

WESTERN AUSTRALIA

**CRIME (SERIOUS AND REPEAT
OFFENDERS) SENTENCING
ACT 1992**

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**CRIME (SERIOUS AND REPEAT
OFFENDERS) SENTENCING
ACT 1992**

No. 3 of 1992

AN ACT to provide for the sentencing of juveniles who commit certain offences involving the use of stolen motor vehicles and of juveniles or other persons who repeatedly commit those or certain other offences, and for related purposes.

[Assented to 13 February 1992]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Crime (Serious and Repeat Offenders) Sentencing Act 1992*.

Commencement

2. This Act comes into operation on 9 March 1992.

Effect of this Act

3. This Act overrides any other enactment or rule of law to the extent of any inconsistency between them.

Definitions

4. In this Act —

“detention centre” means a detention centre declared as such under the *Child Welfare Act 1947*;

“juvenile” means —

- (a) any boy or girl under the age of 18 years; and
- (b) in the absence of positive evidence as to age, any boy or girl apparently under the age of 18 years;

“prescribed offence” means an offence described in Part 1 or 2 of Schedule 1;

“repeat offender” means a person who is a repeat offender according to the criteria set out in Schedule 2;

“violent offence” means an offence described in Part 2 of Schedule 1.

**Sentencing of repeat offenders for
offences other than violent offences**

5. (1) This section applies if a person —

- (a) is convicted of a prescribed offence, other than a violent offence, committed after the commencement of this Act;
- (b) is a juvenile when convicted, or was a juvenile when the prescribed offence was committed; and
- (c) is a repeat offender.

(2) If this section applies, the court sentencing the offender for the prescribed offence shall apply the guidelines set out in Schedule 3 in determining —

- (a) whether or not to sentence the offender to a term of imprisonment, or to detention in a detention centre for a specified period; and
- (b) the duration of any such term of imprisonment or period of detention.

**Sentencing and detention of juvenile
repeat offenders for violent offences**

6. (1) This section applies if a person —

- (a) is convicted of a violent offence committed after the commencement of this Act;
- (b) is a juvenile when convicted, or was a juvenile when the violent offence was committed; and
- (c) is a repeat offender.

(2) If this section applies, the court sentencing the offender for the violent offence shall —

- (a) sentence the offender to a term of imprisonment, or to detention in a detention centre for a specified period;

and

- (b) except where the offender is sentenced to strict security life imprisonment or life imprisonment under section 282 of *The Criminal Code*, direct that on the expiration of that term of imprisonment or period of detention (together with any other term of imprisonment or period of detention that the offender is then liable to serve or continue serving), the offender is to be detained in a prison or a detention centre (whichever the court thinks fit) unless or until released by order of the Supreme Court under section 7.

(3) The court shall apply the guidelines set out in Schedule 3 in determining the duration of the term of imprisonment or period of detention referred to in subsection (2) (a).

(4) Notwithstanding subsection (2) (b), section 13J or 13K of the *Child Welfare Act 1947* applies, with any necessary modifications, in respect of a person who is in a detention centre or a prison under a sentence or direction under subsection (2).

Review of detention of juveniles

7. (1) In this section —

“chief executive officer” means the chief executive officer of the department responsible for the institution in which the offender will be or is detained;

“prescribed day” means the day on which the detention under section 6 (2) (b) is to commence, unless it

commences less than 18 months after the conviction, in which case the day that is 18 months after the conviction is the prescribed day;

“the conviction” means the conviction referred to in section 6 (1) (a).

(2) If before and until the conviction the offender was in custody in respect of the violent offence referred to in section 6 (1) (a) (or in respect of that offence and other offences), the conviction is to be regarded, for the purposes of the definition of “prescribed day” in subsection (1), as having occurred when that custody commenced.

(3) If the offender is serving or liable to serve a term of imprisonment in respect of which an order was made under section 37A of the *Offenders Community Corrections Act 1963*, the detention under section 6 (2) (b) is to be regarded, for the purposes of the definition of “prescribed day” in subsection (1), as commencing at the expiration of the non-parole period as defined in that Act.

(4) Detention under section 6 (2) (b) shall be reviewed by the Supreme Court on the application of the chief executive officer.

(5) An application under subsection (4) shall be made within 3 months before the prescribed day and, from then on, applications shall be made after intervals of not more than 6 months.

(6) In making a review under this section the Supreme Court may —

(a) consult or take advice from any person; and

(b) inform itself in such manner as it thinks fit.

(7) The chief executive officer shall ensure that the Supreme Court is provided with such information and assistance as it requires for the purpose of making reviews under this section.

(8) To the extent that it is not prescribed by this Act or rules of court the procedure on review proceedings under this section is to be determined by the Supreme Court.

(9) After making a review under this section the Supreme Court may, if it thinks fit, order the release of the offender on such conditions (if any) as are specified in the order.

(10) Subject to subsection (11), the chief executive officer shall give effect to an order made under subsection (9).

(11) The offender shall not be released before the prescribed day.

(12) If the offender fails to comply with a condition on which he or she is released, a Judge or District Court Judge may, at any time, by warrant authorize any member of the Police Force or other officer to apprehend the offender and return him or her to a prison or detention centre to be further detained under section 6 (2) (b).

(13) The following provisions of the *Offenders Community Corrections Act 1963* apply to the offender and to the detention directed under section 6 (2) (b) as if the detention were detention at the Governor's pleasure under section 661 of *The Criminal Code* —

(a) section 37A (6) (c) and (d);

(b) section 39 (5);

(c) section 40A (3).

Sentencing and detention of adult repeat offenders for violent offences

8. (1) This section applies if a person —

(a) is convicted of a violent offence committed after the commencement of this Act;

- (b) was not a juvenile when the violent offence was committed; and
- (c) is a repeat offender,

unless the offence is wilful murder (for which strict security life imprisonment or life imprisonment is mandatory) or murder (for which life imprisonment is mandatory).

(2) If this section applies, the court sentencing the offender for the violent offence shall —

- (a) sentence the offender to a term of imprisonment; and
- (b) direct that on the expiration of that term of imprisonment (together with any other term of imprisonment that the offender is then liable to serve or continue serving) the offender is to be detained in a prison at the Governor's pleasure.

Review of detention of adults

9. (1) In this section —

“prescribed day” means the day on which the detention under section 8 (2) (b) is to commence, unless it commences less than 18 months after the conviction, in which case the day that is 18 months after the conviction is the prescribed day;

“the conviction” means the conviction referred to in section 8 (1) (a).

(2) If before and until the conviction the offender was in custody in respect of the violent offence referred to in section 8 (1) (a) (or in respect of that offence and other offences), the conviction is to be regarded, for the purposes of the definition of “prescribed day” in subsection (1), as having occurred when that custody commenced.

(3) If the offender is serving or liable to serve a term of imprisonment in respect of which an order was made under section 37A of the *Offenders Community Corrections Act 1963*, the detention under section 8 (2) (b) is to be regarded, for the purposes of the definition of "prescribed day" in subsection (1), as commencing at the expiration of the non-parole period as defined in that Act.

(4) Subject to subsections (5) and (6), the following provisions of the *Offenders Community Corrections Act 1963* apply to the offender and to the detention directed under section 8 (2) (b) as if the detention were detention under section 661 of *The Criminal Code* —

- (a) section 34 (2) (b) and (d), (3), (5), (6) and (7) and item 8 of the Table to section 34 and the note to that Table;
- (b) section 37A (6) (c) and (d);
- (c) section 40C (1) (a), (2) (b) and (5);
- (d) section 50X (3) (d).

(5) The first report on the offender under section 34 (2) (d) of the *Offenders Community Corrections Act 1963* shall be furnished within 3 months before the prescribed day.

(6) The offender shall not be released from prison (on parole or otherwise) before the prescribed day.

**Sentencing for offences
involving stolen motor vehicles
committed by juveniles**

10. (1) If a person is convicted of —

- (a) murder or manslaughter committed in the course of the stealing or attempted stealing of a motor vehicle;

- (b) an offence against section 292 of *The Criminal Code* committed to facilitate the stealing of a motor vehicle or the flight of an offender after the stealing or attempted stealing of a motor vehicle;
- (c) an offence against section 294 (1) of *The Criminal Code* committed to resist or prevent the lawful arrest or detention of any person after the stealing or attempted stealing of a motor vehicle;
- (d) an offence against section 297 of *The Criminal Code* committed in the course of the stealing or attempted stealing of a motor vehicle; or
- (e) an offence against section 59 of the *Road Traffic Act 1974* if at the time of the offence the motor vehicle was being driven without the consent of the owner or person in charge of the motor vehicle,

and the offender is a juvenile when convicted, or was a juvenile when the offence was committed, the court sentencing the offender shall apply the guidelines set out in Schedule 3 in determining —

- (f) whether or not to sentence the offender to a term of imprisonment, or to detention in a detention centre for a specified period; and
- (g) the duration of any such term of imprisonment or period of detention.

(2) Subsection (1) applies to offences committed after the commencement of this Act and applies whether or not the juvenile is a repeat offender.

(3) A reference in subsection (1) to the stealing of a motor vehicle is a reference to conduct which, under section 371 or 371A of *The Criminal Code*, constitutes the stealing of a motor vehicle.

Regulations

11. The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for achieving the objects and giving effect to the purposes of this Act.

Expiry of Act

12. (1) This Act expires on 8 March 1994.

(2) Subject to section 14 but notwithstanding sections 37 and 39 of the *Interpretation Act 1984*, after this Act expires it does not apply to any proceedings commenced before the expiry or to any offence committed before the expiry.

Review of Act

13. (1) The Minister shall monitor, review and report on the operation and effectiveness of this Act and the extent to which its provisions are being applied and shall report to the Parliament at not more than 3 monthly intervals.

(2) The first report under subsection (1) shall be laid before each House of Parliament before 1 July 1992.

Saving

14. (1) The expiry of this Act does not affect any sentence or direction imposed or given under section 5, 6, 8 or 10 before the expiry.

(2) Notwithstanding the expiry of this Act—

- (a) sections 6 (4) and 7 continue to apply to a person in respect of whom a direction has been given under section 6 (2) (b) before the expiry;

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- (b) section 9 continues to apply to a person in respect of whom a direction has been given under section 8 (2) (b) before the expiry;
- (c) it continues to apply to appeal proceedings commenced before or after the expiry in relation to a sentence or direction imposed or given before the expiry.

SCHEDULE 1

(section 4)

PRESCRIBED OFFENCES**PART 1 — GENERAL**

<i>Enactment or former enactment</i>	<i>Description of offence or circumstances of commission of offence or conviction for offence</i>
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1. *The Criminal Code*

- | | |
|------------|---|
| s. 296 | Intentionally endangering safety of persons travelling by railway |
| s. 296A | Intentionally endangering safety of persons travelling by aircraft |
| s. 378 (2) | Stealing a motor vehicle, aggravated by reckless or dangerous driving |
| s. 401 | Burglary, if the offender is convicted on indictment |
| s. 444 | Criminal damage, if the property is destroyed or damaged by fire |

2. *The Criminal Code* (as it was prior to amendments by Act No. 37 of 1991)

- | | |
|--------|---|
| s. 401 | Burglary (i.e the offence defined in section 401 committed in the night) |
| s. 402 | Entering or being in a dwelling house with intent to commit an offence in the night |

3. *The Criminal Code* (as it was prior to amendments by Act No. 101 of 1990)

- | | |
|--------|-------|
| s. 444 | Arson |
|--------|-------|

4. *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

5. *Road Traffic Act 1974*

- s. 59 Dangerous driving causing death, injury, etc., unless included in item 2 of Part 2
- s. 59A Dangerous driving causing bodily harm, unless included in item 2 of Part 2
- s. 60 Reckless driving committed, before the commencement of the *Criminal Law Amendment Act 1992*, while committing an offence by driving a motor vehicle without the consent of the owner or person in charge of it (for which latter offence the offender must also have been convicted, whether under *The Criminal Code* or under the *Road Traffic Act 1974*)
- s. 61 Dangerous driving committed, before the commencement of the *Criminal Law Amendment Act 1992*, while committing an offence by driving a motor vehicle without the consent of the owner or person in charge of it (for which latter offence the offender must also have been convicted, whether under *The Criminal Code* or under the *Road Traffic Act 1974*)

PART 2 — VIOLENT OFFENCES

<i>Enactment or former enactment</i>	<i>Description of offence or circumstances of commission of offence</i>
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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. 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	Assaults occasioning bodily harm
s. 318	Serious assaults
s. 324B	Indecent assault
s. 324C	Aggravated indecent assault

s. 324D	Sexual assault
s. 324E	Aggravated sexual assault
s. 332	Kidnapping
s. 333	Deprivation of liberty
s. 391 (as read with s. 393)	Robbery
s. 394	Assault with intent to commit robbery

2. *Road Traffic Act 1974*

- s. 59 Dangerous driving causing death, injury, etc. —
- (a) committed, before the commencement of the *Criminal Law Amendment Act 1992*, while committing an offence by driving a motor vehicle without the consent of the owner or person in charge of it (for which latter offence the offender must also have been convicted, whether under *The Criminal Code* or under the *Road Traffic Act 1974*); or
- (b) committed after the commencement of the *Criminal Law Amendment Act 1992* and punished under section 59 (3) (a) of the *Road Traffic Act 1974*
- s. 59A Dangerous driving causing bodily harm committed while committing an offence by driving a motor vehicle without the consent of the owner or person in charge of it (for which latter offence the offender must also have been convicted, whether under *The Criminal Code* or under the *Road Traffic Act 1974*)

SCHEDULE 2

(section 4)

REPEAT OFFENDERS

**Criteria for deciding whether
a person is a repeat offender**

1. For the purposes of 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 made —

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

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

Time of offence

2. If the court cannot ascertain the day on which the offence was committed, the offence shall be regarded, for the purposes of clause 1, as having been committed on the latest day on which it could have been committed.

Meaning of "conviction appearance"

3. In clause 1 "conviction appearance" —

- (a) in relation to prescribed offences of any kind, means an occasion on which the offender appeared in court and was convicted of a prescribed offence or of a number of offences one or more of which were prescribed offences;
- (b) in relation to violent offences, means an occasion on which the offender appeared in court and was convicted of a violent offence or of a number of offences one or more of which were violent offences.

Offences and convictions considered

4. (1) Clause 3 applies to offences committed before or after the commencement of this Act.

(2) Clause 3 does not apply to a conviction that has been set aside or quashed.

(sections 5, 6 and 10)

The court sentencing an offender shall have regard to the need to balance rehabilitation with the protection of the community and property and shall also have regard to such of the following matters as are relevant and known to the court —

- (a) the personal circumstances of any victim of the offence;
- (b) the circumstances of the offence, including any death or injury to a member of the public or any loss or damage resulting from the offence;
- (c) any disregard by the offender for interests of public safety;
- (d) the past record of the offender, including attempted rehabilitation and the number of previous offences committed whether prescribed offences or not;
- (e) the age of the offender;
- (f) any remorse or lack of remorse of the offender.

and to any other matters that the court thinks fit.

Abstract