

*Criminal Code Amendment Act. 7 GEO. VI. No. 14.*

## CORONERS.

*See JUSTICES.*

## CRIMINAL LAW.

### An Act to Amend "The Criminal Code" in certain particulars.

7 GEO. VI.  
No. 14.  
THE  
CRIMINAL  
CODE  
AMENDMENT  
ACT OF 1943.

[ASSENTED TO 29TH APRIL, 1943].

**B**E it enacted by the King'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  
and  
construction.

1. This Act may be cited as "*The Criminal Code Amendment Act of 1943*," and shall be read as one with \*"*The Criminal Code*."

#### *Amendments of \*"The Criminal Code."*

Amendment  
of s. 19.  
[Construc-  
tion of  
provisions of  
Code as to  
punish-  
ments.]

2. The following new subsection ten is added to section nineteen of "*The Criminal Code*," as follows:—

"(10.) The Governor in Council, with the concurrence of two or more justices of the Supreme Court, may by Order in Council from time to time make such rules of court as may be necessary to give effect to the objects and purposes of this section. Such rules of court may in particular provide for—

- (a) The prescribing of further terms and conditions in recognizances in addition to the terms and conditions therein as prescribed in subsections seven, eight, and nine of this section;
- (b) The mode of proof of convictions;
- (c) The means of proof of a breach of the terms and conditions of recognizances;
- (d) The penalty and/or imprisonment for a breach of the terms and conditions of recognizances made under such rules and the mode of enforcement of such penalty or imprisonment,

and the provisions of section eleven of †"*The Supreme Court Act of 1921*" shall, *mutatis mutandis*, apply and extend accordingly.

\* 63 V. No. 9 Sch. I. *See v. 2, pp. 665 et seq.*

† 12 G. 5 No. 15. *See v. 9, p. 331.*

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3. The following paragraph is added to section two hundred and eleven of "*The Criminal Code*," as follows :—
- "The offender may be arrested without warrant."
- Amendment of s. 211.  
[Indecent practices between males.]
4. In the fourth paragraph of section two hundred and twelve of "*The Criminal Code*" the words "within two months" are repealed and the words "within six months" are inserted in lieu thereof.
- Amendment of s. 212.  
[Defilement of girls under twelve.]
5. In section two hundred and twenty-two of "*The Criminal Code*," after the word "sister" where it twice occurs the words "or his mother" are respectively inserted.
- Amendment of s. 222.  
[Incest by man.]
6. In section two hundred and twenty-three of "*The Criminal Code*" after the words "or her brother" where such words thrice occur, the words "or her son" are respectively inserted.
- Amendment of s. 223.  
[Incest by adult female.]
7. The following paragraph is added to section two hundred and twenty-seven of "*The Criminal Code*," namely :—
- "The offender may be arrested without warrant."
- Amendment of s. 227.  
[Indecent acts.]
8. The following paragraph is added to section three hundred and twenty-three of "*The Criminal Code*," namely :—
- "The offender may be arrested without warrant."
- Amendment of s. 323.  
[Wounding and similar acts.]
9. The following new sections, 328A, 328B, and 328c are inserted in "*The Criminal Code*" after section three hundred and twenty-eight, as follows :—
- "[328A.] If any person drives a motor vehicle on a road recklessly or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the road and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road, he shall be liable—
- (a) On summary conviction to a penalty not exceeding fifty pounds or to imprisonment for a term not exceeding four months, and in the case of a second or subsequent conviction either to a penalty not exceeding one hundred pounds or to such imprisonment as aforesaid or to both such penalty and imprisonment ;
- Reckless or dangerous driving of motor vehicle.

New ss. 328A,  
328B, and  
328c.

(b) On conviction on indictment to a penalty not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both penalty and imprisonment.

The offender may be arrested without warrant.

Power to convict for reckless or dangerous driving on trial for manslaughter.

“ [328B.] Upon the trial of a person who is indicted for manslaughter in connection with the driving of a motor vehicle by him, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under section 328A of “ *The Criminal Code* ” to find him guilty of that offence, if such offence is established by the evidence, and the provisions of paragraph (b) of the said section 328A shall apply accordingly.”

Cancellation of certificate of competency to operate motor vehicle.

“ [328C.] Where upon the trial of a person who is indicted for manslaughter in connection with the driving of a motor vehicle by him, the jury finds that such person is guilty of manslaughter, or is guilty of an offence under section 328A of “ *The Criminal Code* ” the Court, in addition to any sentence it may impose, may order and direct that the prisoner shall, from the date of conviction, be disqualified absolutely from holding or obtaining a certificate of competency to operate a motor vehicle (as referred to in section nineteen of \* “ *The State Transport Act of 1938,* ”) or be so disqualified for such period as the Court shall specify in its order. A copy of such order shall be transmitted by the Registrar to the Commissioner of Police and to the Secretary, State Transport Board, for any necessary action accordingly.

Amendment of s. 339. [Assaults occasioning bodily harm.]

10. The following paragraph is added to section three hundred and thirty-nine of “ *The Criminal Code,* ” as follows :—

“ The offender may be arrested without warrant.”

Amendment of s. 343. [Common assaults.]

11. Section three hundred and forty-three of “ *The Criminal Code* ” is amended as follows :—

(a) The words “ five pounds ” are repealed and the words “ twenty pounds ” are inserted in lieu thereof.

(b) The words “ two months ” where they twice occur are repealed and the words “ six months ” are inserted in lieu thereof.

\* 2 G. 6 No. 15. See v. 9., p. 538.

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**12.** Section three hundred and forty-four of "*The Criminal Code*" is amended as follows:—

(a) In the first paragraph, all words after the word "If" up to and including the words "female, and" are repealed.

Amendment of s. 344.

[Aggravated assaults.]

(b) The words "twenty pounds" are repealed and the words "fifty pounds" are inserted in lieu thereof.

(c) The words "six months" where they twice occur in the first paragraph are repealed and the words "twelve months" are inserted in lieu thereof.

**13.** In section three hundred and forty-nine of "*The Criminal Code*" the second paragraph thereof is repealed.

Amendment of s. 349.

[Attempt to commit rape.]

**14.** The following paragraph is added to section three hundred and sixty of "*The Criminal Code*" as follows:—

Amendment of s. 360.

[Bigamy.]

"The wife or husband as the case may be of the accused person shall be a competent witness for the prosecution or defence with or without the consent of such accused person, but shall not be a compellable witness against such accused person.

**15.** The following new subsection seven is added to section three hundred and ninety-one of "*The Criminal Code*," as follows:—

Amendment of s. 391.

[Definition of stealing.]

"(7.) The term "owner" in this section includes the owner, any part owner, or any person having possession or control of, or a special property in, the thing in question."

**16.** The following new section, 425A, is inserted in "*The Criminal Code*" after section four hundred and twenty-five, as follows:—

New s. 425A.

"[425A.] For the purposes of section four hundred and eighteen, four hundred and twenty-one, and four hundred and twenty-two the term "building" includes a building, or any part thereof, office, store, garage, hangar, pavilion, factory, workshop, tent, aircraft, or vessel."

Definition of building.

Amendment  
of s. 430.  
[Conspiracy  
to defraud.]

**17.** Section four hundred and thirty of "*The Criminal Code*" is amended by deleting the second paragraph thereof.

Amendment  
of s. 433.  
[Receiving  
stolen  
property,  
&c.]

**18.** A new paragraph is inserted in section four hundred and thirty-three of "*The Criminal Code*," after the first paragraph of that section, as follows:—

“Where the thing so obtained has been—

- (1) Converted into other property in any manner whatsoever ; or
- (2) Mortgaged or pledged or exchanged for any other property ;

any person who knowing—

- (a) That the said property is wholly or in part the property into which the thing so obtained has been converted or for which the same has been mortgaged or pledged or exchanged ; and
- (b) That the thing so obtained was obtained under such circumstances as to constitute a crime under the first paragraph of this section ;

receives the whole or any part of the property into which the thing so obtained has been converted or for which the same has been mortgaged or pledged or exchanged, is guilty of a crime within the meaning of the first paragraph of this section and may be indicted and punished accordingly.”

Amendment  
of s. 434.  
[Receiving  
after change  
of owner-  
ship.]

**19.** Section four hundred and thirty-four of "*The Criminal Code*" is amended by deleting all words commencing with the words "a subsequent receiving" to the end of the section, and inserting in lieu thereof the following words, namely:—“or, in the event of the thing having been converted into other property whatsoever or mortgaged or pledged or exchanged for other property as referred to in section four hundred and thirty-three of "*The Criminal Code*" another person has acquired a lawful title to such other property or the proceeds or part proceeds of such conversion, mortgage, pledge, or exchange, a subsequent receiving of the thing or, as the case may be, of such other property or proceeds or part proceeds, is not an offence although the receiver knows that the thing has previously been so obtained.”

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**20.** (1.) Section four hundred and forty-three of *The Criminal Code* is amended by the insertion of two new paragraphs after the paragraph ending with the words "deal with the charge summarily" as follows:—

Amendment of s. 443.  
[Indictable offences which may be dealt with summarily.]

"Provided that the complaint may, with the consent of the accused person also be heard and determined at a place appointed for holding Courts of Petty Sessions within the district in which the accused person was arrested or served with the summons as provided under \**The Justices Acts, 1886 to 1942*":

Provided further that where a court of summary jurisdiction deals summarily with any charge under this section such Court shall have jurisdiction to so deal summarily notwithstanding that more than six months have elapsed from the time when the matter of complaint in respect of the charge arose."

(2.) Sections two and four of †*The Justices Acts Amendment Act of 1942* are repealed.

Amendment of Justices Acts.

**21.** The following new section, 470A, is inserted in *The Criminal Code* after section four hundred and seventy, as follows:—

New s. 470A.

"[470A.] Any person who wilfully and without reasonable cause or excuse throws, leaves down, or otherwise deposits any explosive substance in any place whatsoever under such circumstances that it may cause injury to any person or damage to the property of any person, is guilty of a misdemeanour and is liable to imprisonment with hard labour for two years.

Unlawful deposition of explosives.

The offender may be arrested without warrant."

**22.** Section four hundred and seventy-nine of *The Criminal Code* is repealed and the following new section is inserted in lieu thereof, namely:—

Repeal and new s. 479.

"[479.] Any person suspected of committing any of the misdemeanours defined in this chapter may be arrested without warrant by a police officer. Moreover any person found committing any of the misdemeanours so defined may be arrested without warrant by the owner of the property injured or his servant, or by any person authorised by such owner or servant."

Arrest without warrant.

\* 50 V. No. 17 and amending Acts. See v. 4, p. 363.

† 6 G. 6 No. 17 this vol., pp. 115, 116.

Amendment  
of s. 480.  
[Offences  
which may  
be dealt  
with  
summarily.]

**23.** Section four hundred and eighty of “*The Criminal Code*” is amended by the insertion of two new paragraphs after the paragraph ending with the words “deal with the charge summarily” as follows:—

“Provided that the complaint may, with the consent of the accused person also be heard and determined at a place appointed for holding Courts of Petty Sessions within the district in which the accused person was arrested or served with the summons as provided under \**The Justices Acts, 1886 to 1942*”:

Provided further that where a Court of summary jurisdiction deals summarily with any charge under this section, such Court shall have jurisdiction to so deal summarily notwithstanding that more than six months have elapsed from the time when the matter of complaint in respect of the charge arose.”

Amendment  
of s. 636.  
[Evidence of  
relationship  
on charge of  
incest.]

**24.** In section six hundred and thirty-six of “*The Criminal Code*” after the words “or sister” the words “or mother” are inserted.

Amendment  
of s. 644.  
[Admis-  
sions.]

**25.** The following paragraph is added to section six hundred and forty-four of “*The Criminal Code*” as follows:—

“In this section the term “trial” also includes, and it is hereby declared to have always included, proceedings before justices dealing summarily with an indictable offence.”

Amendment  
of s. 656.  
[Conditional  
suspension of  
punishment  
on first  
conviction.]

**26.** Section six hundred and fifty-six of “*The Criminal Code*” is amended as follows:—

(a) A new subsection (2A) is inserted after subsection two, as follows:—

“(2A.) Notwithstanding anything to the contrary contained herein the Court may, if it thinks fit, after passing the sentence upon the offender in the usual form direct that the offender be imprisoned for such portion of the term of sentence as it thinks fit and with respect to the remaining portion of the sentence may direct that execution of the sentence for such remaining portion be suspended upon the offender entering into a recognizance in such amount as the Court directs, such recognizance being conditioned that the offender shall be of good behaviour for a period from the termination of his

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imprisonment equal to the term of the remaining portion of his sentence or if such term is less than twelve months then for the period of twelve months, and shall not during the like period do or omit to do any act whereby the recognizance would become liable to be forfeited under the provisions hereinafter contained.

The provisions of subsections three to seven of this section, inclusive, are, *mutatis mutandis*, applied herein, and to the intent that the "term of the sentence" means that portion of the term of the original sentence suspended as aforesaid."

(b) The following new paragraph is added to the said section, namely:—

"The Governor in Council, with the concurrence of two or more Justices of the Supreme Court, may by Order in Council from time to time make such rules of court as may be necessary to give effect to the objects and purposes of this section. Such rules of court may in particular provide for—

- (a) The prescribing of further terms and conditions in recognizances in addition to the terms and conditions therein as hereinbefore prescribed in this section;
- (b) The mode of proof of convictions;
- (c) The means of proof of a breach of the terms and conditions of recognizances;
- (d) The penalty and/or imprisonment for a breach of the terms and conditions of recognizances made under such rules and the mode of enforcement of such penalty or imprisonment,

and the provisions of section eleven of \**The Supreme Court Act of 1921*" shall *mutatis mutandis*, apply and extend accordingly."

**27** Section six hundred and seventy-nine of "*The Criminal Code*" is amended as follows:—

(i.) In paragraph (a) after the words "may be arrested" the words "with or" are inserted.

(ii.) Paragraph (b) is repealed and a new paragraph (b) is inserted in lieu thereof, namely:—

"(b) Anything whether animate or inanimate and whether living or dead as to which there are

\* 12 G. 5 No. 15. See v. 9, p. 331.



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reasonable grounds for believing that it will of itself or by or on scientific examination, afford evidence as to the commission of any offence ; or ”

(iii.) After the words “ or all police officers to ” the words “ enter, by force if necessary, and to ” are inserted.

New s. 680A.  
[Power of search on arrest.]

**28.** A new section, 680A, is inserted after section six hundred and eighty of “ *The Criminal Code* ” as follows :—

“ [680A.] On the arrest of any person on a charge of an offence committed within or without Queensland relating to property it shall be lawful for a police officer to search, without warrant, in addition to the person of such person, any vehicle or other means of conveyance used by such person, and to take possession of any property reasonably suspected of being stolen or unlawfully obtained.

The provisions of this section shall be in addition to and not in derogation from any other provision of this Code.”

Amendment of s. 701 of the Code.  
[Custody of girls under twenty-one.]

**29.** Section seven hundred and one of “ *The Criminal Code* ” is amended by inserting after the words “ or prostitution ” the words “ or incest.”

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## DEATHS ON WAR SERVICE.

*See* STATISTICS.

## DEVELOPMENT, AID TO.

*See* COMMONWEALTH AND STATES (FINANCIAL ARRANGEMENTS AND DEVELOPMENT AID ACT).

## DEVELOPMENT, POST-WAR AND RECONSTRUCTION, FUNDS FOR.

*See* WAR.

## DINGOES AND MARSUPIALS.

*See* LOCAL AUTHORITIES.

## DIVORCE AND MATRIMONIAL CAUSES.

*See* APPENDICES (A) AND (C), PP. 347, 352A AND 352B.