

Queensland



CRIMINAL LAW AMENDMENT ACT 1945

**Reprinted as in force on 8 February 1996
(includes amendments up to Act No. 17 of 1989)**

Reprint No. 1

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 8 February 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (pt 4, div 2)
- update references (pt 4, div 3)
- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use different spelling consistent with current drafting practice (s 26(2))
- use expressions consistent with current drafting practice (s 29)
- reorder provisions consistent with current drafting practice (s 30A)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (ss 36, 37 and 40)
- omit unnecessary referential words (s 41)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43)
- make all necessary consequential amendments (s 7(1)(k)).

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including—**
 - **table of changed names and titles**
 - **table of changed citations and remade laws**
 - **table of obsolete and redundant provisions**
 - **table of renumbered provisions.**

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**CRIMINAL LAW AMENDMENT ACT
1945**

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CRIMINAL LAW AMENDMENT ACT 1945

[as amended by all amendments that commenced on or before 8 February 1996]

An Act to make further provision for, the treatment and punishment of offenders convicted of sexual offences, and for other purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Criminal Law Amendment Act 1945*.

Meaning of terms “offence of a sexual nature” and “assault of a sexual nature”

2A.(1) In this Act—

“**offence of a sexual nature**” includes any offence constituted wholly or partly by an act whereby the offender has exhibited a failure to exercise proper control over the offender’s sexual instincts and any offence in the circumstances associated with the committal whereof the offender has exhibited a failure to exercise such proper control over the offender’s sexual instincts, and includes an assault of a sexual nature.

(2) This section shall be read as one with the Criminal Code and the *Justices Act 1886*.

PART 4—INDETERMINATE DETENTION AND PROBATION OF OFFENDERS CONVICTED OF SEXUAL OFFENCES

Probation orders in cases of sexual offences

17.(1) A recognisance ordered to be entered into under section 19(9) or under orders in section 656 of the Criminal Code, by an offender who has been convicted of an offence of a sexual nature shall, if the court or, upon summary conviction, the justices so order, contain a condition that the offender be under the supervision of such person as may be named in the order or in any order from time to time made in amendment thereof (which order or orders are hereby authorised to be made by the court or the justices, as the case may be), during the period specified in the order and such other conditions for securing such supervision as may be specified in the order, (in this section called a **“probation order”**).

(2) For the purposes of this section the Governor in Council may appoint persons as probation officers or children’s probation officers.

(3) Except as otherwise permitted by this section, the person named in any probation order shall be selected from amongst the probation officers and, in the case of an offender under the age of 17 years, such person shall, in the absence of good reason to the contrary shown to the court or justices making the order, be selected from amongst the children’s probation officers.

(4) It shall be lawful to name in a probation order as the person to undertake supervision in any special case, a person who is the agent of a voluntary society and any sums payable by way of salary, remuneration or otherwise for the performance of his or her duties under this section to such agent may be paid to the society.

(4A) In subsection (4)—

“voluntary society” means a society carrying on mission work in connection with Magistrates Courts or any work of that nature in connection with the supervision and care of offenders.

(5) It shall be the duty of a probation officer, subject to the direction of the court or justices—

- (a) to visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order or, subject thereto, as the probation officer may think fit;
- (b) to see that such person observes the conditions of the person's recognisance;
- (c) to report to the court or justices as to such person's behaviour;
- (d) to advise, assist, and befriend such person, and, when necessary, to endeavour to find such person suitable employment.

(6) A probation officer shall be entitled to be paid such salary or to receive such remuneration for acting under a probation order as the Governor in Council directs, and may in either case be paid such out-of-pocket expenses as may be allowed by the Governor in Council.

Detention of persons incapable of controlling sexual instincts

18.(1) In any case where a person has been found guilty of an offence of a sexual nature committed upon or in relation to a child under the age of 16 years—

- (a) if such person was found so guilty on indictment—the judge presiding at the trial of such person for that offence may at the judge's discretion direct that 2 or more legally qualified medical practitioners named by the judge (of whom 1 shall be a person specially qualified in psychiatry where the judge is of opinion that the services of such a person are reasonably available), inquire as to the mental condition of the offender, and in particular whether the offender's mental condition is such that the offender is incapable of exercising proper control over the offender's sexual instincts; or
- (b) if such person was found so guilty on summary conviction—the Magistrates Court before which the charge was heard, in addition to or before sentencing such person to any lawful punishment, may order that such person be brought before a judge of the Supreme Court with a view to such person being dealt with by such judge as prescribed by paragraph (a).

(1A) In the case of an order made under subsection (1)(b) before sentence, the Magistrates Court shall make such adjournments as are

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necessary and shall commit the convicted person to a prison or police gaol as defined in the *Corrective Services Act 1988*, until such person has been dealt with by a judge as hereinafter prescribed in this section and thereafter may (in the cases provided for in subsection (3B) or (6)(d) or in cases where the judge refuses to direct detention under either of the subsections), sentence such person to any lawful punishment.

(1B) If and when a psychiatric clinic is established under the *Backward Persons Act 1938*, the judge may direct 2 or more legally qualified medical practitioners each of whom is either a member or officer of such clinic and 1 of whom is specially qualified in psychiatry to make such inquiry.

(2) The medical practitioners shall conduct the inquiry by means of personal examination and observation of the offender and by reference to the depositions and such other records relating to the offender as they think necessary, and shall give their report on oath to the judge.

(3) If the medical practitioners report to the judge that the offender is incapable of exercising proper control over the offender's sexual instincts the judge may, either in addition to or in lieu of imposing any other sentence where the offender was convicted on indictment, or in addition to the punishment (if any) imposed or to be imposed by the Magistrates Court where the offender was summarily convicted, declare that the offender is so incapable and direct that the offender be detained in an institution during Her Majesty's pleasure.

(3A) However, the offender shall be entitled to cross-examine such medical practitioners in relation to and to call evidence in rebuttal of such report, and no such order shall be made unless the judge shall consider the matters reported to be proved.

(3B) When an offender whom a judge directs under subsection (3) to be detained was summarily convicted and the decision with respect to the lawful punishment to be awarded was reserved, such offender shall, unless the judge when so directing otherwise orders (which order is hereby authorised to be made by the judge) again be brought before the Magistrates Court in terms of the adjournment made by that court for sentence.

(4) In any case where 2 medical practitioners, 1 of whom is specially qualified in psychiatry, report to the Attorney-General that any person who is serving a sentence of imprisonment imposed upon the person for an offence of a sexual nature (whether committed upon or in relation to a child

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under the age of 16 years or upon or in relation to a person over that age)—

- (a) is incapable of exercising proper control over the person's sexual instincts; and
- (b) that such incapacity is capable of being cured by continued treatment; and
- (c) that for the purposes of such treatment it is desirable that such person be detained in an institution after the expiration of the person's sentence of imprisonment;

the Attorney-General may cause an application to be made to a judge of the Supreme Court for a declaration and direction in respect of such person as prescribed by subsection (3).

(4A) Upon such application the medical practitioners shall report to the judge upon oath and the prisoner shall be entitled to cross-examine such medical practitioners in relation to and to call evidence in rebuttal of such report, and no such order shall be made unless the judge shall consider the matters reported to be proved.

(5) Every offender or prisoner in respect of whom a direction is given under subsection (3) or (4)—

- (a) shall be detained in such institution as the Governor in Council directs, and until the Governor in Council gives a direction as to such institution, in any prison or police gaol as defined in the *Corrective Services Act 1988*; and
- (b) shall not be released until the Governor in Council is satisfied on the report of 2 legally qualified medical practitioners that it is expedient to release the offender or prisoner.

(6) If the medical practitioners report to the judge that the offender or, in the case of an application made under subsection (4) the judge is of the opinion that the prisoner, is not incapable of exercising proper control over his or her sexual instincts, but that his or her mental condition is subnormal to such a degree that he or she requires care, supervision and control in an institution either in his or her own interests or for the protection of others, and the judge after considering the report and any evidence submitted in rebuttal thereof is of opinion that the offender requires such care, supervision, and control, the judge may—

- (a) direct that the offender or prisoner be detained in an institution

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either for such period as the judge directs or during Her Majesty's pleasure; or

- (b) where the offender was convicted on indictment—pass sentence on the offender and in addition direct as mentioned in paragraph (a); or
- (c) where the offender was summarily convicted and lawful punishment imposed by a Magistrates Court in addition direct as mentioned in paragraph (a); or
- (d) where the offender was summarily convicted and the decision with respect to the lawful punishment to be awarded was reserved—direct, as mentioned in paragraph (a), but in such case the prisoner shall, unless the judge when so directing otherwise orders (which order is hereby authorised to be made by the judge), again be brought before the Magistrates Court in terms of the adjournment made by that court for sentence.

(6A) Every offender or prisoner in respect of whom such a direction is given—

- (a) shall be detained in such institution as the Governor in Council directs, and, until the Governor in Council gives a direction as to such institution, in any prison or police gaol as aforesaid; and
- (b) where the detention ordered is during Her Majesty's pleasure—shall not be released until the Governor in Council is satisfied, on the report of 2 legally qualified medical practitioners (or of the psychiatric clinic hereinbefore in this section referred to), that the offender or prisoner is fit to be at liberty.

(7) Where the judge orders detention during Her Majesty's pleasure in addition to imprisonment or in the case of a prisoner the detention shall commence forthwith upon the expiration of the term of imprisonment.

(7A) In all other cases it shall commence forthwith upon the making of such order.

(8) An offender or prisoner detained under this section shall be examined at least once in every 3 months by the director of mental health or by some legally qualified medical practitioner appointed by the director of mental health (who is hereby authorised to make such appointment) to conduct examinations under this subsection, either generally or of a particular

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offender or prisoner.

(8A) Any legally qualified medical practitioner making an examination under subsection (8) shall forthwith furnish a report of the examination to the chief health officer (of the department in which the *Health Services Act 1991* is administered).

(9) An offender or prisoner detained in an institution pursuant to this section may be removed at any time to another institution by order of the Secretary for Health and Home Affairs.

(9A) Moreover, the provisions of the *Prisons Act 1890*, section 52, shall, subject to all necessary modifications, apply to and in respect of any such offender or prisoner.

(10) In this section—

“**institution**” means—

- (a) any prison or police gaol as defined in the *Corrective Services Act 1988*; or
- (b) any other institution proclaimed by the Governor in Council for the purpose of this section.

(11) The provisions of this section may by order of a judge made on the application of a Crown law officer be applied in any or every respect to any offender who, before the passing of this section, was found guilty either on summary conviction or on indictment, of an offence of a sexual nature committed upon or in relation to a child under the age of 16 years and who, at the passing of this section, is undergoing, or subject to be sentenced to, imprisonment for such offence.

(12) The Governor in Council may from time to time make all such regulations as appear necessary for giving effect to this section and particularly for giving effect to the provisions of this section as respects orders made under this section by Magistrates Courts.

(13) For the purposes of the Criminal Code, chapter 67—

- (a) an offender or prisoner directed to be detained in an institution pursuant to this section shall be deemed to be a person convicted on indictment and such direction shall be deemed to be a sentence; and
- (b) a refusal by a judge of the Supreme Court to direct any offender

or prisoner to be detained in an institution pursuant to this section shall, as respects the right of appeal had by the Attorney-General under chapter 67, be deemed to be a sentence.

Sexual offender to report address

19.(1) Where a person has been convicted on indictment of an offence of a sexual nature committed in relation to a child under the age of 16 years, then, whether or not a direction has been made in respect of that person pursuant to section 18(1)—

- (a) the court of trial; or
- (b) any other court of like jurisdiction upon application made by a person authorised in that behalf by a Crown law officer;

may order that the offender—

- (c) report the offender's address to the officer in charge of police at any place specified in the order within 48 hours after being released from custody; and
- (d) thereafter, for such period as is specified in the order, report any change of address, within 48 hours of the change taking place, to the officer in charge of police at that place or at another place approved by the commissioner of police.

(2) An order shall not be made under subsection (1) unless the court is satisfied a substantial risk exists that the offender will thereafter commit any further offence of a sexual nature upon or in relation to a child under the age of 16 years.

(3) Where application is to be made under subsection (1)(b) for the making of an order—

- (a) notice of the application shall be served upon the offender; and
- (b) the offender or the offender's legal representative shall be entitled to be present at the hearing of the application and, if present, shall be given a reasonable opportunity to be heard thereon.

(4) A notice referred to in subsection (3)(a) may be served in the same manner as a summons may be served under the *Justices Act 1886*.

(5) Where a person is convicted on indictment of an offence of a sexual

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nature and the conviction is one in respect of which a rehabilitation period is capable of running pursuant to the *Criminal Law (Rehabilitation of Offenders) Act 1986* and that period has expired—

- (a) any order made under subsection (1) as a result of that conviction shall thereupon expire;
- (b) no order shall thereafter be made under subsection (1) as a result of that conviction unless the conviction is revived pursuant to that Act.

(6) A report referred to in subsection (1)(c) shall be made by the offender personally.

(7) A report referred to in subsection (1)(d) shall be made by the offender personally or by letter signed by the offender and sent by registered post addressed to the officer in charge of police at the appropriate place.

(8) A person who fails to comply with an order made under subsection (1) commits an offence, and is liable upon summary conviction to a fine of 20 penalty units or to 6 months imprisonment.

(9) Where a court—

- (a) has made an order under subsection (1) in respect of a person, the person may appeal against the making of the order pursuant to the Criminal Code, chapter 67 as if the order were a sentence pronounced upon the conviction of the person for an indictable offence;
- (b) has refused to make an order under subsection (1) in respect of a person, the Attorney-General may appeal against the refusal pursuant to the Criminal Code, chapter 67 as if the refusal were a sentence pronounced upon the conviction of the person for an indictable offence.

Disclosure of offences of sexual nature

20.(1) Where a person is subject to an order made under section 19, the Attorney-General may—

- (a) inform any person of that fact; and
- (b) give the person details of any offence of a sexual nature of which

the person subject to the order has been convicted;

if the Attorney-General is satisfied that the person has a legitimate and sufficient interest in obtaining the information.

(2) Information given pursuant to subsection (1) may be given subject to such conditions as the Attorney-General thinks fit.

(3) A person who fails to comply with a condition imposed pursuant to subsection (2) is guilty of an offence and is liable upon summary conviction to a fine not exceeding 10 penalty units.

(4) Neither the Crown nor any person shall incur any liability for any disclosure made pursuant to this section of information referred to in subsection (1)(a) or (b).

Complaints for certain offences

21.(1) A prosecution for an offence defined in section 19(8) or 20(3) shall be upon the complaint of a person authorised in writing in that behalf by the Attorney-General or a person belonging to a class so authorised.

(2) A complaint purporting to be made by a person authorised in that behalf pursuant to subsection (1) shall, until the contrary is proved, be taken to have been made by a person so authorised.

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 8 February 1996. Future amendments of the Criminal Law Amendment Act 1945 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 List of legislation

Criminal Law Amendment Act 1945 9 Geo 6 No. 11

date of assent 5 April 1945
commenced on date of assent

as amended by—

Criminal Law Amendment Act 1946 11 Geo 6 No. 6 ss 2–3

date of assent 20 December 1946
commenced on date of assent

Criminal Code, Evidence Act and Other Acts Amendment Act 1989 No. 17 pt 4

date of assent 30 March 1989
commenced 3 July 1989 (proc pubd gaz 24 June 1989 p 1821 as amd by proc
pubd gaz 1 July 1989 p 2190)

5 List of annotations

Long title amd R1 (see RA s 7(1)(k))

Parts of Act

s 2 om R1 (see RA s 36)

Meaning of terms “offence of a sexual nature” and “assault of a sexual nature”

s 2A ins 1946 11 Geo 6 No. 6 s 2

PART II—AMENDMENTS OF “THE CRIMINAL CODE”**pt II (s 3)** om R1 (see RA s 37)**(ss 4–13)** om R1 (see RA s 40)**PART III—AMENDMENTS OF “THE JUSTICES ACTS, 1886 TO 1942”****pt III (s 14)** om R1 (see RA s 37)**(ss 15–16)** om R1 (see RA s 40)**Detention of persons incapable of controlling sexual instincts****s 18** amd 1946 11 Geo 6 No. 6 s 3; 1989 No. 17 s 69**Sexual offender to report address****s 19** ins 1989 No. 17 s 70**Disclosure of offences of sexual nature****s 20** ins 1989 No. 17 s 70**Complaints for certain offences****s 21** ins 1989 No. 17 s 70**6 Table of changed names and titles**TABLE OF CHANGED NAMES AND TITLES
under the Reprints Act 1992 ss 23 and 23A

Old	New	Reference provision
(Court of) Petty Sessions	Magistrates Court	Justices Act 1886 s 268(1)
director (of mental hygiene)	director (of mental health)	see Mental Health Act 1962 (rep), s 10(2) and Health Services Act 1991 s 9.3(2) (om)
director-general (of health and medical services)	chief health officer (of the department in which the Health Services Act 1991 is administered)	Health Services Act 1991 s 76
His Majesty	Her Majesty	Acts Interpretation Act 1954 s 52(a)
police court	Magistrates Court	—

7 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Prisons Act 1890	Corrective Services Act 1988	Corrective Services (Administration) Act 1988 s 74

8 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
penalty provision permitting fine or imprisonment permits both	Penalties and Sentences Act 1992 s 180A

9 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS under the Reprints Act 1992 s 43

Previous	Renumbered as
2A, 1st sentence	2A(1), def “offence of a sexual nature”
2A, 2nd sentence	2A(1), def “offence of a sexual nature”
2A, 3rd sentence	2A(2)
17(4), 2nd sentence	17(4A)
18(1), 2nd sentence	18(1A)
18(1), 3rd sentence	18(1B)
18(3)(a)	18(3)
18(3)(a), proviso	18(3A)
18(3)(b)	18(3B)
18(4)(i)	18(4)(a)
18(4)(ii)	118(4)(b)

18(4)(iii)	18(4)(c)
18(4), 2nd sentence	18(4A)
18(6), 2nd sentence	18(6A)
18(6), 2nd sentence, (i)	18(6A)(a)
18(6), 2nd sentence (ii)	18(6A)(b)
18(7), 2nd sentence	18(7A)
18(8), 2nd sentence	18(8A)
18(9), 2nd sentence	18(9A)