

Western Australia

Criminal Code Amendment Act 2009

As at 21 Sep 2009

No. 21 of 2009

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Criminal Code Amendment Act 2009

No. 21 of 2009

An Act to amend *The Criminal Code*.

[Assented to 21 September 2009]

The Parliament of Western Australia enacts as follows:

1. Short title

This is the *Criminal Code Amendment Act 2009*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. *The Criminal Code* amended

This Act amends *The Criminal Code*.

4. Section 297 amended

After section 297(4) insert:

- (5) If the offence is committed in prescribed circumstances by a person who has reached 16 but not 18 years of age, then, notwithstanding the *Young Offenders*

Act 1994 and in particular section 46(5a) of it, the court sentencing the offender —

- (a) must sentence the offender either —
 - (i) to a term of imprisonment of at least 3 months, notwithstanding the *Sentencing Act 1995* section 86; or
 - (ii) to a term of detention (as defined in the *Young Offenders Act 1994* section 3) of at least 3 months,
as the court thinks fit; and
 - (b) must not suspend any term of imprisonment imposed under paragraph (a)(i); and
 - (c) must record a conviction against the offender.
- (6) Subsection (5) does not prevent a court from making a direction under the *Young Offenders Act 1994* section 118(4) or a special order under Part 7 Division 9 of that Act.
- (7) If the offence is committed in prescribed circumstances by a person who has reached 18 years of age, then, notwithstanding any other written law, the court sentencing the offender —
- (a) must sentence the offender to a term of imprisonment of at least 12 months; and
 - (b) must not suspend the term of imprisonment imposed under paragraph (a).
- (8) In subsections (5) and (7) —
- prescribed circumstances*** means any of these circumstances —
- (a) where the offence is committed in the circumstances set out in subsection (4)(a) or (b) and the public officer is —
 - (i) a police officer; or

- (ii) a prison officer as defined in the *Prisons Act 1981* section 3(1); or
 - (iii) a security officer as defined in the *Public Transport Authority Act 2003* section 3;
- (b) where the offence is committed in the circumstances set out in subsection (4)(d)(i), (f) or (g).

5. Section 318 amended

After section 318(1) insert:

- (2) If a person is convicted of an offence against this section committed in prescribed circumstances at a time when the person had reached 16 but not 18 years of age, then, notwithstanding the *Young Offenders Act 1994* and in particular section 46(5a) of it, the court sentencing the person —
- (a) must sentence the offender to either —
 - (i) a term of imprisonment of at least 3 months, notwithstanding the *Sentencing Act 1995* section 86; or
 - (ii) to a term of detention (as defined in the *Young Offenders Act 1994* section 3) of at least 3 months,as the court thinks fit; and
 - (b) must not suspend any term of imprisonment imposed under paragraph (a)(i); and
 - (c) must record a conviction against the person.
- (3) Subsection (2) does not prevent a court from making a direction under the *Young Offenders Act 1994* section 118(4) or a special order under Part 7 Division 9 of that Act.

- (4) If a person is convicted of an offence against this section committed in prescribed circumstances at a time when the person had reached 18 years of age, then, notwithstanding any other written law, the court sentencing the person —
- (a) if the offence is committed in the circumstances set out in subsection (1)(l) — must sentence the person to a term of imprisonment of at least 9 months;
 - (b) if the offence is not committed in the circumstances set out in subsection (1)(l) — must sentence the person to a term of imprisonment of at least 6 months,
- and must not suspend the term of imprisonment imposed under paragraph (a) or (b).
- (5) In subsections (2) and (4) —
- prescribed circumstances*** means any of these circumstances —
- (a) where the offence is committed under subsection (1)(d) or (e) against a public officer who is —
 - (i) a police officer; or
 - (ii) a prison officer as defined in the *Prisons Act 1981* section 3(1); or
 - (iii) a security officer as defined in the *Public Transport Authority Act 2003* section 3,and the officer suffers bodily harm;
 - (b) where the offence is committed under subsection (1)(h)(i), (j) or (k) and the person assaulted suffers bodily harm.

6. Section 740A inserted

After section 739 insert:

740A. Review of certain amendments to s. 297 and 318

- (1) The Minister shall carry out a review of the operation and effectiveness of the amendments made to this Code by the *Criminal Code Amendment Act 2009* as soon as practicable after the third anniversary of the day on which those amendments came into operation.
- (2) The Minister shall prepare a report based on the review made under subsection (1), and shall, as soon as is practicable after that preparation, cause the report to be laid before each House of Parliament.

