

**CRIMINAL LAW AMENDMENT  
ACT 1994**

---

No. 82 of 1994

---

**AN ACT to amend *The Criminal Code* and the *Offenders Community Corrections Act 1963* and to make consequential amendments to the —**

- ***Bail Act 1982;***
- ***Child Welfare Act 1947;***
- ***Evidence Act 1906;***
- ***Justices Act 1902;* and**
- ***Young Offenders Act 1994.***

[Assented to 23 December 1994.]

The Parliament of Western Australia enacts as follows:

**PART 1 — PRELIMINARY****Short title**

1. This Act may be cited as the *Criminal Law Amendment Act 1994*.

**Commencement**

2. (1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.

(2) Subject to subsection (3), Parts 2, 3, 4 and 6 come into operation on the 28th day after the day on which this Act receives the Royal Assent.

(3) Section 13 (6) has no effect unless the *Young Offenders Act 1994* is enacted, and, if that Act receives the Royal Assent after the commencement day referred to in subsection (2), section 13 (6) comes into operation on the day on which that Act receives the Royal Assent.

(4) Part 5 has no effect unless the *Young Offenders Act 1994* is enacted, and, if that Act has not come into operation before this Act receives the Royal Assent, Part 5 comes into operation on the day on which that Act comes into operation.

**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* and amended by Act No. 32 of 1994.]

**PART 2 — AMENDMENTS ABOUT SENTENCING**

**Sections 17A to 17D inserted**

4. Chapter IV of the Code is amended by inserting before section 18 the following sections —

“

**Principles of sentencing**

**17A.** (1) A sentence imposed on an offender shall be commensurate with the seriousness of the offence.

(2) The seriousness of an offence shall be determined by taking into account —

- (a) the statutory penalty for the offence;
- (b) the circumstances of the commission of the offence;
- (c) any aggravating factors; and
- (d) any mitigating factors.

(3) Subsection (1) does not prevent the reduction of a sentence because of —

- (a) any mitigating factors; or
- (b) any rule of law as to the totality of sentences.

(4) A court shall not impose a sentence of imprisonment on an offender unless it is of the opinion that —

- (a) the seriousness of the offence is such that only imprisonment can be justified; or
- (b) the protection of the community requires it.

(5) A court sentencing an offender shall take into account any relevant guidelines in a guideline judgment given under section 17D.

(6) In subsection (1), “**sentence**” includes any form of punishment or disposition available to a court instead of or in addition to the punishments referred to in section 18 (1).

(7) For the purposes of subsection (4), an order under section 19 (5) sentencing a person to be imprisoned is not a sentence of imprisonment.

### **Aggravating factors**

**17B.** (1) Aggravating factors are factors which, in the court’s opinion, increase the culpability of the offender.

(2) An offence is not aggravated by the fact that —

- (a) the offender pleaded not guilty to it;
- (b) the offender has a criminal record; or
- (c) a previous sentence has not achieved the purpose for which it was imposed.

### **Mitigating factors**

**17C.** (1) Mitigating factors are factors which, in the court’s opinion, decrease the culpability of the offender.

(2) The fact that property derived or realized, directly or indirectly, by the offender, or that is subject to the effective control of the offender, as a result of

the commission of the offence is forfeited to the Crown under a written law is not a mitigating factor.

### **Guideline judgments**

**17D.** (1) The Full Court of the Supreme Court or the Court of Criminal Appeal may give a guideline judgment containing guidelines to be taken into account by courts sentencing offenders.

(2) A guideline judgment may be given in any proceeding considered appropriate by the court giving it, and whether or not it is necessary for the purpose of determining the proceeding.

(3) A guideline judgment may be reviewed, varied or revoked in a subsequent guideline judgment.

”

### **Section 19A amended**

**5.** Section 19A of the Code is amended —

- (a) by repealing subsection (1); and
- (b) in subsection (2) by deleting “(1) or”.

**PART 3 — GENERAL AMENDMENTS**

**Section 301 amended**

6. Section 301 of the Code is amended by deleting “3 years.” and substituting the following —

“

5 years.

Summary conviction penalty: Imprisonment for  
2 years or a fine of \$8 000.

”

**Section 317A inserted**

7. After section 317 of the Code the following section is inserted —

“

**Assaults with intent**

**317A.** Any person who —

- (a) assaults another with intent to commit or facilitate the commission of a crime;
- (b) assaults another with intent to do grievous bodily harm to any person; or
- (c) assaults another with intent to resist or prevent the lawful arrest or detention of any person,

is guilty of a crime, and is liable to imprisonment for 5 years.

Summary conviction penalty: Imprisonment for  
2 years or a fine of \$8 000.

”

**Section 318 amended**

8. Section 318 (1) of the Code is amended —

- (a) by deleting paragraphs (a), (b) and (c);
- (b) by deleting “5 years.” and substituting the following —

“ 10 years. ”; and

- (c) by deleting “2 years or a fine of \$7 500.” and substituting the following —

“ 3 years or a fine of \$12 000. ”.

**Chapter XXXIIIB inserted and sections 550 and 551 repealed**

9. (1) After section 338C of the Code the following chapter is inserted —

“

**CHAPTER XXXIIIB — INTIMIDATION**

**Unlawful stalking**

**338D.** (1) Any person who stalks another person with intent to —

- (a) prevent or hinder the doing of an act by a person who is lawfully entitled to do that act;
- (b) compel the doing of an act by a person who is lawfully entitled to abstain from doing that act; or

- (c) cause physical or mental harm to a person or apprehension or fear in a person,

is guilty of a crime and is liable —

- (d) where the offence is committed in circumstances of aggravation, to imprisonment for 8 years; and
- (e) in any other case, to imprisonment for 3 years.

Summary conviction penalty:

In a case to which paragraph (d) applies:  
Imprisonment for 2 years or a fine of \$8 000.

In a case to which paragraph (e) applies:  
Imprisonment for 18 months or a fine of \$6 000.

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

### **Meaning of terms in section 338D**

**338E.** (1) For the purposes of section 338D a person stalks another person by —

- (a) persistently following or telephoning that person;
- (b) depriving that person of possession of any property or hindering that person in the use of any property; or



- (c) watching or besetting —
  - (i) that person's dwelling-house, or the approaches to it;
  - (ii) that person's place of employment or business, or the approaches to it; or
  - (iii) a place where that person happens to be, or the approaches to it.

(2) Attendance in order merely to receive or communicate information is not watching or besetting within the meaning of subsection (1) (c).

(3) Sending unsolicited gifts to a place or leaving unsolicited gifts at a place is besetting within the meaning of subsection (1) (c).

(4) In section 338D "**circumstances of aggravation**" means circumstances in which —

- (a) at or immediately before 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;
- (b) the conduct of the offender in committing the offence constituted a breach of —
  - (i) an order made under Part VII of the *Justices Act 1902* or registered under Part VIIA of that Act; or
  - (ii) a condition on which bail had been granted to the offender.

”.

(2) Sections 550 and 551 of the Code are repealed.

**Section 632A inserted**

10. After section 632 of the Code the following section is inserted —

“

**Plea of guilty after jury have been sworn**

**632A.** At any time after the jury have been sworn and before they have given their verdict, the accused person may plead that he is guilty of the offence charged in the indictment, or, with the consent of the Crown, of another offence of which he might be convicted on the indictment.

If such a plea is pleaded the court shall discharge the jury.

”.

**Section 688 amended**

11. Section 688 (2) (a) of the Code is amended by deleting “indictment;” and substituting the following —

“

indictment or staying or adjourning proceedings on an indictment;

”.

**Various sections amended**

12. Sections 54, 55, 58, 59 and 317 of the Code are amended by deleting “\$7 500.” and substituting, in each case, the following —

“ \$8 000. ”.

**Consequential amendments to other Acts**

13. (1) Schedule 2 to the *Bail Act 1982*\* is amended in the division headed "**1. The Criminal Code**" —

(a) by deleting the items relating to section 318 and substituting the following items —

“

s. 317A (a)	Assault with intent to commit or facilitate a crime	
s. 317A (b)	Assault with intent to do grievous bodily harm	
s. 318	Serious assaults	”;

and

(b) by inserting after the item relating to section 333 the following item —

“ s. 338D Unlawful stalking ”.

(2) Schedule 2 to the *Bail Act 1982*\* is amended by inserting before the division headed "**3. Road Traffic Act 1974**" the following division —

“

**2a. Justices Act 1902**

s. 173	Breach of order to keep the peace	”.
--------	-----------------------------------	----

[\* *Reprinted as at 17 October 1991.*

*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 16 and Gazette 4 March 1994, p. 915.]*

(3) If it is still in operation when this subsection commences, the Fourth Schedule to the *Child Welfare Act 1947*\* is amended

in Part I, Division B by inserting at the end the following item —

“ 318 Serious assaults ”.

[\* Reprinted as at 23 May 1990.

*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 31.]*

(4) The *Evidence Act 1906\** is amended —

(a) in Part 1 of the Second Schedule by inserting after the item relating to section 317 the following item —

“ s. 317A Assaults with intent ”; and

(b) in Part C of Schedule 7 by inserting after the item relating to section 317 the following item —

“ 317A Assaults with intent ”.

[\* Reprinted as at 1 August 1992.

*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 71.]*

(5) The *Justices Act 1902\** is amended —

(a) by repealing section 97 (2); and

(b) in section 173, by deleting “\$1 000 or 6 months imprisonment.” and substituting the following —

“ Imprisonment for 18 months or a fine of \$6 000.

”.

[\* Reprinted as at 1 April 1992.

*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 111.]*



**PART 4 — AMENDMENTS ABOUT TRIAL BY  
JUDGE ALONE**

**Chapter LXIVA inserted**

14. After section 651 of the Code the following chapter is inserted —

“

**CHAPTER LXIVA — TRIAL BY JUDGE ALONE**

**Trial by judge alone without a jury**

**651A.** (1) In this section “election” means an election under subsection (2).

(2) Subject to this section, where an accused person committed for trial before any court for an indictable offence elects to be tried by a judge alone, the trial is to proceed without a jury.

(3) An election is to be made in open court in accordance with rules of court.

(4) An election can be made —

(a) before an indictment has been presented to a court against the accused person; or

(b) at any stage after an indictment (including an *ex officio* indictment) has been presented to a court against the accused person but before the identity of the trial judge is known to the accused person.

(5) An election does not have effect unless the Crown consents to the trial proceeding without a jury.

(6) Where 2 or more accused persons are jointly charged, an election made by one accused person does not have effect unless each other accused person also makes an election.

(7) Where an accused person is charged with 2 or more offences, an election does not have effect unless it is made in respect of both or all of the offences.

(8) An accused person who elects to be tried by a judge alone cannot subsequently elect to be tried by a jury.

### **Judge's verdict and findings**

**651B.** (1) In a trial by a judge alone under this chapter the judge may make any findings or give any verdict that could have been made or given by the jury if the trial had been held before a jury, and any finding by or verdict of the judge has, for all purposes, the same effect as a finding by or verdict of a jury.

(2) A judgment in any trial by a judge alone under this chapter is to include the principles of law applied by the judge and the findings of fact on which the judge relied, but the validity of the judgment is not affected by any failure of the judge to comply with this subsection.

### **Law, practice and procedure relating to jury trials to apply to trials without juries**

**651C.** (1) A court before which an accused person has elected to be tried by judge alone under this chapter can exercise any power that it could have

exercised if the election had not been made. The powers conferred by section 611A can be exercised to the extent provided by rules of court.

(2) In a trial by a judge alone under this chapter the judge is to apply, so far as is practicable, the same principles of law, practice and procedure as would be applied in a trial before a jury.

(3) If any written or other law —

- (a) requires a warning, information or instruction to be given to a jury in certain circumstances; or
- (b) prohibits a warning from being given to a jury in certain circumstances,

the judge in a trial by judge alone under this chapter is to take the requirement or prohibition into account if those circumstances arise in the course of the trial.

(4) The provisions of this Code or any other written law relating to trials before a jury apply to a trial by a judge alone under this chapter with any modifications that are prescribed by rules of court and any other modifications that may be necessary.

(5) Without limiting subsection (4), a reference in this Code or any other written law to a person being tried or triable by or before a jury, or to the trial of a person taking place before a jury, is, unless the context otherwise requires, to be read as including a reference to a person being tried or triable by a judge alone, or to the trial of a person taking place before a judge alone, under this chapter.



**Section 688 amended**

15. Section 688 (2) of the Code is amended by inserting before paragraph (c) the following —

“

(ba) against any verdict of acquittal given by a judge alone under Chapter LXIVA and any judgment founded on that verdict —

(i) on any ground of appeal which involves a question of law alone; or

(ii) with the leave of the Court of Criminal Appeal or upon the certificate of the judge that it is a fit case for appeal, on any ground of appeal which involves a question of fact alone or a question of mixed law and fact;

or

”.

**Consequential amendments to other sections**

16. (1) Section 574 (4) (a) of the Code is amended by deleting “by a jury” and substituting the following —

“ by a judge with or without a jury ”.

(2) Section 622 of the Code is amended by deleting “is entitled to have them tried” and substituting the following —

“ , subject to Chapter LXIVA, those issues are triable ”.

**PART 5 — AMENDMENTS ABOUT THE DETENTION OF  
YOUNG ADULTS**

**Principal Act**

17. In this Part the *Offenders Community Corrections Act 1963\** is referred to as the principal Act.

[\* *Reprinted as at 10 October 1991.*

*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 148-9 and Act No. 32 of 1994.]*

**Long title amended**

18. The long title of the principal Act is amended by inserting after “centres” the following —

“  
    **, for the detention of young adults in particular  
    facilities**

”

**Part IIB inserted**

19. The principal Act is amended by inserting after section 20S the following Part —

“  
    **PART IIB — DETENTION OF YOUNG ADULTS**

**Operation of Part**

**20SA.** This Part does not operate unless —

- (a) regulations under the *Young Offenders Act 1994* provide for detention centres of

the kind referred to in section 119 (1) (a) of that Act; and

- (b) such a detention centre has been declared under section 13 of that Act.

**Detention under *Young Offenders Act 1994*, s. 119 may be directed**

**20SB.** (1) A court, on sentencing an offender to a term of imprisonment, or an aggregate of terms of imprisonment (“**the term imposed**”), of at least 12 months but not more than 36 months for a prescribed offence, may direct that the offender be detained for 4 months in a detention centre of a kind referred to in section 119 (1) (a) of the *Young Offenders Act 1994*.

(2) A court that makes a direction under subsection (1) must nevertheless —

- (a) make such directions under section 20 of *The Criminal Code* as it thinks fit; and
- (b) decide whether or not to make an order under section 37A (1),

in respect of the term imposed.

(3) A direction under subsection (1) may be made only if —

- (a) the offender is at least 18 but not more than 21 years old when the sentence is imposed;
- (b) the court has received a pre-sentence report about the offender;

- (c) the offender —
  - (i) has not been previously convicted of an offence prescribed for the purposes of paragraph (b) of section 119 (2) of the *Young Offenders Act 1994* by regulations under that Act; or
  - (ii) has not previously served all or any of a sentence of imprisonment or detention;

and

- (d) the offender consents to it.

(4) The court that makes a direction under subsection (1) may, on the application of the chief executive officer, cancel the direction.

(5) On making an application under subsection (4), the chief executive officer may transfer the offender to a prison until the application is determined.

(6) If on an application under subsection (4), the court refuses to cancel the direction, the offender must be returned to a detention centre of the kind referred to in subsection (1) and any period the offender spent in a prison, having been transferred under subsection (5), counts as time served in such a detention centre.

(7) In subsection (1) “**prescribed offence**” means an offence prescribed for the purpose of section 119 (1) of the *Young Offenders Act 1994* by regulations under that Act.

**Effect of direction under section 20SB**

**20SC.** (1) If a direction is made under section 20SB (1), then, unless the direction ceases to have effect under subsection (3) —

- (a) the offender is to be detained in a detention centre of the kind referred to for 4 months;
- (b) section 121 (5) and Parts 8, 9, and 10 of the *Young Offenders Act 1994* (other than sections 133 (1) (c) and 147 (2) (b)) apply to the term imposed as if it were a term of detention imposed under that Act; and
- (c) Parts III, IIIA and IIIB do not apply to the term imposed.

(2) Until it is practicable to transport an offender to a detention centre of the kind referred to in section 20SB (1), the offender is to be imprisoned in a prison and any period spent in a prison as a result counts as time served in such a detention centre.

(3) If while an offender is detained under such a direction —

- (a) the offender withdraws his or her consent to the direction;
- (b) the offender is sentenced to a term of imprisonment for another offence; or
- (c) the court cancels the direction under section 20SB (4),

the direction ceases to have effect and the term imposed takes effect as if the direction had not been made.

(4) If a direction ceases to have effect by virtue of subsection (3), the period for which the offender was detained before then counts as time served in respect of the term imposed.

”.

### **Consequential amendment to *Young Offenders Act 1994***

20. Section 7 of the *Young Offenders Act 1994* is amended in paragraph (i) by deleting “although” and the remainder of the paragraph and substituting the following —

“

although —

- (i) 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; and
- (ii) a young person who is the subject of a direction under section 119 (1) may be held in a detention centre of a kind referred to in that section with adults subject to a direction under section 20SB of the *Offenders Community Corrections Act 1963*;

”.

**PART 6 — AMENDMENTS ABOUT SENTENCES FOR  
MURDER AND WILFUL MURDER**

**Principal Act**

**21.** In this Part the *Offenders Community Corrections Act 1963\** is referred to as the principal Act.

[\* *Reprinted as at 10 October 1991.*

*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, pp. 148-9 and Act No. 32 of 1994.]*

**Section 20T amended**

**22.** Section 20T of the principal Act is amended by inserting after the definition of “commencement date” the following definition —

“

“**commencement of the 1994 Act**” means the day of the commencement of Part 6 of the *Criminal Law Amendment Act 1994*;

”.

**Section 34 amended**

**23.** The Table to section 34 of the principal Act is amended by deleting items 2 and 7 and inserting in the appropriate positions the following items —

“

2. A prisoner undergoing a sentence of strict security life imprisonment imposed before the commencement of the 1994 Act, other than —

The date of the expiration of a period of 20 years after the prisoner was sentenced 3 years

- (a) a sentence mentioned in item 1; or
- (b) a sentence in respect of which the prisoner was ordered not to be eligible for parole under section 40D (2a)
- 2a. A prisoner undergoing a sentence of strict security life imprisonment imposed on or after the commencement of the 1994 Act, other than a sentence in respect of which the prisoner was ordered not to be eligible for parole under section 40D (2a)      The date of the expiration of the minimum term set by the court under section 40D (2c)      3 years
7. A prisoner undergoing a sentence of life imprisonment imposed on or after the commencement date and before the commencement of the 1994 Act, other than a sentence imposed under section 282 (a) (ii) or (c) (ii) of *The Criminal Code*      The date of the expiration of a period of 7 years after the prisoner was sentenced      3 years



- 7a. A prisoner undergoing a sentence of life imprisonment imposed on or after the commencement of the 1994 Act under section 282 (a) (ii) or (c) (ii) of *The Criminal Code* The date of the expiration of the minimum term set by the court under section 40D (2d) 3 years
- 7b. A prisoner undergoing a sentence of life imprisonment imposed on or after the commencement of the 1994 Act under section 282 (b) or (d) (i) of *The Criminal Code* The date of the expiration of the minimum term set by the court under section 40D (2e) 3 years
- 7c. A prisoner undergoing a sentence of life imprisonment imposed on or after the commencement of the 1994 Act, other than a sentence imposed under section 282 of *The Criminal Code* The date of the expiration of a period of 7 years after the prisoner was sentenced 3 years

”.

**Section 40D amended**

**24.** (1) Section 40D (1) of the principal Act is amended by deleting “and (2b),” and substituting the following —

“ , (2b) and (2g), ”.

(2) Section 40D (2) of the principal Act is amended by inserting after “imprisonment” in the first place where it occurs the following —

“ imposed before the commencement of the 1994 Act, ”.

(3) Section 40D of the principal Act is amended by inserting after subsection (2b) the following subsections —

“

(2c) A court that sentences a person to strict security life imprisonment must, if it does not make an order under subsection (2a), set a minimum term of at least 20 and not more than 30 years that the person must serve before being eligible for release on parole.

(2d) A court that sentences a person to life imprisonment for wilful murder must set a minimum term of at least 15 and not more than 19 years that the person must serve before being eligible for release on parole.

(2e) A court that sentences a person to life imprisonment for murder must set a minimum term of at least 7 and not more than 14 years that the offender must serve before being eligible for release on parole.

(2f) Subsections (2c) to (2e) apply in respect of a person irrespective of whether the offence concerned was committed before, on or after the commencement of the 1994 Act.

(2g) Except where the Governor is of the opinion that special circumstances exist, an order shall not be made under subsection (1) in respect of a prisoner undergoing a sentence imposed after the commencement of the 1994 Act —

- (a) in the case of a prisoner undergoing a sentence of strict security life imprisonment, other than a sentence in respect of which an order was made under subsection (2a) — before the prisoner has served the minimum term set by the court under subsection (2c);
- (b) in the case of a prisoner undergoing a sentence of life imprisonment for wilful murder — before the prisoner has served the minimum term set by the court under subsection (2d);
- (c) in the case of a prisoner undergoing a sentence of life imprisonment for murder — before the prisoner has served the minimum term set by the court under subsection (2e).

”.