

Protective Custody Bill 2000

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Western Australia

LEGISLATIVE ASSEMBLY

Protective Custody Bill 2000

A Bill for

An Act to allow intoxicated people to be taken into protective custody and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Protective Custody Act 2000*.

2. Commencement

5 This Act comes into operation on a day fixed by proclamation.

3. Interpretation

In this Act, unless the contrary intention appears —

“**adult**” means a person who has reached 18 years of age;

“**apprehended**” means apprehended under section 6(1);

10 “**appropriate facility**”, in relation to an apprehended person,
means an approved place to which the person may be taken
in accordance with a notice published under section 26(1);

“**approved place**” means a place approved under section 26(1);

15 “**authorized officer**” means a community officer or a police
officer;

“**child**” means a person who is under 18 years of age;

“**community officer**” means a person appointed under section
27;

“**intoxicant**” means —

20 (a) alcohol; or

(b) a drug, or a volatile or other substance, capable of
intoxicating a person;

25 “**intoxicated**” means affected by, or apparently by, an
intoxicant to such an extent that there is a significant
impairment of judgment or behaviour;

“**JP**” means Justice of the Peace;

“police officer” means a person appointed under the *Police Act 1892* to be —

- (a) a member of the Police Force;
- (b) a special constable; or
- (c) an aboriginal aide;

“public place” includes —

- (a) a place to which the public are admitted on the payment of money or other consideration, the test of admittance being only the payment of money or other consideration;
- (b) a school, university or other place of education, other than a part of it to which neither students nor the public usually have access; and
- (c) a privately owned place —
 - (i) that is not occupied by, or with the authority of, the owner; or
 - (ii) to which the public has access with the express or implied approval of the owner, occupier or person who has the control or management of the place;

“volatile substance” means a substance that produces a vapour at room temperature.

4. Relationship with other Acts

- (1) This Act is in addition to and does not affect section 138B of the *Child Welfare Act 1947*.
- (2) This Act is in addition to and does not affect the operation of section 195 of the *Mental Health Act 1996*.

Part 2 — Seizing intoxicants from children

5. Intoxicants may be seized from children using them

- (1) An authorized officer may seize an intoxicant from a child who is in a public place if —
- 5 (a) the child is consuming or inhaling the intoxicant; or
- (b) the officer reasonably suspects that the child is about to consume or inhale the intoxicant,
- and the officer reasonably suspects that the child is likely to become intoxicated if the intoxicant is not seized.
- 10 (2) The intoxicant may be seized even if the child is not intoxicated.
- (3) The officer may destroy the intoxicant.
- (4) This section does not prevent an intoxicant that has been seized from being seized under another written law or under a legal process.

15

Part 3 — Apprehending and detaining intoxicated people

6. Intoxicated people may be apprehended

- 5 (1) If an authorized officer reasonably suspects that a person who is
in a public place or who is trespassing on private property —
- (a) is intoxicated; and
- (b) needs to be apprehended —
- (i) to protect the health or safety of the person or
any other person; or
- 10 (ii) to prevent the person causing serious damage to
property,
- the officer may apprehend the person.
- (2) The authorized officer may use reasonable force and assistance
to apprehend the person.
- 15 (3) An authorized officer who apprehends a person must record the
date and time when the person is apprehended.

7. Apprehended person may be detained, but for no longer than necessary

- 20 (1) An authorized officer may detain an apprehended person but
any detention of the person must be in accordance with
subsections (2), (3) and (4).
- (2) An authorized officer must not detain an apprehended person
who is not, or who is no longer, intoxicated.
- (3) An authorized officer must not detain an apprehended person
25 who is intoxicated for any longer than is necessary —
- (a) to protect the health or safety of the person or any other
person; or

s. 7

- (b) to prevent the person causing serious damage to property.
- 5 (4) If an apprehended person is detained in a police station or lock-up, then, despite subsections (2) and (3), a police officer may decide not to release the person between the hours of midnight and 7.30 a.m. if release during those hours is not in the best interests of the person.
- 10 (5) If a police officer makes a decision under subsection (4), he or she must record the reasons for the decision.
- (6) The power to detain an apprehended person does not affect the duty under section 11(1) and 12(1) to release a person as soon as practicable after he or she is apprehended.

Part 4 — Dealing with apprehended people

8. Apprehended person may be searched

- 5 (1) An authorized officer may search an apprehended person, and any thing found on or with the person, for any thing that can be seized under section 9.
- (2) The search of an apprehended person must be made by an authorized officer of the same sex as the person unless that is impracticable.
- 10 (3) An authorized officer may use reasonable force to make the search.

9. Intoxicants and dangerous articles may be seized

- (1) An authorized officer may seize from an apprehended person —
 (a) any intoxicant;
 (b) any article (including any drug prescribed for the
15 person) that could endanger the health or safety of the person or any other person.
- (2) If alcohol or any substance containing alcohol, is seized from an apprehended person, an authorized officer may destroy it.
- 20 (3) If an intoxicant other than alcohol is seized from an apprehended person, an authorized officer may destroy it if the officer reasonably suspects that if it were returned to the person, the person is likely to use it to become intoxicated.
- (4) Anything seized under subsection (1) that is not destroyed under subsection (2) or (3), must be dealt with under section 14.
- 25 (5) An authorized officer who seizes any thing under this section must record the fact and must record how the thing is dealt with.

s. 10

10. Apprehended person may be taken for medical examination

- (1) If an apprehended person needs a medical examination, an authorized officer, as soon as practicable, is to arrange for the person to be medically examined by a suitably qualified person.
- 5 (2) The authorized officer is to continue detaining the apprehended person subject to section 7 unless —
 - (a) under section 29 of the *Mental Health Act 1996* the apprehended person is referred for examination by a psychiatrist; or
 - 10 (b) the person who medically examines the apprehended person directs that the person be left in his or her charge.
- (3) If an authorized officer arranges for a person to be medically examined the officer must record the fact and the date and time when the person was examined.

Part 5 — Releasing apprehended people

11. Releasing apprehended children

- (1) As soon as practicable after a child is apprehended, an authorized officer must release the child —
- 5 (a) into the care of a person who is the child's parent or legal guardian;
- (b) into the care of a person —
- (i) whom the officer reasonably believes is a responsible person capable of taking care of the
- 10 child; and
- (ii) who consents to taking charge of the child;
- or
- (c) if the officer is unable to comply with paragraph (a) or (b), into the care of the person in charge of an
- 15 appropriate facility.
- (2) In deciding which option in subsection (1) to use an authorized officer must give paramount consideration to the safety and welfare of the child.
- (3) Subsection (1) does not prevent an authorized officer from taking
- 20 action under section 10 and, if directed to do so, from releasing a child into the care of another person under that section.
- (4) If a child is apprehended by a community officer and it is not reasonably practicable to comply with subsection (1), a community officer may deliver the child to a police officer to be
- 25 detained in accordance with section 7(1).
- (5) If it is not reasonably practicable, or until it is practicable, to comply with subsection (1), any detention under section 7(1) of a child by a police officer may be in a police station or lock-up;

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but only if there are exceptional circumstances that justify
detaining the child in a police station or lock-up.

- 5 (6) Section 138B(2), (4) and (5) of the *Child Welfare Act 1947*
apply in respect of an apprehended child as if the child had been
apprehended under section 138B(1) of that Act.

12. Releasing apprehended adults

- (1) As soon as practicable after an adult is apprehended, an
authorized officer must release the adult —
10 (a) into the care of another person under section 13; or
(b) into the care of the person in charge of an appropriate
facility.
- (2) Subsection (1) does not prevent an authorized officer from
taking action under section 10 and, if directed to do so, from
15 releasing an adult into the care of another person under that
section.
- (3) If an adult is apprehended by a community officer and it is not
reasonably practicable to comply with subsection (1), a
community officer may deliver the adult to a police officer to be
detained in accordance with section 7(1).
- 20 (4) If it is not reasonably practicable, or until it is practicable, to
comply with subsection (1), any detention under section 7(1) of
an adult by a police officer may be in a police station or lock-up.

13. Release of adult into care of another person

- 25 (1) An authorized officer may at any time release an apprehended
adult into the care of another person who applies for the adult's
release if —
(a) the adult does not object to being released into the care
of the applicant; and

- (b) the officer reasonably believes that the applicant is capable of taking care of the adult.
- (2) If an officer refuses to release an adult under subsection (1) because the officer does not believe that the applicant is capable of taking care of the adult, the applicant may apply to a JP to review the officer's decision.
- (3) If an application is made to a JP and if it is reasonably practicable to do so —
 - (a) an authorized officer, subject to section 21, must take the adult, or arrange for the adult to be taken, before the JP; and
 - (b) the applicant and the officer are to appear before the JP, unless the adult is released before that can be done.
- (4) On an application the JP may —
 - (a) if the adult does not object, direct that the adult be released into the care of the applicant;
 - (b) if the JP is satisfied that the applicant is not capable of taking care of the adult, direct that the adult continue to be detained in accordance with section 7; or
 - (c) give any direction the JP thinks fit for the health and safety of the adult.

14. Seized things to be returned

- (1) A thing that is seized from an apprehended person under section 9 and not destroyed under that section must be kept in safe keeping and —
 - (a) if the apprehended person is released into the care of another person, given to that other person at that time on behalf of the apprehended person; or

s. 15

(b) in any other case, returned to the apprehended person when he or she is released.

(2) Subsection (1) does not prevent the thing that has been seized from being seized under another written law or under a legal process.

15. Release procedure

(1) When an apprehended person is released by an authorized officer —

(a) the apprehended person must acknowledge in writing —

(i) his or her release on the date and at the time recorded; and

(ii) receipt of any thing returned to the person under section 14;

(b) if the apprehended person is released into the care of another person, that other person must acknowledge in writing —

(i) the release of the apprehended person on the date and at the time recorded; and

(ii) receipt of any thing given to that other person under section 14;

or

(c) if the apprehended person refuses or fails to comply with paragraph (a) or that other person refuses or fails to comply with paragraph (b), the authorized officer who releases the person must record —

(i) the fact of the refusal or failure;

(ii) the date and time when the person was released; and

(iii) any thing given to that other person, or returned to the apprehended person, under section 14.

(2) Subsection (1) applies even if the apprehended person is released pursuant to an order made under section 19.

5 (3) An apprehended person is to be taken to have been released on the date and at the time recorded under this section, in the absence of evidence to the contrary.

16. Release to be unconditional

10 An apprehended person must not be required to enter into a bail undertaking or a recognizance of any kind before being released under this Act.

Part 6 — Judicial review

17. Apprehended person may request review by JP

- 5 (1) An apprehended person who has not been released may at any time request an authorized officer to take him or her before a JP so that the person can apply to the JP to be released.
- (2) On such a request being made, the officer, subject to section 21, must take the apprehended person, or arrange for the person to be taken, before a JP, unless the person is released before that can be done.

10 **18. Review of detention after 8 hours**

 If 8 hours after a person is apprehended an authorized officer who is detaining the person reasonably believes it is still not possible to comply with section 7, the officer, subject to section 21, must take the person, or arrange for the person to be taken, before a JP, unless the person is released before that can be done.

15

19. JP to review detention

- (1) When an apprehended person appears before a JP under section 17 or 18, the JP —
- 20 (a) if satisfied that the person should be released under section 7 — must direct that the person be released; or
- (b) in any other case — may give the officer who has custody of the person such directions to ensure the health and safety of the person as the JP thinks fit, including —
- 25 (i) if the apprehended person does not object, a direction that the person be released into the care of a person capable of taking care of the apprehended person;

- 5 (ii) a direction that the person be released into the care of the person in charge of an appropriate facility;
- (iii) a direction that the person continue to be detained in accordance with section 7.
- (2) If a JP gives a direction under subsection (1)(b)(iii), the JP may give a direction as to when another request under section 17 may be made.
- 10 (3) A direction that is given under this section must be complied with by any officer who is detaining the apprehended person.

20. Declaration by court as to state of intoxication

- (1) A person who has been apprehended may apply to a Local Court for a declaration that at the time he or she was apprehended, he or she was not intoxicated.
- 15 (2) The application must be made within 30 days after the date when the person was released.
- (3) In proceedings under this section the officer who apprehended the applicant and any officer who detained the applicant are entitled to appear.
- 20 (4) If the Local Court is satisfied that the applicant was not intoxicated at the time he or she was apprehended it is to make a declaration accordingly.
- (5) A declaration made under subsection (4) does not establish that the apprehension was unlawful.

25 **21. Apprehended person to be taken before a JP promptly**

- (1) An authorized officer who under section 13(3), 17(2) or 18 is required to take an apprehended person, or arrange for the person to be taken, before a JP must do so as soon as practicable

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and must not delay doing so except, in the case of a police officer, for the minimum time necessary to meet the reasonable organizational requirements of the police station concerned.

- 5 (2) The reasons for any delay in taking a person, or arranging for a person to be taken, before a JP must be recorded by the officer.

Part 7 — Miscellaneous

22. Powers may be exercised without a warrant

An authorized officer does not need a warrant to exercise the powers conferred on the officer by this Act.

5 23. Certain functions may be performed by people providing custodial services

10 If under section 80 or 81 of the *Court Security and Custodial Services Act 1999* an authorized person (as defined in section 79 of that Act) takes charge of or moves a person who is detained under this Act, the functions conferred on an authorized officer by the sections in the Table to this section may be performed in respect of the detained person by the authorized person.

Table

s. 7	s. 11(1)	s. 17
s. 8	s. 12(1)	s. 18
s. 9	s. 13	s. 19(3)
s. 10	s. 14	s. 21
	s. 15	

24. Apprehended person not to be charged etc.

- 15 (1) An apprehended person who has not been released —
- (a) is not to be questioned in relation to any offence that he or she is suspected of committing;
 - (b) is not to be subjected to any procedure the purpose of which is to obtain information that can be used for forensic purposes; and
 - 20 (c) is not to be charged with an offence.

s. 25

(2) If subsection (1)(a) is contravened, any answer that the person gives is not admissible in evidence against the person in any proceedings for an offence.

(3) If subsection (1)(b) is contravened —

- 5 (a) the Commissioner of Police must ensure that any information obtained is destroyed; and
- (b) any information obtained is not admissible in evidence against the person in any proceedings for an offence.

25. Escape of an apprehended person

10 For the purposes of any law relating to escape from lawful custody, an apprehended person who has not been released is not to be taken as being in lawful custody.

26. Approved places

(1) The Minister, by notice published in the *Gazette* —

- 15 (a) may approve a place as a place to which an apprehended person may be taken for the purposes of this Act; and
- (b) in relation to the place, may specify that only certain apprehended people or certain classes of apprehended people may be taken to the place.

20 (2) The Minister, by notice published in the *Gazette*, may amend or cancel a notice made under subsection (1).

(3) Nothing in this Act permits the detention of an adult or a child in an approved place.

27. Community officers

25 (1) The Commissioner of Police may appoint a person to be a community officer.

- (2) The appointment must be in writing and for a term decided by the Commissioner.
- (3) The appointment may state that the person appointed may exercise the powers of a community officer under this Act only in a place, or only in circumstances, specified in the appointment.
- (4) The Commissioner is to issue a community officer with a certificate of appointment.
- (5) The Commissioner, at any time, may amend or cancel such an appointment.
- (6) The Commissioner, in writing, may delegate the functions in this section other than this power of delegation.
- (7) A person who is appointed to be a community officer is not by virtue of the appointment a public service officer under the *Public Sector Management Act 1994*.
- (8) The performance of any function under this Act by a community officer is to be voluntary and for no pay.
- (9) For the purposes of the *Workers' Compensation and Rehabilitation Act 1981* —
- (a) a community officer, while performing functions under this Act, is to be regarded as an employee of the Crown; and
- (b) his or her weekly earnings are to be taken to be the amount that the Minister considers is reasonable in the circumstances.

28. Protection from personal liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.

s. 29

- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- 5 (3) Despite subsection (1), the Crown is not relieved from any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- 10 (5) This section does not affect the operation of sections 137 and 138 of the *Police Act 1892*.

29. Regulations

- (1) The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for the giving effect to the purposes of this Act.
- 15 (2) Without limiting subsection (1), regulations may provide for the manner and form of recording any information that is required to be recorded under this Act.

30. Consequential amendments

- 20 The Acts listed in Schedule 1 are amended as set out in that Schedule.

Schedule 1 — Consequential amendments

[s. 30]

1. Court Security and Custodial Services Act 1999

- 5 (1) The amendments in this clause are to the *Court Security and Custodial Services Act 1999**.

[* *Act No. 46 of 1999.*]

- (2) Section 3 is amended by deleting the definition of “intoxicated detainee” and inserting instead —

10 “**“intoxicated detainee”** means a person detained under the *Protective Custody Act 2000*;

”.

- (3) Section 81(a)(iii) is deleted and the following subparagraph is inserted instead —

15 “
(iii) an appropriate facility as defined in
section 3 of the *Protective Custody Act 2000*;

”.

- 20 (4) Schedule 3 clause 1(1)(d) is amended by deleting “Part VA of the *Police Act 1892*.” and inserting instead —

“ the *Protective Custody Act 2000*. ”.

2. Police Act 1892

Part VA of the *Police Act 1892** is repealed.

25 [* *Reprinted as at 31 January 1997.*

For subsequent amendments see 1998 Index to the Statutes of Western Australia, Table 1, p. 196 and Acts Nos. 18, 42 and 47 of 1999.]

Schedule 1 Consequential amendments

3. *Young Offenders Act 1994*

Section 18 of the *Young Offenders Act 1994** is repealed.

[* Reprinted as at 26 November 1996.

*For subsequent amendments see 1998 Index to the Statutes of Western
Australia, Table 1, p. 279 and Act No. 47 of 1999.]*

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