



Western Australia.

ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

No. XXIV.

AN ACT to make better Provision for the
Protection of Women and Girls, and for
other Purposes.

[Assented to, 18th March, 1892.]

BE it enacted by the Queen's Most Excellent Majesty, by and
with the advice and consent of the Legislative Council and
Legislative Assembly of Western Australia, in this present Parlia-
ment assembled, and by the authority of the same, as follows:—

Preamble.

1. THIS Act may be cited as "The Criminal Law Amendment
Act of 1892."

Short title.

PART I.—PROTECTION OF WOMEN AND GIRLS.

2. ANY person who—

- (1.) Procures or attempts to procure any girl or woman
under twenty-one years of age, not being a common
prostitute or of known immoral character, to have
unlawful carnal connection, either within or without
the Colony, with any other person or persons; or

Procuration.
48 and 49 Vic., c 69,
s. 2. *

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- (2.) Procures or attempts to procure any woman or girl to become, either within or without the Colony, a common prostitute; or
- (3.) Procures or attempts to procure any woman or girl to leave the Colony, with intent that she may become an inmate of a brothel elsewhere; or
- (4.) Procures or attempts to procure any woman or girl to leave her usual place of abode in the Colony (such place not being a brothel), with intent that she may, for the purposes of prostitution, become an inmate of a brothel within or without the Colony;

shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor:

No conviction on evidence of one uncorroborated witness.

Provided that no person shall be convicted of any offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

3. ANY person who—

Procuring defilement of woman by threats or fraud, or administering drugs.
Ib. s. 3.

- (1.) By threats or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal connection, either within or without the Colony; or
- (2.) By false pretences or false representations procures any woman or girl, not being a common prostitute or of known immoral character, to have any unlawful carnal connection, either within or without the Colony; or
- (3.) Applies, administers to, or causes to be taken by any woman or girl any drug, matter, or thing, with intent to stupefy or overpower her so as thereby to enable any person to have unlawful carnal connection with such woman or girl;

shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor:

No conviction on evidence of one uncorroborated witness.

Provided that no person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Defilement of girl under twelve years of age.
Ib. s. 4.

4. ANY person who unlawfully and carnally knows any girl under the age of twelve years shall be guilty of felony, and being

convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without whipping.

Any person who attempts to have unlawful carnal knowledge of any girl under the age of twelve years shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without whipping:

Where upon the hearing of a charge under this section, the girl in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not, in the opinion of the Court or Justices, understand the nature of an oath, the evidence of such girl or other child of tender years may be received, though not given upon oath, if, in the opinion of the Court or Justices, as the case may be, such girl or other child of tender years is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth: Provided that no person shall be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution shall be corroborated by some other material evidence in support thereof implicating the accused: Provided also, that any witness whose evidence has been admitted under this section shall be liable to indictment and punishment for perjury in all respects as if he or she had been sworn.

As to admission of evidence of children.

5. WHEREAS doubts have been entertained whether a man who induces a married woman to permit him to have carnal connection with her by personating her husband is or is not guilty of rape, it is hereby enacted and declared that every such offender shall be deemed to be guilty of rape.

Rape by fraud.
Ib. s. 4.

6. ANY person who—

(1.) Unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of any girl being of or above the age of twelve years and under the age of fourteen years; or

Defilement of girl between twelve and fourteen years of age.
Ib. s. 5.

(2.) Unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the commission of the offence that the woman or girl was an idiot or imbecile;

Idiots and imbeciles.

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shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the Court to be imprisoned for any term not exceeding two years, with or without hard labor.

Defence of reasonable belief that girl not under fourteen.

Provided that it shall be a sufficient defence to any charge under sub-section one of this section if it shall be made to appear to the Court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe that the girl was of or above the age of fourteen years.

Provided also that no prosecution shall be commenced for an offence under sub-section one of this section more than three months after the commission of the offence.

No person shall be convicted of an offence under this section upon the evidence of one witness only, unless such witness be corroborated in some material particular by evidence implicating the accused.

Defilement by guardian, &c.

7. ANY person who, being the guardian, teacher, or school-master of any girl or woman under the age of seventeen years, unlawfully and carnally knows, or attempts to have unlawful and carnal knowledge of such girl or woman, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without whipping.

Householder, &c., permitting defilement of young girl on his premises.
Ib. s. 6.

8. ANY person who, being the owner or occupier of any premises, or having, or acting, or assisting in the management or control of any premises, induces or knowingly suffers any girl of such age as is in this section mentioned to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally—

- (1.) Shall, if such girl is under the age of twelve years, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without whipping; and
- (2.) If such girl is of or above the age of twelve years and under the age of fourteen years, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without whipping:

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Provided that it shall be a sufficient defence to any charge under this section, if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe that the girl was of or above the age of fourteen years.

Defence of reasonable belief that girl not under fourteen.

9. ANY person who, being the owner or occupier of any premises, or having, or acting, or assisting in the management, or control thereof, induces, or knowingly suffers, any boy under the age of sixteen years to resort to, or be in or upon such premises for the purpose of unlawfully and carnally knowing any girl or woman, whether such carnal knowledge is intended to be with any particular girl or woman or generally, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor.

Householder, &c., permitting youths under sixteen years of age to resort to brothels guilty of a misdemeanor.

10. ANY person who, with intent that any unmarried girl under the age of eighteen years should be unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, takes or causes to be taken such girl out of the possession and against the will of her father or mother, or any other person having the lawful care or charge of her, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor.

Abduction of girl under eighteen with intent to have carnal knowledge.
Ib. s. 7.

Provided that it shall be a sufficient defence to any charge under this section, if it shall be made to appear to the court or jury before whom the charge shall be brought that the person so charged had reasonable cause to believe that the girl was of or above the age of eighteen years.

Defence of reasonable belief that girl not under eighteen.

11. ANY person who detains any woman or girl against her will—

(1.) In or upon any premises with intent that she may be unlawfully and carnally known by any man, whether any particular man or generally; or

(2.) In a brothel;

shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labor.

Unlawful detention with intent or in a brothel.
Ib. s. 8.

Where a woman or girl is in or upon any premises for the purpose of having any unlawful carnal connection, or is in a brothel, a person shall be deemed to detain such woman or girl in or upon

such premises or in such brothel, if, with intent to compel or induce her to remain in or upon such premises or in such brothel, such person withholds from such woman or girl any wearing apparel or other property belonging to her, or, where wearing apparel has been lent or otherwise supplied to such woman or girl by or by the direction of such person, such person threatens such woman or girl with legal proceedings if she takes away with her the wearing apparel so lent or supplied.

No legal proceedings, either civil or criminal, shall be taken against any such woman or girl for taking away or being found in possession of any such wearing apparel as was necessary to enable her to leave such premises or brothel.

Power, on information for rape, to convict of certain misdemeanors.
Ib. s. 9.

12. IF upon the trial of an information for rape, or any offence made felony by the fourth section of this Act, the jury shall be satisfied that the accused person is guilty of an offence under the third, fourth, or sixth sections of this Act, or of an indecent assault, but are not satisfied that the accused is guilty of the felony charged in such information, or of an attempt to commit the same, the jury may acquit the accused of such felony, and may find him guilty of such offence as aforesaid, or of an indecent assault, and thereupon such accused shall be liable to be punished in the same manner as if he had been convicted upon an information for such offence as aforesaid, or for the misdemeanor of indecent assault.

Power of search.
Ib. s. 10.

13. IF it appears to any Justice of the Peace, on information made before him on oath by any parent, relative, or guardian of any woman or girl, or any other person who, in the opinion of the Justice, is *bonâ fide* acting in the interest of any woman or girl, that there is reasonable cause to suspect that such woman or girl is unlawfully detained for immoral purposes by any person in any place within the jurisdiction of such Justice, such Justice may issue a warrant authorising any person named therein to search for, and when found, to take to and detain in a place of safety, such woman or girl until she can be brought before a Justice of the Peace; and the Justice of the Peace before whom such woman or girl is brought may cause her to be delivered up to her parents or guardians, or otherwise dealt with as circumstances may permit and require.

The Justice of the Peace issuing such warrant may, by the same or any other warrant, cause any person accused of so unlawfully detaining such woman or girl to be apprehended and brought before a Justice of the Peace, and proceedings to be taken for punishing such person according to law.

A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being

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unlawfully and carnally known by any man, whether any particular man or generally, and—

- (a.) Is under the age of sixteen years; or
- (b.) Being of or over the age of sixteen years, and under the age of eighteen years, is so detained against her will, or against the will of her father or mother or of any other person having the lawful care or charge of her; or
- (c.) Being of or above the age of eighteen years, is so detained against her will.

Any person authorised by warrant under this section to search for any woman or girl so detained as aforesaid may enter, and if need be by force, any house, building, or other place specified in such warrant, and may remove such woman or girl therefrom:

Provided always that every warrant issued under this section shall be addressed to and executed by some Officer of Police, who shall be accompanied by the parent, relative, guardian, or other person making the information, if such person so desires, unless the Justice otherwise directs.

14. ANY male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any other person of, any act of gross indecency with another person, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without whipping.

Outrages on decency.
Ib. s. 11.

15. WHERE on the trial of a person charged with an offence under this Act it is proved to the satisfaction of the Court that the seduction or prostitution of a girl under the age of sixteen has been caused, encouraged, or favored by her father, mother, guardian, master, or mistress, it shall be in the power of the Court to divest such father, mother, guardian, master, or mistress of all authority over her, and to appoint any person or persons willing to take charge of such girl to be her guardian until she has attained the age of twenty-one, or any age below twenty-one as the Court may direct, and the Supreme Court, or a Judge thereof, shall have the power from time to time to rescind or vary any such order by the appointment of any other person or persons as such guardian, or in any other respect.

Custody of girls
under sixteen.
Ib. s. 12.

16. NO girl under the age of fourteen years shall be deemed capable of consenting to any indecent assault, and no girl or woman

Indecent assault.

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under the age of seventeen years shall be deemed capable of consenting to any indecent assault committed by the guardian, teacher, or schoolmaster of such girl or woman.

PART II.—INCEST.

Abuse of female by her father or ancestor or brother.

17. ANY person who carnally knows a woman or girl who is to the knowledge of such person his daughter or other lineal descendant, or his sister, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for life, or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without whipping.

Attempt.

Any person who attempts to have carnal knowledge of a woman or girl who is to the knowledge of such person his daughter or other lineal descendant, or his sister, or assaults any such woman or girl with intent unlawfully and carnally to know her, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding ten years, or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without whipping.

It shall be no defence to any such charge that such carnal knowledge, or attempt or assault with intent to have carnal knowledge, was or was made with the consent of such woman or girl.

When female is adult and consents.

18. ANY woman or girl of or above the age of eighteen years who consents to her father or other lineal ancestor, or to her brother, having carnal knowledge of her, and permits him, knowing him to be her father or other lineal ancestor, or her brother, as the case may be, so to do, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding five years.

Excused, if under coercion.

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the Court or Jury before whom the charge shall be brought that the person so charged was, at the time when she consented to her father or other lineal ancestor, or her brother, having carnal knowledge of her or permitted him so to do, acting under his coercion.

Knowledge of relationship to be presumed unless contrary is shown.

19. IN any prosecution for an offence against the provisions of the two last preceding sections—

(1.) It shall be sufficient to prove that the woman or girl on whose person or by whom the offence is alleged to have been committed is reputed to be the daughter or other

lineal descendant, or sister, of the person charged or with whom the offence is alleged to have been committed, and it shall not be necessary to prove that such woman or girl or any person being her parent or ancestor and descendant of the person charged or with whom the offence is alleged to have been committed, was born in lawful wedlock ;

- (2.) The accused person shall, until the contrary is proved, be presumed to have had knowledge at the time of the alleged offence of the relationship existing between the woman or girl on whose person or by whom the offence is alleged to have been committed and the person charged or with whom the offence is alleged to have been committed.

PART III.—MISCELLANEOUS.

20. THIS Act shall not exempt any person from any proceeding for an offence which is punishable at common law, or under any Act other than this Act, so that a person be not punished twice for the same offence.

Saving of liability to other criminal proceedings.
Ib. s. 16.

21. THE Court before which any person charged with misdemeanor under this Act, or with indecent assault, is prosecuted or tried, may upon conviction of the accused person order the costs of the prosecution to be paid by such person ; and every order for the payment of such costs shall be enforced in the same manner as in the case of costs ordered to be paid by the Court upon a conviction for felony.

Costs.
Ib. s. 18.

33 & 34 Vic., c. 23
(37 Vic., No. 8).

22. EVERY person charged with an offence under this Act or under section three of "The Criminal Law Consolidation Ordinance, 1865," or any of the sections fifty-two to fifty-five, both inclusive, of the Act of the Imperial Parliament passed in the session of the twenty-fourth and twenty-fifth years of the reign of Her present Majesty, Chapter One hundred, and adopted (with certain exceptions) in this Colony by "The Criminal Law Consolidation Ordinance, 1865," and the husband or wife of the person so charged shall be competent but not compellable witnesses on every hearing, at every stage of such charge.

Person charged and his wife to be competent witnesses.
Ib. s. 20.

23. UPON the conviction of any person of an attempt to commit the offence of rape, the Court, in addition to any other punishment, may sentence the offender to be whipped.

Court may order whipping for attempts to rape.

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Provisions as to
whipping.

24. WHENEVER whipping may be awarded for any offence under this Act, or for an attempt to rape, the Court may sentence the offender to be once, or if the offence be against sections four or six of this Act, or of an attempt to rape, to be once, twice, or thrice whipped, and the number of strokes not exceeding fifty at each such whipping, or in case of an offender under the age of sixteen not exceeding twenty-five strokes at each such whipping, and the instrument with which and the periods when they shall be inflicted shall be specified by the Court in the sentence: Provided that in no case shall such whipping take place after the expiration of six months from the passing of the sentence.

Power to exclude
females, &c., from
Court.

25. WHEN any hearing or trial takes place in relation to any offence under this Act or "The Criminal Law Consolidation Ordinance, 1865," or any Act thereby adopted, relating to rape or other offences against females, or unnatural offences, it shall be lawful for the Court or Justice of the Peace to direct that all females and boys shall be excluded from the place where such hearing or trial is being heard or conducted.

Repeal of
enactments in
Schedule.

26. THE Act mentioned in the Schedule to this Act shall, to the extent mentioned in the third column of the said Schedule, cease to apply or have any force in Western Australia, except as to anything heretofore lawfully done thereunder, and except so far as may be necessary for the purpose of supporting and continuing any proceeding taken, or of prosecuting or punishing any person, for any offence committed before the passing of this Act.

In the name and on behalf of the Queen I hereby assent
to this Act.

ALEX. C. ONSLOW, Administrator.

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SCHEDULE.

Session and Chapter.	Title.	Extent of Repeal.
24 & 25 Vic., c. 100 (adopted by 29 Vic., No. 5).	An Act to consolidate and amend the Statute Law of England and Ireland relating to Of- fences against the Person.	Sections 49, 50, and 51, and in section fifty- two the words “or “of any attempt to “have carnal know- “ledge of any girl “under twelve years “of age.”