Part 4* provides that *new sections 20(5) and 84(3) and (3A)* apply retrospectively from the commencement of the repeal Act.

Hon Nicole McKee

Sentencing (Reinstating Three Strikes) Amendment Bill

Government Bill

Contents

		Page
1	Title	3
2	Commencement	3
Part 1		
Amendments to Sentencing Act 2002		
3	Principal Act	3
4	Section 4 amended (Interpretation)	3
5	Section 8 amended (Principles of sentencing or otherwise dealing with offenders)	3
6	New section 82A inserted (Additional consequences for certain repeated offending must not be taken into account in determining length of sentence)	4
	82A Additional consequences for certain repeated offending must not be taken into account in determining length of sentence	4
7	New sections 86J to 86X and cross-heading inserted	4
	<i>Additional consequences for certain repeated offending</i>	
	86J Interpretation	4
	86K Warnings: first warning to be given when qualifying sentence imposed for stage-1 offence	5
	86L Warnings: subsequent warning to be given when qualifying sentence imposed for stage-2 offence or stage-3 offence	5
	86M Warnings: administration	6
	86N Notice of possible consequences of receiving further qualifying sentence for qualifying offence	6

Sentencing (Reinstating Three Strikes) Amendment Bill

	86O	Stage-2 offences: loss of parole eligibility when determinate sentence of imprisonment of more than 24 months imposed for offence other than murder	7
	86P	Stage-2 offences: imposition of minimum period of imprisonment when life imprisonment imposed for murder	7
	86Q	Stage-3 offences: transfer of proceedings to High Court	7
	86R	Stage-3 offences: imposition of minimum sentence and loss of parole eligibility for offence other than murder	8
	86S	Stage-3 offences: imposition of minimum period of imprisonment when life imprisonment imposed for murder	9
	86T	Guidance on application of manifestly unjust exception in certain provisions	10
	86U	Continuing effect of warnings	10
	86V	How cessation of record affects later sentences	11
	86W	Appeal against orders relating to imprisonment	12
	86X	Sections 86K to 86T prevail over inconsistent provisions	12
8		Section 89 amended (Imposition of minimum period of imprisonment)	12
9		Section 103 amended (Imposition of minimum period of imprisonment or imprisonment without parole if life imprisonment imposed for murder)	12
10		Section 104 amended (Imposition of minimum period of imprisonment of 17 years or more)	12
11		Schedule 1AA amended	13
12		New Schedule 1AB inserted	13
Part 2			
Amendments to other Acts			
Subpart 1—Amendment to Criminal Procedure Act 2011			
13		Principal Act	13
14		Section 180 amended (Court may correct erroneous sentence)	13
Subpart 2—Amendment to Criminal Procedure (Mentally Impaired Persons) Act 2003			
15		Principal Act	14
16		Section 34 amended (Power of court to commit offender to hospital or facility on conviction)	14
Subpart 3—Amendment to Evidence Act 2006			
17		Principal Act	14
18		Section 139 amended (Evidence of convictions, acquittals, and other judicial proceedings)	14

Subpart 4—Amendments to Parole Act 2002		
19	Principal Act	14
20	Section 20 amended (Parole eligibility date)	14
21	Section 25 amended (Early referral and consideration for parole)	15
22	Section 84 amended (Non-parole periods)	15
23	Schedule 1 amended	15
	Schedule 1	17
	New Part 5 inserted into Schedule 1AA of Sentencing Act 2002	
	Schedule 2	18
	New Schedule 1AB inserted into Sentencing Act 2002	
	Schedule 3	20
	New Parts 3 and 4 inserted into Schedule 1 of Parole Act 2002	

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sentencing (Reinstating Three Strikes) Amendment Act **2024**.

2 Commencement

- (1) This Act comes into force 6 months after Royal assent. 5
- (2) However, **sections 20(2), 22(2), and 23** come into force on the day after Royal assent.

Part 1

Amendments to Sentencing Act 2002

3	Principal Act	10
	This Part amends the Sentencing Act 2002.	
4	Section 4 amended (Interpretation)	
(1)	In section 4(1), definition of minimum period of imprisonment , after “86,”, insert “ 86P(2), 86S(2) ,”.	
(2)	In section 4(1), insert, in its appropriate alphabetical order:	15
	permanent court record has the same meaning as in section 5 of the Criminal Procedure Act 2011	
5	Section 8 amended (Principles of sentencing or otherwise dealing with offenders)	
	In section 8, insert as subsections (2) and (3):	20

- (2) In addition, in sentencing an offender for a stage-2 offence or a stage-3 offence, the court must, if a manifestly unjust exception applies, nevertheless regard the offence as worthy of a stern sentencing response.
- (3) In this section,—
- manifestly unjust exception** means an exception set out in **section 86O(2), 86P(2), 86R(2), (3), or (6), 86S(2)**, or 102(1) 5
- stage-2 offence** has the same meaning as in **section 86J**
- stage-3 offence** has the same meaning as in **section 86J**.
- 6 New section 82A inserted (Additional consequences for certain repeated offending must not be taken into account in determining length of sentence)** 10
- After section 82, insert:
- 82A Additional consequences for certain repeated offending must not be taken into account in determining length of sentence**
- (1) In determining the length of a sentence of imprisonment to be imposed on an offender for a stage-3 offence that is murder, a stage-2 offence, or a stage-1 offence, the court must not take into account the consequences that the offender may face under **sections 86K to 86T**. 15
- (2) In this section, **stage-1 offence**, **stage-2 offence**, and **stage-3 offence** have the same meanings as in **section 86J**. 20
- 7 New sections 86J to 86X and cross-heading inserted**
- Before the cross-heading above section 87, insert:
- Additional consequences for certain repeated offending*
- 86J Interpretation**
- In this section and in **sections 86K to 86X**, unless the context otherwise requires,— 25
- qualifying offence** means an offence against any of the provisions of the Crimes Act 1961 listed in **Schedule 1AB**
- qualifying sentence** means a sentence that is—
- (a) a determinate sentence of imprisonment of more than 24 months; or 30
- (b) an indeterminate sentence of imprisonment
- record of first warning**, in relation to an offender, means a record of a warning that the offender has under **section 86K(3)**
- record of subsequent warning**, in relation to an offender, means a record of a warning that the offender has under **section 86L(3)** 35

stage-1 offence means a qualifying offence committed by an offender when the offender—

- (a) did not have a record of first warning; and
- (b) was at least 18 years old

stage-2 offence means a qualifying offence committed by an offender when the offender— 5

- (a) had a record of first warning (in relation to 1 or more offences); but
- (b) did not have a record of subsequent warning

stage-3 offence means a qualifying offence committed by an offender when the offender had a record of subsequent warning (in relation to 1 or more offences). 10

86K Warnings: first warning to be given when qualifying sentence imposed for stage-1 offence

- (1) This section applies if a court imposes a qualifying sentence on an offender for a stage-1 offence.
- (2) The court must— 15
 - (a) warn the offender of the possible consequences if the offender receives a further qualifying sentence for any qualifying offence committed after that warning (whether or not that further qualifying offence is different in kind from any stage-1 offence for which a qualifying sentence is being, or has been, imposed on the offender); and 20
 - (b) make an entry in the permanent court record, in relation to the stage-1 offence, to the effect that the offender has been warned under **paragraph (a)**.
- (3) On and after the making of the entry under **subsection (2)(b)**, the offender has, in relation to the stage-1 offence, a record of first warning (subject to **section 86U(2)**). 25

86L Warnings: subsequent warning to be given when qualifying sentence imposed for stage-2 offence or stage-3 offence

- (1) This section applies if a court imposes a qualifying sentence on an offender for a stage-2 offence or a stage-3 offence. 30
- (2) The court must—
 - (a) warn the offender of the possible consequences if the offender receives a further qualifying sentence for any qualifying offence committed after that warning (whether or not that further qualifying offence is different in kind from any qualifying offence for which a qualifying sentence is being, or has been, imposed on the offender); and 35
 - (b) make an entry in the permanent court record, in relation to the stage-2 offence or the stage-3 offence, to the effect that the offender has been warned under **paragraph (a)**.

- (3) On and after the making of the entry under **subsection (2)(b)**, the offender has, in relation to the stage-2 offence or the stage-3 offence, a record of subsequent warning (subject to **section 86U(2)**).

86M Warnings: administration

- (1) A warning that a court is required to give to an offender under **section 86K or 86L** must be given to the offender at the time of sentencing. 5
- (2) However, if a court omits to give a warning required under **section 86K or 86L** to an offender at the time of sentencing, the court must,—
- (a) as soon as is reasonably practicable after becoming aware of the omission, issue a summons to bring the offender before the court; and 10
- (b) if the offender fails to appear before the court in answer to the summons, as soon as is reasonably practicable after that failure, issue a warrant to arrest the offender to bring him or her before the court.
- (3) If, on an appeal, a court quashes or sets aside a sentence, not being a qualifying sentence, imposed on an offender for a qualifying offence and imposes a qualifying sentence in substitution for it, the court must, if the offender is not before the court when it imposes the qualifying sentence,— 15
- (a) as soon as is reasonably practicable after imposing the qualifying sentence, issue a summons to bring the offender before the court; and
- (b) if the offender fails to appear before the court in answer to the summons, as soon as is reasonably practicable after that failure, issue a warrant to arrest the offender to bring him or her before the court. 20
- (4) If an offender appears before a court under **subsection (2) or (3)**, the court must, despite **subsection (1)**, when the offender so appears, give the warning and make the entry required under **section 86K or 86L** (whichever applies). 25
- (5) A Judge need not use a particular form of words in giving a warning required under **section 86K or 86L**.

86N Notice of possible consequences of receiving further qualifying sentence for qualifying offence

- (1) A court that gives an offender a warning required under **section 86K or 86L** must also give the offender a written notice that sets out the possible consequences if the offender receives a further qualifying sentence for any qualifying offence committed after the giving of the warning. 30
- (2) The written notice may be given at the time, or as soon as is reasonably practicable after, the warning is given. 35
- (3) Failure to give a written notice in accordance with this section does not affect the validity of—
- (a) any sentence imposed, order made, or warning given by a court; or
- (b) any record of first warning or record of subsequent warning.

- 86O Stage-2 offences: loss of parole eligibility when determinate sentence of imprisonment of more than 24 months imposed for offence other than murder**
- (1) This section applies if a court imposes a determinate sentence of imprisonment of more than 24 months on an offender for a stage-2 offence other than murder. 5
 - (2) The court must order that the offender serve the sentence without parole unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to make the order (*see section 86T*).
 - (3) If, but for the application of this section, the court would have ordered under section 86 that the offender serve a minimum period of imprisonment in relation to the sentence imposed for the stage-2 offence, the court must state, with reasons, the minimum period of imprisonment that it would have imposed. 10
 - (4) If, but for the application of this section, the court would not have made an order under section 86, the court must state that it would not have made such an order. 15
- 86P Stage-2 offences: imposition of minimum period of imprisonment when life imprisonment imposed for murder**
- (1) This section applies if—
 - (a) a court imposes a sentence of imprisonment for life on an offender for a murder that is a stage-2 offence; and 20
 - (b) the court does not make an order under section 103(2A) requiring the offender to serve the sentence without parole.
 - (2) The court must, unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so (*see section 86T*), make an order imposing a minimum period of imprisonment of at least— 25
 - (a) 15 years, if the offender pleaded guilty to the murder and none of the circumstances set out in **section 104(1A)** apply;
 - (b) 17 years, in any other case.
 - (3) If the court makes an order under **subsection (2)**, the court must state, with reasons, the minimum period of imprisonment that it would, but for the application of this section, have imposed. 30
 - (4) If the court does not make an order under **subsection (2)**, the court must give written reasons for not doing so.
- 86Q Stage-3 offences: transfer of proceedings to High Court** 35
- (1) A proceeding against a defendant charged with a stage-3 offence must be transferred to the High Court when the proceeding is adjourned for trial or trial call-over under section 57 of the Criminal Procedure Act 2011 or, as the case may

be, under section 36 of that Act, and the proceeding from that point, including the trial, must be in the High Court.	
(2) Only the High Court, or the Court of Appeal or the Supreme Court on an appeal, and no other court, may sentence an offender for a stage-3 offence.	
(3) Subsections (1) and (2) override any legislation to the contrary.	5
86R Stage-3 offences: imposition of minimum sentence and loss of parole eligibility for offence other than murder	
<i>When this section applies</i>	
(1) This section applies if a court would, in the absence of this section, have imposed a qualifying sentence on an offender for a stage-3 offence other than murder.	10
<i>Minimum term of imprisonment</i>	
(2) The court must, unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so (<i>see section 86T</i>), sentence the offender to imprisonment for—	15
<i>Offence other than manslaughter</i>	
(a) the maximum term of imprisonment prescribed for the offence, if—	
(i) the offence is not manslaughter; and	
(ii) the offender did not plead guilty to the offence:	
(b) at least 80% of the maximum term of imprisonment prescribed for the offence, if—	20
(i) the offence is not manslaughter; and	
(ii) the offender pleaded guilty to the offence:	
<i>Manslaughter</i>	
(c) a term of at least 10 years, if—	25
(i) the offence is manslaughter; and	
(ii) the offender did not plead guilty to the offence:	
(d) a term of at least 8 years, if—	
(i) the offence is manslaughter; and	
(ii) the offender pleaded guilty to the offence.	30
<i>Order to serve sentence without parole</i>	
(3) When the court sentences the offender for the offence, the court must order that the offender serve the sentence without parole unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to make the order (<i>see section 86T</i>).	35

Reasons: general

- (4) If the court does not make an order under **subsection (3)**, the court must give written reasons for not doing so.
- (5) If the court sentences the offender to at least the relevant minimum term of imprisonment set out in **subsection (2)(a) to (d)**, the court must state, with reasons, the sentence and the minimum period of imprisonment (if any) that it would, but for the application of this section, have imposed.

5

Preventive detention not precluded

- (6) Despite **subsection (2)**, this section does not preclude the court from imposing, under section 87, a sentence of preventive detention on the offender and, if the court imposes such a sentence on the offender,—
- (a) **subsections (2) to (4)** do not apply; and
- (b) the minimum period of imprisonment that the court imposes on the offender under section 89(1) must not be less than the term of imprisonment that the court would have imposed under **subsection (2)**, unless the court is satisfied that, given the circumstances of the offence and the offender, the imposition of that minimum period would be manifestly unjust (*see section 86T*).

10

15

Reasons: preventive detention

- (7) If, in reliance on **subsection (6)(b)**, the court imposes a minimum period of imprisonment that is less than the term of imprisonment that the court would have imposed under **subsection (2)**, the court must give written reasons for doing so.

20

86S Stage-3 offences: imposition of minimum period of imprisonment when life imprisonment imposed for murder

25

- (1) This section applies if—
- (a) a court imposes a sentence of imprisonment for life on an offender for a murder that is a stage-3 offence; and
- (b) the court does not make an order under section 103(2A) requiring the offender to serve the sentence without parole.
- (2) When the court sentences the offender for the murder, the court must, unless the court is satisfied that, given the circumstances of the offence and the offender, it would be manifestly unjust to do so (*see section 86T*), make an order imposing a minimum period of imprisonment of at least—
- (a) 18 years, if the offender pleaded guilty to the murder:
- (b) 20 years, in any other case.
- (3) If the court makes an order under **subsection (2)**, the court must state, with reasons, the minimum period of imprisonment that it would, but for the application of this section, have imposed.

30

35

- (4) If the court does not make an order under **subsection (2)**, the court must give written reasons for not doing so.
- 86T Guidance on application of manifestly unjust exception in certain provisions**
- (1) This section applies to a court when determining whether it would be manifestly unjust to impose a sentence, or make an order,— 5
- (a) under **section 86O, 86P, 86R, or 86S**; or
- (b) in the case of an offender who is convicted of a murder that is a stage-2 offence or a stage-3 offence, under section 102.
- (2) The court must give due consideration to— 10
- (a) denouncing the conduct in which the offender was involved; and
- (b) deterring the offender or other persons from committing the same or a similar offence; and
- (c) protecting the community from the offender.
- (3) The court must not determine that imposing the sentence or making the order would be manifestly unjust merely because— 15
- (a) of the applicability of any 1 or more of the mitigating factors listed in section 9(2); or
- (b) it would be disproportionate, unless it would be grossly disproportionate.
- 86U Continuing effect of warnings** 20
- (1) An offender continues to have a record of first warning or a record of subsequent warning in relation to an offence regardless of whether the offender has served or otherwise completed the sentence imposed on the offender for the offence to which the record relates.
- (2) However, an offender ceases to have a record of first warning or a record of subsequent warning in relation to an offence if a court,— 25
- (a) on an appeal,—
- (i) quashes or sets aside the conviction for the offence to which the relevant record relates; or
- (ii) quashes or sets aside the sentence imposed for the offence to which the relevant record relates and does not impose a qualifying sentence in substitution for it; or 30
- (b) imposes a new sentence under section 180 of the Criminal Procedure Act 2011 (which relates the correction of erroneous sentences) for the offence to which the relevant record relates and the new sentence is not a 35
- qualifying sentence.

- (3) If an offender ceases to have a record of first warning in relation to at least 1 offence but continues to have a record of subsequent warning in relation to 1 (but not more than 1) offence, then—
- (a) the court must order that the record of subsequent warning be replaced by a record of first warning; and 5
 - (b) that replacement record of first warning is treated as having taken effect on the date on which the record of subsequent warning took effect.
- (4) If an offender ceases to have a record of first warning in relation to at least 1 offence but continues to have a record of subsequent warning in relation to more than 1 offence, then— 10
- (a) the court must order that each record of subsequent warning that took effect on the earliest date on which the offender had a record of subsequent warning be replaced by a record of first warning; and
 - (b) those replacement records of first warning are treated as having taken effect on that date. 15

86V How cessation of record affects later sentences

- (1) This section applies if,—
- (a) under **section 86U(2)**, an offender ceases to have a record of first warning or a record of subsequent warning or both (the **previous record**); and 20
 - (b) the offender continues to be subject to a qualifying sentence that was imposed on the offender for a qualifying offence committed when the offender had the previous record (a **later qualifying sentence**).
- (2) The court that heard the appeal or imposed the new sentence must—
- (a) take the actions described in **subsection (3)** that are applicable to the case; or 25
 - (b) in the case of an appeal, remit the matter to the court that sentenced the offender with a direction to take those actions.
- (3) The appropriate court must take the following actions:
- (a) if the later qualifying sentence would not have been imposed but for the previous record, the court must set aside the later qualifying sentence and replace it with a sentence that the court would have imposed had the offender not been subject to the previous record: 30
 - (b) if any order relating to the later qualifying sentence would not have been made but for the previous record, the court must cancel the order and, where appropriate, replace it with an order that the court would have made had the offender not been subject to the previous record: 35
 - (c) if the court considers it just to make any consequential orders, the court must make those orders.

86W Appeal against orders relating to imprisonment

For the purposes of Part 6 of the Criminal Procedure Act 2011, an order under **section 86O(2), 86P(2), 86R(3), or 86S(2)** is a sentence.

86X Sections 86K to 86T prevail over inconsistent provisions

- (1) This section applies to a provision— 5
- (a) in **sections 86K to 86T**; and
 - (b) that is inconsistent with another provision in this Act or in the Parole Act 2002.
- (2) The provision prevails over the other provision, to the extent of the inconsistency. 10

8 Section 89 amended (Imposition of minimum period of imprisonment)

Before section 89(3), insert:

- (2A) If a sentence of preventive detention is imposed for a stage-3 offence (as defined in **section 86J**), subsections (1) and (2) are subject to **section 86R(6)**. 15

9 Section 103 amended (Imposition of minimum period of imprisonment or imprisonment without parole if life imprisonment imposed for murder)

In section 103(7), replace “section 104” with “**sections 86P, 86S, and 104**”.

10 Section 104 amended (Imposition of minimum period of imprisonment of 17 years or more) 20

- (1) Replace section 104(1) with:
- (1) The court must make an order under section 103 imposing a minimum period of imprisonment of at least 17 years if any 1 or more of the circumstances set out in **subsection (1A)** apply, unless the court is satisfied that it would be manifestly unjust to do so. 25
- (1A) The circumstances are as follows:
- (a) the murder was committed in an attempt to avoid the detection, prosecution, or conviction of any person for any offence or in any other way to attempt to subvert the course of justice;
 - (b) the murder involved calculated or lengthy planning, including making an arrangement under which money or anything of value passes (or is intended to pass) from one person to another: 30
 - (c) the murder involved the unlawful entry into, or unlawful presence in, a dwelling place;
 - (d) the murder was committed in the course of another serious offence: 35
 - (e) the murder was committed with a high level of brutality, cruelty, depravity, or callousness:

- (f) the murder was committed as part of a terrorist act (as defined in section 5(1) of the Terrorism Suppression Act 2002):
- (g) the deceased was a constable or a prison officer acting in the course of their duty:
- (h) the deceased was particularly vulnerable because of their age, health, or any other factor: 5
- (i) the offender has been convicted of 2 or more counts of murder, whether or not arising from the same circumstances:
- (j) any other exceptional circumstances exist.
- (2) In section 104(2), replace “section 103(2A)” with “**section 86P(2), 86S(2),** or 103(2A)”. 10

11 Schedule 1AA amended

- (1) In Schedule 1AA, Part 4, before clause 13, insert:

13AAA Interpretation

In this Part, **stage-2 or stage-3 offence** means a stage-2 offence or a stage-3 offence as those terms were defined in section 86A immediately before that section was repealed, on 16 August 2022, by section 5 of the Three Strikes Legislation Repeal Act 2022. 15

- (2) In Schedule 1AA,—
- (a) insert the Part set out in **Schedule 1** of this Act as the last Part; and 20
- (b) make all necessary consequential amendments.

12 New Schedule 1AB inserted

After Schedule 1AA, insert the **Schedule 1AB** set out in **Schedule 2** of this Act.

Part 2 25

Amendments to other Acts

Subpart 1—Amendment to Criminal Procedure Act 2011

13 Principal Act

Section 14 amends the Criminal Procedure Act 2011.

14 Section 180 amended (Court may correct erroneous sentence) 30

Replace section 180(4) with:

- (4) In this section, **sentence** includes—
- (a) an order, and references to the imposition of a sentence include references to the making of an order:

- (b) a record of first warning and a record of subsequent warning (as those terms are defined in **section 86J** of the Sentencing Act 2002), and references to the imposition of a sentence include references to the giving and recording of a warning of either kind.

Subpart 2—Amendment to Criminal Procedure (Mentally Impaired Persons) Act 2003 5

15 **Principal Act**

Section 16 amends the Criminal Procedure (Mentally Impaired Persons) Act 2003.

16 **Section 34 amended (Power of court to commit offender to hospital or facility on conviction)** 10

After section 34(5), insert:

- (6) No order may be made under subsection (1)(b) in respect of an offender who is convicted of a qualifying offence for which the court would, in the absence of this section, have imposed a qualifying sentence. 15

- (7) In this section, **qualifying offence** and **qualifying sentence** have the same meanings as in **section 86J** of the Sentencing Act 2002.

Subpart 3—Amendment to Evidence Act 2006

17 **Principal Act**

Section 18 amends the Evidence Act 2006. 20

18 **Section 139 amended (Evidence of convictions, acquittals, and other judicial proceedings)**

Before section 139(1)(c), insert:

- (ba) a record of first warning or a record of subsequent warning (as those terms are defined in **section 86J** of the Sentencing Act 2002) made in respect of a person: 25

Subpart 4—Amendments to Parole Act 2002

19 **Principal Act**

Sections 20 to 23 amend the Parole Act 2002.

20 **Section 20 amended (Parole eligibility date)** 30

- (1) After section 20(4), insert:

- (4A) An offender (**offender A**) who is subject to a sentence (**sentence A**) that he or she is required, by an order made under **section 86O(2) or 86R(3)** of the Sentencing Act 2002, to serve without parole—

- (a) does not have a parole eligibility date in respect of sentence A; and
- (b) may not be released on parole in respect of sentence A.
- (4B) If offender A is also subject to 1 or more other sentences in respect of which no order under **section 86O(2) or 86R(3)** of the Sentencing Act 2002 has been made, the full term of sentence A must be treated as the non-parole period of sentence A for the purpose of determining the parole eligibility date (if any) of each of those other sentences. 5
- (2) After section 20(4), insert:
- (5) If an offender is required, by an order made under section 103(2A) of the Sentencing Act 2002, to serve a sentence of imprisonment for life without parole, the offender may not be released on parole. 10
- 21 Section 25 amended (Early referral and consideration for parole)**
- In section 25(5)(b), replace “section 86, section 89, or section 103” with “section 86, **86O(2), 86P(2), 86R(3), 86S(2)**, 89, or 103”.
- 22 Section 84 amended (Non-parole periods)** 15
- (1) In section 84(2), after “86,”, insert “**86P(2), 86S(2)**,”.
- (2) Replace section 84(3) with:
- (3) The non-parole period of a sentence of imprisonment for life is 10 years, unless the court—
- (a) has imposed a minimum term of imprisonment in respect of that sentence; or 20
- (b) has made an order under section 103(2A) of the Sentencing Act 2002 in respect of that sentence.
- (3A) An offender who is subject to an order made under section 103(2A) of the Sentencing Act 2002 is not eligible for parole in respect of the following sentences: 25
- (a) the sentence to which the order relates:
- (b) any other sentence to which the offender is subject when the order is made:
- (c) any sentence that is later imposed on the offender. 30
- (3) Before section 84(5)(b), insert:
- (ab) every sentence in respect of which an order under **section 86O(2) or 86R(3)** of the Sentencing Act 2002 has been made must be treated as if it had a non-parole period equal to its full term; and
- 23 Schedule 1 amended** 35
- In Schedule 1,—
- (a) insert the Parts set out in **Schedule 3** of this Act as the last Parts; and

- (b) make all necessary consequential amendments.

Schedule 1

New Part 5 inserted into Schedule 1AA of Sentencing Act 2002

s 11(2)

Part 5

Provisions relating to Sentencing (Reinstating Three Strikes) Amendment Act 2024 5

16 Interpretation

In this Part,—

amendment Act means the Sentencing (Reinstating Three Strikes) Amendment Act 2024 10

commencement date means the date on which the amendment Act, other than sections 20(2), 22(2), and 23, comes into force

new rules means this Act as in force on the commencement date

old rules means this Act as in force immediately before 16 August 2022.

17 Offences affected by amendments 15

The amendments made to this Act by the amendment Act do not apply to any offence committed, whether in whole or in part, before the commencement date.

18 No entitlement to compensation

A person is not entitled to compensation of any kind on account of any difference between the old rules and the new rules. 20

Schedule 2
New Schedule 1AB inserted into Sentencing Act 2002

s 12

Schedule 1AB
Qualifying offences

5

s 86J

Provision of Crimes Act 1961	Subject matter
s 128B	Sexual violation
s 129(1)	Attempted sexual violation
s 129(2)	Assault with intent to commit sexual violation
s 129A(1)	Sexual connection with consent induced by threat
s 131(1)	Sexual connection with dependent family member under 18 years
s 131(2)	Attempted sexual connection with dependent family member under 18 years
s 132(1)	Sexual connection with child
s 132(2)	Attempted sexual connection with child
s 132(3)	Indecent act on child
s 134(1)	Sexual connection with young person
s 134(2)	Attempted sexual connection with young person
s 134(3)	Indecent act on young person
s 135	Indecent assault
s 138(1)	Exploitative sexual connection with person with significant impairment
s 138(2)	Attempted exploitative sexual connection with person with significant impairment
s 142A	Compelling indecent act with animal
s 144A	Sexual conduct with children and young people outside New Zealand
s 172	Murder
s 173	Attempted murder
s 174	Counselling or attempting to procure murder
s 175	Conspiracy to murder
s 177	Manslaughter
s 188(1)	Wounding with intent to cause grievous bodily harm
s 188(2)	Wounding with intent to injure
s 189(1)	Injuring with intent to cause grievous bodily harm
s 189A	Strangulation or suffocation
s 191(1)	Aggravated wounding
s 191(2)	Aggravated injury

Provision of Crimes Act 1961	Subject matter
s 198(1)	Discharging firearm or doing dangerous act with intent to do grievous bodily harm
s 198(2)	Discharging firearm or doing dangerous act with intent to injure
s 198A(1)	Using firearm against law enforcement officer, etc
s 198A(2)	Using firearm with intent to resist arrest or detention
s 198B	Commission of crime with firearm
s 200(1)	Poisoning with intent to cause grievous bodily harm
s 201	Infecting with disease
s 208	Abduction for purposes of marriage or civil union or sexual connection
s 209	Kidnapping
s 232(1)	Aggravated burglary
s 234	Robbery
s 235	Aggravated robbery
s 236(1)	Causing grievous bodily harm with intent to rob, or assault with intent to rob in specified circumstances
s 236(2)	Assault with intent to rob

Schedule 3

New Parts 3 and 4 inserted into Schedule 1 of Parole Act 2002

s 23

Part 3

Provision relating to Three Strikes Legislation Repeal Act 2022 5

7 Treatment of persons serving sentence of life imprisonment without parole for murder on commencement of Three Strikes Legislation Repeal Act 2022

- (1) This clause applies to a person who,—
- (a) before the repeal Act came into force, was convicted of murder and sentenced to imprisonment for life; and 10
 - (b) immediately before the repeal Act came into force, was subject to an order made under section 103(2A) of the Sentencing Act 2002.
- (2) A person to whom this clause applies—
- (a) is not, and has never been, affected by the amendments to sections 20 and 84 made by sections 18 and 19 of the repeal Act; and 15
 - (b) may not be released on parole so long as the order remains in force.
- (3) In this clause, **repeal Act** means the Three Strikes Legislation Repeal Act 2022.

Part 4 20

Provisions relating to Sentencing (Reinstating Three Strikes) Amendment Act 2024

8 Interpretation

In this Part,—

amendment Act means the Sentencing (Reinstating Three Strikes) Amendment Act 2024 25

commencement date means the date on which **sections 20(2), 22(2), and 23** of the amendment Act come into force.

9 Retrospective application of section 20(5)

Section 20(5) (as inserted by **section 20(2)** of the amendment Act) applies 30 on and from 16 August 2022 as if it were in force on and from that date.

10 Retrospective application of section 84(3) and (3A)

Section 84(3) and (3A) (as inserted by **section 22(2)** of the amendment Act) apply on and from 16 August 2022 as if they were in force on and from that date.