

WESTERN AUSTRALIA

**CRIMINAL LAW AMENDMENT
ACT (No. 2) 1998**

No. 29 of 1998

AN ACT to amend —

- ***The Criminal Code;***
- ***the Criminal Law Amendment Act 1996;***
- ***the Justices Act 1902;***
- ***the Sentence Administration Act 1995;***
- ***the Sentencing Act 1995; and***
- ***the Young Offenders Act 1994.***

[Assented to 6 July 1998.]

The Parliament of Western Australia enacts as follows:

No. 29] *Criminal Law Amendment Act (No. 2) 1998*
s. 1

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Criminal Law Amendment Act (No. 2) 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 297 amended

3. Section 297 of the Code is amended by deleting “7 years.” and substituting the following —

“ 10 years. ”.

Section 474 inserted

4. After section 473 of the Code the following section is inserted in Chapter XLIX of the Code —

“

Preparation for forgery etc.

474. (1) Any person who makes, adapts or knowingly has possession of any thing under such circumstances as to give rise to a reasonable suspicion that it has been, or is being, made, adapted or possessed for a purpose that is unlawful under section 473 is guilty of a crime and is liable to imprisonment for 3 years.

Summary conviction penalty: Imprisonment for 18 months or a fine of \$6 000.

s. 5

(2) If a person is convicted of an offence under this section the court may make an order for the forfeiture to the Crown, or the destruction or disposal, of the thing in respect of which the offence was committed.

”.

Section 689 amended

5. After section 689 (3) of the Code the following subsection is inserted —

“

(4) On an appeal against sentence the Court of Criminal Appeal may have regard to whether or not the appellant or a convicted person has failed wholly or partly to fulfil an undertaking to assist law enforcement authorities that caused the sentencing court to reduce the sentence that it would otherwise have passed.

”.

Minor amendments

6. The Code is amended as set out in the Table to this section.

TABLE

s. 400 (1)	In the definition of “circumstances of aggravation” after “before or” insert — “ during or ”.
s. 586 (6)	Repeal the subsection.
s. 650	Delete “or of being an habitual criminal”.

PART 3 — CRIMINAL LAW AMENDMENT ACT 1996

Sections 40 and 42 repealed

7. Sections 40 and 42 of the *Criminal Law Amendment Act 1996** are repealed.

[* *Act No. 36 of 1996.*]

PART 4 — JUSTICES ACT 1902

Principal Act

8. In this Part the *Justices Act 1902** is referred to as the principal Act.

[* *Reprinted as at 4 June 1997.*
For subsequent amendments see Act No. 19 of 1997.]

Section 194 amended

9. Section 194 (5) (a) of the principal Act is amended by deleting “subject to a direction under Part 12, or whether or not it”.

Section 199 amended

10. After section 199 (4) of the principal Act the following subsection is inserted —

“

(5) Upon the hearing of an appeal against sentence the Court may have regard to whether or not the appellant or a convicted person has failed wholly or partly to fulfil an undertaking to assist law enforcement authorities that caused the sentencing court to reduce the sentence that it would otherwise have passed.

”.

PART 5 — SENTENCE ADMINISTRATION ACT 1995

Principal Act

11. In this Part the *Sentence Administration Act 1995** is referred to as the principal Act.

[* Act No. 77 of 1995.]

Section 4 amended

12. Section 4 (1) of the principal Act is amended by inserting after “*Sentencing Act 1995*” the following —

“ and in particular, in Part 13 of that Act ”.

Section 8 amended

13. Section 8 (3) of the principal Act is repealed and the following subsection is substituted —

“

(3) In this section —

“**fixed term**” includes a period of imprisonment ordered under section 58 or 59 of the *Sentencing Act 1995*;

“**non-parole period**”, in relation to a parole term, means the period that under section 93 of the *Sentencing Act 1995* the prisoner has to serve before he or she is eligible to be released on parole.

”.

PART 6 — SENTENCING ACT 1995

Principal Act

14. In this Part the *Sentencing Act 1995** is referred to as the principal Act.

[* *Act No. 76 of 1995.*

For subsequent amendments see 1996 Index to Legislation of Western Australia, Table 1, p. 208 and Acts Nos. 76 of 1996 and 19 of 1997.]

Section 8 amended

15. After section 8 (4) of the principal Act the following subsection is inserted —

“

(5) If because an offender undertakes to assist law enforcement authorities a court reduces the sentence it would otherwise have imposed on the offender, the court must state that fact and the extent of the reduction in open court.

”.

Section 37A inserted

16. After section 37 of the principal Act the following section is inserted —

“ **Offender who reneges on promise to assist authorities may be re-sentenced**

37A. (1) If —

- (a) a court reduces the sentence it would otherwise have imposed on an offender for an offence (the “**full sentence**”) because the offender undertakes to assist law enforcement authorities; and
- (b) the offender subsequently fails wholly or partly to fulfil the undertaking,

the court may recall the order imposing the sentence (the “**reduced sentence**”) and impose a sentence based on the full sentence but taking into account the extent to which the reduced sentence has taken effect and the extent to which the offender has complied with any orders made under it.

(2) The powers in subsection (1) may be exercised by a court only on an application by the prosecutor made in accordance with the regulations, but the court must give all parties the opportunity to be heard.

(3) The powers in subsection (1) may be exercised by a court even if the reduced sentence has been varied on appeal, and in that case any sentence imposed must be based on the varied sentence and the court must take into account the extent to which the varied sentence has taken effect and the extent to which the offender has complied with any orders made under it.

(4) A sentence imposed under this section may be appealed.

(5) In this section —

“**sentence**” includes an order in addition to sentence.

”.

Part 12 repealed

17. Part 12 of the principal Act is repealed.

Minor amendments

18. The principal Act is amended as set out in the Table to this section.

TABLE

s. 19	Repeal the section.
s. 20 (3)	Delete “, or making a direction under Part 12 for the detention of a young adult offender, ”.
s. 38 (1)	After paragraph (a), insert the following — “ or ”. Delete paragraph (b) and “or” after it.
s. 39	After paragraph (f), insert the following — “ or ”. Delete paragraph (g) and “or” after it.
s. 60 (8)	Repeal the subsection.

- s. 85 (1) Delete the definition of “prisoner” and substitute the following definition —
- “
- “prisoner”** means a person (whether or not he or she is in custody) who has been sentenced to a term and who has not been discharged from that term, but does not include a person sentenced to suspended imprisonment, unless an order is made under section 80 (1) (a) or (b);
- ”.
- s. 85 (2) Delete “and 12”.
- s. 96 (2) Delete “section 91 (2)” and substitute —
- “ section 91 (3) ”.
- s. 96 (3) Delete “section 91 (2)” and substitute —
- “ section 91 (3) ”.

PART 7 — YOUNG OFFENDERS ACT 1994

Principal Act

19. In this Part the *Young Offenders Act 1994** is referred to as the principal Act.

[* *Reprinted as at 26 November 1996.*
For subsequent amendments see Act No. 2 of 1996.]

Section 7 amended

20. Section 7 of the principal Act is amended by deleting paragraph (i) and substituting the following paragraph —

“
(i) detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detained in the facility, although a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner;
”.

Section 118 amended

21. Section 118 (1) (a) of the principal Act is amended by deleting “or make a direction for the detention of the offender under Part 12”.

Section 119 repealed and a section substituted

22. Section 119 of the principal Act is repealed and the following section is substituted —

“

Taking time on remand into account

119. If when the offender is being sentenced to a term of detention for an offence —

- (a) he or she has previously spent time in custody in respect of that offence and for no other reason; and
- (b) the court decides that that time should be taken into account,

the court may take that time into account —

- (c) if it imposes a set term of detention, by reducing that term by an appropriate period; or
- (d) by ordering that the term it imposes is to be taken to have begun on a specified day being the day when that custody began or on some later date that is not later than the date of the sentence.

”.

Section 121 amended

23. Section 121 (5) of the principal Act is repealed.