



23 September 2016

Submission to the Social Services Committee on the Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill

No Pride in Prisons wishes one of our representatives to appear before the committee to speak to this submission:

Alex Rossiter

No Pride in Prisons Organiser

ander.alex.r.0@gmail.com

No Pride in Prisons (NPIP) is a prisoner advocacy organisation set up in early 2015, in part to advocate for and with incarcerated people, particularly those who are LGBTIQ. *NPIP* advocates for incarcerated people with respect to various issues, focusing primarily on issues of housing and prison placement, access to medical and counselling services, and complaints of sexual and other physical assault. The organisation has recently campaigned around allegations of sexual assaults against trans prisoners. *NPIP* is united in the belief that prisons are inherently violent places and imprisonment must be entirely avoided. For this reason, the organisation is concerned about this bill and the unintended consequences it may produce.

This submission has been made on behalf of *NPIP* by Ti Lamusse and Alex Rossiter, who are *NPIP* researchers and organisers.

Contact details for the purposes of this submission are:

Ti Lamusse – *NPIP* Researcher and University of Auckland Sociologist

PO Box 5870

Wellesley Street

Auckland

ti.lamusse@auckland.ac.nz

Introduction

No Pride in Prisons (NPIP) opposes this bill in its entirety. *NPIP* opposes the bill for the following reasons:

1. We are concerned that the bill will be implemented inefficiently and inequitably.
2. The bill is unnecessarily punitive and is in breach of the *New Zealand Bill of Rights*.
3. It will have a severely negative impact on an already-vulnerable population. It will lead to higher rates of poverty, debt, homelessness, suicide, and drug-dependency.
4. It will increase rates of child poverty.
5. It will increase rates of criminalisation and incarceration.

The bill is poorly thought-out and lacks an evidence-based assessment as to its impacts on those serving community-based sentences, and their dependents. Throughout this submission, we provide an evidence-based opposition to the bill. Contrary to the supposed aims of the bill, to “enable the Department [of Corrections] to manage offenders without burdening the court system,”¹ the unintended consequences of the bill will be to push people to criminalised activities and, potentially, to imprisonment.

1. Implementation

a. Scope of Power

NPIP is very concerned with both the lack of detail as to how this bill will be implemented, as well as the likelihood that the implementation will be incompetent. First, the scope of power granted to the Department of Corrections with regard to the ability to give instructions to a person serving a community-based sentence is too broad and not adequately defined. As the bill currently stands, a warning can be issued if the person “fails to comply with an instruction from the Department of Corrections that relates to their community-based sentence.”² Although there are some statutory obligations for various community-based sentences,³ it is unclear whether “an instruction from the Department of Corrections” can be something in addition to statutory or court-imposed conditions of sentence.

NPIP is concerned that the Department of Corrections may interpret “instruction” very broadly, so as to coerce compliance for a non-court or statute-ordered condition that a probation officer may require nonetheless. For example, if a probation officer instructed a person that they must find employment within a given time frame (an unlikely court-imposed condition), and they fail

¹ Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill 2016 (92-01) (Explanatory Note).

² *Ibid.*, s 184(2)(b)(ii).

³ See: Sentencing Act 2002, ss 49, 54F, 59, 60, 61, 62, 69E.

to do so, not only would they remain unemployed but they could have their benefit entirely withheld. In such an instance, the probation officer would be substantially empowered to inflict severe economic hardship on that person as a further form of punishment.

b. Bureaucratic Errors

Concern remains that even if the Department of Corrections interprets this provision more narrowly, people who comply with their obligations may still be punished. Work and Income's track record on implementing benefit sanctions has been riddled with administrative errors, as reported by the Child Poverty Action Group (CPAG).⁴ These errors include: the failure to register that a person has in fact met their obligations; the improper sanctioning of people who have met their obligations; and the untimely re-commencement of full entitlements upon meeting obligations. We expect, given Work and Income's track record, that these kinds of bureaucratic errors will continue to occur when additional sanctions are applied to people serving community-based sentences.

c. Ineffective Notification

A fundamental problem that people who have been sanctioned under the existing regime report is that they are not adequately or appropriately notified prior to a sanction, and are not given an opportunity to address the outstanding obligation prior to the sanction coming into effect. CPAG found that this is, in part, because of the way notice of sanction is delivered – often in the form of a letter. CPAG demonstrates that the “use of letters is problematic for clients who may have limited English, be of no fixed abode or move frequently,”⁵ meaning that many people are just not made aware of a potential sanction. As a 2002 Ministry of Social Development report found:

Letters did not appear to have been an effective means of communicating with all clients. The qualitative outcomes study found that for some Pacific respondents language problems meant that they largely ignored letters. Pacific participants were more likely to report that they were unaware of the nature of the requirements. Māori respondents also found the letters they received difficult to understand and apply to their particular circumstances.⁶

As it currently stands, the bill states that “A *written warning notice* must instruct the person subject to this Part to comply with an instruction and warn that person that non-compliance with the instruction may result in the withholding of any benefit received by that person.”⁷ In other

⁴ Donna Wynd, *Benefit Sanctions: Creating an invisible underclass of Children?*, (Auckland: Child Poverty Action Group, 2013).

⁵ *Ibid.*, 7.

⁶ Dianne Anderson et al., *Evaluating the February 1999 Domestic Purposes Benefit and Widows Benefit Reforms: Summary of key findings*, (Wellington: Department of Labour and Ministry of Social Development, 2002), 23.

⁷ Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill 2016 (92-01), s 184(2).

words, the Department of Corrections is going to use a method of notification that the Ministry of Social Development found to be ineffective and potentially racially discriminatory.

As noted by the Stop the Sanctions Campaign in its submission to this committee for the Social Security Legislation Rewrite Bill, the vast majority of those who are sanctioned under Section 70A of the Social Security Act 1964 are not even aware that they have been sanctioned, the reason for it, or how to remove the sanction.⁸ It is *NPIP*'s concern that people serving community-based sentences (1) will not be adequately notified that they have failed to follow an instruction, (2) will not be adequately notified that this failure will lead to a partial or full suspension of a benefit and (3) that many people will not be aware that this process has commenced until their benefit has been partially or fully suspended.

d. Impractical Instructions

Recent media reporting has demonstrated that it is not always possible for people serving community-based sentences to fulfil their obligations in the time frame set out by the Court or the Department of Corrections. Leah Flynn, in an article for *Stuff*, notes how people required to do community service are finding it difficult to make up the hours due to a lack of service supervisors.⁹ These people, following the implementation of this bill, may be punished for failing to meet instructions and for reasons outside of their control.

For others, standard conditions for many community-based sentences may be entirely impractical. For example, many community-based sentences have conditions such as that “the offender must not associate with any specified person, or with persons of any specified class, with whom a probation officer has, in writing, directed the offender not to associate.”¹⁰ For many people, particularly if they have family, friends and loved-ones who are gang-affiliated, this non-association order may apply across a person's entire social network. Non-association orders can force people to choose between either being cast out from all potential support they could receive while serving a community-based sentence, or continuing to associate with people and run the risk of being caught in breach of that order. In the event that someone maintains contact with whānau as a means of community support, this bill gives the Department of Corrections the power to remove what little financial support they have.

2. Unnecessary Punitiveness

NPIP's second point of contention with this bill is values-based. It is our belief that when someone does something harmful, everything should be done to address that harm and take steps

⁸ Jonathan King, *Stop the Sanctions: Submission to the Social Services Select Committee on the Social Security Legislation Rewrite Bill Sections 176, 177 and 178*, (Auckland: Auckland Action Against Poverty, 2016).

⁹ Leah Flynn, “Canterbury community work staff 'too busy' for man to complete his hours,” *Stuff*, September 9, 2016, <http://www.stuff.co.nz/national/83993719/departments-of-corrections-too-busy-for-man-to-complete-his-hours?cid=facebook.post.83993719>.

¹⁰ Sentencing Act 2002, ss 49(1)(h), 54F(1)(h).

to ensure that it does not happen again. We believe that, instead of a punishment response to harmful behaviour, we need to support those who have done harm in every way possible to help them to change. What this bill represents is a further movement away from that kind of approach. By imposing a criminal conviction and a community-based sentence, the Court has already decided that the person before them deserves not only that sentence, but also the flow-on effects of a conviction, which include higher rates of unemployment and restrictions on movement.

What this bill would do is add another layer of punishment. It assumes that not only is this person deserving of being punished with a higher likelihood of long-term unemployment, but also that once unemployed they deserve to experience an even more acute state of poverty than those struggling on existing benefit levels.

To make matters worse, this punishment-on-top-of-punishment has *retroactive effect*. Section 186 of the bill states that someone already serving a community-based sentence can be retroactively “notified” of the consequences of non-compliance. The ability to be “notified” means that people *currently* serving community-based sentences can have their benefits partially or fully suspended – a form of financial punishment. This would be an additional punishment, which did not exist at the time that the ‘offence’ was supposedly carried out. This is of concern, as the person who gave the ‘offender’ a community-based sentence was not at the time able to assess whether the effect of this potential financial punishment made it a ‘just’ punishment. Instead, this bill would give the Department of Corrections the ability to enact a form of punishment, which did not exist when the person was sentenced. This retroactive punishment on those already serving community-based sentences is unfair and in breach of the spirit of the *New Zealand Bill of Rights Act*.¹¹

3. Effects of the sanctions on the sanctioned person

a. Effect of existing sanction regime

The New Zealand Council of Christian Social Services recently released their 2016 *Vulnerability Report*, which compiles statements from various religious and charitable organisations, along with Work and Income sanction data.¹² Their findings are presented from 2009 onwards and place emphasis on the effects of sanctions enacted after 2010 as a result of the ‘Future Focus’ reforms. The data shows that 80,202 people were sanctioned by Work and Income from July 2013 to September 2014.¹³ The main reason for sanctioning was that people had missed one or more of their scheduled appointments – an arbitrary reason to endanger someone’s means of survival. Of these 80,202 people, 19,551 were sole parents, and at least 27,778 households with

¹¹ New Zealand Bill of Rights Act 1990, s 26(1).

¹² New Zealand Council of Christian Social Services, *Vulnerability Report*, (Wellington: New Zealand Council of Christian Social Services, 2016).

¹³ *Ibid.*, 16.

children received benefit sanctions overall.¹⁴ So not only were beneficiaries' livelihoods threatened, but their children's too.

Data from the New Zealand Federation of Family Budgeting Services shows that every year since the 'Future Focus' reforms and associated sanctions were introduced, their clients' debts to government departments have increased.¹⁵ Since the fiscal year 2009/10 debt has increased by 144%,¹⁶ suggesting that with greater sanctions come greater debts, along with debt-associated stress and frustration. If beneficiaries serving community-based sentences are cut from welfare, their legal path to finance is through debt.¹⁷

Currently, welfare payments can also be deducted in order to pay for existing fines and debts. Recently, beneficiaries forced to stay in motels due to the ongoing housing crisis have accumulated large debts, some of which are recoverable by Work and Income. In one instance, *Al Jazeera* interviewed a 38 year-old woman experiencing large deductions in her benefit.¹⁸ Two-thirds of the woman's benefit was being cut due to unpaid fines and loans, with an additional deduction of \$10 every week for the next two and a half years due to motel costs.¹⁹ RNZ reported in May 2016 that the total debt owed to WINZ by beneficiaries currently sits at around \$417 million.²⁰ The effect of the sanctions and of resulting indebtedness is that it sometimes-substantially reduces the income of beneficiaries. This is part of the reason for a marked increase in the rate of poverty among beneficiaries in recent years.²¹

b. Likely impact of proposed sanctions

In order to provide an evidence-based assessment of this bill in terms of its effects on people serving community-based sentences, we refer to the closest case study we can find to the proposed changes. In 1996, then-President Bill Clinton signed into law the Personal Responsibility and Work Opportunity Act, which prevented people who had been incarcerated for drug felonies from accessing food stamps and the Temporary Assistance to Needy Families (TANF) programme.²²

¹⁴ Ibid.

¹⁵ Ibid., 4.

¹⁶ Ibid.

¹⁷ Although many will be forced to engage in illegal activity in order to make ends meet.

¹⁸ Tarek Bazley, "New Zealand's Homeless: Living in Cars and Garages," *Al Jazeera*, August 24, 2016, <http://www.aljazeera.com/indepth/features/2016/08/zealand-homeless-living-cars-garages-160811062112936.html>.

¹⁹ Ibid.

²⁰ Sharon Brett Kelly, "Government Won't Wipe Work and Income Motel Debts," *RNZ*, May 24, 2016, <http://www.radionz.co.nz/news/national/304607/homeless-family-faces-%24100k-winz-debt>

²¹ Máire Dwyer, "Sole Parents in Poverty: it's time to update the policy paradigm," *Policy Quarterly* 11, no. 1 (2015).

²² Personal Responsibility and Work Opportunity Act 1996 (US).

The Act gives individual states the ability to remove or amend the sanction, which has meant that different states have different rules for whether or not drug felons can have access to welfare.²³ The reason this is an analogous case to the present bill is that it involves a section of the community who have come into contact with the criminal justice system and who are dependent on the state in order to make ends meet. Using data from this experiment with welfare policy in the US, it is clear that there will be some dire unintended consequences of this bill.

In a study of formerly incarcerated people in three states in the US, Wang et al. found that drug felons living in states where they were ineligible for welfare were much more likely to have insecure access to food, to be homeless, and to engage in unsafe activities.²⁴ These people were also more likely to report going entire days without eating than drug felons living in states without bans on welfare for those convicted of drug offences.²⁵ In part, this is because drug felons are less likely to find stable, if any, employment due to their criminal conviction history.²⁶ As the state fails to provide a safety net for people who are unable to find legal employment, they are effectively left to starve or find illicit means of getting by.

In *A Lifetime of Punishment: The Impact of the Felony Drug Ban*, The Sentencing Project notes the serious public health effects of the welfare ban.²⁷ It found that those people who did not have access to welfare were more likely to engage in high-risk activities, such as using drugs prior to sex. People who were ineligible for welfare were found to be more likely to engage in activity that put them at risk of contracting HIV. The Sentencing Project also notes that the lack of access to food for those who had been banned from welfare is itself a public health emergency.²⁸ It should go without saying that, given the immense wealth of states such as the US and New Zealand, no one should go hungry because of punitive public policy.

This will be one of the effects of this bill. **This bill will lead to more people going without food for extended periods of time. It will make more individuals and families homeless. It will socially and economically marginalise the people it affects.** It will place even more pressure on a section of the population that is already far more likely to both attempt suicide and commit suicide.²⁹ It will drive those affected into even deeper indebtedness. **Let us be clear: by**

²³ Elizabeth Farid quoted in Marjorie Valbrun, "States: Food Stamp, Welfare Bans for Drug Felons Counterproductive," *New America Media*, April 9, 2011, <http://newamericamedia.org/2011/04/states-food-stamp-welfare-bans-for-drug-felons-counterproductive.php>. Teresa Wiltz, "More States Lift Welfare Restrictions for Drug Felons," *The Pew Charitable Trusts*, August 9, 2016, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/08/09/more-states-lift-welfare-restrictions-for-drug-felons>.

²⁴ Emily Wang et al., "A Pilot Study Examining Food Insecurity and HIV Risk Behaviors Among Individuals Recently Released from Prison," *AIDS Education and Prevention* 25, no. 2 (2013): 119.

²⁵ *Ibid.*: 112, 113.

²⁶ Marc Mauer and Virginia McCalmont, *A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits*, (Washington, DC: The Sentencing Project, 2013), 7.

²⁷ *Ibid.*, 8.

²⁸ *Ibid.*

²⁹ Devon Indig, Craig Gear and Kay Wilhelm, *Comorbid Substance Use Disorders and Mental Health Disorders Among New Zealand Prisoners*, (Wellington: Department of Corrections, 2016).

supporting this bill, you would be demonstrating your support for putting vulnerable people at even further risk.

4. Effects on child poverty

There is no data available on how many of those who committed the 44,058 offences that led to community-based sentences in the fiscal year 2015 have dependent children.³⁰ We can nonetheless assume that a large number of those people will have dependent children, given that CPAG has found that “about 20,000 children at any point in time are affected by the incarceration of a parent.”³¹ As there is a far greater number of people who are serving community-based sentences than those serving prison time, we can expect a higher number of children to be affected by a parent or guardian serving a community-based sentence.

This means that children will be punished because of this bill. Although the bill currently states that where “the Ministry of Social Development receives an instruction from the Department of Corrections under this Part the Department of Corrections may not instruct the Ministry of Social Development to reduce a person’s benefit by any more than 50% of the gross benefit where that person is responsible for the care of any dependent child”,³² this still amounts to a severe economic punishment for the child.

As CPAG notes, “low benefit levels are a major cause of poverty. Put simply, families relying on a benefit for their standard of living don’t have enough money.”³³ A 2009 Ministry of Social Development report found that 51% of all families with children supported by a full benefit live in severe or significant hardship.³⁴ Reducing the benefit payment of a child’s caregiver will unquestionably put that child at even greater risk of food and housing insecurity. It relegates the child to an even more severe form of poverty.

These kinds of sanctions, along with the existing sanctions,³⁵ are in breach of the *United Nations Convention on the Rights of the Child*, which New Zealand ratified in 1993.³⁶ Article 26 states

³⁰ Statistics New Zealand, “Annual Community Sentence Offender Population for the latest Fiscal Years (ANZSOC),” *Statistics New Zealand*, April 27, 2016, <http://nzdotstat.stats.govt.nz/wbos/Index.aspx?DataSetCode=TABLECODE7325>.

³¹ Susan St John, Catriona MacLennan, Hannah Anderson and Rebecca Fountain, *The complexities of ‘relationship’ in the welfare system and the consequences for children*, (Auckland: Child Poverty Action Group, 2014), 17.

³² Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill 2016 (92-01), s 183(3).

³³ Michael O’Brien, “Families relying on a benefit simply don’t have enough money,” *Child Poverty Action Group*, May 6, 2015, <http://www.cpag.org.nz/low-benefit-levels-a-major-cause-of-poverty/>.

³⁴ Bryan Perry, *Non-income Measures of Material Wellbeing and Hardship: First Results from the 2008 New Zealand Living Standards Survey, With International Comparisons*, (Wellington: Ministry of Social Development, 2009).

³⁵ As argued in Donna Wynd, *Benefit Sanctions: Creating an invisible underclass of Children?*, (Auckland: Child Poverty Action Group, 2013), 2.

³⁶ United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 12 September 1990).

that “Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the *full realization* of this right in accordance with their national law [emphasis added].”³⁷ This bill, which would deny up to 50% of a benefit to the caregiver of a child, directly contravenes that child’s right to “full realisation” of their right to social security.

5. Effects on criminalisation and incarceration

This bill’s rationale is partly to prevent people from facing new criminal charges for failing to meet probation obligations, but given the likely effects, it is remarkable that it even made it to select committee. An undeniable effect of this bill will be to increase the likelihood of people serving community-based sentences engaging in criminalised activities. **It will increase the burden on the court system and lead to more people being imprisoned.**

Data from the US ban on welfare for drug felons makes this clear. As noted above, the effect of leaving prison with a criminal conviction makes it very difficult to find a job.³⁸ For those people whose social networks do not have the financial means to support them, which is the vast majority of incarcerated people in the US,³⁹ they are fundamentally dependent on the state to ensure that they have food, shelter and clothing. When the state fails to provide that safety net, they can choose to either take on high-risk debt or engage in criminalised activities in order to make ends meet. In the US, there has been stubbornly high recidivism among drug felons in those states that enforce the ban on welfare, compared to those that do not.⁴⁰

As noted by the Deputy Director of the US-based HIRE Network, when “individuals with drug convictions are denied food stamps and cash benefits, establishing economic stability upon re-entry becomes more difficult, and it becomes more likely that they may return to criminal activity and drug use instead of maintaining sobriety and obtaining gainful employment.”⁴¹ This bill would have very similar effects to the US ban on welfare for drug felons. Given that the reason that someone is on a benefit is usually because they either cannot find work or they cannot work, reducing or removing their sole source of income may force some people to steal or engage in fraud or illegal employment in order to feed and house themselves and their families. It may also make people more reliant on gangs as a form of social and economic support. **As a result, *No Pride in Prisons* expects the result of this bill to be a higher rate of criminalisation among those serving community-based sentences.**

³⁷ Ibid., art 26.

³⁸ Marc Mauer and Virginia McCalmont, *A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits*, (Washington, DC: The Sentencing Project, 2013).

³⁹ Bernadette Rabuy and Daniel Kopf, “Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned,” *Prison Policy Initiative*, July 9, 2015, <http://www.prisonpolicy.org/reports/income.html>.

⁴⁰ Cynthia Godsoe, “The Ban on Welfare for Felony Drug Offenders: Giving a New Meaning to Life Sentence,” *Berkeley Women's Law Journal* 13, no. 1 (1998): 262.

⁴¹ Elizabeth Farid quoted in Marjorie Valbrun, “States: Food Stamp, Welfare Bans for Drug Felons Counterproductive,” *New America Media*, April 9, 2011, <http://newamericamedia.org/2011/04/states-food-stamp-welfare-bans-for-drug-felons-counterproductive.php>.

Higher rates of recidivism among drug felons is part of the reason that a large number of US states are changing their policy on welfare for drug felons. Understanding that the cost of incarcerating people is far greater than the cost of providing a basic level of subsistence, there has been a movement in most states, including those governed by Republicans, away from the ban.⁴² Following the lead of those states, we ask the Select Committee to learn the lessons from this experiment in punitive crimino-welfare policy.

Conclusion and Recommendations

For the above reasons we make the following recommendation:

That the Social Security (Stopping Benefit Payments for Offenders who Repeatedly Fail to Comply with Community Sentences) Amendment Bill be rejected in its entirety.

As outlined in this submission, we are concerned about this bill for five key reasons. First, it is likely to be implemented in an ineffective and inequitable manner. Second, it will constitute an additional, unnecessary punishment and will have retroactive effect on people currently serving community-based sentences, in breach of the *New Zealand Bill of Rights Act*. Third, it will lead to increased economic insecurity, higher rates of homelessness and worse health outcomes for those affected. Fourth, it will further exacerbate the problem of child poverty in New Zealand. Fifth and finally, it will lead to greater rates of criminalisation for those serving community-based sentences.

No Pride in Prisons believes that everything that can be done must be done to ensure the safety of children and communities at risk of harm. Our analysis suggests that this bill will do the exact opposite. As noted by Mohan and Lower-Basch, “providing assistance through safety net programs for ex-offenders has been shown to significantly reduce recidivism.”⁴³ It is only by providing people who have done harm with all the support they need in order to change their behaviour that they can change. For that reason, as an alternative to this bill, *No Pride in Prisons* recommends that existing sanctions against beneficiaries be removed and that the level of payment be increased to a rate equivalent to a living wage.

Ti Lamusse and Alex Rossiter
On behalf of *No Pride in Prisons*

⁴² Marissa McCall Dodson quoted in Teresa Wiltz, “More States Lift Welfare Restrictions for Drug Felons,” *The Pew Charitable Trusts*, August 9, 2016, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/08/09/more-states-lift-welfare-restrictions-for-drug-felons>.

⁴³ Lavanya Mohan and Elizabeth Lower-Basch, *No More Double Punishments: Lifting the Lifetime Ban on Basic Human Needs Help for People with a Prior Drug Felony Conviction*, (Washington, DC: CLASP, 2014), 2.