



Western Australia

## **Sentence Administration Amendment Act 2018**

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As at 23 Mar 2018

No. 2 of 2018

Published on [www.legislation.wa.gov.au](http://www.legislation.wa.gov.au)



## Sentence Administration Amendment Act 2018

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## **Sentence Administration Amendment Act 2018**

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**No. 2 of 2018**

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**An Act to amend the *Sentence Administration Act 2003*.**

*[Assented to 23 March 2018]*

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Sentence Administration Amendment Act 2018*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

**3. Act amended**

This Act amends the *Sentence Administration Act 2003*.

**4. Section 12 amended**

In section 12(4) delete “A report —” and insert:

Subject to section 66B(1), a report —

**5. Section 12A amended**

In section 12A(5) delete “A report” and insert:

Subject to section 66B(1), a report

**6. Section 20 amended**

Before section 20(2)(a) insert:

- (aa) the requirements of section 66B(1); and

**7. Section 23 amended**

(1) Before section 23(2a)(a) insert:

(aa) the requirements of section 66B(1); and

(2) In section 23(3) delete “section 10,” and insert:

sections 10 and 66B(1),

**8. Section 52 amended**

In section 52(2) after “have regard to” insert:

the requirements of section 66B(1) and

**9. Part 5 Division 1A inserted**

After Part 5 Division 1 insert:

**Division 1A — Homicide offence or homicide related offence**

**66A. Terms used**

In this Division —

*homicide offence* means an offence of —

- (a) murder; or
- (b) manslaughter; or
- (c) infanticide under *The Criminal Code* section 287A as in force before the commencement of the *Criminal Law Amendment (Homicide) Act 2008* section 13;

***homicide related offence*** means any of the following offences, if the offence relates to the death of a person —

- (a) counselling or procuring the commission of a homicide offence; or
- (b) inciting another person to commit a homicide offence; or
- (c) becoming an accessory after the fact to a homicide offence; or
- (d) conspiring with another person to commit a homicide offence;

***release action*** means making a parole order under section 23(3)(b) in respect of a prisoner;

***release decision*** means —

- (a) a decision to recommend, in a report given under section 12 or 12A, that a prisoner be released; or
- (b) a decision under section 20(2) that it is appropriate to release a prisoner on parole; or
- (c) a decision under section 23(3)(a) to make a parole order in respect of a prisoner; or
- (d) a decision under section 52(1) to make an RRO in respect of a prisoner;

***relevant prisoner*** means —

- (a) a person serving a sentence for a homicide offence or homicide related offence; or
- (b) a person subject to a sentence of detention imposed under *The Criminal Code* section 279(5)(b); or
- (c) a person in, or regarded as being in, strict or safe custody by virtue of an order under *The Criminal Code* section 282 (repealed by the



*Criminal Law Amendment (Homicide) Act 2008* section 10); or

- (d) a person subject to a direction or sentence under *The Criminal Code* section 661 or 662 (repealed by the *Sentencing (Consequential Provisions) Act 1995* section 26) where at least one of the offences referred to in *The Criminal Code* section 661 or 662 was a homicide offence or homicide related offence;

***remains of the victim***, in relation to a homicide offence, means the remains of the person against whom the homicide offence was committed.

**66B. Board not to release or recommend release unless prisoner cooperates or victim's remains located**

- (1) The Board must not make a release decision, or take release action, in relation to a relevant prisoner in custody for a homicide offence or homicide related offence unless the Board is satisfied that —
  - (a) the prisoner has cooperated with a member of the Police Force in the identification of the location, or last known location, of the remains of the victim of the homicide offence; or
  - (b) a member of the Police Force knows the location of the remains of the victim of the homicide offence.
- (2) The Board may be satisfied under subsection (1)(a) in relation to a relevant prisoner in custody for a homicide offence or homicide related offence even if the prisoner did not cooperate —
  - (a) before being sentenced for the offence; or
  - (b) before the determination of an appeal against the conviction or sentence for the offence.

- (3) The Board must, when deciding whether it is satisfied under subsection (1)(a), take into account any information the Board has about the prisoner's mental capacity to provide relevant information or evidence.
- (4) This section applies to a decision or action in relation to a relevant prisoner in custody for a homicide offence or homicide related offence whether the offence was committed before, on or after the day on which the *Sentence Administration Amendment Act 2018* section 9 comes into operation.

**66C. Commissioner of Police report**

- (1) On each occasion on which the Board is required to consider whether to make a release decision, or take release action, in relation to a relevant prisoner in custody for a homicide offence or homicide related offence, the Board must make a written request to the Commissioner of Police for a written report.
- (2) The Board does not have to request a report if the Board is already satisfied that a member of the Police Force knows the location of the remains of the victim of the homicide offence.
- (3) The report must deal with each of the following matters —
  - (a) in relation to the prisoner's cooperation described in section 66B(1)(a) —
    - (i) the nature and extent of the prisoner's cooperation; and
    - (ii) the timeliness of the prisoner's cooperation; and

- (iii) the truthfulness, completeness and reliability of any information or evidence provided by the prisoner; and
    - (iv) the significance and usefulness of the prisoner's cooperation; and
    - (v) to the extent known to the Commissioner of Police, the prisoner's mental capacity to provide relevant information or evidence;
  - (b) whether a member of the Police Force knows the location of the remains of the victim of the homicide offence.
- (4) The Commissioner of Police must give the Board the report within a reasonable period of time after receiving the request.
- (5) If the Board requests a report the Board must, when deciding whether it is satisfied for the purposes of section 66B(1), take into account the matters referred to in subsection (3) as dealt with in the report.

**10. Section 112 amended**

After section 112(e) insert:

- (ea) the number of prisoners whose cooperation was considered by the Board for the purposes of section 66B(1)(a) during the previous financial year;
- (eb) the number of prisoners referred to in paragraph (ea) who were released under an early release order by the Board or the Governor during the previous financial year;

