

Drug Overdose (Assistance Protection) Legislation Bill

Submission of the New Zealand Law Society Te
Kāhui Ture o Aotearoa

16 June 2026

1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**the Law Society**) welcomes the opportunity to comment on the Drug Overdose (Assistance Protection) Legislation Bill (**the Bill**).
- 1.2 The Bill proposes to amend the Misuse of Drugs Act 1975 (**the Act**) by inserting new protections to ensure those who call for life-saving help when they are with someone who is experiencing a drug overdose or adverse drug reaction are not charged for low-level drug offences.
- 1.3 The Law Society supports the underlying aim of the Bill to encourage persons who become aware that they, or others, have taken an overdose of drugs or are experiencing a serious adverse reaction to drugs consumed to seek medical treatment for the person affected. Removing or reducing the threat of prosecution for the drug offending that led to the overdose or adverse reaction may be effective. The trade-off between encouraging reporting on health grounds and creating an exemption from criminal liability is a policy matter for Parliament on which the Law Society does not comment further.
- 1.4 However, the Law Society is concerned the Bill, in its current form, will not necessarily achieve that aim. Several issues arise from the Bill's current drafting, and we recommend the Bill is considered further by officials with appropriate amendments made if it is to proceed. Specific issues the Law Society recommends the Select Committee clarify and seek further advice on include:
 - (a) The relationship of the definitions in proposed section 34B(5) to the list of specified persons in section 34B(1).
 - (b) The inclusion of the words "good faith" in proposed section 34B(1)(b) and the scope of that subsection.
 - (c) The inclusion of the words "at the scene" in proposed section 34B(1)(c) and the scope of that subsection.
 - (d) Whether an accessory after the fact should fall within proposed section 34B(3).
 - (e) The offences listed in proposed section 34B(3).
 - (f) The scope and effect of proposed section 34(4) including the application of the Search and Surveillance Act 2012 and whether a reverse onus provision exists.
 - (g) The definition of drug-related acute adverse reaction including the use of the words "an unwanted or" and the standard of reasonableness to be applied.
 - (h) The definition of 'social sharing'.
 - (i) Whether there is a basis for including or excluding defendants on police bail in the proposed amendments to the Bail Act 2000.

1.5 This submission has been prepared with input from the Law Society’s Criminal Law Committee.¹

1.6 The Law Society wishes to be heard.

2 Part 1 - Amendment to Misuse of Drugs Act 1975

Proposed section 34B(1) and (2)

A person who experiences a drug overdose or drug-related acute adverse reaction

2.1 Clause 4 inserts new section 34B into the Act and provides protection to certain specified persons from prosecution for specific offences under the Act where “the evidence that supports the prosecution was obtained or discovered as a result of emergency assistance having been sought for a drug overdose or drug-related acute adverse reaction (either of the person who may otherwise be prosecuted or another person)”.²

2.2 Proposed section 34B(1)(a) states that a specified person (against whom no prosecution will be commenced) includes “a person who experiences a drug overdose or drug-related acute adverse reaction”. While this is logical on its face, the person calling the ambulance only has to ‘reasonably believe’ that the person is suffering a drug overdose. However, it appears the person for whom the ambulance has been called must have actually had a drug overdose or acute adverse reaction due to the inclusion of the word ‘experiences’. The position is far from clear though given the definition of ‘drug overdose’ in section 34B(5) does not seem to require an actual overdose. Take the following scenario for example: if A consumes drugs, and then falls deeply asleep, B, failing to wake A, then thinks A is suffering a drug overdose and calls for emergency assistance. In this example, B may be protected against prosecution (under a different sub-section) but A would not fall within the ambit of section 34B(1)(a), unless the definitions under section 34B(5) are taken as carrying through the lesser requirement of a ‘suspected’ acute adverse reaction or ‘reasonable’ belief of a drug overdose. The Law Society recommends this is clarified.

A person who, in good faith, seeks emergency assistance for another person who is experiencing a drug overdose or drug-related acute adverse reaction

2.3 Proposed section 34(1)(b) also lists a specified person as “a person who, in good faith, seeks emergency assistance for another person who is experiencing a drug overdose or drug-related acute adverse reaction”. It is unclear what the words ‘in good faith’ add to this provision if as discussed in paragraph 2.2 above, the drug-taker has actually had an overdose or has had an acute adverse reaction. It is hard to foresee a situation where someone would call emergency assistance without good faith (unless either the individual seeking assistance had supplied the drugs and was seeking to avoid liability or was making the call as a prank or in furtherance of a grievance against the drug-taker). The former is a matter which should be expressly addressed if this is the intention. However, it seems more likely that the inclusion of “in good faith” is intended to protect a

¹ More information on the Law Society’s Criminal Law Committee is available on the Law Society’s website here: [NZLS | Criminal Law Committee](#).

² Drug Overdose (Assistance Protection) Legislation Bill, Explanatory Note, p 1.

person who wrongly – and perhaps unreasonably – believes that such an overdose or adverse reaction has occurred.

- 2.4 Given the possible arguments that may arise where it is seen someone hasn't acted 'in good faith', the Law Society recommends the Committee seek advice on this matter and redraft section 34B(1)(b) to better reflect the different possible situations in which it might apply.
- 2.5 It is also unclear what is meant by the words 'seeking... emergency assistance'. On its face, it doesn't appear to actually require that a call for an ambulance is made. Are preliminary steps enough, for example trying to find a phone? The issue may arise where there is a genuine drug overdose/acute adverse reaction (for example at a music festival) which prompts several people to seek emergency assistance, with differing methods and levels of success. All such people are questioned and admit drug use. Would all be immune from prosecution? Or only some? And if so, what is the dividing point?
- 2.6 We invite the Select Committee to clarify the scope of this subsection.
- At the 'scene'*
- 2.7 Proposed section 34B(1)(c) references persons who are "at the scene" where the acute adverse drug reaction or drug overdose occurs and remain "at the scene" to offer support or assistance. Section 34B(2)(b) also refers to a person remaining "at the scene" of such a drug overdose or acute adverse reaction. That wording appears to assume there will only be one "scene". This position is to some extent hard to reconcile with the wording of proposed section 34B(3)(e) which contemplates the commission of drug offences (including supply and consumption) in a vehicle or other conveyance - which may be in motion during the commission of the offence. If an overdose occurs in a moving vehicle or consumption is followed by an acute adverse reaction while the vehicle is in motion, where is the "scene"? Is continuing presence in the vehicle necessary? Or would the proposed immunity apply where the person suffering the overdose or acute adverse reaction is removed from the vehicle as a temporary measure while emergency assistance is sought?
- 2.8 Other scenarios that may create difficulties include, for example:
- (a) A large festival in Hagley Park. Is everyone present at the festival covered by this subsection, or do you need to be within touching distance?
 - (b) A party at a house. Do they have to be in the same room as the affected individual?
- 2.9 It is also unclear if the specified person must have been at the scene at the time the drugs were taken, or whether it is enough that they came onto the scene after the fact.³ The Law Society considers the language used could be read both ways.
- 2.10 Further, proposed section 34B(c) applies to someone who remains at the scene to offer support or assistance to "any person". The ambit of this is broader than just applying to the person who has been affected by a drug overdose or acute adverse reaction.

³ See also the discussion at paragraph 2.13.

- 2.11 In the Law Society’s view, the “at the scene” wording does not seem apposite to achieve the underlying aim of the Bill. We recommend the Select Committee take advice as to possible amendments which would clarify the scope of this subsection and provide better guidance on whether the words “at the scene” are necessary.
- 2.12 Finally, as a minor point, the Law Society notes there is an apparent typographical error in proposed section 34B(2)(b) where “medial” should be “medical”.

Proposed section 34B(3)

Scope of immunity – liability as an accessory after the fact

- 2.13 The immunity provision in proposed section 34B(3) of the Act will apply both to principal offenders against the relevant sections of the Act and to persons who are secondary parties to that offending (as per section 66(1) of the Crimes Act 1961). However, the Bill is silent as to potential liability under section 71 of the Crimes Act 1961 as an accessory after the fact. That section reads:

An accessory after the fact to an offence is one who, knowing any person to have been a party to the offence, receives, comforts, or assists that person or tampers with or actively suppresses any evidence against him, in order to enable him to escape after arrest or to avoid arrest or conviction.

- 2.14 The elements of liability as an accessory after the fact are generally regarded as being fourfold:⁴
- (a) an offence must have been committed;
 - (b) the alleged accessory must have assisted a party to the offending or done an act which actively suppressed any evidence against the offender;
 - (c) the alleged accessory must have known at the time of the assisting or suppressing that the offender had committed the crime; and
 - (d) the alleged accessory had the purpose of enabling the offender to escape detection or conviction.
- 2.15 In the context of proposed section 34B, a “specified person” who commits any one of the offences listed in section 34B(3) may have immunity from prosecution but a person who is not a “specified person” and acts to conceal the offending of the specified person, may still be liable as an accessory after the fact. This may not have been considered as an issue in the drafting of this subsection.
- 2.16 There is also a possibility, on the current draft wording, of liability under section 71 of the Crimes Act where specified person A elects to seek emergency assistance or treatment for specified person B who has experienced an overdose or adverse reaction on the dual grounds that such treatment is necessary for B’s safety and that seeking treatment for B will prevent both A and B from prosecution for any of the section 34B(3) offences. The Court of Appeal in *Nicolls v R* [2016] NZCA 201, at [26], said that it would

⁴ See *R v Thomson* (1992) 9 CRNZ 108 (HC) at 109; applied in *R v Young* [2012] NZHC 902 at [9]; and *R v Johnson* [2020] NZHC 1036 at [9].

be sufficient for liability that one of the purposes for which the alleged accessory acted was to 'assist the principal offender'. Actual or potential liability of specified person A in such a scenario would clearly undercut the effect and purpose of proposed section 34B.

- 2.17 The Law Society recommends the Select Committee consider whether alteration to proposed section 34B(3) - either by specific reference to section 71 of the Crimes Act or otherwise - is necessary to enable proposed section 34B to operate as intended.

Inclusion of section 6(1) of the Act in proposed section 34B(3).

- 2.18 It is not clear to the Law Society why proposed section 34B(3)(b) includes offences against section 6(1)(e) of the Act. That offence deals specifically with selling controlled drugs, something which, in our view, is clearly outside the "social sharing" element of proposed section 34B(3)(b). The inclusion of offences against section 6(1)(f) of the Act is also problematic, insofar as that provision includes possession of a controlled drug for the purposes of sale.

- 2.19 The Law Society recommends the Select Committee take advice as to whether the inclusion of offences aimed solely at the sale of controlled drugs, are intended to fall within the ambit of proposed section 34B.

Inclusion of section 9 of the Act in proposed section 34B(3) and "two plants" limit

- 2.20 Proposed section 34B(3)(c) includes section 9 of the Act, limited to the cultivation of no more than two prohibited plants. The list of prohibited plants is set out in section 2 of the Act. It includes:

- (a) any plant of the genus Cannabis
- (b) any plant of the species *Papaver somniferum* (opium poppy)
- (c) *Erythroxylon coca* and *Erythroxylon novagranatense* (syn *E truxillense*) and every other species of the genus *Erythroxylon* from which a controlled drug [coca and cocaine] can be produced
- (d) any plant of the species *Lophophora williamsii* or *Lophophora lewinii* (cactuses from which peyote and mescaline can be produced)
- (e) any fungus of the genera *Conocybe*, *Panaeolus*, or *Psilocybe* from which a controlled drug can be produced or which contains a controlled drug
- (f) any other plant which is declared to be a prohibited plant by regulations made under this Act

- 2.21 First, in the Law Society's view, expert advice may be necessary as to whether a "two plant" standard is appropriate given the different potential yields of the plants listed above and the different characteristics of the drugs which could be produced as a result of that cultivation.

- 2.22 Second, given the Act also includes as a prohibited plant [sic] "any fungus of the genera *Conocybe*, *Panaeolus*, or *Psilocybe* from which a controlled drug can be produced

or which contains a controlled drug,” the wording of proposed section 34B(3)(c) would, on a literal reading, not apply to cultivation of such fungi.

Exclusion of section 12A of the Act

- 2.23 The Law Society notes the Bill does not extend to affecting in any way investigation of, or prosecution of, offences under section 12A of the Act. That section creates an offence of possession of equipment, material, and substances used in production or cultivation of controlled drugs. It may be that this is an oversight in drafting the Bill, but in light of such omission, the Law Society recommends the Select Committee take advice on the potential effects of omitting reference to section 12A (in proposed section 34B(3)).
- 2.24 More generally, the Law Society invites the Select Committee to consider whether all the offences listed in proposed section 34B(3)(b) are necessary to achieve the underlying policy aim of the Bill.

Proposed section 34B(4) - Searches and search warrants

- 2.25 Proposed section 34B(4) states that “to the extent that, in the circumstances described in subsection (2)(a), a constable has reasonable grounds to believe or to suspect a matter that would authorise a search under sections 20 to 23 of the Search and Surveillance Act 2012, the constable must be treated as not having the grounds that would authorise a search”. The scope and effect of this subsection is unclear, and requires amendment.
- 2.26 The reference to sections 20-23 of the Search and Surveillance Act 2012 (**SSA**), suggests it is limited to cases where such a warrantless search has been, or would have been, undertaken. If so, the Bill would not appear to affect applications for, or the issue of, a search warrant under sections 98-102 of the SSA, where different procedures and criteria apply. While this may not have been the intention of the Member drafting the Bill, the extent to which the SSA applies, should be clarified.
- 2.27 If the intention is to prevent searches, whether warranted or warrantless, it would be useful for the Bill to specifically state this. It is also not clear whether proposed section 34B(4) would prevent reliance on knowledge or information acquired in the circumstances described in proposed section 34B(2)(a) to support an application for a search warrant in relation to any of the offences listed in proposed section 34B(3).⁵ The current wording also may cause difficulties if the constable had already formed a sufficient belief that an offence under the Act was being committed prior to a call being made for emergency assistance. Are the pre-existing grounds for a search or for an application for a search -warrant to be considered, no longer valid? If so, would a warrant validly issued on the basis of the relevant belief somehow be nullified?
- 2.28 Further, proposed section 34B(4) would appear not to prevent Police relying on such knowledge or information when seeking a search warrant in relation to section 12A offences where the observations or information showed a proper basis for a search in relation to those offences. A warrant obtained on that basis would not become invalid

⁵ Compared with, for example, the ability to rely on material ruled inadmissible in a trial to support a warrant application in *R v Alsford* [2017] NZSC 42.

where the Police application also had the collateral purpose of seeking evidence in relation to one or more of the offences listed in subsection 34B(3).⁶

- 2.29 Finally, as currently drafted, the effect of proposed section 34B(4) is to limit the ability of police to engage in a search. The impact of this on the provisos in proposed section 34B(3) must be considered. The effect of subsection 34B(3)(b) and (c) is that no prosecution can be commenced if there is ‘social sharing’ of a controlled drug or if the cultivation is limited to ‘no more than 2 plants’. However, section 34B(4) removes the ability of the police to carry out a search to ascertain whether these provisos are met. The proposed section could therefore be interpreted as placing some evidential onus, at the very least, on the person charged with an offence and seeking to rely on the proviso. To avoid prosecution, they must demonstrate that they were, for example, only sharing between five friends, or only had two plants.
- 2.30 It is unclear whether this subsection is intended to operate as a reverse onus or what the applicable standard is, particularly given Police, as a consequence of subsection 34B(4), have no way to prove the proviso has not been met.
- 2.31 If the intention is to incorporate a reverse onus, it should be made clear in the statute, and the placing of an onus on the defendant justified. The Law Society recommends the Select Committee take advice as to these matters, and where desirable and necessary, make appropriate amendments to provide greater clarity.

Proposed section 34B(5) - interpretation

Drug related acute adverse reaction

- 2.32 Proposed section 34B(5) defines three key terms used throughout the section. The first is “drug related acute adverse reaction” which is defined as meaning:
- an unwanted or a harmful physical or psychological reaction—
 - (a) that is experienced by an individual who has used a controlled drug; and
 - (b) that is suspected to have arisen from, or to be related to, the use of the controlled drug; and
 - (c) that a reasonable person would believe requires emergency assistance.
- 2.33 Several issues arise. First, it is unclear what ‘unwanted’ or ‘harmful’ means in this context. It could be argued that every use of a controlled drug is harmful from a physical or psychological perspective. It is also difficult to conceive of a case where a reaction which meets the emergency criterion in paragraph (c) would be “unwanted” but not also be physically or psychologically harmful. The inclusion of “unwanted” may therefore create unnecessary difficulty and confusion in practice.
- 2.34 Second, sub-paragraph (b) does not indicate who must “suspect” the cause of the adverse reaction to have arisen from the use of a drug, nor when the suspicion must have arisen. Given the person who consumed the drug/s may or may not be capable of coherent

⁶ *R v Williams* [2007] NZCA 52, [2007] 3 NZLR 207, (2007) 23 CRNZ 1 at [36]–[37].

analysis, communication or decision-making, it would be logical for the criterion to be worded as suspected by the person who has consumed the drug or by the person seeking emergency treatment for the consumer. An express statement to that effect would make the subsection more clear, although it might not avoid difficulties in cases where either the consumer of the drug or the person seeking emergency treatment for the consumer has wrongly formed the view that the consumer is in need of emergency treatment for a non-drug related condition (for example that unconsciousness was caused by a fall rather than the ingestion of a drug). A positive belief that the medical condition was from some such cause rather than a drug overdose or reaction leaves little or no room for a “suspicion” that drugs were the cause. Again, clarity is desirable,

- 2.35 The Law Society recommends the Select Committee consider omitting the words “an unwanted or” and seek further advice as to what the position should be in regard to “suspecting” the reason for emergency treatment is a drug overdose or acute adverse reaction.

Reasonableness criterion

- 2.36 The third criterion in sub-paragraph (b), that a reasonable person would believe emergency assistance was necessary, also requires further consideration. It is reasonably likely that a person who is aware of an adverse reaction to a consumed drug, will not be thinking clearly about their position and may unreasonably believe that emergency assistance is needed. This is perhaps most likely with an inexperienced consumer.
- 2.37 Similarly, it is unclear what the standard should be when the ‘reasonable person’ is also on drugs. See for example, *R v Creighton* (1993) 105 DLR 632 (discussed in New Zealand in *R v Hamer* [2005] 2 NZLR 81) where the Supreme Court of Canada considered this in terms of a charge of manslaughter by criminal negligence. The question was whether a reasonable person would have foreseen the risk of bodily harm from leaving a person who was having an adverse reaction for several hours before calling for emergency assistance. The court discussed in detail whether Creighton, who had taken drugs, should be considered in relation to a ‘reasonable person impaired by drugs’ (a lower standard) or a ‘reasonable experienced drug user’ who should have recognised the signs of drugs gone wrong (a higher standard).
- 2.38 Given caselaw is not clear, the Law Society invites the Select Committee to seek advice, and to consider the policy issues, as to which standard should apply, and therefore whether amendment to the Bill is desirable.
- 2.39 Similar issues also arise regarding the definition of “*drug overdose*”. Harmony between that definition and the definition of “*drug-related acute adverse reaction*” is essential.

“Social sharing”

- 2.40 The definition of “social sharing” of a controlled drug, is extensively defined in proposed section 34B(5). The first part of the definition, in paragraph (a) is:

means gifting or sharing, or offering to gift or share, an amount of a controlled drug (not being an amount over which a controlled drug is presumed to be for supply) between not more than 5 individuals;

2.41 The definition does not in fact require any controlled drug be “gifted” or “shared” – an offer to share or gift which is not accepted and acted on is sufficient (on current drafting). It is not clear this was the intention. Nor is it clear whether an offer to share or gift the drug made to a group containing more than five individuals (on the basis that only five may receive the drug) would attract protection from prosecution. In the Law Society’s view, this should be clarified.

2.42 There is also no indication why the criterion of “five” individuals was selected and whether that is an appropriate figure. The Select Committee may wish to seek expert advice as to whether there is a sufficient evidential basis for that figure or for a smaller or larger number.

Social sharing – obtaining a material benefit or avoiding a material detriment

2.43 The second limb of the definition provides that social sharing (of a controlled drug) does not include any gifting or sharing for the purpose of either “obtaining a material benefit or avoiding a material detriment”.

2.44 The apparent intention is to ensure that the new provision will not apply to persons who are essentially trafficking in controlled drugs, whether on a regular basis or only occasionally. This is a commendable aim. However, the proposed exclusion may be expressed in overly broad terms.

2.45 The phrases “material benefit” and “material detriment” are not used elsewhere in the Act. A small number of statutes employ a similar reference to both “material benefit” and “material detriment”, but those phrases are not defined. “Material benefit” is defined in section 2 of the Crimes Act 1961 as part of the compound phrase “obtain a material benefit”, where it is given a wide meaning: “...any goods, money, pecuniary advantage, privilege, property, or other valuable consideration of any kind”. On that basis, a “material detriment” is likely to be read as meaning the loss of, or parting with, anything which is a material benefit.

2.46 However, including such a broad definition in the definition of “social sharing” will, if the section is read literally, restrict social sharing to cases where person A provides the relevant controlled drugs to persons B, C and so on. It will not extend to cases where A and B (or A and B and others) each contribute controlled drugs to a pool which all will share, nor to cases where there is an agreement between A and B that they will both consume drugs provided by A and then both consume drugs provided by B. In each case the parties involved both provide a material benefit to the others, and suffer a material detriment – albeit on the basis of the benefits and detriments being, to some extent, in balance. The same result would appear to flow where person A provides drugs to person B (and perhaps others) in return for a benefit other than drugs – for example provision of a meal to a guest in return for the guest providing drugs for the host and guest to share. It seems unlikely that such situations were not intended to be included in “social sharing”.

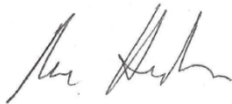
- 2.47 The Law Society recommends the Select Committee seek further advice on suitable amendments to clarify the definition of social sharing. One approach may be to use wording which does not presume, as the current Bill may be thought to do, that “sharing” is a unidirectional transfer from person A to other persons. It may be possible to craft wording which would encompass reciprocal exchanges of drugs or exchanges of drugs for other benefits which can be described as truly social in nature in that no party will receive an element of commercial gain.

3 Part 2 – Amendment to the Bail Act 2000

- 3.1 Clause 6 of the Bill proposes to insert new section 30WA into the Bail Act 2000. Proposed section 30WA states that “a defendant who is subject to a drug or alcohol condition must not be treated as having breached that condition if, in the circumstances that would otherwise give rise to a contravention, the defendant is a specified person within the meaning of section 34B(1) of the Misuse of Drugs Act 1975 and section 34B(2) of that Act applies”.
- 3.2 This section may be problematic in different ways. First, it refers to a “defendant” who is subject to a drug condition of bail. That will apply to all persons granted bail with a drug condition by a court. The Bail Act 2000 refers to persons found guilty of, or pleading guilty to, an offence but released on bail pending sentence but uses the word “appellant” if the person has been sentenced and released on bail pending the appeal. If enacted as drafted, proposed section 30WA is likely to be taken as applying to persons on bail pending trial or, post-conviction, pending sentence but not to persons on bail pending an appeal. It is not clear whether that distinction was intended.
- 3.3 As the Police have no power to impose a drug condition when granting police bail pending a first court appearance, section 34B would have no application to persons on police bail; the Select Committee may wish to take advice on whether there is a basis for including or excluding defendants on police bail.
- 3.4 Second, the proposed section will clearly apply where a defendant has consumed the drugs and overdosed or experienced a sufficiently serious adverse reaction. Persons listed in proposed section 34B(1)(b) and (c) who are either not themselves subject to a drug condition of bail or did not infringe any such consumption of drugs will not need the proposed section 34WA protection. It is a policy question whether a person granted bail who is subject to a drug condition and who is a “specified person” within proposed section 34B(1)(b) or (c) of the Act should be protected or not.
- 3.5 Finally, the Select Committee should note that proposed section 34B of the Act, will not bar or limit arrest and prosecution of breaches of other bail conditions to which a “specified person” is subject, such as absence from a specified bail address, breach of a curfew condition or a non-association condition. The Select Committee may wish to seek official advice on whether there should be immunity from prosecution in some cases (such as absence from a specified address) where the person subject to the bail condition breached the condition to obtain emergency assistance for themselves or for another person coming within proposed section 34B(1)(a) of the Act.

4 Part 3 - Amendment to the Parole Act 2002

- 4.1 Clause 8 of the Bill proposes to amend section 15 of the Parole Act 2002 by ensuring an offender does not breach a drug or alcohol condition if, in the circumstances that would otherwise give rise to a breach, the offender is a specified person within the meaning of section 34B(1) of the Act. This raises similar issues to those discussed above in relation to the proposed Bail Act changes, except that the consequences of a breach of the specified condition is not prosecution but liability to be recalled to prison.



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