

# Sentencing Matrix Bill 1999

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Western Australia

LEGISLATIVE ASSEMBLY

## **Sentencing Matrix Bill 1999**

**A Bill for**

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

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Sentencing Matrix Act 1999*.

**2. Commencement**

5 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.

10 [\* *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**

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

“

### **Part 14A — Sentence reporting and formulation**

#### **Division 1 — Reporting of sentences**

##### **10 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 or 3 applies when a court is sentencing an offender for an offence, this Division does not apply.

##### **15 101B. Reporting offences may be prescribed**

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

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**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.
- 5 (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**

- 10 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;
- (b) indicate the degree to which —
- 15 (i) each of those factors;
- (ii) the maximum penalty for the offence; and
- (iii) the minimum penalty (if any) for the offence,
- 20 affected the sentence; and
- (c) provide any other information required by the regulations.

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**Division 2 — Reporting of variations from  
indicative sentences**

**101E. Application of this Division**

- 5 (1) 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.
- 10 (2) However, if Division 3 applies when a court is sentencing an offender for an offence, this Division does not apply.

**101F. Indicative sentencing method may be prescribed**

- 15 (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 —
- 20 (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
  - 25 (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 —

- 5
- (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.

10 (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**

15 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;
- 20 (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
  - 25 (iii) the minimum penalty (if any) for the offence,affected the indicative sentence and the actual sentence;



- 5
- (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 — Sentencing according to a prescribed method**

10 **101I. Application of this Division**

This Division applies if —

- 15
- (a) a sentencing method for an offence is prescribed in relation to a court by regulations under section 101J that have come into operation under section 101K; and
  - (b) that court is sentencing an offender for that offence.

**101J. Sentencing method may be prescribed**

- 20
- (1) Regulations may prescribe a method to be applied by a court to arrive at the appropriate sentence (the “**relevant sentence**”) for an offence (a “**controlled offence**”).
  - (2) In prescribing a sentencing method for a controlled offence the regulations —  
25
    - (a) may provide for the relevant sentence to be determined in accordance with a prescribed formula or in such other manner as is prescribed;

- 5
- (b) may provide for prescribed factors to be taken into account or ignored, or to be taken into account to a particular degree, in determining the relevant sentence; and
  - (c) may provide that the making of a spent conviction order in relation to the offence is not appropriate.

**101K. Approval of sentencing method by Parliament**

- 10
- (1) In this section —
- “**sentencing regulations**” means regulations under section 101J that —
- (a) prescribe a sentencing method for an offence; or
  - (b) amend a sentencing method prescribed for an offence.
- 15
- (2) Sections 41(1)(b) and 42 of the *Interpretation Act 1984* do not apply to sentencing regulations.
- (3) After being published in the *Gazette*, sentencing regulations are to be laid before each House of Parliament.
- 20
- (4) A House of Parliament may pass a resolution approving of sentencing regulations that have been laid before it.
- (5) If each House of Parliament has passed a resolution under subsection (4), notice to that effect is to be published in the *Gazette* within 21 days.
- 25
- (6) If the Houses of Parliament pass separate resolutions under subsection (4) on different days, the 21 day period mentioned in subsection (5) commences after the later of those days.

- (7) If sentencing regulations are approved by each House of Parliament under subsection (4), they come into operation —
- (a) on the 7th day after the publication of the notice under subsection (5); or
- (b) where a later day is specified or provided for in the regulations, on that day,

and have effect as if enacted in this Act.

- (8) If a resolution to approve of sentencing regulations is defeated in either House of Parliament, the defeat of the resolution repeals the regulations.

- (9) Regulations may abolish a sentencing method prescribed under section 101J and this section does not apply to those regulations unless they prescribe another sentencing method to replace the method that is abolished.

**101L. Sentencing requirements for controlled offences**

- (1) A court sentencing an offender to imprisonment for a controlled offence must —
- (a) determine the relevant sentence;
- (b) impose a sentence for the offence (the “**actual sentence**”) being —
- (i) the relevant sentence; or
- (ii) a sentence imposed under subsection (2);
- and
- (c) prepare a sentencing report and deliver it in accordance with the regulations.

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Part 2 Amendments about appropriate and consistent sentencing

Division 1 Sentencing Act 1995 amended

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- (2) If the court considers that the relevant sentence would be so unreasonable that it would be unjust to impose that sentence, it may elect to impose another sentence.
- (3) For the purposes of subsection (2), the relevant sentence cannot be considered as being unreasonable to the extent to which it was arrived at by —
- (a) taking into account or ignoring a factor; or
  - (b) taking a factor into account to a particular degree,
- as required by the sentencing method.
- (4) This section has effect despite any provision of this Act (other than section 87) or any other law but nothing in this section authorizes the court to impose a sentence that is greater than the maximum penalty for the offence or less than the minimum penalty (if any) for the offence.
- (5) This section does not prevent the court from making an order under Part 14 and the making of such an order is not to be taken into account for the purposes of Division 4.
- (6) Regulations may provide for the use of computer programmes approved under the regulations to —
- (a) determine relevant sentences; and
  - (b) prepare sentencing reports.
- 101M. Contents of sentencing reports for controlled offences**
- The sentencing report for a controlled offence must —
- (a) set out the relevant sentence;

- 5
- (b) set out each mitigating, aggravating or other factor that was taken into account in arriving at the relevant sentence;
- (c) 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,
- 10 affected the relevant sentence;
- (d) if the actual sentence is imposed under section 101L(2), explain, in the prescribed manner, why the court considered that
- 15 unjust and the reasons for the difference between the actual sentence and the relevant sentence; and
- (e) provide any other information required by the regulations.

20 **101N. Procedure on appeal**

- (1) If the actual sentence is more severe than the relevant sentence as determined by the sentencing court and the offender appeals against the actual sentence, the onus is on the prosecution to show cause before the appeal
- 25 court why the actual sentence should not be quashed and a less severe sentence imposed.
- (2) If the actual sentence is less severe than the relevant sentence as determined by the sentencing court and the prosecution appeals against the actual sentence, the
- 30 onus is on the offender to show cause before the appeal

court why the actual sentence should not be quashed and a more severe sentence imposed.

- (3) The relevant sentence is not a sentence fixed by law for the purposes of section 688(1b)(b) of *The Criminal Code*.

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#### **Division 4 — Comparison of actual sentences with indicative or relevant sentences**

##### **101O. Purpose of this Division**

The provisions of this Division have effect for the purpose of determining under Division 2 or 3 whether the actual sentence is the same as, more severe than or less severe than the indicative sentence or the relevant sentence.

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##### **101P. Meaning of terms used in this Division**

- (1) In this Division —

15

“**actual sentence**” has the meaning given by section 101G or 101L, whichever is applicable;

“**indicative sentence**” has the meaning given by section 101F;

20

“**punishment option**” means a sentencing option listed in section 39(2) or a combination of 2 or more of those sentencing options;

“**recommended sentence**” means the indicative sentence or the relevant sentence, whichever is applicable;

25

“**relevant sentence**” has the meaning given by section 101J;

**“sentencing method”** means the sentencing method prescribed under section 101F or 101J, whichever is applicable.

- 5
- (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.

10 **101Q. One sentencing option provided**

- (1) This section applies if the sentencing method provides for the recommended sentence to involve the use of a particular punishment option (the **“prescribed option”**).
- 15 (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 recommended sentence if it is greater than the recommended sentence.
- 20 (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 recommended sentence if —
  - 25 (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 recommended sentence.

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Part 2 Amendments about appropriate and consistent sentencing

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- 5
- (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 recommended sentence if a sentencing option used is higher than the prescribed option.
- (5) Unless —
- 10 (a) the actual sentence only involves the use of the prescribed option and is the same as the recommended sentence; or
- (b) subsection (2), (3) or (4) provides otherwise, the actual sentence is to be regarded as less severe than the recommended sentence.
- 15 (6) If the sentencing method provides for the recommended 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 recommended sentence if it is within that range;
- 20 (b) for the purposes of subsection (2), the actual sentence is greater than the recommended sentence if it is greater than the most severe sentence in that range; and
- 25 (c) for the purposes of subsection (3)(b), the actual sentence is not less than the recommended sentence if it is not less than the most severe sentence in that range.



**101R. Two or more sentencing options provided**

- 5
- (1) This section applies if the sentencing method provides for the recommended sentence to involve the use of any of 2 or more punishment options (the **“prescribed options”**).
- 10
- (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 recommended sentence determined using that option.
- 15
- (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 recommended sentence determined using that option.
- 20
- (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 recommended sentence if —
- 25
- (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 recommended sentence determined using that option.
- (5) In subsection (4) —  
**“sentencing option”** includes a prescribed option.

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Division 1 Sentencing Act 1995 amended

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- 5
- (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 recommended sentence if that other option, or one of those other options, is higher than the highest of the prescribed options.
- 10
- (7) If no prescribed option is used in the actual sentence, the actual sentence is to be regarded as more severe than the recommended sentence if a sentencing option used is higher than the highest of the prescribed options.
- 15
- (8) Unless subsection (2), (3), (4), (6) or (7) provides otherwise, the actual sentence is to be regarded as less severe than the recommended sentence.
- 20
- (9) If the sentencing method provides for the recommended sentence determined under a prescribed option to be within a range of sentences involving the use of that option then —
- 25
- (a) for the purposes of subsection (2), the actual sentence is the same as the recommended 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 recommended 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 recommended sentence determined using that option if it is not less than the most severe sentence in that range.

5

Table showing some examples of the operation of Division 4		
Recommended sentence (“RS”)	Actual sentence imposed (“AS”)	Comparison of AS with RS
\$10 000 fine	\$5 000 fine and 12 months CRO	AS less severe
	\$10 000 fine and 6 months CRO	AS more severe
	\$5 000 fine and 12 months CBO	AS more severe
	6 months CBO	AS more severe
\$10 000 to \$20 000 fine OR 12 to 24 months CBO	\$15 000 fine	AS same as RS
	\$25 000 fine	AS less severe
	\$25 000 fine and 15 months CRO	AS less severe
	\$20 000 fine and 20 months CBO	AS less severe
	\$2 000 fine and 24 months CBO	AS more severe
	\$2 000 fine and 6 months imprisonment	AS more severe
\$10 000 to \$20 000 fine OR 12 to 24 months CBO OR 6 to 9 months imprisonment	\$20 000 fine	AS same as RS
	24 months CBO	AS same as RS
	\$20 000 fine and 24 months CBO	AS less severe
	\$20 000 fine and 8 months imprisonment	AS less severe
	\$20 000 fine and 9 months imprisonment	AS more severe

**Division 5 — Application of this Part to the sentencing of young persons**

**101S. Meaning of terms used in this Division**

In this Division —

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

**101T. Prescribing offences in relation to the Children’s Court**

10 (1) Regulations may be made under section 101B, 101F  
or 101J 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.

15 (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 —

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

the offence.

**101U. Sentencing of young persons by other courts**

25 If regulations referred to in section 101T(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.

**101V. Modified operation of certain provisions of this Part**

(1) If regulations referred to in section 101T(1) are made under section 101J, section 101L(5) applies as if it were amended by inserting after “Part 14” the following —

“

, or under Part 7, Division 9 of the *Young Offenders Act 1994*

”.

(2) If regulations referred to in section 101T(1) are made under section 101F or 101J then, unless section 50B of the *Young Offenders Act 1994* applies, references in Division 4 to section 39(2) are to be read as references to the Table to this subsection.

**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.]*

**Sentencing Matrix Bill 1999**

Part 2 Amendments about appropriate and consistent sentencing

Division 2 Young Offenders Act 1994 amended

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**6. Section 46A amended**

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

“

5 (ba) to the extent that Division 5 of Part 14A of the  
*Sentencing Act 1995* provides for that Part to  
apply; or

”.

**7. Section 55 amended**

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

“

15 (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.

”.

**8. Schedule 2 amended**

20 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 ”.

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