

LAW & ORDER POLICY: SENTENCING, PAROLE AND BAIL

Keeping those who are a risk to the community out of the community.

OVERVIEW

National's policy on sentencing, parole and bail is driven by one primary concern above all others: the need to put public safety first. Sadly, such concern has not been at the forefront of Labour's decision-making in recent years, as dangerous offenders have been paroled without adequate monitoring, and the sentencing and bail laws have been relaxed in an effort to reduce the prison population.

[National has already announced its policy of no parole for the worst repeat violent offenders.](#) We are unashamedly putting the safety of the community before giving violent offenders yet another chance, when they have already spurned opportunities to change their ways.

Our other policies for sentencing, parole and bail are also aimed at providing appropriate consequences for offenders and – ultimately – for a safer society, including:

- Life without parole for the worst murderers.
- Longer sentences for violent crimes against children.
- Re-assessing the eligibility of violent, drug, and sexual offenders for home detention.
- Improved checks and balances for parole.
- Making bail harder to get.
- Unclogging the district courts.

LIFE WITHOUT PAROLE FOR THE WORST MURDERERS

As National has [previously stated](#), offenders who commit murder, having previously served a sentence of five years imprisonment or more for violence, will not be eligible for parole the second time around. They will not be released.

However, there are other murderers who have not committed previous offences of this type, yet have nonetheless been found guilty of heinous killings, such as double murderers Bruce Howse, Mark Lundy, David Konia, and Ese Falealii. Society needs to express its revulsion at their actions and the public has a right to live free from their predation.

National will:

- Give the courts the option of sentencing the worst murderers to life without the possibility of parole.

We envisage that life without the possibility of parole will apply to only a handful of the worst murderers who do not fit the criteria for repeat offenders.

Such truth in sentencing will provide transparency and reassurance to the families of victims who would never have to worry about the offender's release, let alone the torturous prospect of regular parole hearings.

This is something that neither the current life sentences nor preventive detention can provide, since both allow the offender to be paroled after a minimum period. Offences of this severity are rare but the law must provide for them.

LONGER SENTENCES FOR VIOLENT CRIMES AGAINST CHILDREN

Children are the most vulnerable members of our society and as such they deserve the best possible protection.

National wants to send the message that violence against children is abhorrent and will not be tolerated.

New Zealanders are haunted by the names of children who have died after being violently assaulted by people who were supposed to be caring for them – children like James Whakaruru, ‘Lilybing’, Tamati Pokaia, and Coral Burrows.

And yet some offenders who kill children after long periods of violent abuse get lenient prison sentences – rarely more than eight years maximum – because they did not mean to kill the child (see Appendix). National believes that such short sentences are unacceptable and do not reflect the loss of that child’s life.

We will, therefore, substantially increase penalties for causing the death of a child where there is a clear history of abuse or neglect.

Those offenders who commit acts of violence and abuse against children that do not result in death are also being given shorter sentences on average than those who offend against adults.¹

These sentences fail to reflect the severity of the crime. Cruelty to a child attracts a maximum sentence of just five years – considerably less than the maximum sentence of 14 years for an act of torture committed by a public official, for example.²

In 2006, just 31% of people convicted of cruelty to a child received a prison

sentence, and the average length imposed was just under 18 months.³

As another example, the maximum sentence for assaulting a child is just two years – shorter than the three-year maximum sentence for wilfully ill-treating an animal⁴.

Only 12% of those convicted in 2006 of assault on a child received a prison sentence, and the average length was just seven months.⁵

National does not believe that these sentences adequately reflect society’s revulsion towards these acts.

National will:

- Increase penalties handed down for causing the death of a child where there is a clear history of abuse or neglect.
- Direct the courts to take into account the fact that the victim is a child when sentencing.
- Increase sentences for failure to provide the necessities of life, child cruelty/wilful ill-treatment of a child, assault on a child, and wilful neglect.

Tougher sentences for crimes against children are only a small part of the solution to dealing with violent abuse of children, but they reflect the public’s growing intolerance towards such behaviour, and will make a real difference to the lives of many children and their families.

¹ Christopher Clark, ‘The age of physical abuse victims and the sentence imposed on their abusers’, Ministry of Justice, February 2001.

² See section 195 of the Crimes Act 1961 and section 3 of the Crimes of Torture Act 1989.

³ Bronwyn Morrison, Nataliya Soboleva, Jin Chong, *Conviction and Sentencing of Offenders in New Zealand 1997-2006*, Ministry of Justice, April 2008, Tables 3.8-3.9

⁴ See section 194 of the Crimes Act 1961 and section 28 of the Animal Welfare Act 1999.

⁵ Morrison, Soboleva, Chong, 2008, Tables 3.8-3.9

REASSESSING ELIGIBILITY FOR HOME DETENTION

Home detention with electronic monitoring can be an effective tool to steer low-risk offenders away from prison.

However, National is concerned that after home detention started under Labour as an option for low-level non-violent offenders, it is now being given to too many violent, sex, and drug offenders who pose a serious risk to the community.

In 2006/07 more than 50% of the offenders on home detention had convictions for violent, sexual, or drug offences, compared to 39% in 2001/02. More than one-in-four offenders on home detention in 2006/07 were convicted of violence-related offences, compared to one-in-eight when Labour came to power in 1999.⁶

This is despite Labour's earlier promise to review home detention in order to examine *"the appropriateness of home detention for offenders convicted of certain offences (e.g. offences involving serious violence, sex offences, or offences committed in the home)."*

Labour broke its promise, abandoning the review in favour of establishing home detention as a separate sentence and expanding eligibility, as *"a key element in reducing the need for additional prison beds"*.

In the first six months as a standalone sentence, home detention numbers have doubled, but the breach rate has almost tripled.

National will:

- Re-assess the appropriateness of home detention as a sentence for violent, sex, and drug offenders.

⁶ Parliamentary question for written answer 1593(2008), 1594(2008), 1595(2008), 15744(2007), 15872(2006)

IMPROVING CHECKS AND BALANCES FOR PAROLE

The brutal killing of Karl Kuchenbecher by Graeme Burton while he was out of prison on parole raises serious questions about the parole system.

National believes that any decision about granting parole should always put the public's right to safety first. That's why we have announced our policy on [No Parole for the Worst Repeat Violent Offenders](#).

Under that policy, a repeat violent offender such as Burton would not be eligible for parole and would serve the full length of their sentence in prison.

When Burton was released in late 2006 on parole, critical information about his alleged activities in prison was not passed to the Parole Board.

National believes that the Parole Board should have access to such information. We will, therefore, require prison managers to participate in parole hearings, to ensure that the board hears all relevant information about an offender's behaviour while he or she is in prison.⁷

The public must also be assured that prisoners released on parole be held to account for any breach of their parole conditions. Burton was given too many chances because a lack of communication between the Probation Service and Police meant there was no co-ordinated response to his parole breaches. The same issue arose in the case of parolee Jonathan Barclay, who killed a Nelson woman in a car accident after he had previously been convicted of dangerous driving while on parole.

National will require probation officers to meet with local police on a regular basis to share information about parolees.

⁷ Prior to the Parole Act 2002, section 100 of the Criminal Justice Act 1985 gave District Prisons Boards the jurisdiction to release offenders on parole who were subject to a sentence of between one and seven years. Under section 132 of this Act, the superintendent of the prison was a member of the board.

National also believes that all victims have a right to be heard before the Parole Board. Last year, Labour almost succeeded in restricting the right of victims to make oral submissions to the Parole Board.

As part of our [Victims Rights policy](#), National will review the Victims' Rights Act 2002. This review will ensure that the rights of victims are recognised, not only in parole hearings but right across the justice system.

National will:

- Deny parole to the worst repeat violent offenders. See our full policy on this [here](#).
- Require prison managers to participate in parole hearings to ensure that the board hears all relevant information about the inmate's behaviour during their time in custody
- Require police and Probation Service staff to meet on a regular basis to share information about parolees.
- Maintain and, if necessary, enhance the rights of victims to be heard before the Parole Board.

NATIONAL'S VICTIMS POLICY

For more information about the initiatives in our Victims' Rights Policy, including the establishment of a Victims Compensation Scheme and a Victims Services Centre:

SEE Our policy summary on [Victims](#).

READ Our [Policy Briefing Paper](#).

MAKING BAIL MORE EFFECTIVE

Last year, Labour amended the Bail Act by requiring courts to take into account when considering bail whether there is a "real and substantial risk" that an accused may re-offend, interfere with witnesses, or abscond. This means that previous bail breaches, or even offending while on bail, may not necessarily be considered relevant in deciding whether to grant or uphold bail.

This was part of legislation designed to "*arrest the sharp increase in the prison population in recent years,*" and the Law Society, the Police Association and the Police Prosecution Service have all stated that this change has made it easier for people to get bail.⁸

National believes that bail laws should be designed to keep the public safe. They should not be designed to lower the prison population. We will reverse Labour's changes to the Bail Act.

We will also make it clear that bail decisions should not take into account any assistance that a defendant provides to criminal investigations. The most public example of this abuse of the bail system occurred in January 2008 when a gang leader was released on bail after negotiating the return of stolen war medals from the Waiouru Army Museum. Once again, public safety did not appear to be the primary concern.

Too many offenders are breaching their bail conditions. Since Labour came into office, the number of defendants who failed to report for bail has increased by 155%. In September 2007, 18,682 court cases were on hold because defendants had absconded while on bail or simply failed to turn up.

⁸ 'Girl's family outraged that Sila may get bail', *The Press*, 20 December 2007; 'Man charged with rape may be repeat offender', *NZ Herald*, 21 October 2007; NZ Police Association, *Towards a Safer New Zealand*, June 2008, p.9

National will undertake a broader review of the Bail Act with the aim of ensuring greater compliance with bail conditions.

National will:

- Reverse recent law changes that make it easier to get bail.
- Ensure that bail is not granted in return for information.
- Review the Bail Act to improve compliance with bail conditions.

UNCLOGGING DISTRICT COURTS

The longer it takes to bring defendants to trial, the longer victims have to wait for justice. This can make their ordeal worse and prevent them from returning to the relative normalcy of their everyday lives.

Worse still, the failure to make sure defendants are tried promptly allows an increasing number of them to walk away without facing trial at all.

Trials in the High Court are experiencing growing delays. The number of outstanding trials has increased by 74% since 2002, and the median waiting time is up 49% on 2003.

Delays in the High Court should be alleviated by recent changes that allow more methamphetamine trials to be heard in district courts. But these changes are likely to add to the growing bottleneck in district courts, where the number of outstanding trials is up 33% since 2002, and the median waiting time is up 25% on 2004.

To help relieve this pressure on district courts, National will, in turn, allow more civil cases to be heard by the Disputes Tribunal.

Currently, the Disputes Tribunal can hear cases where up to \$7,500 is in dispute, a limit that has not changed since 1998. We will increase this to \$50,000, thereby expanding the number of cases that can be heard by the tribunal. This will relieve some of the pressure on the civil jurisdiction of the district courts, and free-up time and resources for the criminal jurisdiction.

National will:

- Increase the jurisdiction of the Disputes Tribunal to reduce pressure on district courts.