

Queensland



ANNO DECIMO

ELIZABETHAE SECUNDAE REGINAE.

No. 11.

**An Act to Amend "The Criminal Code," "The Criminal Law Amendment Act, 1892," and "The Mental Hygiene Act of 1938," each in certain particulars.**

[ASSENTED TO 29TH MARCH, 1961.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

Short title.

**1.** This Act may be cited as "*The Criminal Code and Other Acts Amendment Act of 1961.*"

Amendment of s. 1.

**2.** Section one of "*The Criminal Code*" is amended by adding to the definition of the terms "registered brand" and "registered mark" the words "and each such registered brand or registered mark shall

for the purposes of this Code be deemed to be the registered brand or registered mark respectively of the person in whose name such brand or mark is registered : Provided that where such brand or mark is registered in the names of two or more persons such registered brand or registered mark shall for the purposes of this Code be deemed to be the registered brand or registered mark respectively of each of such persons."

3. Section nineteen of "*The Criminal Code*" is <sup>Amendments</sup> amended—  
of s. 19.

(a) By, in subsection three, repealing the words "five hundred pounds" and inserting, in lieu of those repealed words, the words "one thousand pounds"; and

(b) By, in subsection six, adding the following provisoes and paragraph :—

"Provided that a person sentenced on conviction upon indictment to pay a fine may be sentenced, in lieu of being sentenced to be imprisoned until the fine is paid, to be imprisoned for a term (not exceeding that hereinbefore in this subsection mentioned) if the fine is not paid within a specified period which period may be extended by the Court as it deems fit and in that event, the sentence of imprisonment shall be suspended accordingly :

And provided further that the Court may give such directions as it thinks fit as to the enforcement of the sentence of imprisonment, including a direction that the person sentenced shall appear at some future sittings of the Court or when called upon (by notice in the prescribed form) to show cause why the sentence of imprisonment should not be executed because of the non-payment of the fine within the specified period or any extension thereof.

If the person sentenced so directed to appear, or called upon by notice in the prescribed form, to show cause why the sentence of imprisonment should not be executed because of the non-payment of the fine within the specified period or any

extension thereof, does not appear at the required time and place, any Judge of the Court may issue a warrant to arrest the said person and to bring him before a Judge of the Court and thereupon such person may be arrested and brought before the Supreme Court or any Circuit Court or any District Court as the case may be."

Amendments  
of s. 233.

4. Section two hundred and thirty-three of "*The Criminal Code*" is amended—

(a) By, in subsection one, repealing the words "five hundred pounds" and inserting, in lieu of those repealed words, the words "one thousand pounds"; and

(b) By, in subsection two, repealing the words "five hundred pounds" and inserting, in lieu of those repealed words, the words "one thousand pounds".

New s. 304A  
inserted.

5. The following headnote and section are inserted after section three hundred and four of "*The Criminal Code*," namely:—

*"Diminished responsibility.*

[304A.] (1.) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute wilful murder or murder, is at the time of doing the act or making the omission which causes death in such a state of abnormality of mind (whether arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury) as substantially to impair his capacity to understand what he is doing, or his capacity to control his actions, or his capacity to know that he ought not to do the act or make the omission, he is guilty of manslaughter only.

(2.) On a charge of wilful murder or murder, it shall be for the defence to prove that the person charged is by virtue of this section liable to be convicted of manslaughter only.

(3.) When two or more persons unlawfully kill another, the fact that one of such persons is by virtue of this section guilty of manslaughter only shall not affect

the question whether the unlawful killing amounted to wilful murder or murder in the case of any other such person or persons.”

6. Section 328A of “*The Criminal Code*” and the headnote to that section are hereby repealed and, in lieu of that repealed headnote and section, the following headnote and section are inserted :—

Repeal of  
and new  
s. 328A and  
headnote  
thereto.

“ *Dangerous driving of a motor vehicle.*

[328A.] Any person who drives a motor vehicle on a road or in a public place dangerously is guilty of a misdemeanour and is liable to a fine of five hundred pounds or to imprisonment with hard labour for two years or to both such fine and imprisonment, or he may be summarily convicted before two justices in which case he is liable to a fine of one hundred pounds or to imprisonment with hard labour for six months or to both such fine and imprisonment.

If the offender has been previously convicted either upon indictment or summarily under this section he is liable on summary conviction to a fine of two hundred pounds or to imprisonment with hard labour for twelve months or to both such fine and imprisonment.

If the offender has been twice previously convicted either upon indictment or summarily under this section (or once upon indictment and once summarily), the Court or justices shall, upon conviction, impose as the whole or part of the punishment, imprisonment.

The term “ drives a motor vehicle on a road or in a public place dangerously ” includes the driving of a motor vehicle at a speed or in a manner dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the road or public place and the amount of traffic which is on the road or in the public place at the time or which might reasonably be expected to be on the road or in the public place.

The term “ public place ” includes every place of public resort open to or used by the public as of right and any field, ground, park, reserve, garden, wharf, pier, jetty, market, passage or any other place for the time

being used for a public purpose or open to access by the public, whether on payment or otherwise, or open to access by the public by the express or tacit consent or sufferance of the owner, and whether the same is or is not at all times so open, but not including a track which for the time being is used as a course for the racing or testing of motor vehicles and from which other traffic at the time is excluded.

The offender may be arrested without warrant.”

Repeal of  
and new  
s. 328B and  
headnote  
thereto.

7. Section 328B of “*The Criminal Code*” and the headnote to that section are hereby repealed and, in lieu of that repealed headnote and section, the following headnote and section are inserted:—

“*Additional power to convict for dangerous driving.*

[328B.] Upon an indictment charging a person with any offence in connection with or arising out of the driving of a motor vehicle by him (not being the offence defined in section 328A of this Code), he may be convicted of the offence defined in section 328A of this Code if such offence is established by the evidence.

The provisions of this section shall apply notwithstanding the provisions of section five hundred and seventy-six of this Code.”

Amendment  
of s. 328c.

8. Section 328c of “*The Criminal Code*” is amended by deleting the words “certificate of competency”, wherever they occur therein, and inserting, in lieu of those repealed words, wheresoever repealed, the words “driver’s license”.

Amendment  
of s. 343.

9. Section three hundred and forty-three of “*The Criminal Code*” is amended by repealing the words “twenty pounds” and inserting, in lieu of those repealed words, the words “fifty pounds”.

Amendment  
of s. 344.

10. Section three hundred and forty-four of “*The Criminal Code*” is amended by repealing the words “fifty pounds” and inserting, in lieu of those repealed words, the words “one hundred pounds”.

11. The following headnote and section are inserted after section three hundred and fifty-four of "*The Criminal Code*," namely :—

New s. 354A  
inserted.

" *Kidnapping for ransom.*

[354A.] Any person who—

- (1.) With intent to extort or gain anything from or procure anything to be done or omitted to be done by any person by a demand containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with, takes or entices away, or detains, the person in respect of whom the threats are made ; or
- (2.) Receives or harbours the said person in respect of whom the threats are made, knowing such person to have been so taken or enticed away, or detained ;

is guilty of a crime which is called kidnapping for ransom.

Any person who commits the crime of kidnapping for ransom is liable to imprisonment with hard labour for fourteen years.

If the person kidnapped has been set at liberty in any manner whatsoever without such person having suffered any grievous bodily harm, the offender is liable to imprisonment with hard labour for ten years.

Any person who attempts to commit the crime of kidnapping for ransom is guilty of a crime and is liable to imprisonment with hard labour for seven years.

The wife of the accused person is a competent but not a compellable witness."

12. Section three hundred and fifty-nine of "*The Criminal Code*" is amended by repealing the words "one hundred pounds" and inserting, in lieu of those repealed words, the words "two hundred pounds".

Amendment  
of s. 359.

Amendments  
of s. 398.

**13.** Section three hundred and ninety-eight of “*The Criminal Code*” is amended—

(a) By, in subparagraph (2) of paragraph IV., repealing the words “five pounds” and inserting, in lieu of those repealed words, the words “twenty pounds”;

(b) By, in the headnote appearing immediately before paragraph IX., repealing the symbol and numerals “£500” and inserting, in lieu of such repealed symbol and numerals, the symbol and numerals “£1,000”;

(c) By, in paragraph IX., repealing the words “five hundred pounds” and inserting, in lieu of those repealed words, the words “one thousand pounds”; and

(d) By, in paragraph X., repealing the words “five pounds” and inserting, in lieu of those repealed words, the words “twenty pounds”.

Amendment  
to s. 408A.

**14.** Section 408A of “*The Criminal Code*” is amended by the addition of the following paragraph:—

“For the purposes of this section, “motor vehicle” means any vehicle propelled by gas, motor spirit, oil, electricity, steam, or any other mechanical power: The term includes an aeroplane, a motor cycle, or a caravan or caravan trailer attached to a motor vehicle.”

Repeal of  
and new  
s. 415.

**15.** Section four hundred and fifteen of “*The Criminal Code*” and the headnote to that section are hereby repealed and, in lieu of that repealed headnote and section, the following headnote and section are inserted:—

“*Demanding property by written or oral threats.*”

[415.] Any person who, with intent to extort or gain anything from any person—

(1.) Knowing the contents of the writing, causes any person to receive any writing demanding anything from or that anything be procured to be done or omitted to be done by any

person without reasonable or probable cause, and containing threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with ; or

- (2.) Orally demands anything from or that anything be procured to be done or omitted to be done by any person without reasonable or probable cause, with threats of any injury or detriment of any kind to be caused to any person, either by the offender or any other person, if the demand is not complied with ;

is guilty of a crime and is liable to imprisonment with hard labour for fourteen years.

The term " writing " shall include any gramophone record, wire, tape, or other thing by which words or sounds are recorded and from which they are capable of being reproduced."

16. Section four hundred and twenty-six of "*The Criminal Code*" is amended by the addition of the following paragraph :—

Amendment  
of s. 426.

" A promise made by words or otherwise to do or omit to do anything by a person who at the time of making the promise does not intend to perform it or does not believe he will be able to perform it is a wilfully false promise."

17. Section four hundred and twenty-seven of "*The Criminal Code*" and the headnote to that section are hereby repealed and, in lieu of that repealed headnote and section, the following headnote and section are inserted :—

Repeal of  
and new  
s. 427.

*" Obtaining goods or credit by false pretence or wilfully false promise.*

[427.] (1.) Any person who by any false pretence or wilfully false promise or partly by a false pretence and partly by a wilfully false promise and with intent to defraud obtains from any other person any chattel, money or valuable security or induces any other person

to deliver to any person any chattel, money or valuable security is guilty of a crime and is liable to imprisonment with hard labour for five years.

It is immaterial that the thing is obtained or its delivery is induced through the medium of a contract induced by the false pretence or the wilfully false promise or partly by a false pretence and partly by a wilfully false promise as the case may be.

(2.) Any person incurring any debt or liability who obtains credit by any false pretence or by any wilfully false promise or partly by a false pretence and partly by a wilfully false promise or by any other fraud is guilty of a misdemeanour and is liable to imprisonment with hard labour for one year.

(3.) The offender cannot be arrested without warrant for any offence against this section unless found committing the offence."

Repeal of  
and new  
s. 428.

**18.** Section four hundred and twenty-eight of "*The Criminal Code*" and the headnote to that section are hereby repealed and, in lieu of that repealed headnote and section, the following headnote and section are inserted:—

*"Obtaining execution of valuable security by a false pretence or wilfully false promise.*

[428.] Any person who by any false pretence or wilfully false promise or partly by a false pretence and partly by a wilfully false promise, and with intent to defraud, induces any person to execute, make, accept, indorse, alter, or destroy, the whole or any part of any valuable security, or to write, impress, or affix, any name or seal upon or to any paper or parchment, in order that it may be afterwards made or converted into or used or dealt with as a valuable security, is guilty of a crime and is liable to imprisonment with hard labour for three years.

The offender cannot be arrested without warrant unless found committing the offence."

**19.** Section four hundred and forty-three of "*The Criminal Code*" is amended by— Amendments of s. 443.

(a) Repealing subparagraph (f) and inserting, in lieu of that repealed subparagraph, the following subparagraph :—

“(f) Obtaining or procuring the delivery of anything by a false pretence or wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, with intent to defraud, or obtaining credit by any false pretence or any wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, or by any other fraud.”;

(b) Repealing the words “ five pounds ”, where those words occur in subparagraph (1) of the first paragraph, and inserting, in lieu of those repealed words, the words “ twenty pounds ” ;

(c) Repealing the word “ sixteen ”, where that word occurs in subparagraph (2) of the first paragraph, and inserting, in lieu of that repealed word, the word “ seventeen ” ;

(d) Repealing the words “ more than six months ”, where those words occur in the second proviso to the first paragraph, and inserting, in lieu of those repealed words, the words “ more than one year ” ; and

(e) Repealing the words “ twenty-five pounds ”, where those words occur at the end of that section, and inserting, in lieu of those repealed words, the words “ one hundred pounds ”.

**20.** Section four hundred and forty-five of "*The Criminal Code*" is amended by repealing the words “ twenty pounds ” and inserting, in lieu of those repealed words, the words “ one hundred pounds ”. Amendment of s. 445.

**21.** Section four hundred and forty-six of "*The Criminal Code*" is amended by repealing the words “ fifty pounds ” and inserting, in lieu of those repealed words, the words “ two hundred and fifty pounds ”. Amendment of s. 446.

Amendment  
of s. 447.

**22.** Section four hundred and forty-seven of “*The Criminal Code*” is amended by repealing the words “fifty pounds” and inserting, in lieu of those repealed words, the words “two hundred and fifty pounds”.

Amendment  
of s. 448.

**23.** Section four hundred and forty-eight of “*The Criminal Code*” is amended by repealing the words “twenty pounds” and inserting, in lieu of those repealed words, the words “one hundred pounds”.

Amendment  
of s. 448A.

**24.** Section 448A of “*The Criminal Code*” is amended by repealing the words “twenty pounds” and inserting, in lieu of those repealed words, the words “one hundred pounds”.

Amendment  
of s. 449.

**25.** Section four hundred and forty-nine of “*The Criminal Code*” is amended by repealing the words “within six months” and inserting, in lieu of those repealed words, the words “within one year”.

Amendments  
of s. 480.

**26.** Section four hundred and eighty of “*The Criminal Code*” is amended by—

(a) Repealing the words “five pounds”, where those words occur in subparagraph (1) of the first paragraph, and inserting, in lieu of those repealed words, the words “twenty pounds”;

(b) Repealing the word “sixteen”, where that word occurs in subparagraph (2) of the first paragraph, and inserting, in lieu of that repealed word, the word “seventeen”;

(c) Repealing the words “more than six months”, where those words occur in the second proviso to the first paragraph, and inserting, in lieu of those repealed words, the words “more than one year”; and

(d) Repealing the words “twenty-five pounds”, where those words occur in the third last paragraph, and inserting, in lieu of those repealed words, the words “one hundred pounds”.

Amendment  
of s. 556.

**27.** Section five hundred and fifty-six of “*The Criminal Code*” is amended by repealing the words “six months” and inserting, in lieu of those repealed words, the words “one year”.

**28.** Section five hundred and sixty-eight of "*The Criminal Code*" is amended by— Amendments  
of s. 568.

(a) Inserting the following subsection after subsection 1A thereof namely:—

"(1B.) In an indictment against a person for stealing cattle the property of the same person, the total number of cattle alleged to have been stolen may be included in one charge notwithstanding that such cattle were stolen at different times, and on the trial of the person so charged the prosecutor is not to be required to elect to proceed in respect of two or three acts of stealing only." ;

(b) Adding the following proviso to subsection four thereof namely:—

" Provided that if the jury find specially that the accused person, or all or any of the accused persons, when the indictment is preferred against two or more persons, either stole the property, or received it, or any part of it, knowing it to have been stolen, and that they are unable to say which of those offences was committed by such person or persons as the case may be, such person or persons shall not by reason thereof be entitled to be acquitted, but the judge shall enter a conviction for the offence for which the lesser punishment is provided."

**29.** Section six hundred and thirteen of "*The Criminal Code*" is amended— Amendments  
of s. 613.

(a) By repealing the word "undertaking", where such word occurs in the second paragraph, and inserting, in lieu of such repealed word, the word "understanding"; and

(b) By inserting after the word "capable", where such word occurs in the third paragraph, the words "they are to say whether he is so found by them for the reason that he is of unsound mind or for some other reason which they shall specify, and".

**30.** Section six hundred and eighteen of "*The Criminal Code*" is repealed and, in lieu of that repealed section, the following section is inserted:— Repeal of  
and new  
s. 618.

"[618.] At the close of the evidence for the prosecution the proper officer of the Court is required to ask the accused person whether he intends to adduce

evidence in his defence or whether he desires to make a statement to the jury before he or his counsel, if he is defended by counsel, addresses the jury. An accused person may be allowed by the Court to make a statement to the jury whether he intends to adduce evidence in his defence or not.

When an accused person is allowed by the Court to make a statement to the jury he must make such statement at the close of the evidence for the prosecution and before adducing any evidence in his defence.”

New s. 618A.

**31.** The following section and headnote are inserted after section six hundred and eighteen of “*The Criminal Code,*” namely:—

“*Prisoner and husband or wife of prisoner competent but not compellable witnesses.*”

[618A.] Every person accused of an indictable offence, and the wife or husband, as the case may be, of every such accused person, shall be a competent witness on his or her behalf, but shall not be compellable to be a witness without his or her consent.

Any accused person tendering himself as a witness may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged but he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any offence other than that wherewith he is then charged, or is of bad character, unless—

- (a) The proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or
- (b) He has by himself or his counsel asked questions of the witnesses for the prosecution with a view to establishing his own good character, or has given evidence of his good character or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the

witnesses for the prosecution : Provided that the permission of the judge (to be applied for in the absence of the jury) to ask any such question must first be obtained ; or

- (c) He has given evidence against any other person charged with the same offence.”

**32.** Section six hundred and forty-four of “*The Criminal Code*” is amended by the insertion of the words “by himself or his counsel” after the word “may”. Amendment of s. 644.

**33.** Section six hundred and fifty of “*The Criminal Code*” is amended by inserting after the words “Circuit Court”, where they last appear, the words “or any District Court, as the case may be”. Amendment of s. 650.

**34.** Section 659A of “*The Criminal Code*” is amended— Amendments of s. 659A.

(a) By repealing in paragraph (a) of subsection one the word and numeral “Chapter XXII.” and inserting, in lieu of such repealed word and numeral, the words and numerals “Chapters XXII. and XXXII.” ;

(b) By inserting in paragraph (a) of subsection two, after the numeral “XXIX.”, the numeral “XXXII.” ;

(c) By inserting in paragraph (b) of subsection two, after the numeral “XXIX.”, the numeral “XXXII.” ;

(d) By inserting in paragraph (a) of subsection three, after the numeral “XXIX.”, the numeral “XXXII.” ; and

(e) By repealing subsection 4a and inserting, in lieu of that repealed subsection, the following subsection :—

“(4a.) Where any person—

- (i.) Is convicted summarily of an unlawful assault on a female or on a male child under the age of fourteen years and such assault is of a sexual nature and is punished as an aggravated assault under the provisions of section three hundred and forty-four of this Code ; and

- (ii.) Has been previously convicted on at least two occasions—
- (a) Of unlawful assaults on a female or on a male child under the age of fourteen years (or of one such assault on a female and another such assault on a male child under the age of fourteen years) and such assaults were of a sexual nature and were, in the case of summary conviction, punished as aggravated assaults under the provisions of section three hundred and forty-four of this Code ; or
  - (b) On indictment of an offence included in Chapter XXXII. (whether of the same description of offence or not) ; or
  - (c) Of offences any of which was an unlawful assault mentioned in subparagraph (a) of this paragraph which, if a case of summary conviction, was punished as an aggravated assault under the provisions of section three hundred and forty-four of this Code, and any other of which was an offence included in Chapter XXXII. for which conviction was on indictment,

the court of petty sessions before which the charge is heard, in addition to sentencing such person to any lawful punishment as provided by the said section, shall order that such person be brought before the Supreme Court or a judge thereof to be dealt with as an habitual criminal.”

Amendment  
of s. 668.

**35.** Section six hundred and sixty-eight of “ *The Criminal Code* ” is amended by adding the following paragraph thereto :—

“ For the purposes of this Chapter a person declared to be an habitual criminal shall be deemed to be a person convicted on indictment and such declaration shall be deemed to be a sentence.”

Amendment  
of s. 671H.

**36.** Subsection two of section 671H of “ *The Criminal Code* ” is amended by repealing the words “ notice of appeal against a conviction ” and inserting, in lieu of those repealed words, the words “ notice of appeal or of application for leave to appeal against a conviction or sentence ”

**37.** Section three of “*The Criminal Law Amendment Act, 1892,*” is hereby repealed.

Repeal of  
s. 3 of  
“*The  
Criminal  
Law  
Amendment  
Act, 1892.*”

**38. (1.)** Subsection two of section one of “*The Mental Hygiene Act of 1938*” is amended by repealing the words “and “*The Criminal Code*” or such other Act or law or rule”, where those words occur twice in paragraph (k) of the proviso to that subsection.

Amendment  
of 2 Geo.  
VI., No. 21,  
s. 1 (2).

(2.) “*The Mental Hygiene Act of 1938,*” and this section may be collectively cited as “*The Mental Hygiene Acts, 1938 to 1961.*”

Collective  
title.