

## **Criminal Law (Mentally Impaired Accused) Amendment Bill 2014**

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Western Australia

LEGISLATIVE ASSEMBLY

(Introduced by Mr John Quigley, MLA)

**Criminal Law (Mentally Impaired Accused)  
Amendment Bill 2014**

**A Bill for**

**An Act to amend the *Criminal Law (Mentally Impaired Accused) Act 1996* to provide that a court making a custody order under that Act in respect of an accused must fix a term for that order that is equivalent to the period of imprisonment that would, in the court's opinion, have been appropriate had the accused been found guilty of the offence with which the accused was charged.**

The Parliament of Western Australia enacts as follows:

**s. 1**

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1    **1.       Short title**

2            This is the *Criminal Law (Mentally Impaired Accused)*  
3            *Amendment Act 2014.*

4    **2.       Commencement**

5            This Act comes into operation as follows —

- 6            (a)   sections 1 and 2 — on the day on which this Act  
7                receives the Royal Assent;
- 8            (b)   the rest of the Act — on a day fixed by proclamation,  
9                and different days may be fixed for different provisions.

10   **3.       Act amended**

11            This Act amends the *Criminal Law (Mentally Impaired*  
12            *Accused) Act 1996.*

13   **4.       Section 3 amended**

14            In section 3 insert in alphabetical order:

15                            *limiting term* —

- 16                            (a)   in relation to a custody order made under  
17                                Part 3 — has the meaning given in  
18                                section 20B(1)(a);
- 19                            (b)   in relation to a custody order made under  
20                                Part 4 — has the meaning given in  
21                                section 23A(1)(a);

22                            *release order* has the meaning given in section 35;

23  
24  
25   **5.       Section 16 amended**

26            (1)   In section 16(5)(b) delete “subsection (6),” and insert:

27  
28            Division 4,  
29

1 (2) Delete section 16(6) and (7).

2 **6. Section 19 amended**

3 (1) In section 19(4)(b) delete “subsection (5),” and insert:

4

5 Division 4,

6

7 (2) Delete section 19(5) and (6).

8 **7. Part 3 Division 4 inserted**

9 At the end of Part 3 insert:

10

11 **Division 4 — Custody orders**

12 **20A. Making of custody orders**

13 (1) A custody order must not be made under this Part in  
14 respect of an accused unless the statutory penalty for  
15 the alleged offence is or includes imprisonment and the  
16 court is satisfied that a custody order is appropriate  
17 having regard to —

18 (a) the strength of the evidence against the  
19 accused; and

20 (b) the nature of the alleged offence and the alleged  
21 circumstances of its commission; and

22 (c) the accused’s character, antecedents, age,  
23 health and mental condition; and

24 (d) the public interest.

25 (2) The court may require a prosecutor to provide copies of  
26 documents relevant to the factors to be considered  
27 under subsection (1).

- 1           **20B. Limiting terms of custody orders**
- 2           (1) If a court makes a custody order under this Part in
- 3           respect of an accused, the court must —
- 4                 (a) fix a term (a *limiting term*) equivalent to the
- 5                 period of imprisonment that would, in the
- 6                 court’s opinion, have been appropriate had the
- 7                 accused been found guilty of the offence with
- 8                 which the accused was charged; and
- 9                 (b) specify the limiting term in the order.
- 10          (2) The custody order lapses at the end of the limiting
- 11          term.
- 12

13 **8. Section 21 amended**

14 In section 21(a) delete “must” and insert:

15

16 must, subject to section 23A,

17

18 **9. Section 22 amended**

19 (1) In section 22(1)(c) before “make a custody” insert:

20

21 subject to section 23A,

22

23 (2) In section 22(3)(b) delete “must” and insert:

24

25 must, subject to section 23A,

26

1   **10.    Section 23A inserted**

2           At the end of Part 4 insert:

3

4           **23A.    Limiting terms of custody orders**

- 5           (1) If a court makes a custody order under this Part in  
6           respect of an accused, the court must —
- 7                   (a) fix a term (a *limiting term*) equivalent to the  
8                   period of imprisonment that would, in the  
9                   court’s opinion, have been appropriate had the  
10                  accused been found guilty of the offence with  
11                  which the accused was charged; and
- 12                  (b) specify the limiting term in the order.
- 13          (2) The custody order lapses at the end of the limiting  
14          term.

15

16   **11.    Section 24 amended**

17           In section 24(1) delete “until released by an order of the  
18           Governor.” and insert:

19

20                   until —

- 21                          (a) the custody order lapses; or
- 22                          (b) the accused is sooner released under a release  
23                          order.

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1   **12.   Section 35 amended**

2       (1) Delete section 35(1) and insert:

3

4           (1) The Governor may at any time make an order (a  
5                *release order*) that a mentally impaired accused be  
6                released.

7

8       (2) In section 35(3)(a) delete “indefinitely or for a set period  
9       determined by the Governor; and” and insert:

10

11           until the end of the limiting term or any shorter period specified  
12           in the order; and

13

14   **13.   Section 37 amended**

15       Delete section 37(3).

16   **14.   Section 38 amended**

17       Delete section 38(2)(a) and (b) and insert:

18

19           (a) when the custody order lapses; or

20           (b) if the accused is sooner released —

21               (i) unconditionally under a release order —  
22               when released; or

23               (ii) on conditions under a release order —  
24               when the conditions cease to apply.

25



1   **15.    Section 39 amended**

2           In section 39 delete “released on conditions” and insert:

3

4           released from detention under a custody order, whether on the  
5           lapsing of the custody order or under a release order,

6

7   **16.    Part 8 inserted**

8           After section 50 insert:

9

10           **Part 8 — Transitional provisions for *Criminal***  
11           ***Law (Mentally Impaired Accused) Amendment***  
12           ***Act 2014***

13   **51.    Terms used**

14           In this Part, unless the contrary intention appears —

15           ***commencement day*** means the day on which the  
16           ***Criminal Law (Mentally Impaired Accused)***  
17           ***Amendment Act 2014***, other than sections 1 and 2,  
18           comes into operation;

19           ***limiting term proceedings***, in relation to a custody  
20           order, means proceedings under this Part in which the  
21           court fixes a limiting term in relation to the custody  
22           order;

23           ***party***, to limiting term proceedings, means —

- 24           (a) the prosecutor; or  
25           (b) the accused;

26           ***prosecutor***, in relation to limiting term proceedings,  
27           means —

- 28           (a) if the custody order was made by the Supreme  
29           Court, the District Court or the Children’s  
30           Court exercising jurisdiction under the

**s. 16**

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- 1                                    *Children’s Court of Western Australia Act 1988*  
2                                    section 19B(4) — the authorised officer (as  
3                                    defined in the *Criminal Procedure Act 2004*  
4                                    section 80) who commenced the prosecution in  
5                                    which the custody order was made, or another  
6                                    such authorised officer; or
- 7                                    (b) if the custody order was made by a court of  
8                                    summary jurisdiction — the person referred to  
9                                    in the *Criminal Procedure Act 2004*  
10                                   section 20(3) who commenced the prosecution  
11                                   in which the custody order was made, or  
12                                   another such person.

13                    **52.        Application of this Part**

14                    This Part applies if —

- 15                    (a) before the commencement day a custody order  
16                    was made in respect of an accused; and
- 17                    (b) immediately before the commencement day the  
18                    accused had not been discharged from the  
19                    custody order.

20                    **53.        Application to court by Attorney General**

- 21                    (1) The Attorney General must, within 28 days after the  
22                    commencement day, apply on behalf of the prosecutor  
23                    to the court that made the custody order for the court to  
24                    hear and determine limiting term proceedings in  
25                    relation to the custody order.
- 26                    (2) The application must be made in accordance with rules  
27                    of court.

28                    **54.        Registrar to fix hearing and notify parties**

- 29                    (1) If an application is made under section 53, a registrar  
30                    of the court must give to each party to the limiting term  
31                    proceedings —
- 32                    (a) a notice in writing that specifies the date, time  
33                    and place of the hearing of the proceedings; and

- 1                   (b) a copy of the application.
- 2           (2) If a party is given notice under subsection (1)(a) but  
3 does not attend the hearing, the court may, as it thinks  
4 fit —
- 5                   (a) proceed with the hearing; or  
6                   (b) adjourn the hearing.
- 7           **55. Court to fix limiting term**
- 8           (1) On hearing the limiting term proceedings, the court  
9 must fix a term (a *limiting term*) equivalent to the  
10 period of imprisonment that would, in the court's  
11 opinion, have been appropriate had the accused been  
12 found guilty of the offence with which the accused was  
13 charged.
- 14           (2) The limiting term is taken to have been fixed when the  
15 custody order was originally made.
- 16           (3) Subject to subsection (4) —
- 17                   (a) the custody order lapses at the end of the  
18 limiting term; and
- 19                   (b) Part 5 applies as if the limiting term had been  
20 fixed under Part 3 or 4.
- 21           (4) If the accused has been subject to the custody order for  
22 a period equal to or longer than the limiting term, the  
23 court must make an order discharging the accused from  
24 the custody order.
- 25           (5) Nothing in this section gives rise to, or can be taken  
26 into account in, any civil cause of action, and, without  
27 limiting this section, nothing in this section operates to  
28 create in the accused legal rights not in existence  
29 before the commencement day.

**s. 16**

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**56. Court to hear and determine limiting term proceedings without undue delay**

A court to which an application is made under section 53 must hear and determine the limiting term proceedings without undue delay.

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