

WESTERN AUSTRALIA

**CRIMINAL LAW AMENDMENT
ACT (No. 1) 1998**

No. 38 of 1998

AN ACT to amend —

- *The Criminal Code; and*
- *the Sentencing Act 1995;*

and to amend various other Acts as a consequence.

[Assented to 25 September 1998.]

The Parliament of Western Australia enacts as follows:

No. 38] *Criminal Law Amendment Act (No. 1) 1998*
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PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Criminal Law Amendment Act (No. 1) 1998*.

PART 2 — THE CRIMINAL CODE

The Code

2. In this Part “**the Code**” means *The Criminal Code**.

[* Reprinted as at 21 April 1997 as the Schedule to the *Criminal Code Act 1913* appearing in Appendix B to the *Criminal Code Compilation Act 1913*.
For subsequent amendments see Act No. 19 of 1997.]

Section 236 amended

3. (1) The second paragraph of section 236 of the Code is amended by deleting “his aid and under his direction,” and substituting —

“
aid of, and under the direction of, the medical practitioner,
”.

(2) After the second paragraph of section 236 of the Code the following paragraphs are inserted —

“
When a person is in lawful custody upon a charge of committing any offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that a sample of the person’s blood, hair (from any part of the body), nails or saliva, or of any matter on the person’s body or obtainable by a buccal swab, will afford evidence as to the commission of the offence, it is lawful for —

- (a) a legally qualified medical practitioner; or
- (b) a nurse as defined in the *Nurses Act 1992*,

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acting at the request of a police officer, and for any person acting in good faith in aid of, and under the direction of, the person acting at the request of the police officer, to take the sample from the person so in custody and to use such force as is reasonably necessary for that purpose.

Where —

- (a) a person is found not guilty of an offence in respect of which a sample has been taken under this section; and
- (b) the person requests that the sample and any genetic information arising from the taking of the sample be destroyed,

the sample and any genetic information arising from the taking of the sample is to be destroyed in his presence after the time for an appeal from the finding has expired or an appeal from the finding has been resolved in his favour.

”.

Chapter XXXIII B repealed and a Chapter substituted and consequential amendments

4. (1) Chapter XXXIII B of the Code is repealed and the following Chapter is substituted —

“

CHAPTER XXXIII B — STALKING

Interpretation

338D. (1) In this chapter —

“**circumstances of aggravation**” means circumstances in which —

- (a) immediately before or during or immediately after the commission of the

offence, the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; or

- (b) the conduct of the offender in committing the offence constituted a breach of —
 - (i) an order made or registered under the *Restraining Orders Act 1997* or to which that Act applies; or
 - (ii) a condition on which bail has been granted to the offender;

“intimidate”, in relation to a person, includes —

- (a) to cause physical or mental harm to the person;
- (b) to cause apprehension or fear in the person;
- (c) to prevent the person from doing an act that the person is lawfully entitled to do, or to hinder the person in doing such an act;
- (d) to compel the person to do an act that the person is lawfully entitled to abstain from doing;

“pursue”, in relation to a person, includes —

- (a) to repeatedly communicate with the person, whether directly or indirectly and whether in words or otherwise;
- (b) to repeatedly follow the person;

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- (c) to repeatedly cause the person to receive unsolicited items;
- (d) to watch or beset the place where the person lives or works or happens to be, or the approaches to such a place;
- (e) whether or not repeatedly, to do any of the foregoing in breach of a restraining order or bail condition.

(2) For the purpose of deciding whether an accused person has pursued another person —

- (a) the accused is not to be regarded as having communicated with or followed that person on a particular occasion if it is proved by or on behalf of the accused that on that occasion the accused did not intend to communicate with or follow that person;
- (b) an act by the accused on a particular occasion is not to be taken into account for the purpose of deciding whether the accused watched or beset a place where that person lived, worked or happened to be, or the approaches to such a place, if it is proved by or on behalf of the accused that on that occasion the accused did not know it was such a place.

Stalking

338E. (1) A person who pursues another person with intent to intimidate that person or a third person, is guilty of a crime and is liable —

- (a) where the offence is committed in circumstances of aggravation, to imprisonment for 8 years; and

- (b) in any other case, to imprisonment for 3 years.

Summary conviction penalty:

- (c) in a case to which paragraph (a) applies:
Imprisonment for 2 years or a fine of \$8 000;
- (d) in a case to which paragraph (b) applies:
Imprisonment for 18 months or a fine of \$6 000.

(2) A person who pursues another person in a manner that could reasonably be expected to intimidate, and that does in fact intimidate, that person or a third person is guilty of a simple offence.

Penalty: Imprisonment for 12 months or a fine of \$4 000.

(3) It is a defence to a charge under this section to prove that the accused person acted with lawful authority.

”.

(2) Schedule 2 to the *Bail Act 1982* is amended in item 1 by deleting the entry relating to section 338D of the *The Criminal Code* and substituting the following —

“ s. 338E Stalking ”.

(3) Schedule 1 to the *Criminal Law (Mentally Impaired Defendants) Act 1996* is amended in item 1 by deleting the entry relating to section 338D (1) (d) of *The Criminal Code* and substituting the following —

“

s. 388E (1) (a) Stalking committed in circumstances of aggravation

”.

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Section 598AA inserted

5. After section 598A of the Code the following section is inserted —

“

Stalking; alternative verdict

598AA. (1) Upon an indictment charging a person with an offence under section 338E (1) the person may be convicted of a simple offence under section 338E (2).

(2) Where a charge under section 338E (1) is dealt with summarily the person charged may be convicted summarily of an offence under section 338E (2).

”.

PART 3 — SENTENCING ACT 1995

Section 91 amended

6. Section 91 (3) of the *Sentencing Act 1995** is repealed and the following subsections are substituted —

“

(3) A court that sentences an offender to strict security life imprisonment must order that the offender be imprisoned for the whole of the offender's life if it is necessary to do so in order to meet the community's interest in punishment and deterrence.

(4) In determining whether an offence is one for which an order under subsection (3) is necessary, the only matters relating to the offence that are to be taken into account are —

- (a) the circumstances of the commission of the offence; and
- (b) any aggravating factors.

”.

[* *Act No. 77 of 1995.*]