

**CRIMINAL PROCEDURE
AMENDMENT ACT 1993**

No. 45 of 1993

AN ACT to amend the —

- *Bail Act 1982;*
- *Child Welfare Act 1947;* and
- *Crime (Serious and Repeat Offenders) Sentencing Act 1992.*

[Assented to 20 December 1993.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Criminal Procedure Amendment Act 1993*.

Commencement

2. (1) Subject to subsection (2), this Act comes into operation on the 28th day after the day on which it receives the Royal Assent.

(2) Sections 7, 8, 9 and 10 (2) (b) come into operation on such day as is fixed by proclamation.

PART 2 — BAIL ACT 1982

Principal Act

3. In this Part the *Bail Act 1982** is referred to as the principal Act.

[* *Reprinted as at 17 October 1991.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 15.]

Section 3 amended

4. Section 3 (1) of the principal Act is amended by inserting after the definition of “prosecutor” the following definition —

“
“**serious offence**” means an offence described in
Schedule 2;
”.

Section 6 amended

5. Section 6 (4) of the principal Act is amended by inserting after “16 (2)” the following —

“ and clause 3A of Part C of Schedule 1 ”.

Section 7 amended

6. Section 7 (5) of the principal Act is amended by inserting after “16 (2)” the following —

“ and clause 3A of Part C of Schedule 1 ”.

Section 11 amended

7. Section 11 (1) of the principal Act is amended in paragraph (e) by inserting after "14 (3)," the following —

" 17A, ".

Section 17 amended

8. Section 17 (1) of the principal Act is amended by inserting after "to do so by" the following —

" clause 2 (3) (c) of Part C and ".

Section 17A inserted

9. After section 17 of the principal Act the following section is inserted —

"

Further provisions as to responsible person's undertaking (Schedule 1, Part C, clause 2)

17A. (1) Where this section applies, an authorized police officer may —

- (a) cancel an undertaking of the kind described in clause 2 (3) (c) of Part C of Schedule 1;
- (b) approve of another person as a responsible person within the meaning in that clause; and
- (c) detain the defendant or order his detention until the person so approved enters into an undertaking of the kind mentioned in paragraph (a).

(2) Subsection (1) applies where —

- (a) a person has entered into an undertaking referred to in paragraph (a) of that subsection;
- (b) a judicial officer when granting bail ordered that the person may under this section be released from the undertaking by an authorized police officer; and
- (c) the person wishes to be so released.

(3) A police officer may, for the purpose of the exercise of the powers in subsection (1), take into custody a child defendant who has been released on bail.

(4) If the police officer is not an authorized police officer he shall, as soon as is practicable, bring the defendant before an authorized police officer for the purpose referred to in subsection (3).

(5) After an undertaking has been entered into as mentioned in subsection (1) (c), the defendant, subject to this Act, has a right to be at liberty until he is required to appear before a court.

”.

Schedule amended

10. (1) The Schedule to the principal Act is amended in the heading by inserting after “**SCHEDULE**” the following —

“ 1 ”.

(2) Schedule 1 to the principal Act is amended in Part C —

(a) in clause 1 by deleting “The” and substituting the following —

“ Subject to clause 3A, the ”;

(b) by repealing clause 2 and substituting the following clause —

“

Child to have qualified right to bail

2. (1) In this clause —

“responsible person” means a parent, relative, employer or other person who, in the opinion of the judicial officer or authorized officer, is in a position to both influence the conduct of the child and provide the child with support and direction.

(2) Subject to subclause (3), a child defendant who is in custody awaiting an appearance in court before conviction for an offence has a right to be granted bail unless —

(a) in the opinion of the judicial officer or authorized officer in whom jurisdiction is vested —

(i) one or more of the questions set out in clause 1 (a), (b) and (d) must be answered in the affirmative; and

(ii) there is no condition which he could reasonably impose under Part D of this Schedule which would satisfy the relevant provision of clause 1 (e);

or

- (b) there is no responsible person willing to enter into an undertaking of the kind described in subclause (3) (c),

and if the child is refused bail he shall be dealt with in accordance with section 33 (3) of the *Child Welfare Act 1947*.

(3) The right of a child defendant under subclause (2) is subject to —

- (a) clause 3A;
- (b) section 28 (2) of the *Child Welfare Act 1947*; and
- (c) there being imposed as a condition on the grant of bail a requirement that before the release of the child on bail a responsible person undertakes in writing in the prescribed form to ensure that the child complies with any requirement of his bail undertaking mentioned in section 28 (2) (a), (b), (c) and (d).

(4) Subclauses (2) (b) and (3) (c) do not apply to a child defendant if it appears to the judicial officer or authorized officer that the defendant —

- (a) is over the age of 17 years; and
- (b) has sufficient maturity to live independently without the guidance or control of a parent or guardian.

(5) For the purposes of this clause, the provisions of sections 46, 47, 48, 54, 55 (2), 60 and 67 (2) (a) (iv) apply with all necessary changes as if —

- (a) references in those provisions to a surety and a surety undertaking were references to a responsible person and to an undertaking referred to in subclause (3) (c) respectively; and

(b) section 54 (1) (b) (i) read as follows —

“

(i) a person who has entered into an undertaking referred to in subclause (3) (c) of clause 2 of Part C of Schedule 1 should no longer be regarded as a responsible person for the purposes of that clause, or is dead;

”

(6) Where a child defendant is released on bail his right to be at liberty is subject to the exercise of the powers in section 17A.

”

and

(c) by inserting after clause 3 the following clause —

“

Bail where serious offence committed while defendant on bail for another serious offence

3A. (1) Notwithstanding clause 1 or 2 or any other provision of this Act, where —

- (a) a defendant is in custody awaiting an appearance in court before conviction for a serious offence; and
- (b) the serious offence is alleged to have been committed while the defendant was on bail for another serious offence or for a group of offences which includes a serious offence,

the judicial officer or authorized officer in whom jurisdiction is vested shall refuse to grant bail for the serious offence referred to in paragraph (a) unless he is satisfied that —

- (c) there are exceptional reasons why the defendant should not be kept in custody; and

- (d) he may properly grant bail having regard to the provisions of clauses 1 and 3 or, in the case of a child defendant, clauses 2 and 3.

(2) Notwithstanding subsection (1) of section 7, where a defendant is refused bail under subclause (1) for an appearance for a serious offence his case for bail need not be considered again under that subsection for an appearance for that offence unless he satisfies the judicial officer who may order his detention that —

- (a) new facts have been discovered, new circumstances have arisen or the circumstances have changed since bail was refused; or
- (b) he failed to adequately present his case for bail on the occasion of that refusal.

(3) Where a child defendant is refused bail under subclause (1) he shall be dealt with in accordance with section 33 (3) of the *Child Welfare Act 1947*.

”.

(3) Schedule 1 to the principal Act is amended in Part D in clause 2 —

- (a) by inserting after subclause (1) the following subclause —

“

(1a) Without limiting subclause (1), a judicial officer or authorized officer shall, on a grant of bail to a child defendant, consider whether it is desirable for any purpose mentioned in subclause (2) to impose a condition as to —

- (a) any period in each day during which the child is to remain at a particular place;
- (b) any person with whom the child is not to associate or communicate;

- (c) any place that the child is not to frequent;
- (d) the attendance by the child at a school or other educational institution; or
- (e) any other matter,

and the judicial officer or authorized officer may impose any such condition.

”;

and

- (b) in subclause (2) by inserting after “subclause (1)” the following —

“ or (1a) ”.

Schedule 2 added

11. After Schedule 1 to the principal Act the following Schedule is added —

“

SCHEDULE 2

[section 3 (1)]

SERIOUS OFFENCES

Enactment

Description of offence

1. The Criminal Code

s. 278 (as read with s. 282)

Wilful murder

s. 279 (as read with s. 282)

Murder

s. 280 (as read with s. 287)

Manslaughter

s. 292

Disabling in order to commit indictable offence

s. 294

Acts intended to cause grievous bodily harm or to resist or prevent arrest

s. 296	Intentionally endangering safety of persons travelling by railway
s. 296A	Intentionally endangering safety of persons travelling by aircraft
s. 297	Grievous bodily harm
s. 298	Causing explosion likely to endanger life
s. 299	Attempting to cause explosion likely to endanger life
s. 301	Wounding and similar acts
s. 317	Assault occasioning bodily harm
s. 318 (1) (a)	Assault with intent to commit or facilitate a crime
s. 318 (1) (b)	Assault with intent to do grievous bodily harm
s. 318 (1) (g)	Assault on driver or operator of certain vehicles or ferry
s. 323	Indecent assault
s. 324	Aggravated indecent assault
s. 325	Sexual penetration without consent
s. 326	Aggravated sexual penetration without consent
s. 332	Kidnapping
s. 333	Deprivation of liberty
s. 378 (2)	Stealing a motor vehicle, aggravated by reckless or dangerous driving
s. 391 (as read with s. 393)	Robbery
s. 394	Assault with intent to commit robbery

- s. 401 Burglary, if the defendant is charged on indictment
- s. 444 Criminal damage, if the property is destroyed or damaged by fire

2. *Bush Fires Act 1954*

- s. 32 Wilfully lighting a fire or causing a fire to be lit under such circumstances as to be likely to injure or damage a person or property

3. *Road Traffic Act 1974*

- s. 59 Dangerous driving causing death, injury, etc.
- s. 59A Dangerous driving causing bodily harm

”

References to “the Schedule” amended

12. The principal Act is amended by deleting “the Schedule” wherever it occurs in the provisions referred to in the Table to this section and substituting in each case the following —

“ Schedule 1 ”.

TABLE

Section 3 (1) (definition of “home detention condition”) and (4) (b)

Section 13 (1) (twice)

Section 15 (1) (b)

Section 17 (1)

Section 24 (1) (b)

Section 26 (1) (b) and (4) (b)

Section 28 (2) (c) and (d)

Section 50G (2) (b)

Section 54 (1) (b) (ii)

Section 55 (1) (e)

Section 67 (2) (b).

Transitional

13. (1) The amendments to the principal Act effected by a provision of this Part apply in relation to —

- (a) a child arrested for any offence; and
- (b) a person, other than a child, arrested for a serious offence,

on or after the day on which that provision comes into operation.

(2) In subsection (1) “**child**” and “**serious offence**” have the same meanings as in the principal Act.

PART 3 — CHILD WELFARE ACT 1947

Section 34E amended

14. Section 34E (1) of the *Child Welfare Act 1947** is amended by deleting “on being satisfied that any parent or guardian of the child has conduced to the commission of the offence by neglecting to exercise due care or control of the child and”.

[* *Reprinted as at 23 May 1990.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, pp. 28-30 and Act No. 6 of 1993.]

**PART 4 — CRIME (SERIOUS AND REPEAT OFFENDERS)
SENTENCING ACT 1992**

Principal Act

15. In this Part the *Crime (Serious and Repeat Offenders) Sentencing Act 1992** is referred to as the principal Act.

[* Act No. 3 of 1992.]

Section 3 amended

16. Section 3 of the principal Act is amended by deleting “them” and substituting the following —

“ this Act and that other enactment or rule of law ”.

Section 6 amended

17. After section 6 (1) of the principal Act the following subsections are inserted —

“

(1a) If the violent offence is an offence against section 318 (1) (c), (d), (e) or (f) of *The Criminal Code* this section does not apply.

(1b) If the violent offence is an offence against section 317 or 318 (1) (a), (b) or (g) of *The Criminal Code* this section does not apply unless the court sentencing the offender for the violent offence considers that, having regard to the nature of the offence and the circumstances in which it was committed, it is a serious offence.

”.

Section 7 amended

18. (1) After section 7 (3) of the principal Act the following subsection is inserted —

“

(3a) Detention under section 6 (2) (b) shall be reviewed by the Supreme Court on the application of the offender but no application can be made under this subsection earlier than 3 months before the prescribed day or less than 3 months after the detention was most recently reviewed under this section.

”.

(2) Section 7 (5) of the principal Act is repealed and the following subsection is substituted —

“

(5) The chief executive officer shall make an application under subsection (4) —

(a) within 3 months before the prescribed day (unless a review has already been made, or is already being made, on an application under subsection (3a)); and

(b) from then on, not more than 6 months after the detention was most recently reviewed under this section (unless a review is already being made on an application under subsection (3a)).

”.

(3) Section 7 (6) of the principal Act is amended by deleting “fit.” and substituting the following —

“

fit,

and shall give the offender an opportunity to be heard, either personally or through a legal representative, and to present any evidence or material that the Supreme Court considers to be relevant.

”

Section 8 amended

19. After section 8 (1) of the principal Act the following subsections are inserted —

“

(1a) If the violent offence is an offence against section 318 (1) (c), (d), (e) or (f) of *The Criminal Code* this section does not apply.

(1b) If the violent offence is an offence against section 317 or 318 (1) (a), (b) or (g) of *The Criminal Code* this section does not apply unless the court sentencing the offender for the violent offence considers that, having regard to the nature of the offence and the circumstances in which it was committed, it is a serious offence.

”

Section 9 amended

20. After section 9 (3) of the principal Act the following subsection is inserted —

“

(3a) Section 7 (3a) and (6) to (12) and the definition of “chief executive officer” in section 7 (1) apply to detention under section 8 (2) (a) as if repeated in this section with necessary modifications.

”

Section 12 amended

21. Section 12 (1) of the principal Act is amended by deleting “March” and substituting the following —

“ June ”.

Section 13 amended

22. (1) Section 13 (1) of the principal Act is amended by deleting “report to” and substituting the following —

“ cause reports to be laid before each House of ”.

(2) Section 13 (2) of the principal Act is repealed and the following subsections are substituted —

“

(2) If, because either House of Parliament is not sitting, a report cannot be laid before that House within the time prescribed by subsection (1), the Minister may comply with the requirement to lay the report before that House by —

(a) giving a copy of the report to the Clerk of that House within that time; and

(b) immediately causing the report to be printed and made available to the public.

(3) A copy of a report given to the Clerk of a House under subsection (2) is to be laid before that House on its next sitting day.

”.

Section 14 amended

23. Section 14 (2) of the principal Act is amended —

- (a) in each of paragraphs (a) and (b) by inserting after “expiry” the following —

“

or in proceedings referred to in paragraph (d)

”;

- (b) in paragraph (c) by deleting “expiry.” and substituting the following —

“

expiry or in proceedings referred to in paragraph (d);

”;

and

- (c) by inserting after paragraph (c) the following paragraph —

“

- (d) it continues to apply to proceedings in which a sentence or direction may be imposed or given in respect of an offence of which a person was convicted before the expiry.

”.

Schedule 2 amended

24. (1) Clause 1 of Schedule 2 to the principal Act is repealed and the following clause is substituted —

“

Criteria for deciding whether a person is a repeat offender

1. (1) In this Act a person (“**the offender**”) convicted of a prescribed offence (“**the offence**”) is a repeat offender if it is proved to the satisfaction of the court sentencing the offender for the offence that the offender has —

- (a) 6 or more convictions for prescribed offences of any kind; or
- (b) 3 or more convictions for violent offences,

during the period of 18 months immediately preceding the commission of the offence.

(2) For the purposes of subclause (1), if it is proved to the satisfaction of the court that in respect of 2 or more convictions for prescribed offences the prescribed offences —

- (a) were committed within a period 24 hours; and
- (b) arose out of one set of facts,

those convictions shall be regarded as one conviction and, if any of them was a conviction for a violent offence, they shall be regarded as one conviction for a violent offence.

”

(2) Clauses 3 and 4 of Schedule 2 to the principal Act are repealed and the following clause is substituted —

“

Convictions considered

3. (1) A conviction for an offence is to be counted for the purposes of clause 1 (a) and (b) whether the offence was committed before or after the commencement of this Act.

(2) A conviction that has been set aside or quashed is not to be counted for the purposes of clause 1 (a) or (b).

(3) A conviction for an offence against section 318 (1) (c), (d), (e) or (f) of *The Criminal Code* is not to be counted for the purposes of clause 1 (a) or (b) if the conviction occurred after the commencement of the *Criminal Procedure Amendment Act 1993*.

(4) If a conviction for an offence against section 317 or 318 (1) (a), (b) or (g) of *The Criminal Code* occurred after the commencement of the *Criminal Procedure Amendment Act 1993*, the conviction is not to be counted for the purposes of clause 1 (a) or (b) unless the court in which the conviction occurred, having regard to the nature of the offence and the circumstances in which it was committed, has directed that it be treated as a conviction for those purposes.

(5) In this Schedule “**conviction**” includes a finding or admission of guilt which led to a punishment being imposed on the offender, or an order being made in respect of the offender, whether or not a conviction was recorded.

”.