

2021

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

# Crimes Legislation Amendment Bill 2021

## Contents

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	Page
<b>Part 1</b>	<b>Preliminary</b>
1	Name of Act 2
2	Commencement 2
3	Legislation amended 2
<b>Part 2</b>	<b>Crimes (Child Sex Offenders) Act 2005</b>
4	Registrable offender—exceptions New section 9 (1A) 3
5	Class 2 offences Schedule 2, part 2.2, new item 14A 3

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	Page
<b>Part 3 Crimes (Sentencing) Act 2005</b>	
6 Sentencing—irrelevant considerations Section 34 (2)	4
7 New section 34B	4
8 New section 67A	5
9 Amendment of start of sentences on setting aside or amending other sentences Section 74 (5)	5
<b>Part 4 Crimes (Surveillance Devices) Act 2010</b>	
10 Purposes of Act New section 6 (e)	6
11 Relationship to other laws and matters Section 7 (1), except note	6
12 New part 5A	6
13 Dictionary, new definition of <i>body-worn camera</i>	8
<b>Part 5 Inspector of Correctional Services Act 2017</b>	
14 Functions—examination and review Section 18 (1) (a)	9
<b>Part 6 Listening Devices Act 1992</b>	
15 Sections 4 (2) (a) and 5 (2) (f)	10
16 Dictionary, note 2	10
<b>Part 7 Terrorism (Extraordinary Temporary Powers) Act 2006</b>	
17 Expiry of Act etc Section 101 (1)	11

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## A Bill for

An Act to amend legislation about crimes, and for other purposes

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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 *Crimes Legislation Amendment Act 2021*.

4 **2 Commencement**

5 (1) This Act (other than parts 4 and 6) commences on the day after its  
6 notification day.

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

9 (2) Parts 4 and 6 commence on a day fixed by the Minister by written  
10 notice.

11 *Note 1* A single day or time may be fixed, or different days or times may be  
12 fixed, for the commencement of different provisions (see [Legislation Act](#),  
13 s 77 (1)).

14 *Note 2* If a provision has not commenced within 6 months beginning on the  
15 notification day, it automatically commences on the first day after that  
16 period (see [Legislation Act](#), s 79).

17 **3 Legislation amended**

18 This Act amends the following legislation:

- 19 • [Crimes \(Child Sex Offenders\) Act 2005](#)  
20 • [Crimes \(Sentencing\) Act 2005](#)  
21 • [Crimes \(Surveillance Devices\) Act 2010](#)  
22 • [Inspector of Correctional Services Act 2017](#)  
23 • [Listening Devices Act 1992](#)  
24 • [Terrorism \(Extraordinary Temporary Powers\) Act 2006](#).

1 **Part 2** **Crimes (Child Sex Offenders)**  
 2 **Act 2005**

3 **4 Registrable offender—exceptions**  
 4 **New section 9 (1A)**

5 *insert*

6 (1A) A person is not a *registrable offender* only because the person has  
 7 been sentenced for an offence mentioned in schedule 2, part 2.2,  
 8 item 14A if the court considers, on application by the defence, that  
 9 the person does not pose a risk to the lives or sexual safety of 1 or  
 10 more children, or of children generally.

11 *Note* The offence mentioned in that item is against the *Criminal Code Act 1995*  
 12 (Cwlth), s 273A.1 (Possession of child-like sex dolls etc).

13 **5 Class 2 offences**  
 14 **Schedule 2, part 2.2, new item 14A**

15 *insert*

14A	<i>Criminal Code Act 1995</i> (Cwlth), section 273A.1	possession of child-like sex dolls etc	
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1 **Part 3** **Crimes (Sentencing) Act 2005**

2 **6 Sentencing—irrelevant considerations**  
3 **Section 34 (2)**

4 *substitute*

- 5 (2) In deciding how an offender should be sentenced for an offence, a  
6 court must not reduce the severity of a sentence it would otherwise  
7 have imposed because of an automatic forfeiture of property, a  
8 forfeiture order, or a penalty order under the *Confiscation of Criminal*  
9 *Assets Act 2003*.

10 **7 New section 34B**

11 *insert*

12 **34B Sentencing—family violence offences**

- 13 (1) In deciding how an offender should be sentenced for a family  
14 violence offence, a court must consider the nature of family violence  
15 and the context of the offending, including the following:
- 16 (a) the matters mentioned in the preamble to the *Family Violence*  
17 *Act 2016*;
  - 18 (b) whether the offending occurred at the home of the victim,  
19 offender or another person;
  - 20 (c) whether the offending occurred when a child was present;
  - 21 (d) if the offence is a serious family violence offence—whether the  
22 offender has 1 or more other convictions for serious family  
23 violence offences.
- 24 (2) A court must not reduce the severity of a sentence it would otherwise  
25 have imposed because—
- 26 (a) the offence is a family violence offence; or

1 (b) a family violence order under the *Family Violence Act 2016* or  
 2 a protection order under the *Domestic Violence and Protection*  
 3 *Orders Act 2008* (repealed) is in force against the offender in  
 4 relation to the family violence offence.

5 (3) In this section:

6 *family violence*—see the *Family Violence Act 2016*, dictionary.

7 *serious family violence offence* means a family violence offence that  
 8 is punishable by imprisonment for 5 years or more.

## 9 **8 New section 67A**

10 *insert*

### 11 **67A Nonparole periods—appeals**

12 (1) If, on appeal, a court sets aside or amends a sentence of imprisonment  
 13 imposed on an offender—

14 (a) any nonparole period to which the offender is subject is  
 15 automatically cancelled; and

16 (b) this part applies in relation to the setting of any new nonparole  
 17 period for the offender.

18 (2) Despite subsection (1) (b), section 65 (4) does not apply if a court  
 19 amends a sentence of imprisonment on appeal and a nonparole period  
 20 applied to the sentence before the appeal.

## 21 **9 Amendment of start of sentences on setting aside or** 22 **amending other sentences** 23 **Section 74 (5)**

24 *omit*

25 , or the nonparole period of a sentence,

1 **Part 4** **Crimes (Surveillance Devices)**  
2 **Act 2010**

3 **10** **Purposes of Act**  
4 **New section 6 (e)**

5 *insert*

6 (e) to provide for the use of body-worn cameras by police officers  
7 in the course of their duties.

8 **11** **Relationship to other laws and matters**  
9 **Section 7 (1), except note**

10 *after*

11 Act

12 *insert*

13 (other than part 5A)

14 **12** **New part 5A**

15 *insert*

16 **Part 5A** **Body-worn cameras**

17 *Note* The *Surveillance Devices Act 2004* (Cwlth), pt 4 also contains provisions  
18 for the use of surveillance devices without a warrant.

19 **43A** **Meaning of *body-worn camera***

20 For this Act, *body-worn camera* means a device that is—

21 (a) capable of recording visual images and sound; and

22 (b) usually worn on the body, whether or not the device is being  
23 worn when used; and

24 (c) approved, in writing, by the chief police officer.



- 1     **43B     Use of body-worn cameras by police officers**
- 2           (1) A police officer may use a body-worn camera in the course of the
- 3           officer's duties.
- 4           (2) A police officer who is wearing a body-worn camera must use the
- 5           camera when dealing with a member of the public in the course of the
- 6           officer's duties.
- 7           (3) Subsection (2) does not apply in circumstances in which the use of a
- 8           body-worn camera—
- 9               (a) is not reasonably practicable; or
- 10               (b) could cause or increase a risk to a person's safety; or
- 11               (c) would unreasonably limit a person's privacy.
- 12           (4) The use of a body-worn camera by a police officer under this section
- 13           must be—
- 14               (a) overt; and
- 15               **Examples—overt use**
- 16                   1     The camera is used or worn in a way that makes it visible to the person
- 17                   being recorded.
- 18                   2     A police officer in attendance tells the person being recorded that the
- 19                   camera is being used.
- 20               (b) in accordance with the guidelines under section 43C.
- 21           (5) However, the use need not be overt if—
- 22               (a) the camera is used when a police officer draws or uses a firearm
- 23               or conducted electrical weapon; or
- 24               (b) overt use of the camera could cause or increase a risk to a
- 25               person's safety.
- 26           (6) A police officer may also use a body-worn camera if the use is—
- 27               (a) incidental to the use of the camera under this section; or
- 28               (b) inadvertent.

1 (7) Parts 2 to 5 do not apply in relation to the use of a body-worn camera  
2 under this section.

3 (8) In this section:

4 *conducted electrical weapon* means a hand-held or other electrical  
5 device designed to administer an electric shock on contact.

6 **43C Body-worn cameras—guidelines**

7 (1) The chief police officer must make guidelines about the use of  
8 body-worn cameras by police officers under section 43B.

9 (2) The guidelines must include—

10 (a) requirements for the storage, use and disposal of a recording  
11 from a body-worn camera, and information about how a person  
12 may access a recording under any applicable laws; and

13 (b) guidance about the circumstances in which a body-worn camera  
14 may or must be used; and

15 (c) a statement about how human rights have been considered in  
16 making the guidelines.

17 (3) The guidelines may include any other relevant matters.

18 (4) The chief police officer must consult the director-general before  
19 making a guideline.

20 (5) A guideline is a disallowable instrument.

21 **13 Dictionary, new definition of *body-worn camera***

22 *insert*

23 *body-worn camera*—see section 43A.

1 **Part 5** **Inspector of Correctional**  
2 **Services Act 2017**

3 **14 Functions—examination and review**  
4 **Section 18 (1) (a)**

5 *substitute*

6 (a) must examine and review each correctional centre declared  
7 under the *Corrections Management Act 2007*, section 24 and  
8 each detention place declared under the *Children and Young*  
9 *People Act 2008*, section 142—

10 (i) within 2 years after the day the centre or place was  
11 declared; and

12 (ii) at least once every subsequent 3 years; and

1 **Part 6** **Listening Devices Act 1992**

2 **15 Sections 4 (2) (a) and 5 (2) (f)**

3 *omit*

4 of the Commonwealth

5 *substitute*

6 in force in the ACT

7 **16 Dictionary, note 2**

8 *omit*

- 9
  - Commonwealth

1 **Part 7** **Terrorism (Extraordinary**  
2 **Temporary Powers) Act 2006**

3 **17** **Expiry of Act etc**  
4 **Section 101 (1)**

5 *omit*

6 15 years

7 *substitute*

8 16 years

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 24 June 2021.

**2 Notification**

Notified under the [Legislation Act](#) on 2021.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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