

Western Australia

Sentencing Amendment Act 2000

As at 06 Dec 2000

No. 64 of 2000

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Sentencing Amendment Act 2000

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Western Australia

Sentencing Amendment Act 2000

No. 64 of 2000

An Act to amend the *Sentencing Act 1995* and *Young Offenders Act 1994*.

[Assented to 6 December 2000]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Sentencing Amendment Act 2000*.

2. Commencement

This Act comes into operation on such day as is, or days as are respectively, fixed by proclamation.

3. Act amended

The amendments in this Act are to the *Sentencing Act 1995** unless otherwise indicated.

[* *Act No. 76 of 1995.*

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 211-12, and Acts Nos. 23, 29 and 38 of 1998.]

Part 2 — Amendments about appropriate and consistent sentencing

Division 1 — *Sentencing Act 1995* amended

4. Part 14A inserted

After section 101 of the *Sentencing Act 1995* the following Part is inserted —

“

Part 14A — Sentence reporting and formulation

Division 1 — Reporting of sentences

101A. Application of this Division

- (1) This Division applies if —
 - (a) an offence is prescribed in relation to a court by regulations under section 101B; and
 - (b) that court is sentencing an offender for that offence.
- (2) However, if Division 2 applies when a court is sentencing an offender for an offence, this Division does not apply.

101B. Reporting offences may be prescribed

Regulations may prescribe an offence (a “**reporting offence**”) in relation to a prescribed court for the purposes of this Division.

101C. Sentencing reports for reporting offences

- (1) A court sentencing an offender for a reporting offence must prepare a sentencing report and deliver it in accordance with the regulations.
- (2) Regulations may provide for the use of computer programmes approved under the regulations to prepare sentencing reports.

101D. Contents of sentencing reports for reporting offences

The sentencing report for a reporting offence must —

- (a) set out each mitigating, aggravating or other factor that was taken into account in arriving at the sentence; and
- (b) indicate the degree to which —
 - (i) each of those factors;
 - (ii) the maximum penalty for the offence; and
 - (iii) the minimum penalty (if any) for the offence,

affected the sentence.

Division 2 — Reporting of variations from indicative sentences

101E. Application of this Division

This Division applies if —

- (a) a sentencing method for an offence is prescribed in relation to a court by regulations under section 101F; and
- (b) that court is sentencing an offender for that offence.

101F. Indicative sentencing method may be prescribed

- (1) Regulations may prescribe a method to be applied by a prescribed court to arrive at an indication of the appropriate sentence (the “**indicative sentence**”) for a prescribed offence (a “**regulated offence**”).
- (2) In prescribing a sentencing method for a regulated offence the regulations —
 - (a) may provide for the indicative sentence to be determined in accordance with a prescribed formula or in such other manner as is prescribed; and
 - (b) may provide that the making of a spent conviction order in relation to the offence would not be appropriate.

101G. Sentencing procedures for regulated offences

- (1) A court sentencing an offender for a regulated offence must —
 - (a) determine the indicative sentence;

- (b) impose a sentence for the offence (the “**actual sentence**”); and
 - (c) prepare a sentencing report and deliver it in accordance with the regulations.
- (2) Regulations may provide for the use of computer programmes approved under the regulations to —
 - (a) determine indicative sentences; and
 - (b) prepare sentencing reports.

101H. Contents of sentencing reports for regulated offences

The sentencing report for a regulated offence must —

- (a) set out the indicative sentence;
- (b) set out each mitigating, aggravating or other factor that was taken into account in arriving at the indicative sentence and the actual sentence;
- (c) set out the degree to which —
 - (i) each of the factors set out under paragraph (b);
 - (ii) the maximum penalty for the offence; and
 - (iii) the minimum penalty (if any) for the offence,affected the indicative sentence and the actual sentence;
- (d) if the actual sentence is not the same as the indicative sentence, explain, in the prescribed manner, the reasons for the difference between the actual sentence and the indicative sentence; and

- (e) provide any other information required by the regulations.

Division 3 — Comparison of actual sentences with indicative sentences

101I. Purpose of this Division

The provisions of this Division have effect for the purpose of determining under Division 2 whether the actual sentence is the same as, more severe than or less severe than the indicative sentence.

101J. Meaning of terms used in this Division

- (1) In this Division —
- “**actual sentence**” has the meaning given by section 101G;
- “**indicative sentence**” has the meaning given by section 101F;
- “**punishment option**” means a sentencing option listed in section 39(2) or a combination of 2 or more of those sentencing options;
- “**sentencing method**” means the sentencing method prescribed under section 101F.
- (2) For the purposes of this Division, a punishment option is higher than any other punishment option that is listed before it in section 39(2).
- (3) In the case of a punishment option that is a combination of options, its position in section 39(2) is determined by reference to the highest of those options.

101K. One sentencing option provided

- (1) This section applies if the sentencing method provides for the indicative sentence to involve the use of a particular punishment option (the “**prescribed option**”).
- (2) If the actual sentence only involves the use of the prescribed option, the actual sentence is to be regarded as more severe than the indicative sentence if it is greater than the indicative sentence.
- (3) If the actual sentence involves the use of another sentencing option, or other sentencing options, in addition to the prescribed option, the actual sentence is to be regarded as more severe than the indicative sentence if —
 - (a) that other option, or one or more of those other options, is higher than the prescribed option; or
 - (b) the portion of the sentence imposed using the prescribed option is not less than the indicative sentence.
- (4) If the actual sentence does not involve the use of the prescribed option, the actual sentence is to be regarded as more severe than the indicative sentence if a sentencing option used is higher than the prescribed option.
- (5) Unless —
 - (a) the actual sentence only involves the use of the prescribed option and is the same as the indicative sentence; or
 - (b) subsection (2), (3) or (4) provides otherwise,the actual sentence is to be regarded as less severe than the indicative sentence.

- (6) If the sentencing method provides for the indicative sentence to be within a range of sentences involving the use of the prescribed option then —
- (a) for the purposes of subsection (5)(a), the actual sentence is the same as the indicative sentence if it is within that range;
 - (b) for the purposes of subsection (2), the actual sentence is greater than the indicative sentence if it is greater than the most severe sentence in that range; and
 - (c) for the purposes of subsection (3)(b), the actual sentence is not less than the indicative sentence if it is not less than the most severe sentence in that range.

101L. Two or more sentencing options provided

- (1) This section applies if the sentencing method provides for the indicative sentence to involve the use of any of 2 or more punishment options (the “**prescribed options**”).
- (2) If the actual sentence only involves the use of one of the prescribed options, the actual sentence is to be regarded as being the same as the indicative sentence if it is the same as the indicative sentence determined using that option.
- (3) If the actual sentence only involves the use of the highest of the prescribed options, the actual sentence is to be regarded as more severe than the indicative sentence if it is greater than the indicative sentence determined using that option.

- (4) If the actual sentence involves the use of another sentencing option, or other sentencing options, in addition to the highest of the prescribed options, the actual sentence is to be regarded as more severe than the indicative sentence if —
 - (a) that other option, or one or more of those other options, is higher than the highest of the prescribed options; or
 - (b) the portion of the sentence imposed using the highest prescribed option is not less than the indicative sentence determined using that option.
- (5) In subsection (4) —
“sentencing option” includes a prescribed option.
- (6) If the actual sentence involves the use of another sentencing option, or other sentencing options in addition to a prescribed option (other than the highest of the prescribed options), the actual sentence is to be regarded as more severe than the indicative sentence if that other option, or one of those other options, is higher than the highest of the prescribed options.
- (7) If no prescribed option is used in the actual sentence, the actual sentence is to be regarded as more severe than the indicative sentence if a sentencing option used is higher than the highest of the prescribed options.
- (8) Unless subsection (2), (3), (4), (6) or (7) provides otherwise, the actual sentence is to be regarded as less severe than the indicative sentence.
- (9) If the sentencing method provides for the indicative sentence determined under a prescribed option to be

within a range of sentences involving the use of that option then —

- (a) for the purposes of subsection (2), the actual sentence is the same as the indicative sentence determined using that option if it is within that range;
- (b) for the purposes of subsection (3), the actual sentence is greater than the indicative sentence determined using that option if it is greater than the most severe sentence in that range; and
- (c) for the purposes of subsection (4)(b), the actual sentence is not less than the indicative sentence determined using that option if it is not less than the most severe sentence in that range.

Division 4 — Application of this Part to the sentencing of young persons

101M. Meaning of terms used in this Division

In this Division —

“**Schedule 1 offence**”, “**Schedule 2 offence**” and “**young person**” have the same meanings as they have in the *Young Offenders Act 1994*.

101N. Prescribing offences in relation to the Children’s Court

- (1) Regulations may be made under section 101B or 101F to apply provisions of this Part to sentencing by the Children’s Court but only in relation to a Schedule 1 offence or a Schedule 2 offence.

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Division 1 Sentencing Act 1995 amended

s. 4

- (2) Regulations referred to in subsection (1) may be made in a way that makes the operation of provisions of this Part depend on, or differ according to, the age of an offender at the time of —

- (a) committing;
- (b) being charged with;
- (c) being convicted of; or
- (d) being sentenced for,

the offence.

101O. Sentencing of young persons by other courts

If regulations referred to in section 101N(1) are made, provisions of this Part that apply to the Children's Court also apply in the same way to any other court sentencing a young person for the offence in question.

101P. Modified operation of certain provisions of this Part

If regulations referred to in section 101N(1) are made under section 101F then, unless section 50B of the *Young Offenders Act 1994* applies, references in Division 3 to section 39(2) are to be read as references to the Table to this section.

Table

Sentencing options under the <i>Young Offenders Act 1994</i>	
1.	The imposition of a fine under section 71.
2.	The making of a youth community based order under section 73.
3.	The making of an intensive youth supervision order under section 98.
4.	The imposition of a custodial sentence under section 118.

”.

Division 2 — *Young Offenders Act 1994* amended

5. The Act amended by this Division

The amendments in this Division are to the *Young Offenders Act 1994**.

[* *Reprinted as at 26 March 1996.*

For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 259, and Act No. 29 of 1998.]

6. Section 46A amended

Section 46A(1) is amended after paragraph (b) by deleting “or” and inserting —

“

- (ba) to the extent that Division 4 of Part 14A of the *Sentencing Act 1995* provides for that Part to apply; or

”.

7. Section 55 amended

After section 55(4) the following subsection is inserted —

“

- (4a) Although a conviction is not recorded, the offender is deemed to have been convicted for the purpose of the application of Part 14A of the *Sentencing Act 1995* to the sentencing of the offender for another offence.

”.

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Part 2 Amendments about appropriate and consistent sentencing

Division 2 Young Offenders Act 1994 amended

s. 8

8. Schedule 2 amended

Schedule 2 is amended in the Division headed “1. *The Criminal Code*” by deleting the item relating to s. 378(2) and inserting instead —

“ s. 378 Stealing a motor vehicle ”.
