

THE CRIMINAL CODE, EVIDENCE ACT AND OTHER ACTS AMENDMENT ACT

No. 17 of 1989

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Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 17 of 1989

An Act to amend The Criminal Code, the Evidence Act 1977-1986, The Criminal Law Amendment Act of 1945, the Appeal Costs Fund Act 1973-1981, the Regulatory Offences Act 1985, the Justices Act 1886-1988, the Children's Services Act 1965-1988 and the Criminal Law (Sexual Offences) Act 1978-1987, each in certain particulars

[ASSENTED TO 30TH MARCH, 1989]

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. This Act may be cited as *The Criminal Code, Evidence Act and other Acts Amendment Act 1989*.

2. Commencement. (1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Subject to subsection (1), this Act or the provisions thereof specified by Proclamation shall commence on the day or days appointed by Proclamation for the commencement of this Act or, as the case may be, those provisions.

3. Arrangement. This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1-3);

PART II—AMENDMENT OF THE CRIMINAL CODE (ss. 4-58);

PART III—AMENDMENT OF THE EVIDENCE ACT (ss. 59-67);

PART IV—AMENDMENT OF THE CRIMINAL LAW AMENDMENT ACT OF 1945 (ss. 68-70);

PART V—AMENDMENT OF THE APPEAL COSTS FUND ACT (ss. 71-72);

PART VI—AMENDMENT OF THE REGULATORY OFFENCES ACT (ss. 73-75);

PART VII—AMENDMENT OF THE JUSTICES ACT (ss. 76-77);

PART VIII—AMENDMENT OF THE CHILDREN'S SERVICES ACT (ss. 78-81);

PART IX—AMENDMENT OF THE CRIMINAL LAW (SEXUAL OFFENCES) ACT (ss. 82-87).

PART II—AMENDMENT OF THE CRIMINAL CODE

4. Amendment of s. 1. Section 1 of *The Criminal Code* is amended by inserting before the definition of the term "aircraft" the following definition:—

"The term "adult" means a person of or above the age of eighteen years;"

5. Repeal of and new s. 12. *The Criminal Code* is amended by repealing section 12 and substituting the following section:—

"**12.** (1) This Code applies to every person who does an act in Queensland or makes an omission in Queensland, which in either case constitutes an offence.

(2) Where acts or omissions occur which, if they all occurred in Queensland, would constitute an offence and any of the acts or omissions occur in Queensland, the person who does the acts or makes the omissions is guilty of an offence of the same kind and is liable to the same punishment as if all the acts or omissions had occurred in Queensland.

(3) Where an event occurs in Queensland caused by an act done or omission made out of Queensland which, if done or made in Queensland, would constitute an offence, the person who does the act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if the act or omission had occurred in Queensland.

It is a defence to prove that the person did not intend that the act or omission should have effect in Queensland.

(4) Where an event occurs out of Queensland caused by an act done or omission made in Queensland, which act or omission would constitute an offence had the event occurred in Queensland, the person who does the act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if the event had occurred in Queensland.

(5) This section does not extend to a case where the only material event that occurs in Queensland is the death in Queensland of a person whose death is caused by an act done or an omission made out of Queensland at a time when he was out of Queensland.”

6. Repeal of and new s. 13 and heading. *The Criminal Code* is amended by repealing section 13 and the heading immediately preceding and substituting the following heading and section:—

*“Offences enabled, aided, procured or counselled
by persons out of Queensland*

13. (1) Any person who while out of Queensland—

- (a) does or omits to do an act for the purpose of enabling or aiding another person to commit an offence that is actually committed in Queensland;
- (b) aids another person in committing an offence that is actually committed in Queensland;
- or
- (c) counsels or procures another person to commit an offence that is actually committed in Queensland,

is guilty of an offence of the same kind and is liable to the same punishment as if he had committed the offence in Queensland.

(2) Any person who while out of Queensland procures another to do or omit to do in Queensland an act of such a nature that, if he had himself done the act or made the omission in Queensland, he would have been guilty of an offence is guilty of an offence of the same kind and is liable to the same

punishment as if he had himself done the act or made the omission in Queensland.”.

7. Amendment of s. 14. Section 14 of *The Criminal Code* is amended by omitting the final paragraph.

8. Amendment of s. 19. Section 19 of *The Criminal Code* is amended by—

(a) in paragraph (6) omitting all words from and including the words “And provided further” to and including the words “any extension thereof.” and substituting the following words:—

“And provided further that the Court may give such directions as it thinks fit as to the enforcement of the sentence of imprisonment and shall, in every case, direct that in the event of the non-payment of the fine within the specified period or any extension of the period the person sentenced shall appear at some future sittings of the Court or a Court of like jurisdiction unless sooner called upon (by notice in the prescribed form) to show cause why the sentence of imprisonment should not be executed;”;

(b) adding at the end of paragraph (7) the words “if the Court that ordered the person to enter into the recognizance, or a Court of like jurisdiction, is satisfied that the person has failed to observe any condition of his recognizance, the Court may forfeit the recognizance and issue a warrant directed to all police officers to arrest that person and bring him before the Court.”;

(c) adding at the end of paragraph (9) the following words:—

“If the Court before which or the justices before whom an offender is bound by recognizance to appear for judgment, or a Court or justices of like jurisdiction, is or are satisfied that he has failed to observe any condition of his recognizance, the Court or justices may forfeit the recognizance and issue a warrant directed to all police officers to arrest the offender and bring him before the Court or justices and, upon his appearance, the Court or justices or a Court or justices of like jurisdiction may sentence him for the offence with which he was charged originally or make any other order that the Court or justices could lawfully have made, as if he had not been discharged on recognizance.”;

(d) in paragraph (9A)—

(i) in the general words preceding provision (a), inserting after the words “relating to property” the words “or against the person of another”;

(ii) at the end of provision (iii) omitting the word “or”;

(iii) renumbering provision (iv) as provision (v);

(iv) inserting after provision (iii) the following words:—

“(iv) to compensate the person aggrieved by the offence for the injury caused to his person; or”.

9. Amendment of s. 29. Section 29 of *The Criminal Code* is amended by omitting the final paragraph.

10. Amendment of s. 208. Section 208 of *The Criminal Code* is amended by—

(a) omitting the word “fourteen” and substituting the word “seven”;

(b) adding at the end of the section the following paragraph:—

“In the case of an offence defined in paragraph (1) or (3) committed in respect of a child under the age of sixteen years, the offender is liable to imprisonment—

(a) for fourteen years or, if the child is under the age of twelve years, for life;

or

(b) for life if the child is, to the knowledge of the offender, his lineal descendant or if the offender is the guardian of the child or, for the time being, has the child under his care.”.

11. Amendment of s. 209. Section 209 of *The Criminal Code* is amended by—

(a) omitting the word “seven” and substituting the word “three”;

(b) omitting the second paragraph and substituting the following paragraphs:—

“In the case of an attempt to commit a crime defined in paragraph (1) or (3) of section 208, if the offence is committed in respect of a child under the age of sixteen years, the offender is liable to imprisonment—

(a) for seven years or, if the child is under the age of twelve years, for fourteen years;

or

(b) for fourteen years if the child is, to the knowledge of the offender, his lineal descendant or if the offender is the guardian of the child or, for the time being, has the child under his care.

The offender cannot be arrested without warrant except in a case referred to in the preceding paragraph.”.

12. Repeal of and new s. 210 and heading. *The Criminal Code* is amended by repealing section 210 and the heading immediately preceding and substituting the following heading and section:—

“Indecent treatment of children under sixteen

210. Any person who—

- (1) unlawfully and indecently deals with a child under the age of sixteen years;
- (2) unlawfully procures a child under the age of sixteen years to commit an indecent act;
- (3) unlawfully permits himself to be indecently dealt with by a child under the age of sixteen years;
- (4) wilfully and unlawfully exposes a child under the age of sixteen years to an indecent act by the offender or any other person;
- (5) without legitimate reason, wilfully exposes a child under the age of sixteen years to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter;
- (6) without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of a child under the age of sixteen years,

is guilty of an indictable offence.

If the child is of or above the age of twelve years, the offender is guilty of a misdemeanour, and is liable to imprisonment for five years.

If the child is under the age of twelve years, the offender is guilty of a crime, and is liable to imprisonment for ten years.

If the child is, to the knowledge of the offender, his lineal descendant or if the offender is the guardian of the child or, for the time being, has the child under his care, he is guilty of a crime, and is liable to imprisonment for ten years.

If the offence is alleged to have been committed in respect of a child of or above the age of twelve years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of sixteen years.

A person may be convicted of an offence defined in this section upon the uncorroborated testimony of one witness, but the Court shall warn the jury of the danger of acting on such testimony unless they find that it is corroborated in some material particular by other evidence implicating that person.

The term “deals with” includes doing any act which, if done without consent, would constitute an assault as defined in this Code.”.

13. Repeal of ss. 212 and 213 and headings and new s. 213 and heading. *The Criminal Code* is amended by repealing sections 212 and

213 and the headings immediately preceding those sections and substituting the following heading and section:—

“Householder permitting abuse of children on his premises

213. Any person who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control of any premises, induces or knowingly permits any child under the age of sixteen years to be in or upon the premises for the purpose of any person, whether a particular person or not, doing an act in relation to the child (referred to in this section as a “proscribed act”) defined to constitute an offence in section 208 (1), 208 (3), 210, 211 or 215 is guilty of an indictable offence.

If the child is of or above the age of twelve years, the offender is guilty of a misdemeanour, and is liable to imprisonment for five years.

If the child is under the age of twelve years, the offender is guilty of a crime, and is liable to imprisonment—

(a) for life, where the proscribed act is one defined to constitute an offence in section 208 (1), 208 (3) or 215;

or

(b) for ten years in any other case.

Where the proscribed act is one defined to constitute an offence in section 210 or 215 and the child is of or above the age of twelve years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of sixteen years.”

14. Repeal of ss. 214, 215 and 216 and headings and new ss. 215 and 216 and headings. *The Criminal Code* is amended by repealing sections 214, 215 and 216 and the headings immediately preceding those sections and substituting the following headings and sections:—

“Carnal knowledge of girls under sixteen

215. Any person who has or attempts to have unlawful carnal knowledge of a girl under the age of sixteen years is guilty of an indictable offence.

If the girl is of or above the age of twelve years, the offender is guilty of a misdemeanour, and is liable to imprisonment for five years.

If the girl is under the age of twelve years, the offender is guilty of a crime, and is liable to imprisonment for life or, in the case of an attempt to have unlawful carnal knowledge, to imprisonment for ten years.

If the girl is not the lineal descendant of the offender but the offender is her guardian or, for the time being, has her under his care, he is guilty of a crime, and is liable to imprisonment

for life or, in the case of an attempt to have unlawful carnal knowledge, to imprisonment for fourteen years.

If the offence is alleged to have been committed in respect of a girl of or above the age of twelve years, it is a defence to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen years.

A prosecution for an offence defined in this section, if not begun within two years after the offence is committed, shall not be begun without the consent of a Crown Law Officer.

A person may be convicted of an offence defined in this section upon the uncorroborated testimony of one witness, but the Court shall warn the jury of the danger of acting on such testimony unless they find that it is corroborated in some material particular by other evidence implicating that person.

Abuse of intellectually impaired persons

216. (1) Any person who has or attempts to have unlawful carnal knowledge of an intellectually impaired person is, subject to subsection (3), guilty of a misdemeanour, and is liable to imprisonment for five years.

(2) Any person who—

- (a) unlawfully and indecently deals with an intellectually impaired person;
 - (b) unlawfully procures an intellectually impaired person to commit an indecent act;
 - (c) unlawfully permits himself to be indecently dealt with by an intellectually impaired person;
 - (d) wilfully and unlawfully exposes an intellectually impaired person to an indecent act by the offender or any other person;
 - (e) without legitimate reason, wilfully exposes an intellectually impaired person to any indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter;
- or
- (f) without legitimate reason, takes any indecent photograph or records, by means of any device, any indecent visual image of an intellectually impaired person,

is, subject to subsection (3), guilty of a misdemeanour, and is liable to imprisonment for three years.

(3) If the intellectually impaired person is not the lineal descendant of the offender but the offender is the guardian of

that person or, for the time being, has that person under his care, the offender is guilty of a crime, and is liable—

- (a) in the case of the offence of having unlawful carnal knowledge, to imprisonment for life;
- (b) in the case of an attempt to have unlawful carnal knowledge, to imprisonment for fourteen years;
- (c) in the case of an offence defined in subsection (2), to imprisonment for ten years.

In the case of an offence defined in subsection (2), if the intellectually impaired person is, to the knowledge of the offender, his lineal descendant, the offender is guilty of a crime, and is liable to imprisonment for ten years.

(4) It is a defence to a charge of an offence defined in this section to prove—

- (a) that the accused person believed on reasonable grounds that the person was not an intellectually impaired person;

or

- (b) that the doing of the act or the making of the omission which, in either case, constitutes the offence did not in the circumstances constitute sexual exploitation of the intellectually impaired person.

(5) A person may be convicted of an offence defined in subsection (1) or (2) upon the uncorroborated testimony of one witness, but the Court shall warn the jury of the danger of acting on such testimony unless they find that it is corroborated in some material particular by other evidence implicating that person.

(6) In this section—

“deals with” includes doing any act which, if done without consent, would constitute an offence;

“intellectually impaired person” means a person who is so intellectually impaired as to be incapable of guarding himself or herself against sexual exploitation.”

15. Repeal of and new s. 217. *The Criminal Code* is amended by repealing section 217 and substituting the following section:—

“217. Any person who—

- (1) procures a girl who is under the age of eighteen years, and is not a common prostitute or of known immoral

- character, to have unlawful carnal connection with a man, either in Queensland or elsewhere;
- (2) procures another, whether male or female, to become a common prostitute, either in Queensland or elsewhere;
- (3) procures another, whether male or female, who is not a common prostitute—
- (a) to leave Queensland for the purpose of engaging in prostitution elsewhere;
- or
- (b) to leave his or her usual place of residence in Queensland for the purpose of engaging in prostitution, either in Queensland or elsewhere,
- is guilty of a crime, and is liable to imprisonment for seven years.

In the case of an offence defined in paragraph (2) or (3), if the person procured is a child, the offender is liable to imprisonment for fourteen years.

A person may be convicted of an offence defined in this section upon the uncorroborated testimony of one witness, but the Court shall warn the jury of the danger of acting on such testimony unless they find that it is corroborated in some material particular by other evidence implicating that person.”

16. Amendment of s. 218. Section 218 of *The Criminal Code* is amended by omitting the final paragraph and substituting the following paragraph:—

“A person may be convicted of an offence defined in this section upon the uncorroborated testimony of one witness, but the Court shall warn the jury of the danger of acting on such testimony unless they find that it is corroborated in some material particular by other evidence implicating that person.”

17. Repeal of and new s. 219 and heading. *The Criminal Code* is amended by repealing section 219 and the heading immediately preceding and substituting the following heading and section:—

“Taking child under sixteen for immoral purposes

219. Any person who takes or entices away, or detains a child who is under the age of sixteen years and is not the spouse of that person for the purpose of any person, whether a particular person or not, doing an act in relation to the child (referred to in this section as a “proscribed act”) defined to constitute an offence in section 208 (1), 208 (3), 210, 211 or 215 is guilty of a crime.

If the child is of or above the age of twelve years, the offender is liable to imprisonment for five years.

If the child is under the age of twelve years, the offender is liable to imprisonment—

(a) for life, where the proscribed act is one defined to constitute an offence in section 208 (1), 208 (3) or 215;

or

(b) for ten years in any other case.

Where the proscribed act is one defined to constitute an offence in section 210 or 215 and the child is of or above the age of twelve years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of sixteen years.”.

18. Repeal of s. 220 and heading. *The Criminal Code* is amended by repealing section 220 and the heading immediately preceding.

19. Amendment of s. 222. Section 222 of *The Criminal Code* is amended by omitting from the second paragraph the word “seven” and substituting the word “ten”.

20. Amendment of s. 228. Section 228 of *The Criminal Code* is amended by inserting before the paragraph commencing with the words “It is a defence” the following paragraphs:—

“In the case of an offence defined in paragraph (1) or (2), if the matter or thing is obscene or tends to corrupt morals by reason of depicting a person who is or is represented to be—

(a) a child under the age of sixteen years, the offender is liable to imprisonment for five years;

or

(b) a child under the age of twelve years, the offender is liable to imprisonment for ten years.

In the case of an offence defined in paragraph (3), if a person appearing in the indecent show or performance is or is represented to be—

(c) a child under the age of sixteen years, the offender is liable to imprisonment for five years;

or

(d) a child under the age of twelve years, the offender is liable to imprisonment for ten years.”.

21. Amendment of s. 229. Section 229 of *The Criminal Code* is amended by—

(a) omitting the words “woman or girl”, where twice occurring, and substituting the word “person” in each case;

(b) omitting the word “she” and substituting the words “the person”.

22. Amendment of s. 229A. Section 229A of *The Criminal Code* is amended by omitting subsections (1) and (2) and substituting the following subsections:—

“(1) Where a person is charged before two justices with an offence defined in section 210 or 215 committed in respect of a child who was of or above the age of fourteen years at the time of the alleged commission of the offence and was not at that time in the care of the accused person, then, if the accused person admits that he is guilty of the offence, the justices may deal with the charge summarily.

The offender is liable upon summary conviction to a fine of 100 penalty units or imprisonment for two years.

(2) A prosecution for an offence defined in subsection (1) in order to the summary conviction of an accused person must be begun within two years after the offence is committed.”.

23. New s. 229B and heading. *The Criminal Code* is amended by inserting after section 229A the following heading and section:—

“Maintaining a sexual relationship with a child under sixteen

229B. (1) Any adult who maintains an unlawful relationship of a sexual nature with a child under the age of sixteen years is guilty of a crime and is liable to imprisonment for seven years.

A person shall not be convicted of the offence defined in the preceding paragraph unless it is shown that the offender, as an adult, has, during the period in which it is alleged that he maintained the relationship in issue with the child, done an act defined to constitute an offence of a sexual nature in relation to the child, other than an offence defined in paragraph (5) or (6) of section 210, on three or more occasions and evidence of the doing of any such act shall be admissible and probative of the maintenance of the relationship notwithstanding that the evidence does not disclose the dates or the exact circumstances of those occasions.

If in the course of the relationship of a sexual nature the offender has committed an offence of a sexual nature for which he is liable to imprisonment for five years or more but less than fourteen years, the offender is liable in respect of maintaining the relationship to imprisonment for fourteen years.

If in the course of the relationship of a sexual nature the offender has committed an offence of a sexual nature for which he is liable to imprisonment for fourteen years or more, the offender is liable in respect of maintaining the relationship to imprisonment for life.

If the offence defined in the first paragraph is alleged to have been committed in respect of a child of or above the age of twelve years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of sixteen years at the commencement of the period in which he maintained the relationship in issue.

(2) A person may be charged in one indictment with an offence defined in subsection (1) and with any other offence of a sexual nature alleged to have been committed by him in the course of the relationship in issue in the first-mentioned offence and he may be convicted of and punished for any or all of the offences so charged:

Provided that where the offender is sentenced to a term of imprisonment for the first-mentioned offence and a term of imprisonment for the other offence an order shall not be made directing that one of those sentences take effect from the expiration of deprivation of liberty for the other.

(3) A prosecution for an offence defined in subsection (1) shall not be commenced without the consent of a Crown Law Officer.”.

24. Amendment of s. 245. Section 245 of *The Criminal Code* is amended by omitting the final paragraph.

25. Repeal of and new s. 259. *The Criminal Code* is amended by repealing section 259 and substituting the following section:—

“(1) Where a person is in lawful custody upon a charge of committing an offence—

(a) a police officer of the same sex as the person in custody;

or

(b) a legally qualified medical practitioner acting at the direction of a police officer,

may search the person of the person in custody and take from his person anything, including clothing, that the police officer believes on reasonable grounds may afford evidence as to the commission of the offence.

(2) Where clothing is taken from a person pursuant to subsection (1), the person shall be left with or provided with such clothing as is reasonably appropriate.

(3) When a person is in lawful custody upon a charge of committing an offence—

(a) a legally qualified medical practitioner, acting in good faith and at the request of a police officer, or a person acting in good faith in aid of and at the direction of that medical practitioner, may do such of the following as may afford evidence as to the commission of the offence:—

(i) examine the person of the person in custody, including the orifices of his body;

(ii) take samples of his blood, saliva or hair;

(iii) require him to provide a sample of his urine;

(iv) collect from his person, including the orifices of his body, any substance or thing if collecting the

substance or thing would be unlikely to cause bodily harm to that person if he co-operates therewith;

- (b) a legally qualified dentist, acting in good faith and at the request of a police officer, or a person acting in good faith in aid of and at the direction of that dentist, may do such of the following as may afford evidence as to the commission of the offence:—
 - (i) examine the mouth of the person in custody;
 - (ii) take samples of his saliva;
 - (iii) take dental impressions from him.

In this section the expression “prescribed act” means any act referred to in paragraph (a) or (b) including the making of a requisition pursuant to subparagraph (iii) of paragraph (a).

(4) A person shall not do a prescribed act unless—

- (a) the person in custody consents in writing to the doing of the act and, where the person is a child, consents in writing in the presence of a parent or guardian or an adult who is either a friend of the person in custody or does not have an interest in the matter in respect of which the charge is made;
- or

- (b) a stipendiary magistrate has, upon application made to him in that behalf, given his approval pursuant to this section to the doing of the act,

and a police officer has informed the person in custody of his right to have present while the act is being done two persons of his choice.

(5) Subject to subsection (8) an application referred to in subsection (4) (b) shall be made by a police officer upon oath and in the prescribed form.

(6) A stipendiary magistrate shall not approve the doing of a prescribed act unless he is satisfied—

- (a) that the person to whom the act is to be done is in lawful custody upon a charge of committing an offence;
- (b) that there are reasonable grounds for believing that the doing of the act may afford evidence as to the commission of that offence;

and

- (c) that the person in custody has been informed of his right to have present while the act is being done two persons of his choice.

(7) A stipendiary magistrate shall give his decision in the prescribed form.

(8) Where it is not practicable to make an application in the manner provided in subsection (5) the application may be

made and the decision of the stipendiary magistrate given as follows:—

- (a) the application may be made and any information concerning it given in whole or in part by telephone, telex, radio or other similar facility;
 - (b) the application shall be made upon oath which may be administered by means of any facility mentioned in paragraph (a);
 - (c) the applicant shall inform the stipendiary magistrate of his name, rank and number (if any) in the Police Force and the stipendiary magistrate may thereupon assume, without further inquiry, that the applicant is a police officer;
 - (d) the stipendiary magistrate may grant approval if satisfied of the matters mentioned in paragraphs (a), (b) and (c) of subsection (6);
 - (e) as soon as is practicable after an application is made pursuant to this subsection the applicant shall forward to the stipendiary magistrate a duly completed application in the prescribed form verifying the information given in support of the application made pursuant to this subsection.
- (9) Where a stipendiary magistrate, upon application made pursuant to subsection (8), grants approval to do a prescribed act and it is not practicable for the applicant to obtain that approval in the prescribed form before the act is done—
- (a) the applicant shall, as directed by the stipendiary magistrate, complete a document in substantially the same terms as the prescribed form duly completed by the stipendiary magistrate pursuant to subsection (7);
 - (b) the applicant shall place his signature on the document and note on it that he has signed on behalf of the stipendiary magistrate and endorse on the back his name, rank and number (if any) in the Police Force; and
 - (c) the stipendiary magistrate shall, within 7 days after giving his approval, send the prescribed form containing his decision to the Commissioner of Police unless otherwise requested by the applicant in which case he shall send a copy of the form to the Commissioner of Police.
- (10) When a stipendiary magistrate has approved the doing of a prescribed act, the applicant or another police officer shall, before the act is done, give to the person in custody—
- (a) a copy of the document containing the stipendiary magistrate's decision;

or

- (b) in a case referred to in subsection (9), a copy of the document completed by the applicant pursuant to that subsection,

and shall inform the person in custody of the contents of the document.

(11) Where the person in custody informs a police officer of the name of any person he desires to be present while a prescribed act is being done, the police officer shall immediately take such steps as are reasonable to advise the person thereof and, if that person indicates he is willing and able to attend within a reasonable period, the prescribed act shall not be done until the expiration of that period.

(12) Where a person whose presence is desired by a person in custody attends upon him, the person in custody shall be responsible for the cost of attendance.

(13) The legality of the detention in custody of a person or of the doing of a prescribed act shall not be affected by the absence while the act is being done of the person desired to be present by the person in custody if—

- (a) such steps as are reasonable have been taken to contact the person;

and

- (b) where the person has indicated that he is willing and able to attend, he has failed to attend within a reasonable period.

(14) A prescribed act shall not be done to a person in custody within view of a person of the opposite sex, other than a legally qualified medical practitioner, if the presence of that person would in the circumstances be likely to embarrass the person in custody.

(15) A person who, pursuant to this section, takes or collects any sample or other thing from the person of a person in custody shall, where practicable, provide the person in custody with a portion of that sample or thing or with an equivalent sample or thing for his own purposes.

(16) The results of any test conducted with respect to any sample or other thing taken or collected pursuant to this section from the person of a person in custody shall be furnished to that person or to a person nominated by him as soon as is practicable after those results are available to any police officer.

(17) A person authorized by or pursuant to this section to carry out a search or do any act may use such force as is reasonable for that purpose.”.

26. Amendment of s. 286. Section 286 of *The Criminal Code* is amended by omitting the word “fourteen” and substituting the word “sixteen”.

27. Amendment of s. 328A. Section 328A of *The Criminal Code* is amended by—

(a) omitting the first four paragraphs and substituting the following paragraphs:—

“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 200 penalty units or to imprisonment for three 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 40 penalty units or to imprisonment for twelve months or to both such fine and imprisonment.

If the offender—

- (a) at the time of committing the offence is adversely affected by an intoxicating substance;
- or
- (b) has been previously convicted either upon indictment or summarily under this section,

he is liable, upon conviction upon indictment, to a fine of 400 penalty units or to imprisonment for five years or to both such fine and imprisonment or, upon summary conviction, to a fine of 100 penalty units or to imprisonment for two years or to both such fine and imprisonment.

If the offender has been—

- (c) previously convicted either upon indictment or summarily of an offence against this section committed while he was adversely affected by an intoxicating substance;
- or
- (d) twice previously convicted either upon indictment or summarily (or once upon indictment and once summarily) of the same prescribed offence or different prescribed offences,

the Court or justices shall, upon conviction, impose as the whole or part of the punishment, imprisonment.

If the offender causes the death of or grievous bodily harm to another person he is liable upon conviction upon indictment to imprisonment for seven years unless at the time of committing the offence the offender is adversely affected by an intoxicating substance in which case he is liable upon conviction upon indictment—

- (e) to imprisonment for ten years;
- or
- (f) if the intoxicating substance is alcohol and the concentration of alcohol in his blood at that time equals or exceeds 150 milligrams of alcohol per 100 millilitres of blood, to imprisonment for fourteen years.

The term “prescribed offence” means an offence against this section or any other offence (prosecuted upon indictment) in connection with or arising out of the driving of a motor vehicle in such a manner as to cause or be likely to cause injury to any person or an offence defined in subsection (1) or (2) of section 16 of the *Traffic Act 1949-1985*.”;

(b) in the paragraph commencing “The term “drives a motor vehicle”, adding after the words “blood at the time” the words “and the presence of any other intoxicating substance in the driver’s body at the time”.

28. Repeal of and new s. 337 and heading. *The Criminal Code* is amended by repealing section 337 and the heading immediately preceding and substituting the following heading and section:—

“Indecent assaults

337. Any person who—

- (1) unlawfully and indecently assaults another;
- (2) procures another person, without the consent of that other person or with consent if it is obtained by force or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false and fraudulent representations as to the nature of the act of gross indecency or by personating the spouse of that other person—
 - (a) to commit an act of gross indecency;
 - or
 - (b) to witness an act of gross indecency by the offender or any other person,

is guilty of a crime, and is liable to imprisonment for seven years.

In the case of an offence defined in paragraph (1) or (2) (a), if the indecent assault or the act of gross indecency consists (wholly or in part)—

- (i) in an act of carnal knowledge against the order of nature, the offender is liable to imprisonment for life;
- (ii) in penetrating the vagina or anus with any object or with any part of the body other than the penis or in bringing into contact any part of the mouth and the anus or any part of the genitalia, the offender is liable to imprisonment for fourteen years.

The term “spouse” includes a person living with the person procured as his or her spouse though not lawfully married to him or her.”.

29. Amendment of s. 344. Section 344 of *The Criminal Code* is amended by—

- (a) omitting from the first paragraph the expression “or 343A”;
- (b) omitting from subparagraph (b) the word “seventeen” and substituting the word “sixteen”;
- (c) omitting from the second-last paragraph the word “seventeen” and substituting the word “sixteen”.

30. Repeal of s. 345 and heading. *The Criminal Code* is amended by repealing section 345 and the heading immediately preceding.

31. Repeal of and new s. 347. *The Criminal Code* is amended by repealing section 347 and substituting the following section:—

“347. Any person who has carnal knowledge of a female without her consent or with her consent if it is obtained by force, or by means of threats or intimidation of any kind, or by fear of bodily harm, or by means of false and fraudulent representations as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of a crime, which is called rape.

In the preceding paragraph “married woman” includes a woman living with a man as his wife though not lawfully married to him and “husband” has a corresponding meaning.”

32. Repeal of ss. 350 and 352 and headings. *The Criminal Code* is amended by repealing sections 350 and 352 and the headings immediately preceding those sections.

33. Amendment of s.354A. Section 354A of *The Criminal Code* is amended by omitting from the third paragraph the words “set at liberty in any manner whatsoever” and substituting the words “unconditionally set at liberty”.

34. Amendment of s. 363. Section 363 of *The Criminal Code* is amended by omitting from the first paragraph the word “fourteen” and substituting the word “sixteen”.

35. New s. 363A and heading. *The Criminal Code* is amended by inserting after section 363 the following heading and section:—

“Abduction of child under sixteen

363A. Any person who unlawfully takes an unmarried child under the age of sixteen years out of the custody or protection of the child’s father or mother, or other person having the lawful care or charge of the child, and against the will of the father, mother or other person, is guilty of a misdemeanour, and is liable to imprisonment for two years.

It is immaterial that the offender believed the child to be of or above the age of sixteen years.

It is immaterial that the child was taken with the consent of or at the suggestion of the child.”

36. Amendment of s. 364. Section 364 of *The Criminal Code* is amended by inserting after the words “being the parent” the words “, guardian, or other person who has the lawful care or charge,”.

37. Amendment of s. 391. Section 391 of *The Criminal Code* is amended by inserting after subsection (2) the following subsection:—

“(2A) A person who has taken possession of anything capable of being stolen in such circumstances that the thing thereupon is not identifiable is deemed to have taken or converted the thing fraudulently notwithstanding that the property in the thing has passed to him if, at the time he transports the thing away, he has not discharged or made arrangements with the owner or previous owner of the thing for discharging his indebtedness in respect of the thing.

The presumption provided for by this subsection is rebuttable.”.

38. Amendment of s. 398. *The Criminal Code* is amended in section 398 by—

(a) omitting paragraph IX and the heading immediately preceding and substituting the following heading and paragraph:—

“*Stealing Property of Value exceeding \$5000*

IX. If the value of the thing stolen exceeds \$5000, the offender is liable to imprisonment for seven years.”;

(b) omitting from paragraph X the words “twenty pounds” and substituting the expression “\$500”.

39. Amendment of s. 408c. Section 408c of *The Criminal Code* is amended in subsection (2) by omitting from paragraph (d) the expression “\$2,000” and substituting the expression “\$5 000”.

40. Amendment of s. 417. Section 417 of *The Criminal Code* is amended by omitting the words “, with or without solitary confinement”.

41. Amendment of s. 443. Section 443 of *The Criminal Code* is amended by—

(a) in the general words following subparagraph (j), omitting all words from and including the words “if the age” to and including the words “twelve years, and”;

(b) in subparagraph (1), omitting the words “five hundred dollars” and substituting the expression “\$2 500”;

(c) omitting subparagraph (2) and the word “or” occurring immediately after that subparagraph;

(d) in the paragraph commencing "Save as is hereinafter", omitting the words "one thousand dollars" and substituting the words "100 penalty units".

42. Amendment of s. 444. Section 444 of *The Criminal Code* is amended by—

(a) omitting from the second paragraph all words from and including the words " , or, in a case" to and including the words "his parent or guardian,";

(b) omitting all words from and including the words "(1) If the age" to the end of the section and substituting the following words:—

"If for any reason the justices are of opinion that the charge is a fit subject for prosecution by indictment, they shall abstain from dealing with the case summarily."

43. Amendment of s. 450H. Section 450H of *The Criminal Code* is amended in subsection (1) by omitting the words "or section 448A" and substituting the words " , section 448A or section 468".

44. Amendment of s. 450I. Section 450I of *The Criminal Code* is amended in subsection (1) by omitting the words "or section 448A" and substituting the words " , section 448A or section 468".

45. Amendment of s. 468 Section 468 of *The Criminal Code* is amended by adding at the end of the section the following paragraph:—

"If the offender (whether guilty of a crime or a misdemeanour) kills or maims the animal and is sentenced to pay a fine in addition to, or instead of imprisonment, the fine shall be not less than 4 penalty units or, where in respect of the animal in question a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, not less than that value, whichever is the higher amount, for every animal killed or maimed:

Provided that the fine imposed in respect of the offence shall not exceed 500 penalty units."

46. Amendment of s. 480. Section 480 of *The Criminal Code* is amended by—

(a) in the general words following subparagraph (b), omitting all words from and including the words "if the age" to and including the words "twelve years, and";

(b) in subparagraph (1), omitting the words "hve hundred dollars" and substituting the expression "\$2 500";

(c) omitting subparagraph (2) and the word "or" occurring immediately after that subparagraph and substituting the following words:—

"(2) In the case of an offence of wilfully and unlawfully killing or maiming a horse, mare, gelding, ass, mule,

camel, bull, cow, ox, ram, ewe, wether, boar, sow, barrow, deer, buffalo or goat, or the young of any such animal, the value of the animal does not exceed \$5 000; or”;

(d) omitting all words from and including the words “The offender is liable” to the end of the section and substituting the following words:—

“Notwithstanding the provisions of subparagraph (3)—

(i) If it appears that the injury complained of was done in the course of hunting or fishing, or in the pursuit of game, and was not done with an intention to destroy or damage the property injured;

or

(ii) If, in a case of wilfully and unlawfully killing or maiming an animal referred to in subparagraph (2), the value of the animal exceeds \$5 000,

the justices shall not deal with the charge summarily.

The offender is liable upon such summary conviction to imprisonment for two years or to a fine of 100 penalty units.

If the offender is convicted of wilfully and unlawfully killing or maiming an animal referred to in subparagraph (2) and is sentenced to pay a fine in addition to, or instead of, imprisonment, the fine shall be not less than 4 penalty units or, where in respect of the animal a value is determined in accordance with the provisions of the regulations made pursuant to section 450F, not less than that value, whichever is the higher amount, for every animal killed or maimed:

Provided that the fine imposed in respect of the offence shall not exceed 100 penalty units.”.

47. Repeal of and new s. 539. *The Criminal Code* is amended by repealing section 539 and substituting the following section:—

“539. (1) Any person who attempts to procure another—

(a) to do an act or make an omission in Queensland;

or

(b) to do an act or make an omission outside Queensland,

being an act or omission of such a nature that, if the act were done or the omission made, an offence would thereby be committed—

(c) in the case referred to in provision (a), under the laws of Queensland;

or

(d) in the case referred to in provision (b), under the laws in force in the place where the act or omission is proposed to be done or made,

whether by himself or by the other person, is guilty of an offence of the same kind and is liable to the same punishment as if he

had himself attempted to do the same act or make the same omission in Queensland:

Provided that in the case referred to in provision (b), the punishment cannot exceed that which he would have incurred under the laws in force where the act or omission was proposed to be done or made, if he had himself attempted to do the proposed act or make the proposed omission.

(2) Any person who, while out of Queensland, attempts to procure another to do an act or make an omission in Queensland of such a nature that, if he had himself done the act or made the omission in Queensland, he would have been guilty of an offence is guilty of an offence of the same kind and is liable to the same punishment as if he had himself attempted to do the act or make the omission in Queensland.”

48. Amendment of s. 557. Section 557 of *The Criminal Code* is amended by—

(a) renumbering subsection (8) as subsection (9);

(b) inserting after subsection (7) the following subsection:—

“(8) If a person is charged with committing an offence for which he may lawfully be tried in Queensland and it is uncertain where the offence was committed, he may be tried in any jurisdiction within which he is arrested or is in custody.”

49. Amendment of s. 559. Section 559 of *The Criminal Code* is amended by inserting after the second paragraph the following words:—

“An application for a change of the place of trial for an indictable offence shall be granted if based upon the facts—

(a) that the accused person has been committed for trial for another indictable offence at a Court held at any other place or that an indictment has been presented to a Court held at any other place charging the accused person with another offence;
and

(b) that the charge for the offence in respect of which the application is made and the charge for the offence referred to in paragraph (a) could have been joined in the same indictment, had the offences been committed at the same place,

unless good cause is shown for not granting the application.”

50. Repeal of and new s. 578 and heading. *The Criminal Code* is amended by repealing section 578 and the heading immediately preceding and substituting the following heading and section:—

“*Charge of offence of a sexual nature*

578. (1) Upon an indictment charging a person with the crime of rape, he may be convicted of any offence, if established

by the evidence, defined in paragraph (1) of section 210, or in section 215, or in paragraph (1) of section 217, or in section 218 or section 337.

(2) Upon an indictment charging a person with having unlawful carnal knowledge of a girl under the age of sixteen years, he may be convicted of any offence, if established by the evidence, defined in paragraph (1) of section 210, or in paragraph (1) of section 217, or in section 218.

(3) Upon an indictment charging a person with unlawfully and indecently assaulting another, he may be convicted of any offence, if established by the evidence, defined in paragraph (1) of section 210.

(4) Upon an indictment charging a person with incest or an attempt to commit incest, he may be convicted of any offence, if established by the evidence, defined in paragraph (1) of section 210.

(5) A person convicted of any offence pursuant to this section may be convicted of that offence with any circumstance of aggravation established by the evidence.”

51. New s. 631A and heading. *The Criminal Code* is amended by inserting after section 631 the following heading and section:—

“Plea of guilty during trial

631A. (1) If, at any time before the jury returns its verdict, the accused person informs the Court that—

(a) he wishes to change his plea to one of guilty of the offence charged in the indictment;

or

(b) he wishes to plead guilty to any other offence of which he might be convicted upon the indictment,

the Court—

(c) in the case referred to in paragraph (a), may direct that the accused person be again called upon in open Court and in the presence of the jury to plead to the indictment, and to say whether he is guilty or not guilty of the offence charged;

or

(d) in the case referred to in paragraph (b), may direct, with the consent of the Crown, that the accused person be called upon in open Court and in the presence of the jury to plead to any other offence of which he might be convicted upon the indictment, and to say whether he is guilty or not guilty of that offence.

(2) If the accused person does not plead guilty to the offence charged in the indictment or, in the circumstances described in

paragraph (d) of subsection (1), to another offence, the trial shall proceed.

(3) If the accused person pleads guilty to the offence charged in the indictment or, in the circumstances described in paragraph (d) of subsection (1), to another offence, the jury shall be discharged from giving their verdict in respect of the offence charged in the indictment.

(4) A plea of guilty to an offence made by the accused person in the circumstances described in this section shall have effect as if made by him when called upon at the beginning of a trial to plead to an indictment charging him with that offence.”.

52. Repeal of and new s. 636 and heading. *The Criminal Code* is amended by repealing section 636 and the heading immediately preceding and substituting the following heading and section:—

“Evidence of blood relationship

636. (1) In this section—

“blood relationship” means the blood relationship existing between a person charged with a prescribed offence and the person in respect of whom or, as the case may be, with whom a prescribed offence is alleged to have been committed;

“prescribed offence” means an offence—

(a) defined in section 222 or 223;

or

(b) defined in section 208, 209, 210 or 216 (2) where it is alleged as a circumstance of aggravation that the offence was committed in respect of a child under the age of sixteen years who is the lineal descendant of the person charged.

(2) On the trial of a person charged with a prescribed offence—

(a) blood relationship is sufficiently proved by proof that the relationship is reputed to exist and it is not necessary to prove that the person charged or the person in respect of whom or with whom the prescribed offence is alleged to have been committed or any person (living or dead) upon whom the blood relationship depends was born in lawful wedlock;

(b) the person charged is, until the contrary is proved, presumed to have had knowledge at the time the prescribed offence is alleged to have been committed of the blood relationship.”.

53. Repeal of and new s. 650. *The Criminal Code* is amended by repealing section 650 and substituting the following section:—

“**650.** If a motion to arrest the judgment is not made or is dismissed, the Court may pass sentence upon the offender

forthwith or make any other order it may make by law instead of passing sentence.

The Court may receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed or order to be made.”.

54. Amendment of s. 668. Section 668 of *The Criminal Code* is amended by omitting from the definition of the term “sentence” the words “with reference to the person convicted or his property” and substituting the words “of a person with reference to his person or his property whether or not he is adversely affected thereby and whether or not the order is made instead of passing sentence”.

55. Amendment of s. 669A. Section 669A of *The Criminal Code* is amended by omitting subsection (2) and substituting the following subsections:—

“(2) The Attorney-General may refer any point of law that has arisen at the trial upon indictment of a person in relation to any charge contained therein to the Court for its consideration and opinion thereon if—

(a) the person has been acquitted of the charge;

or

(b) the person has been discharged in respect of that charge after counsel for the Crown, as a result of a determination of the court of trial on that point of law, has duly informed the court that the Crown will not further proceed upon the indictment in relation to that charge.

(3) Notice of the reference shall be given to the person acquitted or, as the case may be, discharged.

(4) Upon the reference the Court shall hear argument—

(a) by the Attorney-General or by counsel on his behalf;

and

(b) if he so desires, by the person acquitted or, as the case may be, discharged or by counsel on his behalf,

and thereupon shall consider the point referred and furnish to the Attorney-General its opinion thereon.

(5) Where the reference relates to a trial in which the person charged has been acquitted, the reference shall not affect the trial of nor the acquittal of the person.”.

56. Amendment of s. 685A. Section 685A of *The Criminal Code* is amended by—

(a) in subsection (1), omitting paragraphs (a) and (b) and substituting the following words:—

“(a) make restitution of property in relation to which the offence was committed or of property taken in the course of or in connection with the commission of the offence;

(b) pay compensation to any person for loss occasioned in respect of property—

(i) in relation to which the offence was committed;

or

(ii) in the course of or in connection with the commission of the offence;”;

(b) in subsection (5), omitting all words from and including the words “In an order” to and including the words “comply with the order.” and substituting the following words:—

“In an order made pursuant to subsection (3) the Court or justices may give such directions as it or they may think fit as to the enforcement of the sentence of imprisonment and shall, in every case, direct that in the event that the offender fails to comply with the order he shall appear at some future sittings of the Court or justices or a Court or justices of like jurisdiction unless sooner called upon (by notice in the prescribed form) to show cause why the sentence of imprisonment should not be executed.”.

57. Amendment of s. 707. Section 707 of *The Criminal Code* is amended by—

(a) in subsection (1)—

(i) omitting from the first paragraph the words “The Judges of the Supreme Court may make General Rules” and substituting the words “The power of the Judges of the Supreme Court to make rules of practice includes power to make rules”;

(ii) omitting from the second paragraph the words “General Rules” and substituting the word “rules”;

(b) in subsection (2), omitting the words “General Rules” and substituting the word “rules”.

58. Amendment of Index. The Index to *The Criminal Code* is amended as provided in the following Table:—

TABLE

Reference to provision of Code	Amendment
section 13	insert after "Offences" the words "enabled, aided,"
section 210	omit the reference and substitute the reference "210. Indecent treatment of children under sixteen"
section 212	omit the reference
section 213	omit the reference and substitute the reference "213. Householder permitting abuse of children on his premises"
section 214	omit the reference
section 215	omit the reference and substitute the reference "215. Carnal knowledge of girls under sixteen"
section 216	omit the reference and substitute the reference "216. Abuse of intellectually impaired persons"
section 219	omit the reference and substitute the reference "219. Taking child under sixteen for immoral purposes"
section 220	omit the reference
section 229B	insert after the reference to section 229A the reference "229B. Maintaining a sexual relationship with a child under sixteen"
section 337	omit the reference and substitute the reference "337. Indecent assaults"
section 345	omit the reference
section 350	omit the reference
section 352	omit the reference
section 363A	insert after the reference to section 363 the reference "363A. Abduction of child under sixteen"
section 398 IX	omit "\$2,000" and substitute "\$5 000"

TABLE—continued

Reference to provision of Code	Amendment
section 402	omit the reference
section 404	omit the reference
CHAPTER XLIV	omit “PUNISHABLE ON SUMMARY CONVICTION” and substitute “RELATING TO ANIMALS”
CHAPTER DIVISION I	insert after the reference to CHAPTER XLIV the reference “CHAPTER DIVISION I—INDICTABLE OFFENCES”
sections 444A, 444B	insert after the reference to CHAPTER DIVISION I the following references:— “444A. Killing animals with intent to steal 444B. Using registered brands with criminal intention”
CHAPTER DIVISION II	insert after the reference to section 444B the reference “CHAPTER DIVISION II—OFFENCES RELATING TO ANIMALS PUNISHABLE ON SUMMARY CONVICTION”
CHAPTER DIVISION III	insert after the reference to section 448A the reference “CHAPTER DIVISION III—PROCEDURAL AND AUXILIARY PROVISIONS”
sections 450A, 450B, 450C	insert after the reference to section 450 the following references:— “450A. Arrest without warrant 450B. Warrant in first instance 450C. Effect of civil proceedings”
CHAPTER XLIVA	insert after the reference to section 450C the reference “CHAPTER XLIVA SPECIAL PROVISIONS IN RESPECT OF OFFENCES RELATING TO ANIMALS”
sections 450D—450I	insert after the reference to CHAPTER XLIVA the following references:— “450D. Meaning of term “animal” 450E. Animals not tendered in certain cases 450F. Animal valuers and valuations 450G. Identification of animals and return to owners prior to tender in certain cases

TABLE—continued

Reference to provision of Code	Amendment
	450H. Licence disqualification where commission of offence facilitated by licence or use of vehicle
	450I. Forfeiture in cases of conviction for offences under specified sections”
CHAPTER XLIVB	insert after the reference to section 450I the following reference:— “CHAPTER XLIVB OTHER OFFENCES ANALOGOUS TO STEALING PUNISHABLE ON SUMMARY CONVICTION”
section 578	omit the reference and substitute the reference “578. Charge of offence of a sexual nature”
section 588A	insert after the reference to section 588 the reference “588A. Charges of stealing certain animals and of killing certain animals with intent to steal”
section 631A	insert after the reference to section 631 the reference “631A. Plea of guilty during trial”
section 636	omit the reference and substitute the reference “636. Evidence of blood relationship”
section 651	omit the reference and substitute the reference “651. Outstanding charges may be taken into account in passing sentence”
section 671K	omit the reference and substitute the reference “671K. Record of trial proceedings”
section 685B	insert after the reference to section 685A the reference “685B. Orders for delivery of certain property”

PART III—AMENDMENT OF THE EVIDENCE ACT

59. Citation. (1) In this Part the *Evidence Act 1977-1986* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Evidence Act 1977-1989*.

60. Amendment of s. 2. Arrangement of Act. Section 2 of the Principal Act is amended by—

(a) omitting the expression “9”, occurring after the words “*Division 1—Who may testify, ss.6—*”, and substituting the expression “9A”;

(b) inserting after the expression “ss.15-21;” the following words:—
“*Division 4—Evidence of special witnesses, s. 21A;*”.

61. Amendment of s. 9. Evidence of children. Section 9 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(1) Where in any proceeding a child called as a witness does not in the opinion of the court understand the nature of an oath, the court—

(a) shall explain to the child the duty of speaking the truth;
and

(b) whether or not the child understands that duty, shall receive the evidence of the child though not given on oath unless satisfied that the child does not have sufficient intelligence to give reliable evidence.”;

(b) omitting from subsection (2) all words from and including the words “but in a trial” to and including the words “implicating that person”;

(c) omitting subsection (3) and substituting the following subsection:—

“(3) The fact that the evidence of a child in any proceeding is not given on oath shall not of itself diminish the probative value of the evidence.”;

(d) omitting subsection (6).

62. New s. 9A. The Principal Act is amended by inserting after section 9 the following section:—

“**9A. Expert evidence of ability of child under 12 years to give reliable evidence.** Where in any proceeding—

(a) a court is determining whether a child under the age of 12 years has sufficient intelligence to give reliable evidence;
or

(b) the evidence of a child under the age of 12 years is admitted,

expert evidence is admissible relating to the level of intelligence of the child including his powers of perception, memory and expression or relating to any other matter relevant to his ability to give reliable evidence.”.

63. New Division 4 of Part II. The Principal Act is amended by inserting after section 21 the following heading and section:—

“Division 4—Evidence of special witnesses

21A. Evidence of special witnesses. (1) In this section, “special witness” means—

- (a) a child under the age of 12 years;
- or
- (b) a person who, in the court’s opinion—
 - (i) would, as a result of intellectual impairment or cultural differences, be likely to be disadvantaged as a witness;
 - (ii) would be likely to suffer severe emotional trauma;
 - or
 - (iii) would be likely to be so intimidated as to be disadvantaged as a witness,
 if required to give evidence in accordance with the usual rules and practice of the court.

A party to a proceeding or, in a criminal proceeding, the person charged may be a special witness.

(2) Where a special witness is to give or is giving evidence in any proceeding, the court may, of its own motion or upon application made by a party to the proceeding, make one or more of the following orders:—

- (a) in the case of a criminal proceeding, that the person charged be excluded from the room in which the court is sitting or be obscured from the view of the special witness while the special witness is giving evidence or is required to appear in court for any other purpose;
- (b) that, while the special witness is giving evidence, all persons other than those specified by the court be excluded from the room in which it is sitting;
- (c) that the special witness give evidence in a room—
 - (i) other than that in which the court is sitting;
 - and
 - (ii) from which all persons other than those specified by the court are excluded;
- (d) that a person approved by the court be present while the special witness is giving evidence or is required

to appear in court for any other purpose in order to provide emotional support to the special witness;

- (e) that a videotape of the evidence of the special witness or any portion of it be made under such conditions as are specified in the order and that the videotaped evidence be viewed and heard in the proceeding instead of the direct testimony of the special witness.

(3) An order shall not be made pursuant to subsection (2) if it appears to the court that the making of the order would unfairly prejudice any party to the proceeding or, in a criminal proceeding, the person charged or the prosecution.

(4) Subject to any order made pursuant to subsection (5), in any criminal proceeding an order shall not be made pursuant to paragraph (a), (b) or (c) of subsection (2) excluding the person charged from the room in which a special witness is giving evidence unless provision is made, by means of an electronic device or otherwise, for that person to see and hear the special witness while the special witness is giving evidence.

(5) Where the making of a videotape of the evidence of a special witness is ordered pursuant to paragraph (e) of subsection (2), the court may further order that all persons other than those specified by the court be excluded from the room in which the special witness is giving that evidence:

Provided that any person entitled in the proceeding to examine or cross-examine the special witness shall be given reasonable opportunity to view any portion of the videotape of the evidence relevant to the conduct of that examination or cross-examination.

(6) A videotape, made under this section, of any portion of the evidence of a special witness shall be admissible as if the evidence were given orally in the proceeding in accordance with the usual rules and practice of the court.

(7) The room in which a special witness gives evidence pursuant to an order made pursuant to paragraph (c) of subsection (2) or the room occupied by a special witness while his evidence is being videotaped shall be deemed to be part of the court in which the proceeding is being held.

(8) Rules of Court may be made for any court—

- (a) regulating the practice and procedure in relation to the making of any determination or order referred to in this section;
- (b) in relation to the manner in which any order made under this section is to be carried out or in relation to any other matter incidental to the carrying out of any such order.

Until such Rules of Court are made or to the extent that they do not apply, a court may, in any particular case, give directions concerning any matter referred to in paragraph (a) or

(b) and those directions shall, according to their tenor, have the force and effect of Rules of Court.”

64. **New s. 93A.** The Principal Act is amended by inserting after section 93 the following section:—

“93A. Statement made before proceeding by child under 12 years. (1) In any proceeding where direct oral evidence of a fact would be admissible, any statement tending to establish that fact, contained in a document (within the meaning of section 5), shall, subject to this Part, be admissible as evidence of that fact if—

(a) the maker of the statement was a child under the age of 12 years at the time of making the statement and had personal knowledge of the matters dealt with by the statement;

(b) the statement was made soon after the occurrence of the fact or was made to a person investigating the matter to which the proceeding relates before or soon after it becomes apparent to the person that the child is a potential witness in any proceeding;

and

(c) the child is available to give evidence in the proceeding.

(2) Where a statement made by a child is admissible as evidence of a fact pursuant to subsection (1), a statement made to the child by any other person—

(a) that is also contained in the document containing the statement of the child;

and

(b) in response to which the statement of the child was made,

shall, subject to this Part, be admissible as evidence if that other person is available to give evidence.

(3) Where the statement of a person is admitted as evidence in any proceeding pursuant to subsection (1) or (2), the party tendering the statement shall, if required to do so by any other party to the proceeding, call as a witness the person whose statement is so admitted and the person who recorded the statement.

In the application of the preceding paragraph to a criminal proceeding, the term “party” means the prosecution or the person charged in the proceeding.”

65. Amendment of s. 94. Admissibility of evidence concerning credibility of persons responsible for statement. Section 94 of the Principal Act is amended—

(a) in subsection (1), by omitting the expression “or 93” and substituting the expression “, 93 or 93A”;

(b) in subsection (2), by omitting the expression “or 93” and substituting the expression “, 93 or 93A”.

66. Amendment of s. 103. Provisions of Part are alternative. The Principal Act is amended by inserting after the expression “93,” the expression “93A,”.

67. Amendment of Second Schedule. The Second Schedule to the Principal Act is amended by—

(a) omitting the expressions “212, 214, 215, 216, 222, 223” and substituting the expressions “215, 216, 219, 222, 223, 229B”;

(b) omitting the expression “, 350”.

PART IV—AMENDMENT OF THE CRIMINAL LAW AMENDMENT ACT OF 1945

68. Citation. (1) In this Part *The Criminal Law Amendment Act of 1945* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Criminal Law Amendment Act 1945-1989*.

69. Amendment of s. 18. Detention of Persons incapable of Controlling Sexual Instincts. Section 18 of the Principal Act is amended by—

(a) omitting from subsection (1) the word “seventeen” and substituting the word “sixteen”;

(b) omitting from subsection (4) the word “seventeen” and substituting the word “sixteen”;

(c) omitting from subsection (11) the word “seventeen” and substituting the word “sixteen”.

70. New ss. 19, 20 and 21. The Principal Act is amended by adding after section 18 the following sections:—

“19. Sexual offender to report address. (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 sixteen 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 authorized in that behalf by a Crown Law Officer,

may order that the offender—

(c) report his 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 sixteen years.

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

(a) notice of the application shall be served upon the offender;

and

(b) the offender or his 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 paragraph (a) of subsection (3) may be served in the same manner as a summons may be served under the *Justices Act 1886-1988*.

(5) Where a person is convicted on indictment of an offence of a sexual 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 1986-1987* 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 paragraph (c) of subsection (1) shall be made by the offender personally.

(7) A report referred to in paragraph (d) of subsection (1) shall be made by the offender personally or by letter signed by him 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 twenty penalty units or to imprisonment for six months or to both of those penalties.

(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 Chapter LXVII of *The Criminal Code* 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 Chapter LXVII of *The Criminal Code* as if the refusal were a sentence pronounced upon the conviction of the person for an indictable offence.

20. Disclosure of offences of sexual nature. (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 he 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 ten 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 paragraph (a) or (b) of subsection (1).

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

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

PART V—AMENDMENT OF THE APPEAL COSTS FUND ACT

71. Citation. (1) In this Part the *Appeal Costs Fund Act 1973-1981* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Appeal Costs Fund Act 1973-1989*.

72. New s. 22A. The Principal Act is amended by inserting after section 22 the following section:—

“22A. Entitlement where point of law referred under s. 669A (2) of Code. Where pursuant to paragraph (b) of section 669A (2) of *The Criminal Code* a point of law is referred to the Court of Criminal Appeal for its consideration and opinion thereon, the accused in the trial at which the point of law arose shall be entitled to be paid from the Fund such costs as the Board considers have been reasonably incurred by him or on his behalf by reason of—

- (a) the proceedings before the Court of Criminal Appeal; and
- (b) where a new trial is had as a consequence of the opinion given by the Court of Criminal Appeal on the point of law, the trial at which the point of law arose.”.

PART VI—AMENDMENT OF THE REGULATORY OFFENCES ACT

73. Citation. (1) In this Part the *Regulatory Offences Act 1985* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Regulatory Offences Act 1985-1989*.

74. Amendment of s. 4. Interpretation. Section 4 of the Principal Act is amended by inserting before the definition “restaurant” the following definition:—

““goods” includes any substance in liquid or gaseous form;”.

75. Repeal of and new s. 5. The Principal Act is amended by repealing section 5 and substituting the following section:—

“5. Unauthorized dealing with shop goods. (1) Any person who, with respect to goods in a shop of a value of \$150 or less—

- (a) consumes them without the consent, express or implied, of the person in lawful possession of them;
- (b) deliberately alters, removes, defaces or otherwise renders indistinguishable a price shown on them, without the consent, express or implied, of the person in lawful possession of them;

or

- (c) whether or not the property in the goods has passed to him, takes them away without discharging, or attempting honestly, or making proper arrangements, to discharge his lawful indebtedness therefor,

is guilty of a regulatory offence and, subject to section 9, is liable to a fine of 6 penalty units.

(2) It is a defence to a charge of an offence defined in subsection (1) (c) to prove that the taking away of the goods was not dishonest.”.

PART VII—AMENDMENT OF THE JUSTICES ACT

76. Citation. (1) In this Part the *Justices Act 1886-1988* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Justices Act 1886-1989*.

77. Repeal of s. 71A. The Principal Act is amended by repealing section 71A.

PART VIII—AMENDMENT OF THE CHILDREN'S SERVICES ACT

78. Citation. (1) In this Part the *Children's Services Act 1965-1988* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Children's Services Act 1965-1989*.

79. Amendment of s. 27. Hearing or examination concerning child not public. Section 27 of the Principal Act is amended by—

(a) inserting after the note to the section the expression “(1)”;

(b) omitting the word “Notwithstanding” and substituting the words “Subject to subsection (2) but notwithstanding”;

(c) omitting paragraph (a) and substituting the following paragraph:—

“(a) the complainant and, where that person is a complainant within the meaning of the *Criminal Law (Sexual Offences) Act 1978-1988*, any person whose presence will provide emotional support to the complainant;”;

(d) adding at the end of paragraph (e) the words “unless, in the court's opinion, the presence of that person would not be in the child's interests”;

(e) adding at the end of the section the following subsection:—

“(2) The provisions of subsection (1) apply subject to any order made by the court or justice pursuant to section 21A of the *Evidence Act 1977-1988*—

(a) excluding any person (including a defendant) from the place in which the court is sitting;

or

(b) permitting any person to be present, while a special witness, within the meaning of that section, is giving evidence.”.

80. Amendment of s. 63. Order on children convicted of serious offences. Section 63 of the Principal Act is amended in subsection (1) by—

- (a) in paragraph (a) omitting the expression “212,”;
- (b) in paragraph (c) omitting the expression “214.”

81. Repeal of s. 138 and new ss. 138 and 138A. The Principal Act is amended by repealing section 138 and substituting the following sections:—

“138. Restrictions on reporting proceeding concerning child.

(1) Where, in a proceeding before any court, or before a justice taking an examination of witnesses in relation to an indictable offence, the person against or in respect of whom the proceeding is taken is a child, a report of the proceeding or any part of the proceeding shall not reveal any prescribed matter relating to the child unless the court or justice expressly permits the inclusion of that matter in the report.

In this subsection “child” includes a person charged in a proceeding before any court with an offence or a person who is the subject of an examination of witnesses in relation to any indictable offence where the person was a child at the time the offence is alleged to have been committed.

(2) Where, in a proceeding before any court in relation to an offence, or before a justice taking an examination of witnesses in relation to an indictable offence, a child is concerned as a witness or as the person in respect of whom the offence is alleged to have been committed, then—

(a) in the case of an offence of a sexual nature, a report of the proceeding or any part of the proceeding shall not reveal any prescribed matter relating to the child unless the court or justice expressly permits the inclusion of that matter in the report;

or

(b) in any other case, the court or justice may order that no report of the proceeding or any part of the proceeding reveal any prescribed matter relating to the child other than any matter the court or justice expressly permits to be included in the report.

(3) A report of a proceeding (or any part of a proceeding) referred to in subsection (1) or (2) shall not, without the express permission of the court or justice, reveal the name of any officer of the Department.

(4) A person who makes or publishes a report—

(a) that contravenes subsection (1), (2) or (3);

or

(b) that does not comply in all respects with an order made by the court under subsection (1) or (2) permitting any prescribed matter to be revealed,

commits an offence against this Act.

Penalty: in the case of a body corporate 40 penalty units;
in the case of an individual 10 penalty units or imprisonment for six months or both.

(5) Subsections (1), (2) and (3) do not apply to—

(a) a report made for the purposes of a proceeding before a court, or before a justice taking an examination of witnesses in relation to an indictable offence;

or

(b) a report made for the Department or the Department of Justice or the Police Department.

(6) In this section, “prescribed matter” means—

(a) the name, address, school, place of employment or any other particular likely to lead to the identification of the person concerned;

or

(b) any photograph, picture, videotape or other visual representation of the person concerned or of any other person that is likely to lead to the identification of the person concerned.

138A. Power to exclude child in certain circumstances. When in any proceeding before any court or justice brought in respect of a child it appears to the court or justice that information is about to be given knowledge of which by the child—

(a) would not be in the best interest of the child;

or

(b) would be likely to injuriously affect the regard in which the child should hold his parent or guardian,

such court or justice may cause the child to be excluded from the room in which the court or justice is then sitting until the information has been given:

Provided that a court or justice shall not exercise the power conferred by this section so as to exclude the child during the hearing of evidence relating to the commission by him of an offence which is the subject of the proceeding before the court or justice.”

PART IX—AMENDMENT OF THE CRIMINAL LAW (SEXUAL OFFENCES)
ACT

82. Citation. (1) In this Part the *Criminal Law (Sexual Offences) Act 1978-1987* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Criminal Law (Sexual Offences) Act 1978-1989*.

83. Amendment of s. 3. Meaning of terms. Section 3 of the Principal Act is amended by—

(a) omitting the definition “complainant” and substituting the following definition:—

““complainant” means a person in respect of whom a sexual offence is alleged to have been committed; the term does not include a person who was of or above the age of 17 years at the time a sexual offence is alleged to have been committed in respect of that person and who is an accomplice in its commission;”;

(b) inserting after the definition “examination of witness” the following definition:—

““prescribed sexual offence” means any of the following offences:—

- (a) rape;
- (b) attempt to commit rape;
- (c) assault with intent to commit rape;
- (d) an offence defined in section 337 of *The Criminal Code*;
- (e) assault with intent to commit an unnatural offence;”;

(c) omitting the definition “sexual offence” and substituting the following definition:—

““sexual offence” means any offence of a sexual nature; the expression includes a prescribed sexual offence;”.

84. Amendment of s. 4. Special rules of evidence concerning sexual offences. Section 4 of the Principal Act is amended by—

(a) in the general words preceding paragraph 1—

(i) inserting after the words “any examination of witnesses or trial” the words “in relation to a prescribed sexual offence”;

(ii) inserting before the words “sexual offence” the word “prescribed”;

(b) in paragraph 2 omitting provision (a) and substituting the following provision:—

“(a) cross-examination of the complainant shall not be permitted as to the sexual activities of the complainant with any person other than the defendant;”.

85. Repeal of and new s. 5. The Principal Act is amended by repealing section 5 and substituting the following section:—

“**5. Exclusion of public.** (1) Whilst a complainant is giving evidence in any examination of witnesses or trial, the court shall

cause to be excluded from the room in which it is then sitting all persons other than—

- (a) the counsel and solicitor of the complainant;
- (b) the defendant and his counsel and solicitor;
- (c) A Crown Law Officer or a person authorized by a Crown Law Officer;
- (d) the prosecutor;
- (e) any person whose presence is, in the opinion of the court, necessary or desirable for the proper conduct of the examination or trial;
- (f) any person whose presence will provide emotional support to the complainant;
- (g) where the complainant is under or apparently under the age of 17 years, the parent or guardian of the child unless, in the court's opinion, the presence of that person would not be in the child's interests;
- (h) any person who makes application to the court to be present and whose presence, in the court's opinion—
 - (i) would serve a proper interest of the applicant;
and
 - (ii) would not be prejudicial to the interests of the complainant.

(2) The provisions of subsection (1) shall be construed so as not to prejudice the power of the court had under any other provision or rule of law to exclude from the room in which it is sitting any person, including a defendant.”.

86. Amendment of s. 7. Publication prematurely of defendant's identity prohibited. Section 7 of the Principal Act is amended by inserting after the words “examination of witnesses” the words “in relation to a prescribed sexual offence”.

87. Amendment of s. 10. Offences and penalty. Section 10 of the Principal Act is amended in subsection (3) by omitting paragraph (b) and substituting the following paragraph:—

- “(b) a defendant charged with a prescribed sexual offence to which the statement or representation relates, before he is committed for trial or sentence upon that charge,”.