



Queensland

Criminal Law Amendment Bill 2012



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2012

A Bill

for

An Act to amend the Criminal Code, the *Corrective Services Act 2006*, the *Criminal Law Amendment Act 1945*, the *Penalties and Sentences Act 1992*, the *Police Powers and Responsibilities Act 2000* and the *Youth Justice Act 1992* for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Criminal Law Amendment Act 2012*. 4
5

Part 2 Amendment of Criminal Code 6

Clause 2 Act amended 7

This part amends the Criminal Code. 8

Clause 3 Amendment of s 305 (Punishment of murder) 9

(1) Section 305(2), ‘20’— 10

omit, insert— 11

‘30’. 12

(2) Section 305— 13

insert— 14

‘(4) If— 15

(a) the person killed was a police officer at the time the act
or omission that caused the person’s death was done or
made; and 16
17
18

(b) the person being sentenced did the act or made the
omission that caused the police officer’s death— 19
20

(i) when— 21

-
- (A) the police officer was performing the officer's duty; and
- (B) the person knew or ought reasonably to have known that he or she was a police officer; or
- (ii) because the police officer was a police officer; or
- (iii) because of, or in retaliation for, the actions of the police officer or another police officer in the performance of the officer's duty;
- 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 25 or more specified years of imprisonment, unless released sooner under exceptional circumstances parole under the *Corrective Services Act 2006*.'.

Clause 4 Amendment of s 340 (Serious assaults)

- (1) Section 340(1), 'crime, and is liable to imprisonment for 7 years.'—
- omit, insert—*
- 'crime.
- 'Maximum penalty—
- (a) for subsection (1)(b), if the offender assaults a police officer in any of the following circumstances—
- (i) the offender bites or spits on the police officer or throws at, or in any way applies to, the police officer a bodily fluid or faeces;
- (ii) the offender causes bodily harm to the police officer;
- (iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument—14 years imprisonment; or
- (b) otherwise—7 years imprisonment.'
- (2) Section 340(2A)—

[s 5]

omit.

1

Clause 5 Insertion of new ch 90

2

After section 728—

3

insert—

4

**‘Chapter 90 Transitional provision for
Criminal Law Amendment
Act 2012**

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‘729 Application of amendment Act

8

‘(1) Section 305, as amended by the amendment Act, section 3, to the extent the amendment Act increases the minimum number of years of imprisonment to be served, applies only if—

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(a) for section 305(2)(a), at least 1 conviction of murder is for an offence committed after the commencement, even if the other offence or offences were committed before the commencement; or

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(b) for section 305(2)(b), either the conviction of murder is for, or the other offence of murder taken into account is for, an offence committed after the commencement, even if one of those offences was committed before the commencement; or

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(c) for section 305(2)(c), either the conviction of murder is for, or the other offence of murder for which the person has previously been sentenced is for, an offence committed after the commencement, even if one of those offences was committed before the commencement; or

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(d) for section 305(4), the conviction of murder is for an offence committed after the commencement.

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‘(2) For an offence mentioned in subsection (1) as having been committed before the commencement, for which there was a

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conviction, it does not matter whether the conviction was 1
recorded before or after the commencement. 2

‘(3) This section applies despite section 11 and the *Acts* 3
Interpretation Act 1954, section 20C(3). 4

‘(4) In this section— 5

amendment Act means the *Criminal Law Amendment Act* 6
2012. 7

commencement means the commencement of the amendment 8
Act, section 3. 9

minimum number of years of imprisonment to be served 10
means the minimum number of years of imprisonment a 11
person must serve before the person may be released from 12
imprisonment under an order made under section 305 by the 13
court sentencing the person.’. 14

Part 3 **Amendment of Corrective** 15 **Services Act 2006** 16

Clause 6 **Act amended** 17
This part amends the *Corrective Services Act 2006*. 18

Clause 7 **Amendment of s 181 (Parole eligibility date for prisoner** 19
-serving term of imprisonment for life) 20

(1) Section 181(2) and (3)— 21
omit, insert— 22

‘(2) The prisoner’s parole eligibility date is the day after the day 23
on which the prisoner has served the following period of 24
time— 25

(a) if the Criminal Code, section 305(2) applied on 26
sentence—30 years or the longer time ordered under 27
that section; 28

[s 8]

- (b) if the Criminal Code, section 305(4) applied on sentence—25 years or the longer time ordered under that section; 1
2
3
- (c) if the prisoner is serving a term of imprisonment for life for an offence of murder and paragraphs (a) and (b) do not apply—20 years; 4
5
6
- (d) otherwise—15 years.’. 7
- (2) Section 181(4), ‘subsections (2) and (3)’— 8
omit, insert— 9
‘subsection (2)’. 10
- (3) Section 181(4)— 11
renumber as section 181(3). 12

Clause 8 **Insertion of new ch 7A, pt 5** 13
Chapter 7A, after section 490— 14
insert— 15

‘Part 5 **Transitional provision for** 16
 Criminal Law Amendment Act 17
 2012 18

‘490A Application of amendment Act 19

- ‘(1) For section 181(2)(a) as inserted by the amendment Act, a prisoner’s parole eligibility day continues to be the day after the day on which the prisoner has served 20 years or the longer time ordered under the Criminal Code, section 305(2) if— 20
21
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- (a) the Criminal Code, section 305(2) as amended by the amendment Act did not apply on sentence; but 25
26
- (b) that section as it existed before the commencement applied on sentence. 27
28

- ‘(2) Section 181(2)(c) as inserted by the amendment Act only applies to a prisoner who is serving a term of imprisonment for life for an offence of murder committed after the commencement. 1
2
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4
- ‘(3) In this section— 5
- amendment Act* means the *Criminal Law Amendment Act 2012*. 6
7
- commencement* means the commencement of the amendment Act, section 7.’. 8
9

Part 4 Amendment of Criminal Law Amendment Act 1945

Clause 9 Act amended 12

This part amends the *Criminal Law Amendment Act 1945*. 13

Clause 10 Amendment of s 18B (Parole orders under Corrective Services Act 2006) 14
15

(1) Section 18B(1)(a), from ‘to whom’ to ‘apply’— 16

omit, insert— 17

‘to whom the *Corrective Services Act 2006*, section 181(2)(d) applies, subject to subsection (2)’. 18
19

(2) Section 18B(2), ‘181(2)’— 20

omit, insert— 21

‘181(2)(d)’. 22

[s 11]

Part 5	Amendment of Penalties and Sentences Act 1992	1 2
Clause 11	Act amended	3
	This part amends the <i>Penalties and Sentences Act 1992</i> .	4
Clause 12	Amendment of s 4 (Definitions)	5
	Section 4, definition <i>council</i> —	6
	<i>omit.</i>	7
Clause 13	Replacement of s 15AH (Relevant considerations before giving or reviewing guideline judgment)	8 9
	Section 15AH—	10
	<i>omit, insert—</i>	11
	‘15AH Relevant considerations before giving or reviewing guideline judgment	12 13
	‘If the court is considering giving or reviewing a guideline judgment, the court must consider—	14 15
	(a) the need to promote consistency of approach in sentencing offenders; and	16 17
	(b) the need to promote public confidence in the criminal justice system.’.	18 19
Clause 14	Amendment of s 15AI (Procedural requirements if court decides to give or review guideline judgment)	20 21
	Section 15AI(3)—	22
	<i>omit.</i>	23
Clause 15	Amendment of s 160A (Application of ss 160B–160D)	24
	(1) Section 160A(4), example, after ‘305(2)’—	25

insert— 1
'and (4)'. 2
(2) Section 160A(5)(a), '181(2) or (3)'— 3
omit, insert— 4
'181(2)'. 5

Clause 16 Amendment of s 171 (Review—periodic) 6

(1) Section 171(1)(a)— 7
omit, insert— 8
'(a) must for the first time review the indefinite sentence 9
within 6 months after an offender has served the period 10
of time stated in subsection (2); and'. 11

(2) Section 171— 12
insert— 13

'(1A) For subsection (1)(a), the period of time the offender must 14
have served is— 15

(a) for an offender whose nominal sentence is life 16
imprisonment for an offence of murder— 17

(i) if the Criminal Code, section 305(2) applies on 18
sentence—30 years; or 19

(ii) if the Criminal Code, section 305(4) applies on 20
sentence—25 years; or 21

(iii) otherwise—20 years; or 22

(b) if the offender's nominal sentence is life imprisonment 23
and paragraph (a) does not apply—15 years; or 24

(c) otherwise—50% of the offender's nominal sentence.'. 25

(3) Section 171(3), from 'Subsection (1)(a)' to 'this 26
subsection,'— 27
omit, insert— 28

[s 17]

‘Section 171(1)(a), as in force immediately before the commencement of the *Criminal Law Amendment Act 2002*, section 64.’

(4) Section 171(3)—
relocate as section 210(3).

(5) Section 171(1A) and (2)—
renumber as section 171(2) and (3).

Clause 17 Omission of pt 12 (Sentencing Advisory Council) 8
Part 12— 9
omit. 10

Clause 18 Insertion of new pt 14, div 1, hdg 11
Part 14, before section 206— 12
insert— 13

**‘Division 1 Transitional provisions before
Criminal Law Amendment Act 2012’.** 14
15

Clause 19 Insertion of new pt 14, div 2 16
After section 220— 17
insert— 18

**‘Division 2 Transitional provisions for Criminal
Law Amendment Act 2012** 19
20

‘221 Transitional provision for s 171 21

‘(1) For section 171(2)(a)(i) as inserted by the amendment Act, the period of time an offender must have served before the offender’s indefinite sentence must be reviewed for the first time continues to be 20 years if— 22
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-
- (a) the Criminal Code, section 305(2) as amended by the amendment Act does not apply on sentence; but
- (b) that section as it existed before the commencement applies on sentence.
- ‘(2) Section 171(2)(a)(iii), as inserted by the amendment Act, only applies to an offender who is serving an indefinite sentence for an offence of murder committed after the commencement.
- ‘(3) In this section—
- amendment Act* means the *Criminal Law Amendment Act 2012*.
- commencement* means the commencement of the amendment Act, section 16.
- ‘222 Dissolution of Sentencing Advisory Council**
- ‘(1) On the commencement of this section—
- (a) the Sentencing Advisory Council is dissolved; and
- (b) the members of the Sentencing Advisory Council go out of office.
- ‘(2) No compensation is payable to a member because of subsection (1).’.

Part 6 Amendment of Police Powers and Responsibilities Act 2000

- Clause 20 Act amended**
- This part amends the *Police Powers and Responsibilities Act 2000*.

[s 21]

Clause 21	Amendment of s 754 (Offence for driver of motor vehicle to fail to stop motor vehicle)	1 2
(1)	Section 754(2), before ‘Maximum penalty’— <i>insert</i> — ‘Minimum penalty—50 penalty units.’.	3 4 5
(2)	Section 754— <i>insert</i> —	6 7
(2A)	If a court convicts a person of an offence against subsection (2), the court, in addition to imposing a penalty, must disqualify the person from holding or obtaining a Queensland driver licence for 2 years.’.	8 9 10 11
(3)	Section 754(2A) to (7)— <i>renumber</i> as section 754(3) to (8).	12 13

Part 7	Amendment of Youth Justice Act 1992	14 15
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Clause 22	Act amended	16
	This part amends the <i>Youth Justice Act 1992</i> .	17

Clause 23	Amendment of s 176 (Sentence orders—life and other significant offences)	18 19
(1)	Section 176(6), ‘305(2) and (3)’— <i>omit, insert</i> — ‘305(2), (3) and (4)’.	20 21 22
(2)	Section 176— <i>insert</i> —	23 24

-
- ‘(7A) For the purpose of subsection (6), a reference in the Criminal Code, section 305 to imprisonment is taken to be a reference to detention.’ 1
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- (3) Section 176(7A) to (9)— 4
renumber as section 176(8) to (10). 5

Clause 24 Insertion of new pt 11, div 9 6
After section 352— 7
insert— 8

‘Division 9 Transitional provision for Criminal Law Amendment Act 2012 9
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‘353 Application of Criminal Code, s 305 11

- ‘(1) This section applies for the purpose of applying the Criminal Code, section 305(2), (3) and (4) to a child under section 176(6) of this Act. 12
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- ‘(2) Section 305, as amended by the amendment Act, section 3, to the extent the amendment Act increases the minimum number of years of imprisonment to be served, applies only if— 15
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- (a) for section 305(2)(a), at least 1 conviction of murder is for an offence committed after the commencement, even if the other offence or offences were committed before the commencement; or 18
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- (b) for section 305(2)(b), either the conviction of murder is for, or the other offence of murder taken into account is for, an offence committed after the commencement, even if one of those offences was committed before the commencement; or 22
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- (c) for section 305(2)(c), either the conviction of murder is for, or the other offence of murder for which the person has previously been sentenced is for, an offence committed after the commencement, even if one of 27
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[s 24]

- those offences was committed before the commencement; or
- (d) for section 305(4), the conviction of murder is for an offence committed after the commencement.
- ‘(3) For an offence mentioned in subsection (2) as having been committed before the commencement, for which there was a conviction, it does not matter whether the conviction was recorded before or after the commencement.
- ‘(4) This section applies despite the *Acts Interpretation Act 1954*, section 20C(3) and the Criminal Code, section 11.
- ‘(5) In this section—
- amendment Act*** means the *Criminal Law Amendment Act 2012*.
- commencement*** means the commencement of the amendment Act, section 3.
- minimum number of years of imprisonment to be served*** means the minimum number of years of imprisonment a person must serve before the person may be released from imprisonment under an order made under the Criminal Code, section 305 by the court sentencing the person.’.