

2005

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Crimes (Offences Against Pregnant Women) Amendment Bill 2005

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Crimes (Offences Against Pregnant Women) Amendment Bill 2005

A Bill for

An Act to amend the *Crimes Act 1900*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Crimes (Offences Against Pregnant Women) Amendment Act 2005*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Crimes Act 1900*.

**4 Manslaughter
New section 15 (3)**

insert

- (3) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 26 years.

Note Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

**5 Intentionally inflicting grievous bodily harm
Section 19**

omit

A person

substitute

- (1) A person

6 New section 19 (2)*insert*

- (2) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 20 years.

Note Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

**7 Recklessly inflicting grievous bodily harm
Section 20***omit*

A person

substitute

- (1) A person

8 New section 20 (2)*insert*

- (2) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 13 years.

Note Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

**9 Wounding
Section 21***omit*

A person

substitute

- (1) A person

10 New section 21 (2)

insert

- (2) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 7 years.

Note Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

**11 Inflicting actual bodily harm
Section 23**

omit

A person

substitute

- (1) A person

12 New section 23 (2)

insert

- (2) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 7 years.

Note Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

**13 Assault occasioning actual bodily harm
Section 24**

omit

A person

substitute

- (1) A person

14 New section 24 (2)*insert*

(2) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 7 years.

Note Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

**15 Culpable driving of motor vehicle
New section 29 (2A)***insert*

(2A) However, for an aggravated offence against subsection (2), the maximum penalty is imprisonment for 9 years.

Note Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

16 New section 29 (3A)*insert*

(3A) However, for an aggravated offence against subsection (3), the maximum penalty is imprisonment for 5 years.

17 Section 29

renumber subsections when Act next republished under Legislation Act

18 New sections 48A and 48B

insert

48A Aggravated offences—offences against pregnant women

- (1) This section applies to an offence against any of the following provisions:
- (a) section 15 (Manslaughter);
 - (b) section 19 (Intentionally inflicting grievous bodily harm);
 - (c) section 20 (Recklessly inflicting grievous bodily harm);
 - (d) section 21 (Wounding);
 - (e) section 23 (Inflicting actual bodily harm);
 - (f) section 24 (Assault occasioning actual bodily harm);
 - (g) section 29 (2) or (3) (Culpable driving of motor vehicle).
- (2) The offence is an ***aggravated offence*** if—
- (a) the offence was committed against a pregnant woman; and
 - (b) the commission of the offence caused—
 - (i) the loss of, or serious harm to, the pregnancy; or
 - (ii) the death of, or serious harm to, a child born alive as a result of the pregnancy.
- (3) If the prosecution intends to prove an aggravated offence, the relevant factors of aggravation must be stated in the charge.
- (4) It is not necessary to prove that the person who committed the offence had a fault element in relation to any factor of aggravation.

(5) To remove any doubt, the Criminal Code, chapter 2 (other than the applied provisions) does not apply to an offence to which this section applies, whether or not it is an aggravated offence.

(6) In this section:

applied provisions—see the Criminal Code, section 10 (1).

cause loss, serious harm or death—a person’s conduct causes loss, serious harm or death if it substantially contributes to the loss, serious harm or death.

factor of aggravation means a matter mentioned in subsection (2) (a) or (b).

harm to a child—see the Criminal Code, dictionary, definition of *harm*.

harm to a pregnancy includes maternal haemorrhage, rupture of the uterus or membranes, placental abruption, pre-term uterine contractions, fetal haemorrhage and trauma to the fetus.

loss of a pregnancy means a miscarriage or stillbirth.

serious harm to a child—see the Criminal Code, dictionary, definition of *serious harm*.

serious harm to a pregnancy means any harm (including the cumulative effect of more than 1 harm) that—

(a) is likely to cause loss of the pregnancy; or

(b) endangers, or is likely to endanger, the natural course of the pregnancy.

48B Alternative verdicts for aggravated offences—offences against pregnant women

(1) If, in a prosecution for an aggravated offence mentioned in column 2 of an item in table 48B, the trier of fact is not satisfied that the defendant committed the aggravated offence, but is satisfied

beyond reasonable doubt that the defendant committed an offence mentioned in column 3 of the item (the *alternative offence*), the trier of fact may find the defendant guilty of the alternative offence but only if the defendant has been given procedural fairness in relation to that finding of guilt.

Table 48B

column 1 item	column 2 aggravated offence	column 3 alternative offences
1	section 15 (Manslaughter), aggravated offence	1.1 section 15, simple offence 1.2 section 17 (1) (Suicide—aiding etc) 1.3 section 17 (2) 1.4 section 20 (Recklessly inflicting grievous bodily harm), aggravated offence 1.5 section 20, simple offence 1.6 section 25 (Causing grievous bodily harm) 1.7 section 29 (2) (Culpable driving of motor vehicle—causing death), aggravated offence 1.8 section 29 (2), simple offence 1.9 section 42 (Child destruction) 1.10 section 47 (Concealment of birth)

column 1 item	column 2 aggravated offence	column 3 alternative offences
2	section 19 (Intentionally inflicting grievous bodily harm), aggravated offence	2.1 section 19, simple offence 2.2 section 20 (Recklessly inflicting grievous bodily harm), aggravated offence 2.3 section 20, simple offence 2.4 section 21 (Wounding), aggravated offence 2.5 section 21, simple offence 2.6 section 23 (Inflicting actual bodily harm), aggravated offence 2.7 section 23, simple offence 2.8 section 43 (Childbirth—grievous bodily harm)
3	section 20 (Recklessly inflicting grievous bodily harm), aggravated offence	3.1 section 20, simple offence 3.2 section 23 (Inflicting actual bodily harm), aggravated offence 3.3 section 23, simple offence 3.4 section 25 (Causing grievous bodily harm) 3.5 section 29 (3) (Culpable driving of motor vehicle—causing grievous bodily harm), aggravated offence

column 1 item	column 2 aggravated offence	column 3 alternative offences
		3.6 section 29 (3), simple offence 3.7 section 43 (Childbirth—grievous bodily harm)
4	section 21 (Wounding), aggravated offence	4.1 section 21, simple offence 4.2 section 23 (Inflicting actual bodily harm), aggravated offence 4.3 section 23, simple offence 4.4 section 24 (Assault occasioning actual bodily harm), aggravated offence 4.5 section 24, simple offence 4.6 section 26 (Common assault)

- 1 (2) In this section:
- 2 ***aggravated offence***—see section 48A (2).
- 3 ***simple offence***—a ***simple offence***, in relation to a provision, means
- 4 an offence against the provision that is not an aggravated offence
- 5 against the provision.

19 Section 49 heading

substitute

49 Alternative verdicts for certain other offences against the person

**20 Matters to which court to have regard
New section 342 (1) (w)**

insert

(w) if a victim of the offence was a pregnant woman—

(i) whether the person knew, or ought reasonably to have known, that the woman was pregnant; and

(ii) whether the person intended to cause, or was reckless about causing, loss of or harm to the pregnancy; and

(iii) the loss of or harm to the pregnancy; and

(iv) whether the person intended to cause, or was reckless about causing, the death of or harm to a child born alive as a result of the pregnancy; and

(v) the death of or harm to a child born alive as a result of the pregnancy.

21 Dictionary, new definition of *actual bodily harm*

insert

actual bodily harm to a pregnant woman includes harm to the pregnancy other than in the course of a medical procedure (whether or not the woman suffers any other harm).

22 Dictionary, definition of *grievous bodily harm*

substitute

grievous bodily harm to a person includes—

- (a) any permanent or serious disfiguring of the person; and
- (b) for a pregnant woman—loss of or serious harm to the pregnancy other than in the course of a medical procedure (whether or not the woman suffers any other harm).

harm to a pregnancy—see section 48A (6).

23 Dictionary, definition of *serious harm*

substitute

serious harm—

- (a) to a pregnancy—see section 48A (6); and
- (b) for part 2A (Industrial manslaughter)—see the Criminal Code, dictionary.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.