

## CRIMINAL LAW.

*The Criminal Law Amendment Act of 1945.*

9 GEO. VI.  
No. 11.  
THE  
CRIMINAL LAW  
AMENDMENT  
ACT OF 1945.

**An Act to Amend "The Criminal Code," and "The Justices Acts, 1886 to 1942," each in certain particulars in respect of, and to make further provision for, the Treatment and Punishment of Offenders convicted of Sexual Offences, and for other purposes.**

[ASSENTED TO 5TH APRIL, 1945.]

**BE** 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:—

PART I.—  
PRELIMINARY.

Short title.

PART I.—PRELIMINARY.

1. This Act may be cited as "*The Criminal Law Amendment Act of 1945.*"

Parts of Act.

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

PART I.—PRELIMINARY;

PART II.—AMENDMENTS OF \*"THE CRIMINAL CODE";

PART III.—AMENDMENTS OF †"THE JUSTICES ACTS, 1886 TO 1942";

PART IV.—INDETERMINATE DETENTION AND PROBATION OF OFFENDERS CONVICTED OF SEXUAL OFFENCES.

PART II.—  
AMENDMENTS  
OF "THE  
CRIMINAL  
CODE."

Construction of Part II.

PART II.—AMENDMENTS OF \*"THE CRIMINAL CODE."  
3. This Part of this Act shall be read as one with \*"*The Criminal Code.*"

Amendment of s. 212.

4. In the second paragraph of section two hundred and twelve of \*"*The Criminal Code*" the words "three years" are repealed and the words "seven years" are inserted in lieu thereof.

\* 63 V. No. 9, Sch. I., v. 2, pp. 665 *et seq.*† 50 V. No. 17 and amending Acts, v. 4, pp. 363 *et seq.*

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5. In the first paragraph of section two hundred and fifteen of \**The Criminal Code*” the words “two years” are repealed and the words “five years” are inserted in lieu thereof. Amendment of s. 215.

6. In the second paragraph of section two hundred and sixteen of \**The Criminal Code*” the words “three years” are repealed and the words “five years” are inserted in lieu thereof. Amendment of s. 216.

7. Section four hundred and twenty-one of \**The Criminal Code*” is amended, as follows:— Amendment of s. 421.

(a) The words “or counting-house” wherever they appear therein are repealed and the words “counting-house, office, store, railway vehicle, garage, hangar, pavilion, factory, workshop, tent, caravan, petrol-station, ship, aircraft or vessel” are inserted in lieu thereof.

(b) The words “the building” are repealed where such words last occur in paragraph two thereof, and the words “such school-house, shop, warehouse, counting-house, office, store, railway vehicle, garage, hangar, pavilion, factory, workshop, tent, caravan, petrol-station, ship, aircraft, vessel or other building, as the case may be,” are inserted in lieu thereof.

8. In section four hundred and twenty-two of \**The Criminal Code*” the words “or counting-house” are repealed and the words “counting-house, office, store, railway vehicle, garage, hangar, pavilion, factory, workshop, tent, caravan, petrol-station, ship, aircraft or vessel” are inserted in lieu thereof. Amendment of s. 422.

9. In section 425A of \**The Criminal Code*” the words “four hundred and twenty-one, and four hundred and twenty-two” are repealed. Amendment of s. 425A.

10. Section four hundred and thirty-six of \**The Criminal Code*” is amended by inserting, after the words “that is to say,—” in the fourth paragraph thereof, the following sub-paragraph, namely:— Amendment of s. 436.

“A trustee within the meaning of †*The Trust Accounts Acts, 1923 to 1925*,” or any Act in amendment thereof or in substitution therefor;”.

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

† 14 G. 5 No. 4 and amending Acts, v. 9, pp. 694 *et seq.*

Amendment  
of s. 568.

**11.** Section five hundred and sixty-eight of \**"The Criminal Code"* is amended by inserting the following subsection after subsection one thereof, namely:—

"(1A.) In an indictment against a trustee to whom †*"The Trust Accounts Acts, 1923 to 1925,"* or any Act in amendment thereof or in substitution therefor, apply or applies, for stealing money or for an offence under section four hundred and thirty-six of this Code, the Trustee may be charged and proceeded against for the amount of a general deficiency notwithstanding that such general deficiency is made up of any number of specific sums of money, such sums being the property of different persons, the taking of which extended over any space of time."

Amendment  
of s. 641.

**12.** Section six hundred and forty-one of \**"The Criminal Code"* is amended, as follows:—

(a) The words "or being a trustee within the meaning of †*"The Trust Accounts Acts, 1923 to 1925,"* or any Act in amendment thereof or in substitution therefor, charged with stealing money of which he is a trustee on behalf of any other person or with an offence under section four hundred and thirty-six of this Code" are inserted in the first paragraph thereof after the word "employer" where such word last occurs.

(b) The words "or the conversion with intent to defraud within the meaning of section four hundred and thirty-six of this Code" are inserted after the word "stealing" in the second paragraph thereof.

(c) The words "or converted with intent to defraud within the meaning of section four hundred and thirty-six of this Code" are inserted after the word "stole" in the second paragraph thereof.

(d) The following paragraph is added thereto, namely:—

"And on the trial of a person charged with any offence as a trustee referred to in the first paragraph hereof, the ownership of or the right, title, use or benefit in, to or of the money the subject matter of the charge may be laid in the indictment in the name of any one or other of the persons (hereinafter in this section referred to as the "beneficiaries") of whose money the person charged is the trustee as aforesaid specifying

\* 63 V. No. 9. Sch. I., v. 2. pp. 665 *et seq.*† 14 G. 5 No. 4 and amending Acts, v. 9, pp. 694 *et seq.*

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any one of the beneficiaries by name with the addition of the words "and others," and it is immaterial whether or no the evidence establishes that the said money was the property of any specific one of the beneficiaries, or that the right, title, use or benefit in, to or of the said money was in any specific one of the beneficiaries and the indictment will be sustained so far as regards that allegation upon proof that the property in, or the right, title, use or benefit in, to or of the money was in one or other of the beneficiaries without ascertaining which of them."

**13.** Section 659A of \**"The Criminal Code"* is <sup>Amendment</sup> amended as follows:—  
of s. 659A.

(a) The following subsections are inserted after subsection four thereof, namely:—

"(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 hereof; and
- (ii.) Has been previously convicted on at least two occasions 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 hereof,

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.

(4b.) Notwithstanding the provisions of subsection four of this section, where any person—

- (i.) Is convicted under subparagraph (d) of paragraph (viii.) of subsection one of section four

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of \**"The Vagrants, Gaming and Other Offences Acts, 1931 to 1938"* of the wilful exposure of his person in view of any person in any public place; and

(ii.) Has been previously convicted on at least two occasions of the said offence,

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

(b) In subsection five thereof the words "two preceding" are repealed and the words "four preceding" are inserted in lieu thereof."

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PART III.—AMENDMENTS OF †"THE JUSTICES ACTS,  
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Construction  
of Part III.

**14.** This Part of this Act shall be read as one with †*"The Justices Acts, 1886 to 1942"* and that Act and this Part of this Act may be collectively cited as *"The Justices Acts, 1886 to 1945."*

New s. 71A  
inserted.

**15.** The following section is inserted after section seventy-one of †*"The Justices Acts, 1886 to 1942,"* namely:—

Sexual  
offences  
against  
children to  
be heard in  
camera.

"[71A.] (1.) Notwithstanding the provisions of sections seventy and seventy-one of this Act justices shall exclude from any room or place in which such justices—

(i.) Sit to hear and determine any complaint of an offence of a sexual nature alleged to have been committed upon a child under the age of seventeen years; or

(ii.) Take the examination and statement of any person in relation to a charge of an indictable offence of a sexual nature alleged to have been committed upon a child under the age of seventeen years for the purpose of committal for trial,

all persons except the complainant, the prosecuting officer, the member of the police force in charge of the case, the counsel and solicitor for such complainant,

\* 22 G. 5 No. 27 and amending Acts, v. 9, pp. 705 *et seq.*

† 50 V. No. 17 and amending Acts, v. 4, pp. 363 *et seq.*

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prosecuting officer, or member, the defendant, his counsel and solicitor, any parent or guardian of such child and (whilst any other child under the age of seventeen years is giving evidence or being examined in the case) any parent or guardian of such other child, any representative of the State Children Department, and any representative of any organisation or institution interested in the care or reform of children.

(2.) (i.) Notwithstanding anything contained in any Act or law, in any proceedings—

(a) Where the justices hear and determine any complaint of an offence of a sexual nature or take the examination and statement of any person in relation to a charge of an indictable offence of a sexual nature; or

(b) Where the judge presides at the trial of any person who has been committed for trial or for sentence in relation to a charge of an indictable offence of a sexual nature,

the justices, or as the case may be, the judge, may make an order prohibiting the publication of the whole of such proceedings in any newspaper, or prohibiting the publication of such part of the proceedings and/or the name or names of any witness or witnesses under the age of seventeen years, and/or the name of the complainant or the person against whom the offence was committed, where such complainant or person is a female, as they or he shall specify in the order concerned.

(ii.) If any person acts in contravention of any order made under this subsection, such person shall be liable, if a corporation, to a penalty of not more than five hundred pounds, and if any other person, to a penalty of not more than one hundred pounds or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment:

Provided that where a person who is guilty of an offence under this subsection is a corporation, any person being a member of the governing body, director, manager or officer of such corporation shall be deemed to have committed the like offence and be liable to the pecuniary penalty or imprisonment or both provided by this subsection in the case of such an offence by a person

other than a corporation accordingly, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

(iii.) For the purposes of this subsection the term "newspaper" has the like meaning as in section three of \*"*The Printers and Newspapers Act of 1914*" or any Act amending the same.

(iv.) Nothing in this section shall prevent the publication of such proceedings in any separate volume or part of any *bona fide* series of law reports which does not form part of any other publication and consists solely of reports of proceedings in courts of law or in any publication of a technical character *bona fide* intended for circulation among members of the legal or medical professions :

Provided that where an order prohibiting the publication has been made, any such publication referred to in this paragraph shall not contain the names of the defendant or of the witnesses or of any other particular which may serve to identify the case referred to; and when the order prohibits the publication of the name or names of the complainant and/or any witness or witnesses, such order must be obeyed in that regard."

Amendment  
of s. 111.

16. The following paragraph is inserted after the first paragraph of section one hundred and eleven of †"*The Justices Acts, 1886 to 1942,*" namely :—

"Moreover, when any person has been charged before justices with an indictable offence of a sexual nature alleged to have been committed on a child under the age of twelve years, and has been committed for trial, the deposition of such child or of any other child under the age of twelve years may, in the discretion of the judge of trial and if conditions (b) and (c) hereinafter in this section set out are satisfied, without further proof be read as evidence on the trial of that person, whether for the offence for which he has been committed for trial or for any other offence for which an indictment shall be presented, arising out of the same transaction or set of circumstances as the offence for which he has been committed for trial, and whether or not combined with other circumstances."

\* 5 G. 5 No. 20 v. 7, p. 1009.

† 50 V. No. 17 and amending Acts, v. 4, pp. 363 *et seq.*

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PART IV.—INDETERMINATE DETENTION AND PROBATION  
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17. (1.) A recognizance ordered to be entered into under paragraph nine of section nineteen or under section six hundred and fifty-six 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, which order is in this section referred to as a probation order.

Probation orders in cases of sexual offences.

(2.) For the purposes of this section the Governor in Council may appoint persons as probation officers and/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 seventeen 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 duties under this section to such agent may be paid to the society.

In this subsection the expression “voluntary society” means a society carrying on mission work in connection with police 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 ;

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



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- (b) To see that such person observes the conditions of his recognizance ;
- (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 seventeen 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 his discretion direct that two or more legally qualified medical practitioners named by the judge (of whom one 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 his mental condition is such that he is incapable of exercising proper control over his sexual instincts ; or
- (b) If such person was found so guilty on summary conviction, the court of petty sessions 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) of this subsection.

In the case of an order made under paragraph (b) of this subsection before sentence, the court of petty sessions shall make such adjournments as are necessary and shall commit the convicted person to a prison or police gaol as defined in \**"The Prisons Act, 1890,"*

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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 paragraph (b) of subsection three or in paragraph (d) of subsection six of this section or in cases where the judge refuses to direct detention under either of the said subsections), sentence such person to any lawful punishment.

If and when a psychiatric clinic is established under \**"The Backward Persons Act of 1938,"* the judge may direct two or more legally qualified medical practitioners each of whom is either a member or officer of such clinic and one 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 him as they think necessary, and shall give their report on oath to the judge.

(3.) (a) If the medical practitioners report to the judge that the offender is incapable of exercising proper control over his 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 court of petty sessions where the offender was summarily convicted, declare that the offender is so incapable and direct that he be detained in an institution during His Majesty's pleasure :

Provided that 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.

(b) When an offender whom a judge directs under this subsection 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 court of petty sessions in terms of the adjournment made by that court for sentence.

(4.) In any case where two medical practitioners, one of whom is specially qualified in psychiatry, report to the Attorney-General that any person who is serving a sentence of imprisonment imposed upon him for an offence of a sexual nature (whether committed upon or in relation to a child under the age of seventeen years or upon or in relation to a person over that age)—

- (i.) Is incapable of exercising proper control over his sexual instincts; and
- (ii.) That such incapacity is capable of being cured by continued treatment; and
- (iii.) That for the purposes of such treatment it is desirable that such person be detained in an institution after the expiration of his 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 three of this section.

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 three or subsection four of this section—

- (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 Prisons Act, 1890”*; and
- (b) Shall not be released until the Governor in Council is satisfied on the report of two legally qualified medical practitioners that it is expedient to release him.

(6.) If the medical practitioners report to the judge that the offender or, in the case of an application made under subsection four of this section the judge is of the opinion that the prisoner, is not incapable of

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exercising proper control over his sexual instincts, but that his mental condition is subnormal to such a degree that he requires care, supervision and control in an institution either in his 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 either for such period as the judge directs or during His 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) of this subsection ; or
- (c) Where the offender was summarily convicted and lawful punishment imposed by a court of petty sessions in addition direct as mentioned in paragraph (a) of this subsection ; 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) of this subsection, 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 court of petty sessions in terms of the adjournment made by that court for sentence.

Every offender or prisoner in respect of whom such a direction is given—

- (i.) 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
- (ii.) Where the detention ordered is during His Majesty's pleasure shall not be released until the Governor in Council is satisfied, on the report of two legally qualified medical practitioners (or of the psychiatric clinic hereinbefore in this section referred to), that he is fit to be at liberty.

(7.) Where the judge orders detention during His 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. 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 three months by the Director of Mental Hygiene or by some legally qualified medical practitioner appointed by the Director of Mental Hygiene (who is hereby authorised to make such appointment) to conduct examinations under this subsection, either generally or of a particular offender or prisoner.

Any legally qualified medical practitioner making an examination under this subsection shall forthwith furnish a report of the examination to the Director-General of Health and Medical Services.

(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.

(10.) In this section "Institution" means—

- (a) Any prison or police gaol as defined in \**The Prisons Act, 1890*"; 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 and/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 seventeen 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 courts of petty sessions.