

Queensland



**PENALTIES AND
SENTENCES (SERIOUS
VIOLENT OFFENCES)
AMENDMENT ACT 1997**

Act No. 4 of 1997

Queensland



PENALTIES AND SENTENCES (SERIOUS VIOLENT OFFENCES) AMENDMENT ACT 1997

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Queensland



**Penalties and Sentences (Serious Violent
Offences) Amendment Act 1997**

Act No. 4 of 1997

An Act to amend the *Penalties and Sentences Act 1992* and other Acts

[Assented to 3 April 1997]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Penalties and Sentences (Serious Violent Offences) Amendment Act 1997*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992

Act amended in pt 2

3. This part amends the *Penalties and Sentences Act 1992*.

Amendment of s 3 (Purposes)

4. Section 3(b)—

omit, insert—

‘(b) providing for a sufficient range of sentences for the appropriate punishment and rehabilitation of offenders, and, in appropriate circumstances, ensuring that protection of the Queensland community is a paramount consideration; and’.

Amendment of s 4 (Definitions)

5. Section 4—

insert—

- ‘**“serious violent offence”** means a serious violent offence of which an offender is convicted under section 161A.¹’.

Amendment of s 9 (Sentencing guidelines)

6.(1) Section 9(1)(c), ‘discourage’—

omit, insert—

‘deter’.

(2) Section 9(1)(d), ‘does not approve of’—

omit insert—

‘denounces’.

(3) Section 9(3) and (4)—

omit, insert—

‘**(3)** However, the principles mentioned in subsection (2)(a) do not apply to the sentencing of an offender for any offence—

- (a) that involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person;
or
- (b) that resulted in physical harm to another person.

‘**(4)** In sentencing an offender to whom subsection (3) applies, the court must have regard primarily to the following—

- (a) the risk of physical harm to any members of the community if a custodial sentence were not imposed;
- (b) the need to protect any members of the community from that risk;

¹ Section 161A (When an offender is convicted of a serious violent offence)

-
- (c) the personal circumstances of any victim of the offence;
 - (d) the circumstances of the offence, including the death of or any injury to a member of the public or any loss or damage resulting from the offence;
 - (e) the nature or extent of the violence used, or intended to be used, in the commission of the offence;
 - (f) any disregard by the offender for the interests of public safety;
 - (g) the past record of the offender, including any attempted rehabilitation and the number of previous offences of any type committed;
 - (h) the antecedents, age and character of the offender;
 - (i) any remorse or lack of remorse of the offender;
 - (j) any medical, psychiatric, prison or other relevant report in relation to the offender;
 - (k) anything else about the safety of members of the community that the sentencing court considers relevant.’.

Amendment of s 147 (Power of court mentioned in s 146)

7.(1) Section 147(2), ‘in view of all the circumstances that have arisen since the suspended sentence was imposed’—

omit.

(2) Section 147(3)—

renumber as section 147(4).

(3) Section 147—

insert—

(3) In deciding whether it would be unjust to order the offender to serve the whole of the suspended imprisonment the court must have regard to—

- (a) whether the subsequent offence is trivial having regard to—
 - (i) the nature of the offence and the circumstances in which it was committed; and

- (ii) the proportion between the culpability of the offender for the subsequent offence and the consequence of activating the whole of the suspended imprisonment; and
- (iii) the antecedents and any criminal history of the offender; and
- (iv) the prevalence of the original and subsequent offences; and
- (v) anything that satisfies the court that the prisoner has made a genuine effort at rehabilitation since the original sentence was imposed, including, for example—
 - (A) the relative length of any period of good behaviour during the operational period; and
 - (B) community service performed; and
 - (C) fines, compensation or restitution paid; and
 - (D) anything mentioned in a pre-sentence report; and
- (vi) the degree to which the offender has reverted to criminal conduct of any kind; and
- (vii) the motivation for the subsequent offence; and
- (b) the seriousness of the original offence, including any physical or emotional harm done to a victim and any damage, injury or loss caused by the offender; and
- (c) any special circumstance arising since the original sentence was imposed that makes it unjust to impose the whole of the term of suspended imprisonment.’.

(4) Section 147—

insert—

(5) In this section—

“original offence” means the offence for which a term of imprisonment has been suspended under section 144(1).

“original sentence” means the sentence imposed for the original offence.

“subsequent offence” means the offence committed during the operational period of an order made under section 144(1) for the original offence.’.

Insertion of new s 156A

8. After section 156—

insert—

‘Cumulative order of imprisonment must be made in particular circumstances

‘156A.(1) This section applies if an offender—

- (a) is convicted of an offence—
 - (i) against a provision mentioned in the schedule; or
 - (ii) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in the schedule; and
- (b) committed the offence while—
 - (i) a prisoner serving a term of imprisonment; or
 - (ii) released on parole under the *Corrective Services Act 1988*; or
 - (iii) on leave of absence, from a term of imprisonment, granted under the *Corrective Services Act 1988*; or
 - (iv) serving a period of home detention under the *Corrective Services Act 1988*; or
 - (v) at large after escaping from lawful custody under a sentence of imprisonment.

‘(2) A sentence of imprisonment imposed for the offence must be ordered to be served cumulatively with any other term of imprisonment the offender is liable to serve.’.

Amendment of s 157 (Eligibility for parole)

9. Section 157—

insert—

‘(7) If an offender is convicted of a serious violent offence—

- (a) the court that sentences the offender for the serious violent offence can not make a recommendation under this section that

reduces the period of imprisonment the offender must serve before being eligible for release on parole under the *Corrective Services Act 1988*, section 166(1)(c); and

- (b) no recommendation made under this section by any court can reduce the period of imprisonment that the offender must serve before being eligible for release on parole under the *Corrective Services Act 1988*, section 166(1)(c).’.

Insertion of new pt 9A

10. After section 161—

insert—

‘PART 9A—CONVICTIONS OF SERIOUS VIOLENT OFFENCES

‘When an offender is convicted of a serious violent offence

‘161A. An offender is convicted of a serious violent offence if—

- (a) the offender is—
- (i) convicted on indictment of an offence—
 - (A) against a provision mentioned in the schedule; or
 - (B) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in the schedule; and
 - (ii) sentenced to 10 or more years imprisonment for the offence, calculated under section 161C;² or
- (b) the offender is convicted on indictment and declared to be convicted of a serious violent offence under section 161B(3) or (4).

² Section 161C (Calculation of years of imprisonment)

‘Declaration of conviction of serious violent offence

‘161B.(1) If an offender is convicted of a serious violent offence under section 161A(a), the sentencing court must declare the conviction to be a conviction of a serious violent offence as part of the sentence.

‘(2) However, the failure of the sentencing court to make a declaration as required under subsection (1) does not affect the fact that the offender has been convicted of a serious violent offence.

‘(3) If an offender is—

- (a) convicted on indictment of an offence—
 - (i) against a provision mentioned in the schedule; or
 - (ii) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in the schedule; and
- (b) sentenced to 5 or more, but less than 10, years imprisonment for the offence, calculated under section 161C;³

the sentencing court may declare the offender to be convicted of a serious violent offence as part of the sentence.

‘(4) Also, if an offender is—

- (a) convicted on indictment of an offence—
 - (i) that involved the use, counselling or procuring the use, or conspiring or attempting to use, serious violence against another person; or
 - (ii) that resulted in serious harm to another person; and
- (b) sentenced to a term of imprisonment for the offence;

the sentencing court may declare the offender to be convicted of a serious violent offence as part of the sentence.

³ Section 161C (Calculation of number of years of imprisonment)

‘Calculation of number of years of imprisonment

‘161C.(1) This section applies for deciding whether an offender is sentenced—

- (a) under section 161A(a)—to 10 or more years imprisonment (the **“specified years”** of imprisonment); or
- (b) under section 161B(3)—to 5 or more, but less than 10, years imprisonment (also the **“specified years”** of imprisonment);

for an offence—

- (c) against a provision mentioned in the schedule; or
- (d) of counselling or procuring the commission of, or attempting or conspiring to commit, an offence against a provision mentioned in the schedule.

‘(2) An offender is sentenced to the specified years of imprisonment if—

- (a) the offender is sentenced to a term of imprisonment of the specified years for the offence; or
- (b) the term of imprisonment to which the offender is sentenced for the offence is part of a period of imprisonment of the specified years imposed on convictions consisting of the conviction on which the offender is being sentenced and any 1 or more of the following—
 - (i) a conviction of an offence mentioned in subsection (1)(c) or (d);
 - (ii) a conviction declared to be a conviction of a serious violent offence under section 161B.

‘(3) For subsection (2), whether the offender is sentenced to the specified years of imprisonment must be calculated as at the day of sentence.

‘Sentence for serious violent offence cannot be remitted

‘161D. The sentence of an offender convicted of a serious violent offence cannot be remitted under the *Corrective Services Act 1988*.’

Amendment of s 162 (Definitions)

11. Section 162, definition “**violent offence**”, paragraph (a)(i), ‘use, or attempted use, of’—

omit, insert—

‘use of, counselling or procuring the use of, or attempting or conspiring to use,’.

Amendment of s 164 (Counsel for prosecution to inform court)

12. Section 164(2), ‘7’—

omit, insert—

‘15’.

Amendment of s 167 (Evidence)

13. Section 167(3)—

omit, insert—

‘(3) In deciding whether the offender is a serious danger to the community, the court may have regard to anything relevant to the issue contained in the certified transcript of, or any medical or other report tendered in, any proceeding against the offender for a violent offence.’.

Insertion of new s172A–172C

14. After section 172—

insert—

‘Distribution of reports

‘**172A.(1)** The court must, a reasonable time before a review under section 171 or 172 is to take place, cause a copy of a report ordered by it under section 176 to be provided to—

- (a) the director of public prosecutions; and
- (b) the legal practitioner representing the offender; and

- (c) the offender, if the court has so directed; and
- (d) any victim, within the meaning of the Criminal Offence Victims Act 1995, section 5, of the offence for which the indefinite sentence was imposed, if the court has so decided.

‘(2) If the prosecution or the defence has caused a report about the offender to be prepared for a review under section 171 or 172, it must, a reasonable time before the review is to take place—

- (a) file the report with the court; and
- (b) provide a copy of the report to the director of public prosecutions or the legal practitioner representing the offender, as the case requires.

‘Disputed report

‘172B.(1) The director of public prosecutions or the offender may file with the court a notice of intention to dispute the whole or any part of a report provided under section 172A.

‘(2) If a notice is filed under subsection (1) before the review is to take place, the court must not take the report or the part in dispute into consideration on the hearing of the review unless the party that filed the notice has been given the opportunity—

- (a) to lead evidence on the disputed matters; and
- (b) to cross-examine the author of the report on its contents.

‘Review hearing

‘172C. On the hearing of a review under section 171 or 172, a court must—

- (a) give both the director of public prosecutions and the offender the opportunity to lead admissible evidence on any relevant matter; and
- (b) subject to section 172B, take into consideration any report in respect of the offender that is filed with the court; and

-
- (c) have regard to any submissions on the review made to it; and
 - (d) have regard to the fundamental principles of justice for victims of crime declared by the Criminal Offence Victims Act 1995, part 2.’.

Amendment of s 176 (Registrar of court to give report)

15.(1) Section 176(1), ‘On the hearing of’—

omit, insert—

‘For’.

(2) Section 176(6)—

omit.

Insertion of new s 206

16. After section 205—

insert—

‘Transitional provisions for Penalties and Sentences (Serious Violent Offences) Amendment Act 1997

‘**206.(1)** Section 157(7)(b) applies to a recommendation made under section 157 even if the recommendation was made before the commencement of section 157(7).

‘**(2)** For subsection 161C(2)(b), sentences of imprisonment imposed on the offender for offences mentioned in section 161C(1)(c) or (d) must be taken into account even if the sentences were imposed before the commencement of part 9A.’.

Insertion of schedule

17. After section 206—

insert—

‘SCHEDULE

s 161A(a)

s 161B(3)(a)

s 161C(1)(c) and (d)

‘SERIOUS VIOLENT OFFENCES

‘CRIMINAL CODE

1. Section 62 (Punishment of unlawful assembly)
2. Section 63 (Punishment of riot)
3. Section 75 (Threatening violence)
4. Section 142 (Escape by persons in lawful custody)
5. Section 208 (Unlawful sodomy)
6. Section 209 (Attempted sodomy)
7. Section 210 (Indecent treatment of children under 16)
8. Section 213 (Owner etc. permitting abuse of children on premises)
9. Section 215 (Carnal knowledge of girls under 16)
10. Section 216 (Abuse of intellectually impaired persons)
11. Section 217 (Procuring young person etc. for carnal knowledge)
12. Section 218 (Procuring sexual acts by coercion etc.)
13. Section 222 (Incest)
14. Section 229B (Maintaining a sexual relationship with a child)
15. Sections 303 and 310 (Manslaughter)
16. Section 306 (Attempt to murder)
17. Section 313 (Killing unborn child)

18. Section 315 (Disabling in order to commit indictable offence)
19. Section 316 (Stupefying in order to commit indictable offence)
20. Section 317 (Acts intended to cause grievous bodily harm and other malicious acts)
21. Section 317A (Carrying or sending dangerous goods in a vehicle)
22. Section 318 (Obstructing rescue or escape from unsafe premises)
23. Section 319 (Intentionally endangering safety of persons travelling by railway)
24. Section 319A (Endangering safety of persons travelling by aircraft)
25. Section 320 (Grievous bodily harm)
26. Section 320A (Torture)
27. Section 321 (Attempting to injure by explosive or noxious substances)
28. Section 321A (Bomb hoaxes)
29. Section 322 (Maliciously administering poison with intent to harm)
30. Section 323 (Wounding and similar Acts)
31. Section 326 (Endangering life of children by exposure)
32. Section 328A (Dangerous operation of a vehicle)
33. Section 336 (Assault with intent to commit rape)
34. Section 337 (Sexual assault)
35. Section 339 (Assaults occasioning bodily harm)
36. Section 340 (Serious assaults)
37. Section 347 (Rape)
38. Section 349 (Attempt to rape)
39. Section 351 (Abduction)
40. Section 354 (Kidnapping)
41. Section 354A (Kidnapping for ransom)
42. Section 409 (Robbery)

-
43. Section 411(2) (Punishment of robbery)
 44. Section 412 (Attempted robbery)
 45. Section 419(3)(b) (Burglary)
 46. Section 421(2) (Entering or being in premises and committing indictable offences)

**‘CRIMINAL CODE (PROVISIONS REPEALED BY
CRIMINAL LAW AMENDMENT ACT 1997)**

1. Section 208 (Unlawful anal intercourse)
2. Section 221 (Conspiracy to defile)
3. Section 222 (Incest by man)
4. Section 223 (Incest by adult female)
5. Section 318 (Preventing escape from wreck)

‘CORRECTIVE SERVICES ACT 1988

1. Section 93(1)(a) (Escape from lawful custody (including attempts to escape or preparation to escape))
2. Section 92(2) (Taking part in a riot or mutiny whilst in custody)
3. Section 92(3) (Destruction of property when taking part in riot or mutiny whilst in custody)

‘DRUGS MISUSE ACT 1986

1. Section 5 (Carrying on the business of trafficking in a dangerous drug)
2. Section 6 (Aggravated supply of dangerous drugs (to minors, intellectually handicapped people, in schools and in correctional institutions))

3. Section 8 (Producing dangerous drugs (producing first schedule drugs in excess of the third schedule)).

PART 3—AMENDMENT OF CRIMINAL CODE

Code amended in pt 3

18. This part amends the Criminal Code (1899).

Amendment of s 305 (Punishment of murder)

19. Section 305—

insert—

‘(2) If the person is being sentenced—

- (a) on more than 1 conviction of murder; or
- (b) on 1 conviction of murder and another offence of murder is taken into account; or
- (c) on a conviction of murder and the person has on a previous occasion been sentenced for another offence of murder;

the court sentencing the person must make an order that the person must not be released from imprisonment until the person has served a minimum of 20 or more specified years of imprisonment, unless released sooner under the *Corrective Services Act 1988*, section 166(4) because of special circumstances.

‘(3) Subsection (2)(c) applies whether the crime for which the person is being sentenced was committed before or after the conviction for the other offence of murder mentioned in the paragraph.’.

PART 4—AMENDMENT OF THE CORRECTIVE SERVICES ACT 1988

Act amended in pt 4

20. This part amends the *Corrective Services Act 1988*.

Amendment of s 10 (Definitions)

21. Section 10—

insert—

‘ **“serious violent offence”** see the *Penalties and Sentences Act 1992*, section 4.’

Amendment of s 61 (Leave of absence)

22. Section 61—

insert—

‘**(2A)** The commission must not grant leave of absence to a prisoner serving a term of imprisonment on conviction of a serious violent offence unless the prisoner—

(a) has served at least—

(i) if the prisoner is serving life imprisonment—15 years of that sentence; or

(ii) otherwise—80% of the sentence imposed; or

(b) is released for medical or compassionate purposes.

‘**(2B)** A prisoner released under subsection (2A) may only be released under the control of a custodial corrections officer.

‘**(2C)** In deciding whether or not to grant leave of absence to a prisoner to whom subsection (2A) applies, the commission must consider any recommendation of the court that sentenced the prisoner that the prisoner should not be released from imprisonment unless the prisoner has served a period of the sentence longer than that required under subsection (2A)(a).’.

Amendment of s 86 (Release of prisoner to home detention)**23. Section 86—***insert—*

‘(2A) The commission must not release a prisoner serving a term of imprisonment on conviction of a serious violent offence to serve a period of home detention unless the prisoner has served at least—

- (a) if the prisoner is serving life imprisonment—15 years of that sentence; or
- (b) otherwise—80% of the sentence imposed.

‘(2B) In deciding whether or not to release a prisoner to whom subsection (2A) applies to serve a period of home detention, the commission must consider any recommendation of the court that sentenced the prisoner that the prisoner should not be released from imprisonment unless the prisoner has served a period of the sentence longer than that required under subsection (2A).’.

Amendment of s 166 (Eligibility for parole)**24. Section 166(1)(a) and (b)—***omit, insert—*

- ‘(a) if the prisoner is serving a term of life imprisonment and the Criminal Code, section 305(2)⁴ applied to the prisoner on sentence—until the prisoner has served the period required under an order under the subsection, or, if no order was made, 20 years; or
- (b) if the prisoner is serving a term of life imprisonment and the Criminal Code, section 305(2) did not apply to the prisoner on sentence—until the prisoner has served a period of 15 years; or
- (c) if the prisoner is serving a term of imprisonment for a serious violent offence—until the prisoner has served the lesser of the following—

⁴ Criminal Code, section 305 (Punishment of murder)

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- (i) 80% of the term of imprisonment to which the prisoner was sentenced;
- (ii) 15 years; or
- (d) otherwise—until the prisoner has served half of the term of imprisonment to which the prisoner was sentenced.’.