



New South Wales

Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Act 2013 No 7

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New South Wales

Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Act 2013 No 7

Act No 7, 2013

An Act to amend the *Crimes (Sentencing Procedure) Act 1999* to enable the provisional sentencing of children who are convicted of murder; and for related purposes. [Assented to 25 March 2013]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Act 2013*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

[1] Part 4, Division 2A

Insert after Division 2:

Division 2A Provisional sentencing for child offenders

60A Definitions

In this Division:

case plan means a plan of management for an offender.

final sentence means a sentence imposed as a final sentence under this Division.

ordinary sentence means a sentence imposed otherwise than under the powers conferred by this Division.

person responsible for the detention of the offender means:

- (a) in the case of an offender detained or proposed to be detained in a detention centre—the Director-General of the Department of Attorney General and Justice, or
- (b) in the case of an offender detained or proposed to be detained in a mental health facility (within the meaning of the *Mental Health Act 2007*)—the Director-General of the Ministry of Health, or
- (c) in the case of an offender detained or proposed to be detained in a correctional centre—the Commissioner of Corrective Services or, if no person holds that position, the Director-General of the Department of Attorney General and Justice.

progress review—see section 60E.

provisional sentence means a sentence imposed as a provisional sentence under this Division.

60B Power to impose provisional sentence

- (1) A court that imposes a sentence on an offender for the offence of murder may impose a sentence for that offence as a provisional sentence if:
 - (a) the offender was less than 16 years of age when the offence was committed, and
 - (b) the offender is less than 18 years of age when the provisional sentence is imposed, and

- (c) the sentence proposed to be imposed for the offence is or includes a term of imprisonment, and
 - (d) the court is of the opinion that it is not appropriate to impose an ordinary sentence on the offender because the information presently available does not permit a satisfactory assessment of whether the offender has or is likely to develop a serious personality or psychiatric disorder, or a serious cognitive impairment, such that the court cannot satisfactorily assess either or both of the following matters:
 - (i) whether the offender is likely to re-offend,
 - (ii) the offender's prospects of rehabilitation.
- (2) A court may impose a sentence as a provisional sentence of its own motion or on application of a party to the proceedings.
 - (3) A reference in this Division to a sentence for the offence of murder includes a reference to an aggregate sentence for the offence of murder and for one or more other offences.

60C Case plan to be provided

- (1) A court that is considering imposing a provisional sentence on an offender may request a person responsible for the detention of the offender to provide information on the case plan or proposed case plan for the offender.
- (2) The court may have regard to the case plan, in addition to any other relevant evidence provided by a party to the proceedings, in deciding whether or not it is appropriate to impose a provisional sentence.

60D Effect of provisional sentence

- (1) A provisional sentence is subject to review and redetermination under this Division.
- (2) The other Divisions of this Part apply in respect of a provisional sentence in the same way as they apply in respect of an ordinary sentence.
- (3) A provisional sentence is not a sentence for an indeterminate period, for the purposes of Division 1, merely because it is subject to review and redetermination under this Division.

60E Progress reviews

- (1) A court that imposes a provisional sentence on an offender is to review the offender's case from time to time for the purpose of deciding whether it is appropriate to impose a final sentence.
- (2) Such a review is a *progress review*.
- (3) The court may conduct a progress review on application of a party to the proceedings in which the provisional sentence was imposed or of its own motion.
- (4) A progress review may be conducted as often as the court considers appropriate but must be conducted at least once every 2 years after the provisional sentence is imposed.
- (5) The court that conducts the progress review is, if practicable, to be constituted in the same way as the court that imposed the provisional sentence.
- (6) A progress review is to be conducted in the presence of the offender.

60F Progress reports to be provided by person responsible for detention of an offender

- (1) When a progress review is conducted by a court, the person responsible for the detention of the offender who is the subject of the progress review is to provide a report to the court about the offender's progress.
- (2) The report is to include the following:
 - (a) an assessment of the care and treatment of the offender while in custody,
 - (b) an assessment of the offender's psychiatric, cognitive and psychological development since the provisional sentence was imposed,
 - (c) such other matters as the court requires to be addressed in the report.
- (3) A court that conducts a progress review may also request any other person who, or body that, has responsibilities with respect to the care and treatment of the offender to provide information about the offender.
- (4) A court that conducts a progress review may have regard to the information obtained under this section, in addition to any other relevant evidence provided by a party to the proceedings, in deciding whether or not it is appropriate at that time to impose a final sentence on the offender.

60G Final sentence

- (1) A court may, after conducting a progress review:
 - (a) impose a final sentence on the offender, or
 - (b) decline to impose a final sentence on the offender.
- (2) A court imposes a final sentence by:
 - (a) setting aside the provisional sentence and substituting instead another sentence as the final sentence for the offender, or
 - (b) confirming the provisional sentence as the final sentence for the offender.
- (3) If the court sets aside the provisional sentence:
 - (a) the term of imprisonment imposed under the final sentence is not to exceed the term of imprisonment imposed under the provisional sentence, and
 - (b) the non-parole period (if any) set for the final sentence is not to exceed the non-parole period set for the provisional sentence, and
 - (c) the final sentence imposed is taken to have commenced on the day on which the provisional sentence commenced.
- (4) Subject to this Division, this Part applies to a final sentence in the same way as it applies to an ordinary sentence.
- (5) A final sentence is not subject to review and redetermination under this Division.
- (6) A decision to decline to impose a final sentence on an offender is not a sentence and, accordingly, is not subject to appeal under the *Criminal Appeal Act 1912*.
- (7) A court that conducts a further progress review after having declined to impose a final sentence on an offender is to conduct that review as a fresh hearing in relation to the question of whether it is appropriate to impose a final sentence on the offender.

60H Time limit for imposition of final sentence

- (1) A final sentence must be imposed on an offender who is the subject of a provisional sentence before the expiry of the initial custodial period.

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- (2) The *expiry of the initial custodial period* is:
- (a) the date that is 5 years after the date the provisional sentence is imposed, or
 - (b) the date that is one year before the date the non-parole period (if any) for the provisional sentence ends,
- whichever happens first.
- (3) A final sentence is not invalid merely because it is imposed after the expiry of the initial custodial period.

60I Appeals

- (1) On appeal against a provisional sentence, a court hearing the appeal that has power to vary the provisional sentence and substitute a new sentence (however expressed) may:
- (a) substitute a new provisional sentence, or
 - (b) substitute a final sentence.
- (2) If a provisional sentence is varied and a new provisional sentence is imposed by a court on appeal:
- (a) the functions of the court under this Division with respect to progress reviews and the imposition of a final sentence on the offender are to be exercised by the court that first imposed a provisional sentence on the offender, and not the appeal court, and
 - (b) a reference in this Division to the date on which the sentence is imposed is a reference to the date on which a provisional sentence for the relevant offence was first imposed (and not the date a new provisional sentence was imposed by the appeal court), and
 - (c) a reference in this Division to a term of imprisonment imposed, or non-parole period set, under a provisional sentence is a reference to a term of imprisonment imposed, or non-parole period set, under the new provisional sentence as imposed by the appeal court.
- (3) To avoid doubt, a court that imposes a provisional sentence that is varied on appeal can set aside the provisional sentence (as varied on appeal) under section 60G and substitute another sentence as the final sentence for the offender in accordance with this Division.

Note. Appeals against provisional sentences can be made to the Court of Criminal Appeal under the *Criminal Appeal Act 1912*. If the Court of Criminal Appeal varies the provisional sentence, the original sentencing court (and not the Court of Criminal Appeal) must conduct progress

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Schedule 1 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

reviews and impose a final sentence. The final sentence can also be appealed under the *Criminal Appeal Act 1912*.

[2] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any Act that amends this Act

[3] Schedule 2

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provision consequent on enactment of
Crimes (Sentencing Procedure)
Amendment (Provisional Sentencing for
Children) Act 2013**

Provisional sentencing

Division 2A of Part 4, as inserted by the *Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Act 2013*, applies in respect of any sentence imposed after the commencement of that Division (including for an offence committed before that commencement).

Schedule 2 Amendment of Criminal Appeal Act 1912 No 16

Section 2 Definitions

Insert after section 2 (2):

- (3) For the purposes of this Act, a sentence imposed under Part 2 of the *Crimes (Sentencing Procedure) Act 1999* includes a provisional sentence and a final sentence within the meaning of Division 2A of Part 4 of that Act.

[Second reading speech made in—
Legislative Assembly on 26 February 2013
Legislative Council on 20 March 2013]