

# CRIMINAL CODE AMENDMENT BILL 2008 (WA)

## EXPLANATORY MEMORANDUM

### Overview of Bill

The Criminal Code Amendment Bill 2008 (WA) (the Bill) amends the *Criminal Code* (the *Code*) to provide that when a person assaults a police officer and causes the officer bodily harm the person must be sentenced to a term of imprisonment.

The Bill amends section 297, which applies when a person commits grievous bodily harm, to provide that when the harm is caused to a public officer who is a police officer in the performance of his or her duties the person must be sentenced to imprisonment for 12 months.

The Bill also amends section 318 which deals with serious assault to provide that a person must be sentenced to imprisonment for 6 months. If there are aggravating circumstances involved in the assault (that is, if the person was armed or in company), then the person must be sentenced to imprisonment for 9 months.

If the person who commits the assault is a juvenile then, in all cases, they must be sentenced to detention for a minimum term of 3 months.

The Bill also ensures that when a sentence of imprisonment is imposed under the legislation then a conviction must be recorded. That is, the conviction cannot immediately be spent under the *Sentencing Act 1995* (WA) and it cannot be suspended. The conviction may be “spent” after a period of 10 years has elapsed under the *Spent Convictions Act 1988* (WA).

## CLAUSE NOTES

### Clause 1 – Short title

Clause 1 provides that the title of the proposed Act is the *Criminal Code Amendment Act 2008* (WA).

### Clause 2 – Commencement

Clause 2 provides that sections 1 and 2 will come into operation on the day that the Act receives Assent. The balance of the Act (sections 3, 4 and 5, inclusive) will commence on the following day.

### Clause 3 – *The Criminal Code* amended

Clause 3 provides that the Act amends *The Criminal Code*.

#### Clause 4 – Section 297 amended

Clause 4 proposes to insert three new subsections after subsection (4) of section 297 of the *Code*. Section 297 of the *Code* makes provision for assaults causing grievous bodily harm. The base maximum term of imprisonment under section 297 is imprisonment for 10 years.

If the grievous bodily harm is committed when certain circumstances of aggravation apply then a maximum term of imprisonment of 14 years applies. The circumstances that lead to a higher penalty include:

- Subsection (2) – when the offence occurs during the stealing of a motor vehicle;
- Subsection (3) – when the offence is committed in “circumstances of aggravation”. Section 221(1) of the *Code* provides that “circumstances of aggravation” means circumstances when:
  - the offender is in a family and domestic relationship with the victim of the offence;
  - a child was present when the offence was committed;
  - the conduct of the offender in committing the offence constituted a breach of an order made or registered under the *Restraining Orders Act 1997* (WA) or to which that Act applies; or
  - the victim is 60 years of age or over 60 years of age.
- Subsection (4) – the victim is a public officer performing his or her duties or is engaged in one of the occupations or duties listed in the subsection including being an ambulance officer, a fire brigade officer or a person working in a hospital.

Proposed new subsection (5) will provide that if a young person, as defined under the *Young Offenders Act 1994* (WA), commits grievous bodily harm and the victim is a public officer who is a police officer in the performance of their duties then the court sentencing the young person must sentence them to a minimum term of imprisonment or detention of 3 months. The proposed new subsection (5) is an exception to section 86 of the *Sentencing Act 1995* (WA) that provides that the minimum sentence that can be imposed is a term of 6 months imprisonment. When imposing the sentence the court must record a conviction and must not suspend the term of imprisonment.

Proposed new section (6) makes it clear that imprisonment of a young person under proposed subsection (5) does not preclude the court making an order under either section 118(4) or Part 7 Division 9 of the *Young Offenders Act 1994* (WA). Section 118(4) provides that if the young person is 16 years or over the court can direct that the sentence be served as an adult under the *Prisons Act 1981* (WA). Part 7 Division 9 of the *Young Offenders Act 1994* (WA) makes provision for young persons who repeatedly commit

serious offences. Part 7 provides that the protection of the community is paramount and allows the court to make special orders to detain repeat young offenders.

Proposed new subsection (7) provides that if an adult commits grievous bodily harm and the victim is a public officer who is a police officer in the performance of his or her duties then the court sentencing the person must sentence him or her to a minimum term of imprisonment or detention of 12 months. When imposing the sentence the court must record a conviction and must not suspend the term of imprisonment.

#### **Clause 5 – Section 318 amended**

Clause 5 proposes to insert three new subsections after subsection (1) of section 318 of the *Code*. Section 318 of the *Code* provides penalties for offenders who assault any of the persons, generally those performing functions of a public nature, who are listed in section 318(1). Included in the list are “public officers” (defined in section 1 of the *Code*), taxi drivers, ambulance officers, fire fighters and hospital employees. Such an offence is termed a “serious offence”. The base maximum term of imprisonment under section 318 is imprisonment for 7 years. However, if the offence is committed whilst the person is armed or in company – the aggravating circumstances – the maximum penalty is imprisonment for 10 years. If the offender is convicted summarily, that is, in the Magistrates Court, then the maximum penalty is imprisonment for 3 years and a fine of \$36,000.

Proposed new subsection (2) will provide that if a young person, as defined under the *Young Offenders Act 1994 (WA)*, commits a “serious offence” and the victim is a public officer who is a police officer in the performance of their duties who suffers “bodily harm” (as defined in section 1 of the *Code*) then the court sentencing the young person must sentence them to a minimum term of imprisonment or detention of 3 months. The proposed new subsection (2) is an exception to section 86 of the *Sentencing Act 1995 (WA)* that provides that the minimum sentence that can be imposed is a term of 6 months. When imposing the sentence the court must record a conviction and must not suspend the term of imprisonment.

Proposed new section (3) makes it clear that imprisonment of a young person under proposed subsection (2) does not preclude the court making an order under either section 118(4) or Part 7 Division 9 of the *Young Offenders Act 1994 (WA)*. Section 118(4) provides that if the young person is 16 years or over the court can direct that the sentence be served as an adult under the *Prisons Act 1981 (WA)*. Part 7 Division 9 of the *Young Offenders Act 1994 (WA)* makes provision for young persons who repeatedly commit serious offences. Part 7 provides that the protection of the community is paramount and allows the court to make special orders to detain repeat young offenders.

Proposed new subsection (4) provides that if an adult commits a “serious offence” and the victim is a public officer who is a police officer in the performance of his or her duties who suffers “bodily harm” then the court sentencing the person must sentence him or her to a minimum term of imprisonment or detention of 6 months. If the offence is

committed in “aggravating circumstances” (that is, if the offender is armed or in company), the minimum term of imprisonment is 9 months. When imposing the sentence the court must record a conviction and must not suspend the term of imprisonment.

### Summary

The Bill will provide minimum mandatory terms of imprisonment as follows:

Code section	Max (Months)	Summary Court penalty (Months)	Mandatory for adult (Months)	Mandatory for young persons (Months)
297 (GBH)	168	n/a	12	3
318 (Serious assault - aggravated)	120	n/a	9	3
318 (Serious assault – base)	84	36	6	3