

## Criminal Code Amendment Bill (No. 2) 2003

---

### CONTENTS

---

<b>Part 1 — Preliminary</b>		
1.	Short title	2
2.	Commencement	2
3.	<i>The Criminal Code</i> amended	2
<b>Part 2 — Amendments about wilful murder and murder</b>		
4.	Section 278 repealed	3
5.	Section 279 amended	3
6.	Section 282 replaced	3
7.	Consequential amendments to the Code	4
8.	<i>Sentencing Act 1995</i> consequentially amended	5
9.	Other Acts consequentially amended	7
10.	Transitional and savings	7
<b>Schedule 1 — Amendments consequential on Part 2</b>		
		8
1.	<i>Adoption Act 1994</i> amended	8
2.	<i>Bail Act 1982</i> amended	8
3.	<i>Criminal Code Act 1913</i> amended	8
4.	<i>Criminal Investigation (Identifying People) Act 2002</i> amended	8
5.	<i>Criminal Law (Mentally Impaired Defendants) Act 1996</i> amended	9
6.	<i>District Court of Western Australia Act 1969</i> amended	9
7.	<i>Evidence Act 1906</i> amended	9
8.	<i>Juries Act 1957</i> amended	10
9.	<i>Prisons Act 1981</i> amended	10

Contents

---

10.	<i>Sentence Administration Act 2003</i> amended	12
11.	<i>Sentencing Act 1995</i> amended	15
12.	<i>Young Offenders Act 1994</i> amended	15
	<b>Schedule 2 — Transitional and savings provisions consequential on Part 2</b>	16
1.	Interpretation	16
2.	Wilful murder trials in progress at commencement	16
3.	Wilful murders committed before commencement	16
4.	Offenders serving life term at commencement	16

Western Australia

LEGISLATIVE ASSEMBLY

*(As divided by the Assembly)*

*(As amended during consideration in detail)*

**Criminal Code Amendment Bill (No. 2) 2003**

**A Bill for**

**An Act to amend the *The Criminal Code* and to consequentially amend various other Acts.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Criminal Code Amendment Act (No. 2) 2003*.

5 **2. Commencement**

Subject to this section, this Act comes into operation on the 28<sup>th</sup> day after the day on which it receives the Royal Assent.

**3. *The Criminal Code* amended**

10 The amendments in this Act are to *The Criminal Code*\* unless otherwise indicated.

[\* *Reprint 10 as at 7 February 2003 (see the Schedule to the Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Act Compilation Act 1913).*]

---

**Part 2 — Amendments about wilful murder and murder**

**4. Section 278 repealed**

Section 278 is repealed.

5 **5. Section 279 amended**

Section 279 is amended as follows:

- (a) by deleting paragraph (1) and inserting the following paragraph instead —

“

- 10 (1) If the person intends to cause the death of, or to do grievous bodily harm to, the person killed or some other person;

”;

- (b) by deleting paragraphs (3), (4) and (5);

- 15 (c) by deleting the paragraph beginning with “In the last 3 cases” and ending with “result.”.

**6. Section 282 replaced**

Section 282 is repealed and the following section is inserted instead —

20 “

**282. Penalty for murder**

- (1) A person, other than a child, who commits the crime of murder is liable to the mandatory penalty of life imprisonment.
- 25 (2) A child who commits the crime of murder is liable to the penalty of either —
- (a) life imprisonment; or

(b) detention in a place determined by the Governor from time to time until released by order of the Governor.

”.

5 **7. Consequential amendments to the Code**

(1) Section 31(4) is amended by deleting “an offence punishable with strict security life imprisonment,” and inserting instead —  
“ murder, manslaughter, ”.

10 (2) Section 47(1) is amended by deleting “commit any crime punishable with strict security life imprisonment” and inserting instead —  
“ kill any person ”.

(3) Section 48(1)(b) is deleted and the following paragraph is inserted instead —

15 “  
(b) To commit any indictable offence other than one entailing the killing of a person;

”.

(4) Section 125 is amended by deleting “with strict security life imprisonment, or”.

(5) Section 134 is amended by deleting “to strict security life imprisonment or”.

(6) Section 144 is repealed and the following section is inserted instead —

25 “  
**144. Forcibly freeing certain offenders from custody**

Any person who forcibly frees, or attempts to free, from lawful custody any person serving a sentence for, or charged with, an offence that is punishable with

imprisonment for life, or for 20 years or more, is guilty  
of a crime and is liable to imprisonment for 20 years.

”.

- (7) Section 277 is amended by deleting “wilful murder,”.
- 5 (8) Section 280 is amended by deleting “wilful murder or”.
- (9) Section 281 is amended by deleting “wilful murder or”.
- (10) Section 281A is amended by deleting “wilful murder or”.
- (11) Section 595 is amended as follows:
- 10 (a) by deleting “wilful murder,”;
- (b) in the Table to the section by deleting the entry relating  
to “wilful murder”;
- (c) in the Table to the section, in the entry relating to  
“murder”, by inserting in the second column after  
“under section” —
- 15 “ 283, ”.
- (12) Section 720 is amended by deleting “not punishable with strict  
security life imprisonment” and inserting instead —
- “ other than murder ”.

**8. Sentencing Act 1995 consequentially amended**

- 20 (1) The amendments in this section are to the *Sentencing Act 1995*\*.
- [\* *Reprinted as at 4 May 2001.*  
*For subsequent amendments see 2001 Index to Legislation of  
Western Australia, Table 1, p. 339-40 and Acts Nos. 24 of  
2001 and 7 of 2002.*]
- 25 (2) Section 85(1) is amended as follows:
- (a) in the definition of “fixed term” by deleting “a life term”  
and inserting instead —
- “ life imprisonment ”;

- (b) in the definition of “term” by deleting “a life term” and inserting instead —  
“ life imprisonment ”;
- (c) by deleting the semicolon after the definition of “term” and inserting instead a full stop;
- (d) by deleting the definition of “life term”.
- (3) Section 88(5) is amended by deleting “a life term is to serve that term” and inserting instead —  
“ life imprisonment is to serve that sentence ”.
- (4) Section 90 is repealed and the following section is inserted instead —

“

**90. Imposing life imprisonment for murder**

- (1) A court that sentences an offender to life imprisonment for murder must either —
- (a) set a minimum period of at least 10 and not more than 30 years that the offender must serve before being eligible for release on parole; or
- (b) order that the offender must never be released.
- (2) Any minimum period so set begins to run when the sentence of life imprisonment begins.
- (3) A court must make an order under subsection (1)(b) if it is necessary to do so in order to meet the community’s interest in punishment and deterrence.
- (4) In determining whether an offence is one for which an order under subsection (1)(b) is necessary, the only matters relating to the offence that are to be taken into account are —
- (a) the circumstances of the commission of the offence; and

(b) any aggravating factors.

”.

(5) Section 91 is repealed.

(6) Section 96 is repealed and the following section is inserted  
instead —

5

“

**96. Release from life term**

(1) A prisoner serving a sentence of life imprisonment for  
an offence other than murder is not to be released  
before he or she has served 7 years of the sentence.

10

(2) A prisoner serving a sentence of life imprisonment for  
murder in respect of which a minimum period has been  
set under section 90(1)(a) is not to be released before  
he or she has served the minimum period.

15

(3) A prisoner serving a sentence of life imprisonment for  
murder in respect of which an order has been made  
under section 90(1)(b) is not to be released.

(4) Any order for the release of a prisoner referred to in  
this section must be made in accordance with Part 3 of  
the *Sentence Administration Act 2003*.

20

”.

(7) Section 142 is amended by deleting “sentenced to strict security  
life imprisonment” and inserting instead —

“

serving a sentence of life imprisonment in respect of  
which an order has been made under section 90(1)(b)

25

”.

**9. Other Acts consequentially amended**

Schedule 1 has effect.

30

**10. Transitional and savings**

Schedule 2 has effect.

**Schedule 1 — Amendments consequential on Part 2**

[s. 9]

**1. Adoption Act 1994 amended**

- (1) The amendment in this clause is to the *Adoption Act 1994*\*.

5 [\* Reprinted as at 2 January 2001.  
For subsequent amendments see Act No. 3 of 2002.]

- (2) Section 40(2)(e)(ii) is amended by deleting “, strict security life imprisonment”.

**2. Bail Act 1982 amended**

- 10 (1) The amendments in this clause are to the *Bail Act 1982*\*.

[\* Reprinted as at 27 August 1999.  
For subsequent amendments see 2001 Index to Legislation of  
Western Australia, Table 1, p. 27 and Acts Nos. 6 and 27 of 2002.]

- (2) Section 15(1) is amended by deleting “wilful murder or”.

- 15 (3) Schedule 2 item 1 is amended by deleting the entry relating to section 278 of *The Criminal Code*.

**3. Criminal Code Act 1913 amended**

- (1) The amendment in this clause is to the *Criminal Code Act 1913*\*.

20 [\* Reprint 10 as at 7 February 2003 (see Appendix B to the Criminal  
Code Act Compilation Act 1913).]

- (2) Section 3(2) is repealed.

**4. Criminal Investigation (Identifying People) Act 2002 amended**

- (1) The amendments in this clause are to the *Criminal Investigation (Identifying People) Act 2002*\*.

25 [\* Act No. 6 of 2002.]

- (2) Section 3(1) is amended in the definition of “serious offence” by deleting “strict security life imprisonment,” and inserting instead —  
“ or includes ”.

**5. Criminal Law (Mentally Impaired Defendants) Act 1996 amended**

- 5 (1) The amendment in this clause is to the *Criminal Law (Mentally Impaired Defendants) Act 1996\**.

[\* Reprinted as at 21 June 2002.  
For subsequent amendments see Act No. 27 of 2002.]

- 10 (2) Schedule 1 item 1 is amended by deleting the entry relating to section 278 of *The Criminal Code*.

**6. District Court of Western Australia Act 1969 amended**

- (1) The amendment in this clause is to the *District Court of Western Australia Act 1969\**.

15 [\* Reprinted as at 19 January 2001.  
For subsequent amendments see Act No. 23 of 2002.]

- (2) Section 42(2) is amended by deleting “or strict security life imprisonment”.

**7. Evidence Act 1906 amended**

- (1) The amendments in this clause are to the *Evidence Act 1906\**.

20 [\* Reprinted as at 4 January 2001.  
For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 121 and Acts Nos. 3 and 27 of 2002.]

- (2) The Second Schedule Part 1 is amended as follows:

- 25 (a) in the entry relating to an offence under section 144 of *The Criminal Code* by deleting “Using force to rescue a person undergoing, or liable to, strict security life imprisonment” and inserting instead —  
“ Forcibly freeing certain offenders from custody ”;
- 30 (b) by deleting the entry relating to an offence under section 278 of *The Criminal Code*.

**8. *Juries Act 1957* amended**

(1) The amendment in this clause is to the *Juries Act 1957*\*.

[\* Reprinted as at 3 July 2000.]

5 (2) Section 41 is amended by deleting “an offence punishable with strict security life imprisonment or for”.

**9. *Prisons Act 1981* amended**

(1) The amendments in this clause are to the *Prisons Act 1981*\*.

[\* Reprinted as at 22 December 2000.

For subsequent amendments see Act No. 10 of 2002.]

10 (2) Section 16(6) is repealed and the following subsection is inserted instead —

“

(6) Subsection (5) does not apply in respect of a prisoner who —

15 (a) is serving a sentence that requires him or her to spend —

(i) 20 years or more in custody before being eligible for parole; or

(ii) his or her whole life in custody;

20 or

(b) is subject to an order made under section 282 of *The Criminal Code* and whose release is to be determined by the Governor.

”.

25 (3) Section 26(2) is amended by inserting after “life imprisonment” —

“

or a sentence of life imprisonment in respect of which an order has been made under section 90(1)(b) of the *Sentencing Act 1995*

30

”.

- (4) Section 27(6) is repealed and the following subsection is inserted instead —

“

- (6) If a prisoner who —

- 5 (a) is serving a sentence that requires him or her to spend —
- (i) 20 years or more in custody before being eligible for parole; or
  - (ii) his or her whole life in custody;
- 10 or
- (b) is subject to an order made under section 282 of *The Criminal Code* and whose release is to be determined by the Governor,

15 is removed from or returned to a prison under an order made under this section, the superintendent of the prison shall notify the chief executive officer accordingly.

”.

- 20 (5) Section 86 is amended by inserting after paragraph (c) the following paragraph —

“

- (ca) subject to an order made under section 282 of *The Criminal Code* and whose release is to be determined by the Governor;

25

”.

- (6) Section 89(a) is amended by inserting after subparagraph (iii) the following subparagraph —

“

- 30 (iiia) subject to an order made under section 282 of *The Criminal Code* and whose release is to be determined by the Governor;

”.

**Schedule 1** Amendments consequential on Part 2

---

- (7) Section 94(7) is amended by inserting after paragraph (c) the following paragraph —

“

- (ca) subject to an order made under section 282 of *The Criminal Code* and whose release is to be determined by the Governor;

”.

**10. Sentence Administration Act 2003 amended**

- (1) The amendments in this clause are to the *Sentence Administration Act 2003*.

- (2) Section 12(1) is amended in the definition of “person in custody” as follows:

- (a) in paragraph (b) by deleting “life term” and inserting instead —

“ life imprisonment ”;

- (b) by deleting paragraph (d) and inserting the following paragraph instead —

“

- (d) a person in custody by virtue of an order made under section 282 of *The Criminal Code* whose release is to be determined by the Governor.

”.

- (3) Section 14(1) is repealed and the following subsection is inserted instead —

“

- (1) The release by the Governor of a person in custody by virtue of an order made under section 282 of *The Criminal Code* whose release is to be determined by the Governor may, if the Governor thinks fit, be by means of a parole order made by the Governor.

”.

- (4) The Table to section 18 is deleted and the following Table is inserted instead —

“

**Table**

Type of sentence	When report due	When subsequent reports are due
Life imprisonment for an offence other than murder	7 years after the sentence was imposed	Every 3 years after that
Life imprisonment for murder where a minimum period has been set under section 90(1)(a) of the <i>Sentencing Act 1995</i>	At the end of the minimum period	Every 3 years after that
Indefinite imprisonment	One year after the day on which the sentence began	Every 3 years after that

5

”.

- (5) Section 25(1) is repealed and the following subsections are inserted instead —

“

- (1) The Governor may make a parole order in respect of a prisoner serving life imprisonment for murder but only if —
- (a) a minimum period has been set under section 90(1)(a) of the *Sentencing Act 1995*;
  - (b) the prisoner has served the minimum period;
- and

15

**Schedule 1** Amendments consequential on Part 2

---

- (c) a report has been given by the Board to the Minister under section 12 or 18.
- (1a) The Governor may make a parole order in respect of a prisoner serving life imprisonment for an offence other than murder but only if —
- (a) the prisoner has served the period required by section 96(1) of the *Sentencing Act 1995*; and
- (b) a report has been given by the Board to the Minister under section 12 or 18.
- (6) Section 26 is repealed.
- (7) Section 50(b) is amended by deleting “a life term” and inserting instead —
- “ life imprisonment ”.
- (8) Section 68(2) is repealed and the following subsection is inserted instead —
- “
- (2) If a parole order in respect of a prisoner serving life imprisonment is suspended, the prisoner is then liable to resume serving the sentence in custody.
- (9) Section 69(2) is repealed and the following subsection is inserted instead —
- “
- (2) If a parole order in respect of a prisoner serving life imprisonment is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the sentence in custody.

**11. Sentencing Act 1995 amended**

- (1) The amendments in this clause are to the *Sentencing Act 1995* as amended by section 8 of this Act.
- (2) Section 96(4) is amended by deleting “*Sentence Administration Act 1995*” and inserting instead —
- “ *Sentence Administration Act 2003* ”.

**12. Young Offenders Act 1994 amended**

- (1) The amendments in this clause are to the *Young Offenders Act 1994*\*.

[\* *Reprinted as at 8 December 2000.*

*For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 423.]*

- (2) Section 179(6) is amended as follows:
- (a) by deleting “or” after paragraph (b);
- (b) by inserting after paragraph (b) the following paragraph —
- “
- (ba) is subject to an order made under section 282 of *The Criminal Code* and whose release is to be determined by the Governor; or
- ”.

- (3) Schedule 1 item 1 is amended as follows:

- (a) in the entry relating to section 125 of *The Criminal Code*, by deleting “with strict security life imprisonment, or”;
- (b) in the entry relating to section 134 of *The Criminal Code*, by deleting “to strict security life imprisonment or”;
- (c) in the entry relating to section 144 of *The Criminal Code* by deleting “Forcibly rescuing offenders sentenced or liable to strict security life imprisonment” and inserting instead —
- “ Forcibly freeing certain offenders from custody ”.

- (4) Schedule 2 item 1 is amended by deleting the entry relating to section 278 of *The Criminal Code*.

**Schedule 2 — Transitional and savings provisions  
consequential on Part 2**

[s. 10]

**1. Interpretation**

5 In this Schedule —  
“commencement” means the commencement of Part 2.

**2. Wilful murder trials in progress at commencement**

10 If before commencement a person is charged on indictment with  
wilful murder and on commencement the person’s trial has begun but  
not concluded, then the trial may continue as if Part 2 had not been  
enacted.

**3. Wilful murders committed before commencement**

15 If before commencement a person commits wilful murder and is not  
charged on indictment before commencement, then the person may, in  
respect of the act or omission constituting the offence, be charged  
under section 279 of *The Criminal Code* as amended in Part 2 and be  
tried and sentenced as if, at the time of doing the act or making the  
omission, Part 2 had commenced.

**4. Offenders serving life term at commencement**

- 20 (1) If immediately before commencement a person is serving a sentence  
of life imprisonment for an offence other than murder or wilful  
murder, the person is eligible to be released on parole when he or she  
has served 7 years of the sentence.
- 25 (2) If immediately before commencement a person is serving a sentence  
of life imprisonment for murder or wilful murder in respect of which a  
minimum period was set under section 90 of the *Sentencing Act 1995*  
as it was before commencement, the person is not to be released  
before he or she has served that minimum period.
- 30 (3) If immediately before commencement a person is serving a sentence  
of strict security life imprisonment in respect of which a minimum  
period was set under section 91(1) of the *Sentencing Act 1995* as it

was before commencement, the person is not to be released before he or she has served that minimum period.

- 5            (4) If immediately before commencement a person is serving a sentence of strict security life imprisonment in respect of which an order was made under section 91(3) of the *Sentencing Act 1995* as it was before commencement, the person is not to be released on parole.
- (5) Any order for the release of a person to whom this clause applies must be made in accordance with Part 3 of the *Sentence Administration Act 2003*.
- 10          (6) If immediately before commencement a person is serving a sentence of strict security life imprisonment, any order made after commencement in relation to the person in the exercise of the Royal Prerogative of Mercy is subject to section 142 of the *Sentencing Act 1995* as it was immediately before commencement.
- 15          (7) If immediately before commencement a person is serving a sentence of —
- (a) life imprisonment imposed for murder or wilful murder; or
- (b) strict security life imprisonment imposed for wilful murder,
- 20          then sections 18, 25 and 26 of the *Sentence Administration Act 2003* as they were immediately before commencement continue to apply to and in respect of the person.

=====