

Western Australia

Criminal Code Amendment Bill 2008

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

Criminal Code Amendment Bill 2008

A Bill for

An Act to amend *The Criminal Code*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Criminal Code Amendment Act 2008*.

3 **2. Commencement**

4 This Act comes into operation as follows —

5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;

7 (b) the rest of the Act — on the day after that day.

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

9 This Act amends *The Criminal Code*.

10 **4. Section 297 amended**

11 After section 297(4) insert:

12

13 (5) If the offence is committed in prescribed circumstances
14 by a person who has reached 16 but not 18 years of
15 age, then, notwithstanding the *Young Offenders*
16 *Act 1994* and in particular section 46(5a) of it, the court
17 sentencing the offender —

18 (a) must sentence the offender either —

19 (i) to a term of imprisonment of at least
20 3 months, notwithstanding the
21 *Sentencing Act 1995* section 86; or

22 (ii) to a term of detention (as defined in the
23 *Young Offenders Act 1994* section 3) of
24 at least 3 months,

25 as the court thinks fit; and

26 (b) must not suspend any term of imprisonment
27 imposed under paragraph (a)(i); and

28 (c) must record a conviction against the offender.

- 1 (6) Subsection (5) does not prevent a court from making a
2 direction under the *Young Offenders Act 1994*
3 section 118(4) or a special order under Part 7
4 Division 9 of that Act.
- 5 (7) If the offence is committed in prescribed circumstances
6 by a person who has reached 18 years of age, then,
7 notwithstanding any other written law, the court
8 sentencing the offender —
- 9 (a) must sentence the offender to a term of
10 imprisonment of at least 12 months; and
- 11 (b) must not suspend the term of imprisonment
12 imposed under paragraph (a).
- 13 (8) In subsections (5) and (7) —
- 14 ***prescribed circumstances*** means any of these
15 circumstances —
- 16 (a) where the offence is committed in the
17 circumstances set out in subsection (4)(a) or (b)
18 and the public officer is —
- 19 (i) a police officer; or
- 20 (ii) a prison officer as defined in the *Prisons*
21 *Act 1981* section 3(1); or
- 22 (iii) a security officer as defined in the
23 *Public Transport Authority Act 2003*
24 section 3;
- 25 (b) where the offence is committed in the
26 circumstances set out in subsection (4)(d)(i), (f)
27 or (g).

- 1 **5. Section 318 amended**
- 2 After section 318(1) insert:
- 3
- 4 (2) If a person is convicted of an offence against this
- 5 section committed in prescribed circumstances at a
- 6 time when the person had reached 16 but not 18 years
- 7 of age, then, notwithstanding the *Young Offenders*
- 8 *Act 1994* and in particular section 46(5a) of it, the court
- 9 sentencing the person —
- 10 (a) must sentence the offender to either —
- 11 (i) a term of imprisonment of at least
- 12 3 months, notwithstanding the
- 13 *Sentencing Act 1995* section 86; or
- 14 (ii) to a term of detention (as defined in the
- 15 *Young Offenders Act 1994* section 3) of
- 16 at least 3 months,
- 17 as the court thinks fit; and
- 18 (b) must not suspend any term of imprisonment
- 19 imposed under paragraph (a)(i); and
- 20 (c) must record a conviction against the person.
- 21 (3) Subsection (2) does not prevent a court from making a
- 22 direction under the *Young Offenders Act 1994*
- 23 section 118(4) or a special order under Part 7
- 24 Division 9 of that Act.
- 25 (4) If a person is convicted of an offence against this
- 26 section committed in prescribed circumstances at a
- 27 time when the person had reached 18 years of age,
- 28 then, notwithstanding any other written law, the court
- 29 sentencing the person —
- 30 (a) if the offence is committed in the circumstances
- 31 set out in subsection (1)(l) — must sentence the
- 32 person to a term of imprisonment of at least
- 33 9 months;

- 1 (b) if the offence is not committed in the
2 circumstances set out in subsection (1)(l) —
3 must sentence the person to a term of
4 imprisonment of at least 6 months,
5
6 and must not suspend the term of imprisonment
7 imposed under paragraph (a) or (b).
8 (5) In subsections (2) and (4) —
9 *prescribed circumstances* means any of these
10 circumstances —
11 (a) where the offence is committed under
12 subsection (1)(d) or (e) against a public officer
13 who is —
14 (i) a police officer; or
15 (ii) a prison officer as defined in the *Prisons*
16 *Act 1981* section 3(1); or
17 (iii) a security officer as defined in the
18 *Public Transport Authority Act 2003*
19 section 3,
20 and the officer suffers bodily harm;
21 (b) where the offence is committed under
22 subsection (1)(h)(i), (j) or (k) and the person
assaulted suffers bodily harm.

23 **6. Section 740A inserted**

24 After section 739 insert:
25

26 **740A. Review of certain amendments to s. 297 and 318**

- 27 (1) The Minister shall carry out a review of the operation
28 and effectiveness of the amendments made to this Code
29 by the *Criminal Code Amendment Act 2008* as soon as
30 practicable after the third anniversary of the day on
31 which those amendments came into operation.

s. 6

- 1 (2) The Minister shall prepare a report based on the review
2 made under subsection (1), and shall, as soon as is
3 practicable after that preparation, cause the report to be
4 laid before each House of Parliament.

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