

ACTS AMENDMENT (DETENTION OF DRUNKEN PERSONS) ACT

No. 35 of 1989

AN ACT to amend the *Police Act 1892* and the *Child Welfare Act 1947*.

[Assented to 21 December 1989]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment (Detention of Drunken Persons) Act 1989*.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

PART 2—*POLICE ACT 1892*

Principal Act

3. In this Part the *Police Act 1892** is referred to as the principal Act.

[*Reprinted as approved 18 April 1983 and amended by Acts Nos. 21 and 30 of 1983, 22 and 23 of 1984, 10, 19 and 29 of 1985 and 74 of 1987.]

Section 43 amended

4. Section 43 of the principal Act is amended in subsection (1) by deleting “drunk, or disorderly,” and substituting the following—

“ conducting himself in a disorderly manner, ”.

Section 44 amended

5. Section 44 of the principal Act is amended by deleting “drunk, or” in both places where it occurs.

Part VA inserted

6. After Part V of the principal Act the following Part is inserted—

“ PART VA—APPREHENSION AND DETENTION
WITHOUT ARREST

Interpretation

53. In this Part unless the contrary intention appears—

“approved hospital” means—

- (a) any private hospital or public hospital to which the *Hospitals Act 1927* applies; or
- (b) an approved hospital within the meaning of and subject to the *Mental Health Act 1962*;

“intoxicated” means seriously affected apparently by alcohol;

“police officer” means a person appointed—

- (a) under Part 1 to be a member of the Police Force of Western Australia;
- (b) under Part III to be a special constable; or
- (c) under Part IIIA to be an aboriginal aide;

“register” means the record maintained by a police officer of—

- (a) the dates and times a person is taken into and released from detention under this Part; and
- (b) the inventory of property taken from and returned to the detained person or to a person into whose care the detained person is released.

Circumstances in which a person
may be apprehended

53A. (1) Subject to section 33A of the *Child Welfare Act 1947* where a police officer has reasonable grounds for believing that a person is intoxicated and the person is in a public place or trespassing on private property, the police officer may, without warrant, apprehend and detain the person.

(2) For the purposes of subsection (1) a police officer may, without warrant, enter upon private property.

Power to search the person and
remove personal property

53B. (1) Where a person is detained under section 53A a police officer may, subject to this section—

- (a) search the person or cause the person to be searched; and
- (b) remove or cause to be removed from the person for safe keeping, until the person is released from detention, any personal property found on or about the person including any item that is likely to cause harm to the person or any other person or that could be used by the person or any other person to cause harm to himself or herself or to another.

(2) Where a female person is detained under section 53A and there is no female police officer available to exercise the powers conferred by subsection (1) a police officer who wishes to exercise those powers shall for that purpose authorize another female person to do so.

(3) A police officer, or other person authorized under subsection (2), may use such force as is reasonably necessary for the purposes of subsection (1).

Inventory to be kept

53C. An inventory of personal property taken from a person under section 53B shall be recorded in the register and the personal property shall be returned—

- (a) to the person when the register is signed or marked under section 53E (1) (a);
- (b) to the person in whose care the detained person is released under section 53G (1) when the register is signed or marked under section 53E (1) (c); or
- (c) to a responsible person at an approved hospital to which the detained person is admitted under section 53H when the register is signed under section 53E (1) (d).

Period of detention

53D. (1) Subject to this Part, a person who has been apprehended under section 53A shall be detained by a police officer for as long as it reasonably appears to a police officer that the person remains intoxicated.

(2) Subject to this Part, where a police officer by whom the person is detained considers that the person is no longer intoxicated, the police officer shall release the person or cause the person to be released without the person entering into any recognizance or bail.

Release from detention

53E. (1) A person who is being detained under this Part shall not be released unless—

- (a) the person signs or otherwise marks the register acknowledging his or her release and the receipt of the property (if any) taken from him or her under section 53B;
- (b) the person refuses or fails to sign or mark the register under paragraph (a) and a police officer records that refusal or failure in the register and signs the register;
- (c) the person into whose care the detained person is to be released under section 53G signs or otherwise marks the register acknowledging the release of the person into his or her care and the receipt of the property (if any) taken from the detained person under section 53B; or
- (d) a responsible person at an approved hospital to which the detained person is to be admitted under section 53H signs the register acknowledging the admission of the detained person and the receipt of the property (if any) taken from the detained person under section 53B.

(2) Subsection (1) has effect notwithstanding any order made by a Justice under section 53I.

(3) A person apprehended under section 53A shall be deemed to be released from detention at the time and on the date recorded in the register as the time at which and the date on which the register was signed or marked under subsection (1) (a), (b), (c) or (d) as the case may be.

Protection of detained person

53F. (1) A person detained under this Part—

- (a) shall not be charged with an offence;
- (b) shall not be questioned in relation to an offence; and
- (c) shall not be photographed or have his or her measurements, palm prints or fingerprints taken,

while he or she is detained under this Part.

(2) Where a person is questioned in contravention of subsection (1) (b) any answer that the person may give to any question shall be inadmissible in evidence against the person in any proceedings.

Release of detained person into
care of another person

53G. (1) Subject to subsection (2) and to the applicant signing the register under section 53E (1) (c) a police officer by whom a person is detained under this Part may, at any time release the person or cause the person to be released without the person entering into a recognizance or bail, into the care of a person who applies for his or her release, where the police officer reasonably believes the applicant is capable of taking adequate care of the person who has been detained.

(2) A person shall not be released under subsection (1) if he or she objects to being released into the care of the applicant.

(3) Where a police officer refuses an application under subsection (1) on the grounds that the applicant is not capable of taking adequate care of the detained person the applicant may apply to a Justice to review the police officer's decision.

(4) Subject to section 53J where an application is made to a Justice under subsection (3), the police officer and the applicant may, unless the detained person is sooner released under this Part, as soon as practicable, appear before a Justice who may—

- (a) order the release of the person into the care of the applicant;
- (b) where it appears to the Justice that the applicant is not capable of taking adequate care of the person, order the person to be detained for as long as it appears to a police officer that the person remains intoxicated; or
- (c) give any other order or direction for the safety and welfare of the detained person which the Justice thinks fit.

Release of detained person into
the care of an approved hospital

53H. Subject to section 53E (1) (d) a police officer by whom a person is detained under this Part may, at any time release the person or cause the person to be released without the person entering into a recognizance or bail, into the care of an approved hospital.

Review of detention of person

53I. Subject to section 53J—

- (a) a person detained under this Part may, at any time, request a police officer to take him or her before a Justice, in order that the detained person may make an application to the Justice for his or her release;
- (b) where a request is made to a police officer under paragraph (a), the police officer shall as soon as practicable, bring the person before a Justice, or cause the person to be brought before a Justice unless the person is released under this Part before appearing before a Justice;
- (c) if, 8 hours after a person has been apprehended under section 53A, it reasonably appears to a police officer by whom the person is detained that the person is still intoxicated, the police officer shall bring the person before a Justice as soon as practicable, unless the person is released under this Part before appearing before a Justice;
- (d) where a person is brought before a Justice under paragraph (b) or (c) the Justice—
 - (i) shall order the release of the person where the Justice considers that the person is no longer intoxicated; or
 - (ii) may give directions to the police officer for the safety and welfare of the person including, if the Justice thinks fit—
 - (A) for the detention of the person by a police officer for as long as it appears to a police officer that the person remains intoxicated; or
 - (B) subject to paragraph (e) releasing the detained person into the care of a person capable of taking adequate care of the detained person;

and

- (e) a Justice shall not order the release of a person brought before him under paragraph (b) or (c) into the care of another person if the person in detention objects to being released into the care of that person.

When release or review of detained person may be deferred

53J. (1) Except as provided in subsection (2), a police officer shall not defer—

- (a) releasing the detained person under this Part; or
- (b) bringing the detained person before a Justice except for the minimum time necessary to meet reasonable organisational requirements of the police station concerned.

(2) Notwithstanding subsection (1) (a), a police officer may defer releasing a detained person under this Part between the hours of midnight and 7.30 am if release during those hours is not in the best interests of the detained person.

(3) Where a police officer exercises a power in subsection (1) (b) or (2) the reason for the deferral shall be recorded in the register.

Indemnity

53K. (1) A Justice, police officer or any person who performs any function under this Part is not civilly liable for any thing done or omitted to be done by him or her in good faith or in connection with the performance or purported performance of his or her functions under this Part.

(2) Subsection (1) does not limit the operation of section 138.

Application for Declaration

53L. (1) A person may, before the expiration of 30 days from the date of his discharge from detention or, from an approved hospital, apply to a court of summary jurisdiction for a declaration that at the time he was taken into detention under section 53A, he was not intoxicated.

(2) Where in proceedings under this section the court is satisfied that the applicant was not intoxicated at the time he was taken into detention it shall make a declaration accordingly.

(3) In any proceedings under this section, the person by whom the applicant was taken into detention and the person by whom the applicant was apprehended, shall be entitled to appear.

(4) A declaration made under this section in relation to the detention of the applicant does not establish that the detention was unlawful.

Escape of detained person

53M. A person who is detained under this Part shall not be regarded as being in legal custody for the purposes of any law relating to escape from legal custody. ”.

Section 53 repealed

7. Section 53 in Part VI of the principal Act is repealed.

Section 65 amended

8. Section 65 of the principal Act is amended by repealing paragraph (6).

PART 3—CHILD WELFARE ACT 1947

Section 33A inserted

9. After section 33 of the *Child Welfare Act 1947** the following section is inserted—

Apprehension under section 53A
of the *Police Act 1892*

“ 33A. Where a child is apprehended under section 53A of the *Police Act 1892*, where practicable, the child should not be taken to a police station or lock-up to be detained until the police officer has first attempted—

- (a) to take the child to his or her place of residence and to release the child into the care of a responsible person, who the police officer reasonably believes is capable of taking care of the child; or
- (b) to release the child into the care of a person under section 53G of the *Police Act 1892*. ”

[*Reprinted as approved 30 August 1984 and amended by Acts Nos. 87 of 1982, 52, 61 and 121 of 1984, 74 and 98 of 1985, 89 of 1986, 105 and 127 of 1987 and 70 of 1988.]