

Sue Moroney, MP

Sentencing Act (Domestic Violence) Amendment Bill

Member's Bill

Explanatory note

General policy statement

Domestic violence is an oppressive and devastating feature of our society – with approximately 80,000 cases per year (84,000 in 2011-2012), which have a disproportionate impact on women and children. It is a complex problem that requires a comprehensive response.

This Bill aims to be part of the solution by representing society's abhorrence about the act of domestic violence and by improving the reporting of domestic violence offending so that we can respond to the needs of domestic violence survivors, and work to prevent domestic violence.

The nature of domestic violence offending and the significant and long-term impact that it has on the lives of victims and witnesses (such as children in a relationship) makes it appropriate to be considered separately as a factor that may lead to a penalty being increased. This approach ensures that the breadth of offences that may involve or relate to domestic violence are considered and taken into account.

Judge Boshier, the former Principal Family Court Judge and now Law Commissioner, has highlighted deficiencies in the automatic access to information Judges have about an offender's history of domestic violence (including complaints and convictions) when making decisions in the Family Court.

In addition, NZ Police have stated in their 2011/2012 Annual Report that they will no longer be reporting on the domestic violence offence rate.

Access to this information is important to ensure that the right decisions are made in individual cases and to ensure tracking on how effective efforts are at responding to domestic violence in society.

The Family Court is primarily responsible for the decisions made under the Domestic Violence Act 1995, decisions relating to spouses and partners, and care and access to children of a relationship. Background information from Police and Criminal Courts about the parties to a case is essential information for a Judge to ensure that appropriate and effective steps are taken to reduce the risk of domestic violence. It is also important for a Judge to be aware of the power dynamics in a relationship, particularly marriage dissolution cases, as the Government recently decided that legal aid should not be available in these cases and parties may therefore be without legal representation.

The Bill addresses these issues by making domestic violence an aggravating factor at the time of sentencing. Currently, all criminal judges are required to weigh up the mitigating and aggravating features of a case before deciding on an appropriate sentence. Sentencing decisions are recorded and made available in subsequent judgments, including in the Family Court.

It is important to start a formal record so that we know the nature and extent of domestic violence in order to identify ways to prevent it.

Clause by Clause Analysis

Clause 1 is the title of the Bill.

Clause 2 relates to commencement. The Bill would come into force on the day after it receives Royal Assent.

Clause 3 provides that the Bill amends the Sentencing Act 2002 ("**the principal Act**").

Clause 4 amends section 4 of the principal Act by inserting a definition of "domestic violence" in the principal Act. For consistency, and to ensure that the full range of offending is covered, the definition in the Domestic Violence Act 1995 is applied.

Clause 5 amends section 9 of the Principal Act by adding a new aggravating factor to be considered by Judges at the time of sentencing – namely, that the offending involved or related (in whole or part) to domestic violence committed by the offender.

Sue Moroney, MP
Sentencing Act (Domestic Violence) Amendment Bill
Member's Bill

Contents

		Page
1	Title	1
2	Commencement	1
3	Principal Act amended	

Part 1

Amendments to Principal Act

4	Interpretation	1
5	Domestic violence as an aggravating factor	1

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sentencing Act (Domestic Violence) Amendment Bill.

2 Commencement

This Act comes into force on the day after the date on which this Act receives Royal Assent.

3 Principal Act amended

This Act amends the Sentencing Act 2002.

4 Interpretation

Section 4 is amended by inserting the following paragraph after the definition of “curfew periods”:

“domestic violence has the meaning given in section 3 of the Domestic Violence Act 1995;”

5 Domestic violence as an aggravating factor

Section 9(1) is amended by inserting the following paragraph after paragraph (e):

“(ea) that the offending involved, or related (in whole or part), to domestic violence committed by the offender.”