

# CRIMINAL CODE—AMENDMENT.

9° GEO. V., No. XXII.

No. 32 of 1918.

AN ACT to amend the Criminal Code.

[Assented to 24th December, 1918.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Criminal Code Amendment Act*, 1918.

Amendment of Section 18.

2. Section eighteen of the Criminal Code (hereinafter called "the Code") is hereby amended by the deletion of the words "preventive detention" and the substitution of the words "detention in a reformatory prison."

Amendment of Section 19.

3. Section nineteen of the Code is hereby amended by the insertion, after paragraph six, of the following paragraph:—

6a. If any child or young person under the age of eighteen years is convicted on indictment of any offence punishable with imprisonment, the Court, in lieu of sentencing him to imprisonment, may order him to be sent to an industrial school (as defined in the State Children Act, 1907) until he is eighteen years of age, or until the expiry of two years from the date of the conviction, whichever period shall be the longer, and such child or young person may by virtue of the order be dealt with as is provided in the State Children Act, 1907, with reference to children sent to industrial schools, and the relative provisions of that Act shall apply to him accordingly.

4. Section one hundred and eighty-two of the Code is hereby amended by omitting the words “the offender cannot be arrested without warrant.”

Amendment of  
Section 182.

5. Section one hundred and eighty-five of the Code is hereby amended by the substitution, in the second paragraph, of the word “crime” for the word “misdemeanour,” and of the word “fourteen” for the word “three,” and by the repeal of the third paragraph thereof.

Amendment of  
Section 185.

6. Section one hundred and eighty-seven of the Code is hereby repealed, and the words “or one hundred and eighty-seven,” in section two hundred and six of the Code, are hereby excised.

Repeal of Sec-  
tion 187.

7. (1.) Section one hundred and eighty-eight of the Code is hereby repealed, and the following sections inserted in lieu thereof:—

Repeal of Sec-  
tion 188 and  
substitution of  
new provisions.

187. (1.) Any person who has or attempts to have unlawful carnal knowledge of a girl under the age of sixteen years is guilty of a crime, and is liable to imprisonment with hard labour for five years with or without whipping:

Defilement of  
girls under  
sixteen.

Provided that if the offender’s age does not exceed twenty-one years he is guilty of a misdemeanour and liable to imprisonment with hard labour for two years, with or without whipping.

(2.) It is a defence to a charge of either of the offences defined in this section to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen.

(3.) A prosecution under this section for the offence of having unlawful carnal knowledge must be begun within six months, and for the offence of attempting to have unlawful carnal knowledge within three months, after the offence has been committed.

(4.) A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness.

(5.) The wife of the accused person is a competent and compellable witness.

Defilement of  
idolots.

188. (1.) Any person who, knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her is guilty of a crime, and is liable to imprisonment with hard labour for five years with or without whipping.

(2.) A person cannot be convicted of either of the offences defined in this section upon the uncorroborated testimony of one witness.

(3.) The wife of the accused person is a competent and compellable witness.

(2.) The words "one hundred and eighty-seven" are hereby inserted before the words "one hundred and eighty-eight," in section two hundred and six of the Code.

Substitution of  
new section for  
Section 139.

8. Section one hundred and eighty-nine of the Code is hereby repealed, and the following section is hereby inserted in lieu thereof:—

Indecent deal-  
ing with girls  
under sixteen  
and others.

189. (1.) Any person who unlawfully and indecently deals with a girl or woman—

- (i.) who is under the age of sixteen years; or
- (ii.) who is to the knowledge of the accused person an idiot or imbecile; or
- (iii.) who is under the age of seventeen years, and of whom the accused person is a guardian, employer, teacher, or schoolmaster,

is guilty of a crime, and is liable to imprisonment with hard labour for four years with or without whipping:

Provided that if the offender's age does not exceed twenty-one years he is guilty of a misdemeanour and liable to imprisonment with hard labour for two years, with or without whipping.

(2.) If the girl dealt with is under the age of thirteen years he is guilty of a crime, and liable to imprisonment with hard labour for seven years with or without whipping.

(3.) If a person accused of the offence of unlawfully and indecently dealing with a girl under the age of sixteen years proves that the act committed was done with the consent of the girl, that she was in fact of or over the age of thirteen years, and that he believed at the time on reasonable grounds that her age was greater than stated in the indictment, he shall be in the same position as if her age had in fact been such as he so believed it to be.

(4.) The wife of the accused person is a competent and compellable witness.

(5.) The term “deal with” includes doing any act which if done without consent would constitute an assault as hereinafter defined.

(6.) A prosecution under this section for the offence of unlawfully and indecently dealing with a girl under the age of sixteen years must, if she is of or over the age of thirteen years, be commenced within three months after the offence has been committed.

9. Section one hundred and ninety of the Code is hereby amended by inserting the word “employer” after the word “guardian,” in line one, and by the substitution of the word “crime” for the word “misdemeanour,” and of the word “five” for the word “two.”

Amendment of  
Section 190.

10. Section one hundred and ninety-four of the Code is hereby amended by inserting after the word “brothel,” in line six, “or (3) being the keeper of a brothel suffers any girl or woman under the age of twenty-one years to be therein.”

Amendment of  
Section 194.

11. The following section is hereby inserted in Chapter XXII. of the Code, between sections two hundred and five and two hundred and six:—

Insertion of  
new section in  
Chap. xxii.

205A. Nothing in the foregoing provisions of this chapter shall apply to or in respect of the offence of rape or attempted rape.

Rape or at-  
tempted rape  
not affected by  
foregoing pro-  
visions of this  
Chapter.

12. Section two hundred and ten of the Code is hereby amended by the addition of paragraphs, as follows:—

Amendment of  
Section 210.

In any prosecution under paragraph (1) on proof that the place was kept as a place to which persons resort for the purpose of playing at any game of chance, the averment in the indictment, information, or complaint that the place was kept for gain shall be deemed to be proved in the absence of proof to the contrary.

Any person who, being the owner or occupier of any house, room, or place, knowingly and wilfully permits it to be opened, kept, or used as a common gaming house by another person, or who has the use or management, or assists in conducting the business of a common gaming house, is guilty of an offence, and is liable on summary conviction to imprisonment with hard labour for six months, or to a fine of one hundred pounds.

Amendment of  
Section 239.

13. Section two hundred and eighty-nine of the Code is hereby amended by the addition of paragraphs, as follows:—

If the accused person admits that he is guilty of the offence, the justices before whom he is charged may, in their discretion, deal with the charge summarily.

The offender is liable on such summary conviction to imprisonment with hard labour for six months.

Amendment of  
Section 323.

14. Section three hundred and twenty-three of the Code is hereby amended by omitting the words “proceeding civil or criminal,” and inserting the words “criminal proceedings” in place thereof.

Amendment of  
Section 328.

15. The second paragraph of section three hundred and twenty-eight of the Code is hereby repealed.

Amendment of  
Section 427.

16. Section four hundred and twenty-seven of the Code is hereby amended by the addition of the following paragraph:—

If in any case it appears to the justices that for any reason the sentence which they are empowered by this chapter to pass on the person convicted by them is inadequate, they may, in lieu of passing sentence, commit the convicted person for sentence.

Amendment of  
Section 532.

17. The following paragraph is hereby inserted in section five hundred and eighty-two of the Code, between the third and fourth paragraphs thereof:—

Where an enactment constituting an offence states the offence to be the doing or the omission to do any one of any different acts in the alternative or the doing or the omission to do any act in any one of any different capacities or with any one of any different intentions or states any part of the offence in the alternative, the acts, omissions, capacities, or intentions or other matters stated in the alternative in the enactment may be stated in the alternative in the statement of the offence in the indictment charging the offence: provided that the court may at any stage of the proceedings amend the statement if it appears to the court to be so framed as to be embarrassing.

18. Section five hundred and ninety-four of the Code is hereby repealed and the following section inserted in lieu thereof:—

Substitution of new section for Section 594.

594. Except as hereinafter stated, upon an indictment charging a person with an offence he may be convicted of any offence which is established by the evidence, and which is an element or would be involved in the commission of the offence charged in the indictment.

Conviction for offence other than that charged.

19. The following section is hereby inserted in the Code after section five hundred and ninety-six:—

Insertion of new section after Section 596.

596A. Upon an indictment charging a person with having or attempting to have unlawful carnal knowledge of a girl under a particular age, he may be convicted of unlawfully and indecently assaulting or dealing with her (she being a girl under that particular age, or a girl or woman of or over that age) if such offence is established by the evidence.

Power to convict for assault on charge of defilement.

20. The following section is hereby inserted in Chapter LXIII. of the Code, after section six hundred and seven:—

Insertion of new section after Section 607.

607A. Nothing in this chapter shall be deemed to authorise the conviction of any person of any offence on any prosecution which has not been commenced within the time (if any) limited by law for the commencement of a prosecution for such offence.

Saving of provisions as to time.

21. Section six hundred and eighteen of the Code is hereby amended by the insertion of the words “that he was duly convicted of the offence charged in the indictment or” after the word “satisfied,” in the second paragraph.

Amendment of Section 618.

22. The following section is hereby inserted in the Code after section six hundred and thirty-five:—

Insertion of new section after Section 635.

635a. At the trial on indictment of any person under eighteen years of age (either alone or in conjunction with any other person) for any offence, or at the trial on indictment of any person for any offence of an indecent character committed against a person under the age of eighteen years, the court may exclude all or any persons not directly interested in the case from the court-room or place of trial, and may prohibit the publication of all or any portion of the evidence or proceedings.

Exclusion of persons from hearing.

23. Sections five hundred and eighty-nine and six hundred and forty-nine of the Code are hereby repealed.

Repeal of Sections 589 and 649.

Amendment of  
Section 656.

24. Section six hundred and fifty-six of the Code is hereby amended by the repeal of the third paragraph, and the substitution of the following paragraphs:—

If sentence is not passed forthwith, the court or any judge or chairman of the court may, at any subsequent sitting of the court at which the offender is present, pass sentence upon him.

When an offender has been discharged on his recognisance as aforesaid, any judge or chairman of the court may at any time, on an *ex parte* application made by or on behalf of the Attorney General, issue a warrant under his hand to arrest the offender and bring him before a justice of the peace, and the justice may commit him to prison until he can be brought before the court to receive sentence, and the sheriff or other proper officer shall bring him before the court to receive sentence as soon as practicable.

Amendment of  
Section 657.

25. Section six hundred and fifty-seven of the Code is hereby amended, as from the commencement of the Code, by the substitution of the word "is" for the word "his," in the fourth line of the section.

Repeal of Sections  
661 to  
668.

26. Sections six hundred and sixty-one to six hundred and sixty-eight (both inclusive) of the Code are hereby repealed.

Insertion of new  
sections after  
Section 660.

27. The following sections are hereby inserted after section six hundred and sixty, in Chapter LXV. of the Code, that is to say—

Indeterminate  
sentence on  
habitual  
criminal.

661. When any person apparently of the age of eighteen years or upwards is convicted of any indictable offence, not punishable by death, and has been previously so convicted on at least two occasions, the court before whom such person is convicted may declare that he is an habitual criminal, and direct that on the expiration of the term of imprisonment then imposed upon him, he be detained during the Governor's pleasure in a reformatory prison.

Indeterminate  
sentence on  
person con-  
victed of in-  
dictable offence.  
662.

662. When any person apparently of the age of eighteen years or upwards is convicted of any indictable offence, not punishable by death (whether such person has been previously convicted of any indictable offence or not), the court before which such person is convicted may, if it thinks fit, having regard to the antecedents,

character, age, health, or mental condition of the person convicted, the nature of the offence or any special circumstances of the case—

- (a) direct that on the expiration of the term of imprisonment then imposed upon him he be detained during the Governor's pleasure in a reformatory prison; or
- (b) without imposing any term of imprisonment upon him sentence him to be forthwith committed to a reformatory prison, and to be detained there during the Governor's pleasure.

663. Any question arising under this chapter as to whether any person is or is not an habitual criminal or has or has not been previously convicted, or should or should not be detained in a reformatory prison, shall be determined by the court on such evidence as the court may think fit to hear.

Question of liability to detention in a reformatory prison to be determined by the Court.

664. A person shall be deemed to have been previously convicted of an offence for the purposes of this chapter if so convicted anywhere or at any time whether heretofore or hereafter, and whether within or outside of Western Australia, and any conviction for any offence outside of Western Australia shall, if such offence is of the same or substantially the same nature as any offence defined by the law of this State, be deemed for the purposes aforesaid a conviction for the offence so defined.

What to be deemed previous convictions.

665. (1.) An indeterminate sentence shall commence and become operative on the expiry or sooner determination of any sentence involving deprivation of liberty which the convicted person is undergoing or has been sentenced to undergo.

Service of indeterminate sentence.

(2.) Indeterminate sentences shall be served in a reformatory prison under and subject to such provisions as shall be made by law for the establishment of such prisons and for prescribing the manner of serving such sentences and regulating the treatment, employment, and discipline of persons undergoing such sentences.

(3.) The fact that any person is subject to an indeterminate sentence shall not prevent him from undergoing or suffering any other punishment to which he may be or become liable.

666. (1.) The Governor may at any time, subject to any provisions to be made under any law relating to prisons, and subject to any conditions which he may see

Release on probation.



fit to impose, direct the release on probation for two years of any person undergoing an indeterminate sentence hereunder, and such person shall be so released accordingly.

(2.) Any such license may prescribe as a condition that the released person be placed and remain under the supervision or authority of any society named in the license which may be willing to take charge of the case, and such society shall, whenever required by the Governor or Comptroller General of Prisons, report on the conduct and circumstances of the released person.

(3.) Every person so released while he remains in Western Australia shall (except in so far as the Governor shall, in the case of a person placed under the supervision or authority of some society, otherwise order) be subject to police supervision, and the provisions of subsections two and three of section six hundred and sixty of this Code shall apply to him accordingly.

(4.) Nothing herein shall prevent the exercise by the Governor of the Royal Prerogative of Mercy in respect of any person on whom an indeterminate sentence has been imposed.

667. (1.) If, during the period of probation, a person so released—

(a) is proved at any court of petty sessions to have failed (without some excuse which such court deems reasonable) to comply with any of the said provisions of section six hundred and sixty, or with any condition on which he has been released, or to have been associating with reputed thieves or other reputed criminals; or

(b) is convicted of any indictable offence or of any simple offence which is punishable by imprisonment for a period exceeding one month,

then the court of petty sessions or the court before which he is so convicted as aforesaid, as the case may be, may by order direct that such person forthwith or on the completion of the term of imprisonment (if any) then imposed upon him be recommitted to a reformatory prison during the Governor's pleasure, and he shall be so recommitted and the indeterminate sentence shall, subject to any such imprisonment as aforesaid, again become operative.

Recommittal of persons released on probation or termination of his reformatory detention.

(2.) Complaint of any matter necessary to secure an order of recommittal by a court of petty sessions hereunder may be made in manner provided in the Justices Act, 1902, in respect of a charge of a simple offence, and for the purpose of having such matter heard and determined such summonses, warrants, and other proceedings may be issued and taken as could be issued or taken if the complaint were in respect of such a charge.

(3.) An order of recommittal under this section on the ground of the conviction of the person concerned may be made at any time during the period of probation and before the expiry of the sentence (if any) imposed on the conviction and, when the order is not made at the time of the conviction, the person concerned may be brought before the court or justice having power to make such order in the same manner as if he were charged with an offence to be dealt with by such court or justice, and (if he is in prison) the provisions of section fifty-two of the Prisons Act, 1903, shall be deemed to apply to the case accordingly.

(4.) If during the period of probation none of the events aforesaid happens, or if no order of recommittal is made in consequence of any such event which has happened, then the indeterminate sentence shall be deemed to be annulled as from the end of such period.

668. Any person at or immediately prior to the commencement of these provisions undergoing or liable to undergo a sentence of preventive detention, which has been heretofore imposed on him as an habitual criminal, or released on probation from such detention, shall be deemed to have been sentenced or released under these provisions, and these provisions shall apply to him accordingly: provided that if a period shall have been fixed as the duration of the preventive detention of such person, then the sentence to which he is subject by virtue of these provisions shall be deemed to be annulled at the end of that period.

Application of these provisions to sentences of preventive detention heretofore imposed.

28. Section six hundred and seventy-eight of the Code is hereby amended—

Amendment of Section 678.

(1.) By the substitution for the second paragraph of the following paragraphs, that is to say—

Notwithstanding the provisions of any law heretofore enacted, every sentence of death shall be

executed by the Comptroller General of Prisons or his deputy, or by some substitute appointed by such Comptroller General or deputy by writing under his hand.

The Comptroller General or his deputy is required to be present at the execution, together with the superintendent or gaoler and proper officers of the prison, including the medical officer. Such adult spectators as the Comptroller General or his deputy may think fit may also be present.

- (2.) By the deletion in the fourth paragraph of the words “the Sheriff or Under Sheriff or such deputy,” and the substitution of the words “the Comptroller General of Prisons or his deputy.”

Insertion of new section after Section 682.

29. The following section is hereby inserted in the Code after section six hundred and eighty-two:—

Enforcement of order for payment of penalty, compensation, or costs.

682A. (1.) When any decision of the Supreme Court or any court of general or quarter sessions of the peace adjudges or orders the payment of a pecuniary penalty or compensation or sum of money or costs, then such decision may be enforced in such manner and by such means as a similar decision of justices is enforceable, and shall for that purpose be deemed an order made by justices, and the relative provisions of the Justices Act, 1902, shall apply thereto accordingly.

(2.) For the purposes of enforcing such decision the Registrar or Clerk of the Court, as the case may be, shall have power to make such subsidiary orders and to sign and issue such warrants as any justices might make and sign in a similar case or as may be authorised by rules of court.

(3.) The provisions of this section shall be without prejudice to any other method of enforcement.

(4.) “Decision” means any judgment, sentence, or order given, pronounced, or made in or in connection with a criminal cause or matter.

Amendment of Section 688.

30. Section six hundred and eighty-eight of the Code is hereby amended by the deletion of the words “preventive detention,” and the substitution of the words “detention in a reformatory prison.”

31. Sections one hundred and ninety-five, six hundred and fifty-nine, six hundred and seventy, six hundred and eighty, and seven hundred and nine of the Code are hereby amended by the substitution of the word "eighteen" for the word "sixteen" therein.

Amendment of Sections 195, 659, 670, 680, and 709.

32. Section seven hundred and eleven of the Code is hereby amended by the deletion of the words "which is such that the offender may be arrested without warrant," in paragraph (a), and by the deletion of the word "such," in paragraph (b), and also in paragraph (c).

Amendment of Section 711.

33. The following section is hereby inserted in the Code after section seven hundred and forty-six:—

Insertion of new section after Section 746.

746A. When a person bound by recognisance (by whomsoever ordered or permitted to be entered into and before whomsoever taken) to take his trial or attend any other proceeding before the Supreme Court or a court of general or quarter sessions of the peace in any criminal cause or matter or bound by any other recognisance, before whomsoever taken (entered into pursuant to any judgment, order, or sentence of any such court, given, made, or pronounced in a criminal cause or matter), to keep the peace or be of good behaviour or receive judgment or do or refrain from doing anything or observe or comply with any other condition whatsoever, fails in any condition of the recognisance, such court or any judge or chairman thereof, on the production of the recognisance, and on the application of counsel for the Crown may order that the recognisance be estreated forthwith, and that such person and any surety bound by the recognisance shall forthwith pay to the Attorney General to the use of the Crown the sum in which he is bound.

Enforcing recognisances.

The provisions of this section shall be without prejudice to any other method of enforcing recognisances.

34. Section seven hundred and forty-eight of the Code is hereby repealed.

Repeal of Section 748.