

WESTERN AUSTRALIA

**CRIMINAL CODE AMENDMENT
ACT (No. 2) 1996**

No. 60 of 1996

AN ACT to amend *The Criminal Code*.

[Assented to 11 November 1996.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Criminal Code Amendment Act (No. 2) 1996*.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

The Code

3. In this Act “**the Code**” means *The Criminal Code**.

[* *Reprinted as at 17 December 1993 as the Schedule to the Criminal Code Act 1913 appearing in Appendix B to the Criminal Code Compilation Act 1913. For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, pp. 53-5 and Act No. 14 of 1996.*]

Section 400 amended

4. (1) Section 400 (1) of the Code is repealed and the following subsection is substituted —

“

(1) In this chapter —

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

(a) immediately before or immediately after the commission of the offence the offender —

(i) is or pretends to be armed with a dangerous or offensive weapon or instrument;

(ii) is or pretends to be in possession of an explosive substance;

- (iii) is in company with another person or other persons;
- (iv) does bodily harm to any person;
- (v) threatens to kill or injure any person;
or
- (vi) detains any person (within the meaning of section 332 (1));

or

- (b) immediately before the commission of the offence the offender knew or ought to have known that there was another person (other than a co-offender) in the place;

“place” means a building, structure, tent, or conveyance, or a part of a building, structure, tent, or conveyance, and includes —

- (a) a conveyance that at the time of an offence is immovable; or
- (b) a place that is from time to time uninhabited or empty of property.

”.

(2) After section 400 (2) of the Code the following subsections are inserted —

“

(3) For the purposes of this chapter a person is a repeat offender if it is proved to the satisfaction of the court that the offender —

- (a) committed and was convicted of a relevant offence committed in respect of a place ordinarily used for human habitation; and

- (b) subsequent to that conviction again committed and was convicted of a relevant offence committed in respect of such a place,

and it does not matter that the sequence described in paragraphs (a) and (b) has occurred more than once.

- (4) For the purposes of subsection (3) —

- (a) a relevant offence is an offence against this chapter (as enacted at any time) other than an offence against section 407;
- (b) a conviction includes a finding or admission of guilt that led to a punishment being imposed on the offender, or an order being made in respect of the offender, whether or not a conviction was recorded; and
- (c) a conviction that has been set aside or quashed is to be disregarded.

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(3) To avoid doubt it is declared that section 400 (3) of *The Criminal Code* as enacted by this Act applies in respect of offences committed at any time and to convictions recorded at any time.

Section 401 repealed and a section substituted

5. Section 401 of the Code is repealed and the following section is substituted —

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Burglary

401. (1) A person who enters or is in the place of another person, without that other person’s consent, with intent to commit an offence in that place is guilty of a crime and is liable —

- (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years;

- (b) if the place is ordinarily used for human habitation but the offence is not committed in circumstances of aggravation, to imprisonment for 18 years; or
- (c) in any other case, to imprisonment for 14 years.

Summary conviction penalty for an offence to which paragraph (b) or (c) applies:

- (a) in a case to which paragraph (b) applies: imprisonment for 3 years or a fine of \$12 000; or
- (b) in a case to which paragraph (c) applies: imprisonment for 2 years or a fine of \$8 000.

(2) A person who commits an offence in the place of another person, when in that place without that other person's consent, is guilty of a crime and is liable —

- (a) if the offence is committed in circumstances of aggravation, to imprisonment for 20 years;
- (b) if the place is ordinarily used for human habitation but the offence is not committed in circumstances of aggravation, to imprisonment for 18 years; or
- (c) in any other case, to imprisonment for 14 years.

Summary conviction penalty for an offence to which paragraph (b) or (c) applies (subject to subsection (3)):

- (a) in a case to which paragraph (b) applies: imprisonment for 3 years or a fine of \$12 000; or
- (b) in a case to which paragraph (c) applies: imprisonment for 2 years or a fine of \$8 000.

(3) If the offence committed in the place is an offence against property and the value of the property is more than \$10 000 the offence is not to be dealt with summarily.

(4) If a person convicted of an offence against subsection (1) or (2) committed in respect of a place ordinarily used for human habitation was a repeat offender at the time of committing that offence, the court sentencing the person shall sentence the offender —

(a) to at least 12 months imprisonment notwithstanding any other written law; or

(b) if the offender is a young person (as defined in the *Young Offenders Act 1994*) either to at least 12 months imprisonment or to a term of at least 12 months detention (as defined in that Act), as the court thinks fit, notwithstanding section 46 (5a) of that Act.

(5) A court shall not suspend a term of imprisonment imposed under subsection (4).

(6) Subsection (4) (b) does not prevent a court from making a direction under section 118 (4) of the *Young Offenders Act 1994* or a special order under Division 9 of Part 7 of that Act.

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Review

6. (1) The Minister administering this Act is to carry out a review of the operation and effectiveness of Section 401 of the Code as soon as practicable after the expiration of 4 years from its commencement.

(2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 5 years after the commencement of Section 401 of the Code.
