

2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Bill Stefaniak)

Sentencing Legislation Amendment Bill 2007

Contents

	Page
Part 1	
Preliminary	
1 Name of Act	2
2 Commencement	2
Part 2	
Crimes Act 1900	
3 Legislation amended—pt 2	3
4 Manslaughter	
Section 15 (2)	3
5 Section 15 (3)	3

Contents

	Page
6 Intentionally inflicting grievous bodily harm	
Section 19 (1)	3
7 Section 19 (2)	4
8 Recklessly inflicting grievous bodily harm	
Section 20 (1)	4
9 Section 20 (2)	4
10 Wounding	
Section 21 (1)	4
11 Section 21 (2)	5
12 Assault with intent to commit certain indictable offences	
Section 22	5
13 Acts endangering life etc	
Section 27 (3)	5
14 Section 27 (4)	5
15 Acts endangering health etc	
Section 28 (2)	6
16 Culpable driving of motor vehicle	
Section 29 (2)	6
17 Section 29 (3)	6
18 Section 29 (4)	6
19 Section 29 (5)	7
20 Possession of object with intent to kill etc	
Section 33	7
21 Abduction of young person	
Section 37	7
22 Neglect etc of children	
Section 39 (1), penalty	7
23 Section 39 (3), penalty	8
24 Sexual assault in the first degree	
Section 51 (1)	8
25 Section 51 (2)	8
26 Sexual assault in the second degree	
Section 52 (1)	8
27 Section 52 (2)	9
28 Sexual assault in the third degree	
Section 53 (1)	9
29 Section 53 (2)	9

	Page
30 Sexual intercourse without consent	
Section 54 (1)	9
31 Section 54 (2)	10
32 Sexual intercourse with young person	
Section 55 (1)	10
33 Section 55 (2)	10
34 Maintaining a sexual relationship with young person	
Section 56 (5)	10
35 Act of indecency in the first degree	
Section 57	11
36 Act of indecency in the second degree	
Section 58	11
37 Acts of indecency with young people	
Section 61 (1)	11
38 Section 61 (2)	11
39 Abduction	
Section 63	12
40 Possessing child pornography	
Section 65 (1), penalty	12
41 Using the Internet etc to deprave young people	
Section 66 (1), penalty, paragraph (a)	12
42 Section 66 (1), penalty, paragraph (b)	12
43 Section 66 (2), penalty	13
44 Aiding prisoner to escape	
Section 159, penalty	13
45 Escaping	
Section 160, penalty	13
46 Summary disposal of certain cases	
Section 375 (1) (b)	13
47 Section 375 (2) (c)	13
48 Section 375 (10)	14
49 Section 375 (11)	14
Part 3 Crimes (Sentencing) Act 2005	
50 Legislation amended—pt 3	15
51 Sentencing—relevant considerations	
Section 33 (3), new note	15

Contents

	Page
52 New section 33A	15
53 New section 65A	16
Part 4 Criminal Code 2002	
54 Legislation amended—pt 4	21
55 New section 318A	21
56 False accounting Section 350 (1), (2) and (3), penalty	22
57 False statement by officer of body Section 351 (1), penalty	22
Part 5 Supreme Court Act 1933	
58 Legislation amended—pt 5	23
59 New sections 37SA and 37SB	23

2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Bill Stefaniak)

Sentencing Legislation Amendment Bill 2007

A Bill for

An Act to reform the law about sentencing, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Sentencing Legislation Amendment Act 2007*.

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

1 **Part 2** **Crimes Act 1900**

2 **3 Legislation amended—pt 2**

3 This part amends the *Crimes Act 1900*.

4 **4 Manslaughter**
5 **Section 15 (2)**

6 *omit*

7 20 years

8 *substitute*

9 25 years

10 **5 Section 15 (3)**

11 *omit*

12 26 years

13 *substitute*

14 30 years

15 **6 Intentionally inflicting grievous bodily harm**
16 **Section 19 (1)**

17 *omit*

18 15 years

19 *substitute*

20 20 years

1	7	Section 19 (2)
2		<i>omit</i>
3		20 years
4		<i>substitute</i>
5		25 years
6	8	Recklessly inflicting grievous bodily harm
7		Section 20 (1)
8		<i>omit</i>
9		10 years
10		<i>substitute</i>
11		15 years
12	9	Section 20 (2)
13		<i>omit</i>
14		13 years
15		<i>substitute</i>
16		16 years
17	10	Wounding
18		Section 21 (1)
19		<i>omit</i>
20		5 years
21		<i>substitute</i>
22		10 years

1 **11 Section 21 (2)**

2 *omit*

3 7 years

4 *substitute*

5 13 years

6 **12 Assault with intent to commit certain indictable offences**
7 **Section 22**

8 *omit last mention of*

9 5 years

10 *substitute*

11 10 years

12 **13 Acts endangering life etc**
13 **Section 27 (3)**

14 *omit*

15 10 years

16 *substitute*

17 20 years

18 **14 Section 27 (4)**

19 *omit*

20 15 years

21 *substitute*

22 25 years

Section 15

- 1 **15 Acts endangering health etc**
2 **Section 28 (2)**
- 3 *omit*
4 5 years
5 *substitute*
6 10 years
- 7 **16 Culpable driving of motor vehicle**
8 **Section 29 (2)**
- 9 *omit*
10 7 years
11 *substitute*
12 15 years
- 13 **17 Section 29 (3)**
- 14 *omit*
15 9 years
16 *substitute*
17 17 years
- 18 **18 Section 29 (4)**
- 19 *omit*
20 4 years
21 *substitute*
22 10 years

1	19	Section 29 (5)
2		<i>omit</i>
3		5 years
4		<i>substitute</i>
5		10 years
6	20	Possession of object with intent to kill etc
7		Section 33
8		<i>omit</i>
9		5 years
10		<i>substitute</i>
11		10 years
12	21	Abduction of young person
13		Section 37
14		<i>omit</i>
15		5 years
16		<i>substitute</i>
17		10 years
18	22	Neglect etc of children
19		Section 39 (1), penalty
20		<i>substitute</i>
21		Maximum penalty: 500 penalty units, imprisonment for 5 years or
22		both.

Section 23

- 1 **23 Section 39 (3), penalty**
- 2 *substitute*
- 3 Maximum penalty: 500 penalty units, imprisonment for 5 years or
- 4 both.
- 5 **24 Sexual assault in the first degree**
- 6 **Section 51 (1)**
- 7 *omit*
- 8 17 years
- 9 *substitute*
- 10 25 years
- 11 **25 Section 51 (2)**
- 12 *omit*
- 13 20 years
- 14 *substitute*
- 15 life
- 16 **26 Sexual assault in the second degree**
- 17 **Section 52 (1)**
- 18 *omit*
- 19 14 years
- 20 *substitute*
- 21 20 years

1 **27 Section 52 (2)**

2 *omit*

3 17 years

4 *substitute*

5 25 years

6 **28 Sexual assault in the third degree**
7 **Section 53 (1)**

8 *omit*

9 12 years

10 *substitute*

11 15 years

12 **29 Section 53 (2)**

13 *omit*

14 14 years

15 *substitute*

16 18 years

17 **30 Sexual intercourse without consent**
18 **Section 54 (1)**

19 *omit*

20 12 years

21 *substitute*

22 15 years

1	31	Section 54 (2)
2		<i>omit</i>
3		14 years
4		<i>substitute</i>
5		18 years
6	32	Sexual intercourse with young person
7		Section 55 (1)
8		<i>omit</i>
9		17 years
10		<i>substitute</i>
11		20 years
12	33	Section 55 (2)
13		<i>omit</i>
14		14 years
15		<i>substitute</i>
16		17 years
17	34	Maintaining a sexual relationship with young person
18		Section 56 (5)
19		<i>omit</i>
20		7 years
21		<i>substitute</i>
22		10 years

1 **35 Act of indecency in the first degree**
2 **Section 57**

3 *omit*

4 15 years

5 *substitute*

6 20 years

7 **36 Act of indecency in the second degree**
8 **Section 58**

9 *omit*

10 12 years

11 *substitute*

12 15 years

13 **37 Acts of indecency with young people**
14 **Section 61 (1)**

15 *omit*

16 12 years

17 *substitute*

18 15 years

19 **38 Section 61 (2)**

20 *omit*

21 10 years

22 *substitute*

23 12 years

Section 39

1	39	Abduction
2		Section 63
3		<i>omit</i>
4		10 years
5		<i>substitute</i>
6		15 years
7	40	Possessing child pornography
8		Section 65 (1), penalty
9		<i>substitute</i>
10		Maximum penalty: 700 penalty units, imprisonment for 7 years or
11		both.
12	41	Using the Internet etc to deprave young people
13		Section 66 (1), penalty, paragraph (a)
14		<i>omit</i>
15		5 years
16		<i>substitute</i>
17		7 years
18	42	Section 66 (1), penalty, paragraph (b)
19		<i>omit</i>
20		10 years
21		<i>substitute</i>
22		12 years

1	43	Section 66 (2), penalty
2		<i>substitute</i>
3		Maximum penalty: 200 penalty units, imprisonment for 7 years or
4		both.
5	44	Aiding prisoner to escape
6		Section 159, penalty
7		<i>substitute</i>
8		Maximum penalty: 200 penalty units, imprisonment for 7 years or
9		both.
10	45	Escaping
11		Section 160, penalty
12		<i>substitute</i>
13		Maximum penalty: 200 penalty units, imprisonment for 10 years or
14		both.
15	46	Summary disposal of certain cases
16		Section 375 (1) (b)
17		<i>substitute</i>
18		(b) an offence punishable by imprisonment for not longer than
19		15 years.
20	47	Section 375 (2) (c)
21		<i>omit</i>
22		\$10 000
23		<i>substitute</i>
24		\$50 000

- 1 **48 Section 375 (10)**
- 2 *omit*
- 3 2 years nor impose a fine exceeding \$5 000
- 4 *substitute*
- 5 5 years nor impose a fine exceeding 100 penalty units
- 6 **49 Section 375 (11)**
- 7 *omit*
- 8 6 months nor impose a fine exceeding \$1 000
- 9 *substitute*
- 10 2 years nor impose a fine exceeding 50 penalty units

Part 3 Crimes (Sentencing) Act 2005

50 Legislation amended—pt 3

This part amends the *Crimes (Sentencing) Act 2005*.

51 Sentencing—relevant considerations Section 33 (3), new note

insert

Note The court must also have regard to any relevant guideline judgment (see s 33A).

52 New section 33A

insert

33A Sentencing—regard to guideline judgments

- (1) In deciding how an offender should be sentenced (if at all), a court must have regard to any relevant guideline judgment.
- (2) If a court imposes a sentence that is inconsistent with the relevant guideline judgment, the court must give written reasons for the inconsistency.
- (3) This section is additional to and does not limit section 33.
- (4) In this section:

guideline judgment, for an offence, means a judgment of the Court of Appeal that is expressed to contain guidelines to be taken into account by courts sentencing offenders.

53 New section 65A

insert

65A Nonparole periods—standard periods

- (1) This section applies if a court is setting a nonparole period for an offender under section 65 or section 66 in relation to an offence for which there is a standard nonparole period.
- (2) The court must set the standard nonparole period as the nonparole period for the offence unless the court considers that there are reasons for setting a nonparole period for the offence that is longer or shorter than the standard nonparole period.
- (3) When setting the nonparole period for the offence, the court may have regard to any relevant aggravating circumstance mentioned in subsection (4) (other than a circumstance that is an element of the offence) and any relevant mitigating circumstance mentioned in subsection (5).
- (4) Aggravating circumstances to which the court may have regard include the following:
 - (a) the victim is a police officer, emergency services worker, corrections officer, judicial officer, health professional, health or community worker or teacher and the offence arose because of the victim's occupation;
 - (b) the offence involved actual or threatened use of violence;
 - (c) the offence involved actual or threatened use of a weapon;
 - (d) the offender has a record of previous convictions;
 - (e) the offence was committed in company with someone else;
 - (f) the offence involved gratuitous cruelty;
 - (g) the injury, emotional harm, loss or damage caused by the offence was substantial;

- (h) the offence was motivated by hatred for or prejudice against a group of people to which the offender believed the victim belonged;

Examples

- 1 people of a particular religion, racial or ethnic origin
- 2 people who speak a particular language
- 3 people of a particular sexual orientation
- 4 people of a particular age
- 5 people with a disability

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (i) the offence was committed without regard for public safety;
- (j) the offence was committed while the offender was on bail in relation to an offence or alleged offence;
- (k) the offender abused a position of trust or authority in relation to the victim;
- (l) the victim was vulnerable because of age or occupation;

Examples

- 1 the victim was very young or old
- 2 the victim had a disability
- 3 the victim was a taxi driver, bank teller or service station attendant

- (m) the offence involved multiple victims or a series of criminal acts;
- (n) the offence was part of a planned or organised criminal activity.
- (5) Mitigating circumstances to which the court may have regard include the following:
- (a) the injury, emotional harm, loss or damage caused by the offence was not substantial;

- 1 (b) the offence was not part of a planned or organised criminal
2 activity;
- 3 (c) the offender was provoked by the victim;
- 4 (d) the offender was acting under duress;
- 5 (e) the offender does not have any record, or any significant
6 record, of previous convictions;
- 7 (f) the offender was otherwise a person of good character;
- 8 (g) the offender is unlikely to reoffend;
- 9 (h) the offender has good prospects of rehabilitation, whether
10 because of age or otherwise;
- 11 (i) the offender has shown remorse for the offence by making
12 reparation for any injury, loss or damage or in any other way;
- 13 (j) the offender was not fully aware of the consequences of his or
14 her actions because of the offender's age or any disability;
- 15 (k) a plea of guilty by the offender;
- 16 (l) if the offender is tried on indictment—the degree of pre-trial
17 disclosure by the defence for the purposes of the trial;
- 18 (m) the degree to which the offender has assisted, or undertaken to
19 assist, law enforcement authorities in the prevention, detection
20 or investigation of, or in a proceeding in relation to, the offence
21 concerned or any other offence.
- 22 (6) If the court sets a nonparole period that is different to the standard
23 nonparole period for the offence, the court must state the reasons for
24 the difference.
- 25 (7) The *standard nonparole period* for an offence mentioned in
26 table 65A, column 2 is the period mentioned in column 3 of the
27 same item.

Table 65A Standard nonparole periods

column 1 item	column 2 offence against	column 3 period
1	<i>Crimes Act 1900</i> , section 12 (Murder), other than an offence to which item 2 applies	20 years
2	<i>Crimes Act 1900</i> , section 12 (Murder), if the victim is a police officer, emergency services worker, correctional officer, judicial officer, health professional, health or community worker or teacher and the offence arose because of the victim's occupation	25 years
3	<i>Crimes Act 1900</i> , section 19 (Intentionally inflicting grievous bodily harm)	7 years
4	<i>Crimes Act 1900</i> , section 20 (Recklessly inflicting grievous bodily harm)	5 years
5	<i>Crimes Act 1900</i> , section 27 (4) (b) (Acts endangering life etc)	7 years
6	<i>Crimes Act 1900</i> , section 51 (2) (Sexual assault in the first degree)	15 years
7	Criminal Code, section 44 (Attempt), if the offence attempted is murder	10 years
8	Criminal Code, section 310 (Aggravated robbery)	7 years
9	Criminal Code, section 311 (Burglary), if the offender has been convicted of a burglary offence in the previous 5 years	1 year
10	Criminal Code, section 312 (Aggravated burglary), if serious injury is caused to a person	7 years
11	Criminal Code, section 318A (1) or (2) (Carjacking)	3 years
12	offence against Criminal Code, section 318A (3) (Carjacking) (which is about carjacking in aggravated circumstances)	5 years

column 1 item	column 2 offence against	column 3 period
13	offence against <i>Drugs of Dependence Act 1989</i> , section 164 (2) (Sale or supply) if the quantity of the drug to which the offence relates is at least 50 times the quantity prescribed as a trafficable quantity	15 years
14	<i>Drugs of Dependence Act 1989</i> , section 164 (2) (Sale or supply) if the quantity of the drug to which the offence relates is at least 30 but less than 50 times the quantity prescribed as a trafficable quantity	10 years
15	<i>Drugs of Dependence Act 1989</i> , section 164 (2) (Sale or supply) if the quantity of the drug to which the offence relates is at least 20 but less than 30 times the quantity prescribed as a trafficable quantity	5 years

Part 4 Criminal Code 2002

54 Legislation amended—pt 4

This part amends the *Criminal Code 2002*.

55 New section 318A

insert

318A Carjacking

(1) A person commits an offence if the person—

- (a) assaults someone else with intent to take a motor vehicle; and
- (b) takes and drives the vehicle, or takes the vehicle for the purpose of driving it, without the consent of the owner or person in lawful possession of the vehicle.

Maximum penalty: imprisonment for 10 years.

(2) A person commits an offence if the person—

- (a) takes and drives a motor vehicle, or takes the vehicle for the purpose of driving it, without the consent of the owner or person in lawful possession of the motor vehicle; and
- (b) someone else is in or on the vehicle.

Maximum penalty: imprisonment for 10 years.

(3) A person commits an offence against this subsection if the person commits an offence against subsection (1) or (2) in circumstances of aggravation.

Maximum penalty: imprisonment for 14 years.

Section 56

- 1 (4) For subsection (3), a person commits an offence in *circumstances of*
2 *aggravation* if—
3 (a) the person is in company with someone else; or
4 (b) the person is armed with an offensive weapon or instrument; or
5 (c) the person inflicts actual bodily harm on someone else.
6 (5) In this section:
7 *motor vehicle*—see the *Road Transport (General) Act 1999*,
8 dictionary.

9 **56 False accounting**
10 **Section 350 (1), (2) and (3), penalty**

11 *substitute*

12 Maximum penalty: 1 000 penalty units, imprisonment for 10 years
13 or both.

14 **57 False statement by officer of body**
15 **Section 351 (1), penalty**

16 *substitute*

17 Maximum penalty: 1 000 penalty units, imprisonment for 10 years
18 or both.

Part 5 Supreme Court Act 1933

58 Legislation amended—pt 5

This part amends the *Supreme Court Act 1933*.

59 New sections 37SA and 37SB

in part 2A, insert

37SA Guideline judgments

- (1) The Court of Appeal may, on its own initiative or at the request of the Attorney-General under section 37SB, give a guideline judgment to be taken into account by courts when sentencing offenders.
- (2) A guideline judgment may be given separately or in any proceeding that the Court of Appeal considers appropriate.
- (3) A guideline judgment may be given in a proceeding even if it is not necessary for deciding the proceeding.
- (4) A guideline judgment may be reviewed, varied or revoked in a later guideline judgment.
- (5) This section does not limit any power or jurisdiction that the Court of Appeal has apart from this section.

37SB Attorney-General may request guideline judgment

- (1) The Attorney-General may request the Court of Appeal to give a guideline judgment.
- (2) The request for a guideline judgment may include submissions about the proposed guidelines.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2007.

2 Notification

Notified under the Legislation Act on 2007.

3 Republications of amended laws

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

© Australian Capital Territory 2007