

Queensland



ANNO VICESIMO

ELIZABETHAE SECUNDAE REGINAE

No. 41 of 1971

**An Act to Amend The Criminal Code and The Offenders
Probation and Parole Acts 1959 to 1968, each in
certain particulars**

[ASSENTED TO 25TH OCTOBER, 1971]

BE 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:—

PART I—PRELIMINARY

1. **Short title and citation.** This Act may be cited as *The Criminal Code and the Offenders Probation and Parole Act Amendment Act 1971*.

2. **Parts of Act.** This Act is divided into Parts as follows:—

PART I—PRELIMINARY;

PART II—AMENDMENTS OF THE CRIMINAL CODE;

PART III—AMENDMENTS OF THE OFFENDERS PROBATION AND PAROLE ACTS 1959 TO 1968.

PART II—AMENDMENTS OF THE CRIMINAL CODE

3. **Construction.** This Part shall be read as one with *The Criminal Code*.

4. **Amendment of s. 19. Construction of provisions of Code as to Punishments.** Section 19 of *The Criminal Code* is amended by omitting the proviso to subparagraph (7).

5. **Repeal of s. 301. Definition of Wilful Murder.** Section 301 of *The Criminal Code* is repealed.

6. **Amendment of s. 302. Definition of Murder.** Section 302 of *The Criminal Code* is amended by inserting after the words “(1) If the offender intends” the words “to cause the death of the person killed or that of some other person or if the offender intends”.

7. **Amendments in relation to abolition of distinction between Wilful Murder and Murder.** *The Criminal Code* is amended as set out in the Schedule to this section.

THE SCHEDULE

Amendments in relation to abolition of distinction between Wilful Murder and Murder.

Provision amended	Amendments
Section 31 ..	omit the words “wilful murder or”;
Section 32 ..	omit the words “wilful murder or”;
Section 47 ..	omit the words “wilful murder or”;
Section 141 ..	omit the words “wilful murder or”;
Section 300 ..	omit the words “wilful murder”;
Section 303 ..	omit the words “wilful murder or”;
Section 304 ..	omit the words “wilful murder or”;
Section 304A ..	omit the words “wilful murder or” (wherever occurring);
Section 305 ..	omit the words “wilful murder or”;
Section 307 ..	omit the words “wilful murder or”;
Section 567 ..	omit the words “wilful murder”;
Section 576 ..	omit the whole of the first paragraph;
Section 577 ..	omit the words “wilful murder or”;
Section 621 ..	omit the words “wilful murder or”;
Section 678 ..	omit the words “wilful murder”.

8. **Amendment of s. 656. Conditional suspension of Punishment on First Conviction.** Section 656 of *The Criminal Code* is amended—

(a) by omitting provision (2A);

(b) by omitting from provision (7) the words “or so much thereof, if any, as remains to be undergone under the provisions hereinbefore contained;”.

9. References in Acts (other than this Act) to Wilful Murder. A reference in any Act (other than this Act), or in any instrument made under any such Act, to—

- (a) “wilful murder”;
- (b) “wilful murder or murder”;
- (c) “wilful murder and murder”;
- or
- (d) “wilful murder, murder”;

shall, unless the context is such that it would be inappropriate or the contrary intention appears, be read as a reference to “murder” and the Act or instrument shall have effect accordingly.

10. Transitional. (1) Where a person is charged on indictment with an offence against section 301 of *The Criminal Code* before the commencement of this Act and the trial on the indictment is continued after that commencement, the trial shall be continued, and punishment shall be imposed and enforced upon a conviction in the proceedings, as if this Act had not been passed.

(2) Where before the commencement of this Act a person has committed an offence against section 301 of *The Criminal Code* in respect of which he has not been charged on indictment before that commencement, he may be charged under section 302 of *The Criminal Code* as amended by this Part of this Act in respect of the act or omission constituting the offence as if at the time of doing the act or making the omission the said section 302 as so amended had been of force and effect.

PART III—AMENDMENTS OF THE OFFENDERS PROBATION AND PAROLE ACTS 1959 TO 1968

11. Citation. (1) In this Part, *The Offenders Probation and Parole Act of 1959* as amended is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Offenders Probation and Parole Act 1959–1971*.

12. Amendment of s. 9. First offender’s recognizance or recognizance to appear and receive judgment if called upon not to be used where probation appropriate. Section 9 of the Principal Act is amended by omitting from subsection (2) the words “or subsection 2A of section six hundred and fifty-six”.

13. Amendment of s. 32. Release on Parole. Section 32 of the Principal Act is amended—

(a) by omitting from subsection (1) the word “The” and inserting in its stead the words “Subject to subsections (1A), (1B), (1C) and (1D) of this section, the”;

(b) by omitting the provisoes to subsection (1);

(c) by inserting after subsection (1), the following subsections:—

“ (1A) Unless the Governor in Council, upon the recommendation of the Board, otherwise determines—

- (a) A prisoner to whom paragraph (b) of subsection (1) of this section refers, shall not be eligible for release on parole until the prisoner shall have been detained during a period of two years;
- (b) A prisoner to whom paragraph (c) of that subsection refers shall not be eligible for release on parole until the prisoner shall have been detained during one-half of the period for which he was directed to be detained; and
- (c) A prisoner undergoing a sentence of imprisonment not exceeding six months shall not be eligible for release on parole.

(1B) Where a Court sentences a person convicted of an offence to a term of imprisonment (not being imprisonment with or without hard labour for life), the Court may recommend that that person be released from prison on parole after serving such period of imprisonment (being a period less than the term for which he is sentenced) as is specified in the recommendation and a prisoner in respect of whom such a recommendation has been made (being a prisoner to whom paragraph (a) of subsection (1) of this section refers) may be released on parole by the Board at any time after he has served the period of imprisonment so specified.

(1C) Where, in the case of a prisoner to whom paragraph (a) of subsection (1) of this section refers, the Board is satisfied that special circumstances so warrant, the prisoner may be released on parole by the Board at any time.

(1D) Save as provided in subsections (1B) and (1C) of this section a prisoner to whom paragraph (a) of subsection (1) of this section refers is not eligible for release on parole by the Board until the prisoner has undergone one-half at least of the sentence of imprisonment that he is undergoing.

(1E) The Board may cancel, amend or vary any parole order under this section before the prisoner has been released thereunder, and any order so amended or varied shall apply accordingly.”

(d) by inserting in subsection (2), after the words “ his term of imprisonment ”, the words “ or such shorter period as the Board may fix ”.

14. Amendment of s. 35. Section 35 of the Principal Act is amended by inserting after subsection (4) the following subsection:—

“ (4A) The Board may direct that a prisoner whose parole has been cancelled under this section (whether by order or by operation of subsection (2)) serve such part only of the unexpired portion of his term of imprisonment or detention as is specified in the direction and where a prisoner in respect of whom such a direction is made has, in accordance with the provisions of any law applicable to his imprisonment or detention, served the part so specified, the prisoner shall be regarded as having served his term of imprisonment or detention and shall be wholly discharged therefrom.”

15. Amendment of s. 36P. Annulment or cancellation of parole by order of the Board. Section 36P of the Principal Act is amended by inserting in paragraph (a) of subsection (11) at the end thereof the words "or such shorter period as the Board may fix".