

No. , 1915.

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## A BILL

To amend the Crimes Act, 1900, and the Habitual Criminals Act, 1905, and to repeal the Crimes (Girls' Protection) Act, 1910, and the Crimes (Girls' Protection) Amendment Act, 1911; and for other purposes consequent thereon or incidental thereto.

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**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** This Act may be cited as the "Crimes (Amendment) Act, 1915," and shall be read with the Crimes Act, 1900, hereinafter called the Principal Act.

2. In amendments inserted by this Act in the Principal Act, the expression "this Act" means the Principal Act as amended by this Act.

3. The several enactments mentioned in the Schedule to this Act are, to the extent therein specified, hereby repealed.

4. Part I of the Principal Act is amended as follows:—

(a) Section four: After the definition of "Governor" insert the following definition:—

"Grievous bodily harm" includes any permanent or serious disfiguring of the person.

(b) Section four: After the definition of "justice" insert the following definition:—

"Loaded arms" means any gun, pistol, or other arms, loaded in the barrel or chamber with gunpowder or other explosive substance, and with ball, shot, slug, or other destructive material, although the attempt to discharge may fail from want of proper priming, or from any other cause; and every gun, pistol, or other arms, unlawfully presented at any person, shall be deemed to be loaded unless the contrary is shown.

(c) Section four: Add at end of definition of "dwelling-house": "Any building or other place which if occupied would be a dwelling-house shall be deemed to be a dwelling-house notwithstanding that it is temporarily unoccupied."

(d) Section eight: Insert after the words "Where, by this or any other Act," the words "or by any rule, regulation or by-law, duly made under or by virtue of the provisions of any Act".

(e) Section nine is repealed, and the following is substituted:—

9. (1) Whenever by this or any Act an offence is punishable by imprisonment with or without hard labour for a term of two years or more, such

such offence is hereby declared to be and shall be dealt with as a felony, or whenever in this or any Act or Imperial Act the term "felony" is used, the same shall be taken to mean an offence punishable as aforesaid.

(2) Every offence not so punishable shall be, and shall be dealt with, as a misdemeanour only.

5. Parts II, III, IV, and V of the Principal Act are amended by the substitution of the word "imprisonment" for the words "penal servitude" wheresoever occurring.

6. Parts III and IV of the Principal Act are amended as follows:—

Sections twenty-seven, twenty-eight, sixty-three, one hundred and ten, and one hundred and ninety-six: Omit the words "suffer death", and insert in lieu thereof the words "imprisonment for life".

7. Part III of the Principal Act is further amended as follows:—

(a) Section eighteen, subsection one, paragraph (a) is repealed.

(b) Section nineteen is repealed, and the following is substituted:—

19. (1) Whosoever commits the crime of murder shall be liable—

(a) if it be of the first degree—to imprisonment for the term of his natural life;

(b) if it be not of the first degree—to imprisonment for a term not exceeding twenty years.

(2) Murder shall be deemed to be of the first degree where it has been wilful and premeditated.

(3) On the trial of any person for murder the jury shall, if they convict the accused, say in and by their verdict whether they find the murder to have been in the first degree or not.

(c) Section thirty-six is repealed.

(d)

- (d) Sections sixty-four, sixty-nine, seventy, seventy-one, seventy-two, and seventy-seven: Omit the word "fourteen", and substitute therefor the word "sixteen".
- (e) Sections seventy-three and seventy-four: Omit the word "sixteen", and substitute therefor the word "seventeen".
- (f) Sections seventy-three, seventy-four, seventy-five, and seventy-six: Omit the words "father" and "daughter" and substitute therefor the words "step-father" and "step-daughter" respectively.
- (g) Section seventy-eight is repealed, and the following is substituted:—

78. Whosoever indecently assaults any female shall be liable to imprisonment for *three* years.

8. The following sections are inserted next after section seventy-eight of the Principal Act:—

78A. Whosoever commits incest shall be liable to imprisonment for *fourteen* years.

78B. Whosoever commits adultery with a married woman, living with her husband, shall, if the proceedings be instituted by her husband, be liable to imprisonment for *ten* years.

78c. It shall be a sufficient defence to any charge which renders a person liable to be found guilty of an offence under sections seventy-one, seventy-two, or seventy-seven of this Act, if it shall be made to appear to the court, or jury before whom the charge is brought, that the girl was at the time of the alleged offence—

- (a) over the age of fourteen years, and
- (b) consented to the commission of the offence, and
- (c) was a common prostitute or an associate of common prostitutes,

or that the person so charged had reasonable cause to believe that the girl in question was of or above the age of sixteen years.

78D.

78D. No prosecution in respect of any offence under sections seventy one, seventy two, or seventy-seven of the Principal Act, as amended by this Act, shall, if the girl in question was at the time of the alleged offence over the age of fourteen years and under the age of sixteen years be commenced after the expiration of twelve months from the time of the alleged offence.

9. The following section is inserted next after section eighty-seven of the Principal Act :—

87A. Whosoever procures, entices or leads away, or detains any female under the age of twenty-one years, whether with her consent or not, with intent that he, or some other person, may have carnal knowledge of such girl, either within or without New South Wales, shall, notwithstanding that some one or more of the various acts constituting the offence may have been committed outside New South Wales, be liable to imprisonment for *fourteen* years.

10. The following section is inserted next after section eighty-nine of the Principal Act :—

89A. Whosoever by means of any fraud, violence, threat, or abuse of authority, or by the use of any drug or intoxicating liquor, procures, entices, or leads away or detains any woman of or above the age of twenty-one years with intent that he, or some other person, may have carnal knowledge of such woman, either within or without New South Wales, shall, notwithstanding that some one or more of the various acts constituting the offence may have been committed outside New South Wales, be liable to imprisonment for *seven* years.

11. The following sections are inserted next after section ninety-one of the Principal Act :—

91A. Whosoever having been convicted under the provisions of the Vagrancy Act, 1902, as amended by the Police Offences (Amendment) Act, 1908, of being a male person knowingly living, wholly or in part, on the earnings of prostitution afterwards commits the said offence shall be liable to imprisonment for *three* years.

91B.

91B. Whosoever employs in, or under any circumstances whatever suffers to resort to or be upon, any premises used as a brothel or house of ill-fame any girl under the age of eighteen years shall be liable to imprisonment for *five* years.

**12.** Part IV of the Principal Act is amended as follows :—

- (a) Section one hundred and twenty-four : After the word “ took ” insert the words “ or appropriated or retained ”.
- (b) Section one hundred and thirty-one : After the word “ whosoever ” insert the words “ takes and uses or takes for the purpose of using any cart, waggon, carriage, motor-car, bicycle, or other vehicle, or any boat howsoever propelled, or any other means of locomotion, the property of another person, without the consent of the owner, or person in lawful possession thereof, or ”

**13.** The following section is inserted next after section one hundred and eighty-nine of the Principal Act :—

189A. (1) Whosoever, without lawful excuse, receives, or has in his possession, any property stolen outside the State of New South Wales, knowing the same to have been stolen, shall liable to imprisonment for *ten* years.

(2) For the purposes of this section property shall be deemed to have been stolen if it has been taken, extorted, obtained, embezzled, converted, or disposed of under such circumstances that if the Act had been committed in the State of New South Wales the person committing it would have been guilty of an indictable offence according to the law for the time being of the State of New South Wales.

**14.** Part VII of the Principal Act is amended as follows :—

- (a) Section three hundred and forty: Omit the word “ or ” where it occurs between the words “ Circuit ”

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“Circuit” and “District Court”, and insert after the words “District Court” the words “or Court of Petty Sessions”.

(b) The same section is further amended by inserting after the words “Chairman of Quarter Sessions” the words “or Stipendiary or Police Magistrate” and by inserting after the words “the Judge or Chairman” the words “or Magistrate”.

(c) Section three hundred and forty-one: In subsection one after the word “Chairman” insert the words “or Magistrate”, and omit the words “or Justice or Justices” in subsection two.

**15.** Part X of the Principal Act is amended as follows:—

(a) Section three hundred and fifty-two, subsection two (a): After the word “such” insert the words “offence or”.

(b) Section three hundred and fifty-two: The following subsection to be read after subsection three:—

(4) Any constable may apprehend any person for whose apprehension on any ground other than a charge of felony or misdemeanour or offence punishable as a misdemeanour a warrant has been lawfully issued, provided the issue of such warrant has been certified by the Inspector-General of Police, or by the Justice who has signed such warrant.

**16.** The following section is inserted next after section three hundred and fifty-three of the Principal Act:—

353A (1) Where a person is in lawful custody upon a charge of committing any crime or offence, any constable may search his person and take from him anything found upon his person, and may use such force as is reasonably necessary for that purpose.

(2)

(2) When a person is in lawful custody upon a charge of committing any crime or offence which is of such a nature and is alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the crime or offence, any legally qualified medical practitioner acting at the request of any constable, and any person acting in good faith in his aid and under his direction, may make such an examination of the person so in custody as is reasonable in order to ascertain the facts which may afford such evidence, and may use such force as is reasonably necessary for that purpose.

(3) When any person is in lawful custody for any offence punishable on indictment or summary conviction under any Act, the officer-in-charge of police at the station where he is so in custody may take or cause to be taken all such particulars as may be deemed necessary for the identification of such person, including his photograph and finger-prints, and may use or cause to be used such reasonable force as may be necessary to secure the same.

**17.** Part XI of the Principal Act is amended as follows:—

- (a) Section three hundred and seventy: Omit words "not capital".
- (b) Section four hundred and six: Insert after the words "for the murder", the words "or manslaughter".
- (c) Section four hundred and seven: Add the following subsection:—
  - (3) Nothing herein contained shall apply to any person who but for this Act would be at common law or by any Act or Imperial Act compellable to give evidence in such proceedings.
- (d) Section four hundred and ten: Insert after the word "if" the words "it has been made after the arrest of the accused unless the accused

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accused has been cautioned that he need not say anything, but that if he does, whatever he says may be given in evidence for or against him, and it has been made in the presence of some person other than a constable, warder, or other officer of police or of a gaol, who has taken it down in writing, and read it over to the accused, and it has been signed by the accused, or if ”.

(e) Section four hundred and eighteen : In subsection two, after the word “prosecution”, insert the words “is that of more than one child or”.

**18.** The following section is inserted next after section four hundred and fourteen of the Principal Act :—

414A. On the hearing of any charge under this or any Act before a justice or justices, it shall not be necessary for any person who has made a scientific examination of any article or body to give evidence of the result of such examination, but a certificate under the hand of such person setting out the facts and conclusions he has arrived at shall be prima facie evidence thereof.

**19.** The following section is inserted next after section four hundred and nineteen of the Principal Act :—

419A. On the prosecution of any person for stealing, or receiving any property knowing it to be stolen, from any vessel, dock, wharf, or quay, the bill-of-lading relating to the said property and the particulars therein, and any marks or signs set out thereon, and any marks or signs upon the goods to which they purport to refer, shall be admissible in evidence as prima facie proof of ownership of the property, the subject of the charge, in the consignee or his assignee.

**20.** The following section is inserted next after section four hundred and twenty-four of the Principal Act :—

424A. Where on the trial of any person for any felony or misdemeanour, the jury have been unable to

to come to a unanimous decision after deliberating for twelve hours, the verdict of the majority, provided it is not less than three-fourths of the whole, shall be taken as the verdict of the jury, and shall to all intents and purposes be as effective as if it were the unanimous verdict of the whole jury.

**21.** Part XII of the Principal Act is amended as follows:—

(a) Section four hundred and twenty-nine: Omit words "whether of penal servitude or imprisonment", and insert in lieu thereof the words "of imprisonment".

(b) The same section is further amended by the addition thereto of the following words:—

(2) Where a person of or above the age of sixteen years and under the age of eighteen years is convicted of an offence under sections seventy-one, seventy-two, or seventy-seven of this Act, and the jury was satisfied that the girl in question was at the time of the offence of or above the age of fourteen years and under the age of sixteen years, he may be dealt with in the manner provided in subsection one of this section, or under the provisions of sections thirty, thirty-one, thirty-two, and thirty-three of the Neglected Children and Juvenile Offenders Act, 1905.

(c) Sections four hundred and thirty and four hundred and thirty-one are repealed.

(d) Sections four hundred and thirty-two and four hundred and thirty-three are repealed, and the following section is inserted, and shall be read as section four hundred and thirty-two:—

432. Where any offender is sentenced to imprisonment, whether for a misdemeanour at common law, or under this or any other Act, or Imperial Act, he shall be kept, if a male, to hard labour, and if a female, to light labour, unless the court shall in and by the sentence otherwise direct.

(e) Section four hundred and forty: Omit the words "not punishable with death". (f)

- (f) The same section is further amended by omitting the words "penal servitude" and inserting in lieu thereof the word "imprisonment".
- (g) Section four hundred and forty-one: Omit the words "whether punishable with death or otherwise".

**22.** Section four hundred and forty-two is repealed, and the following is substituted:—

442. (1) Where by any section of this Act an offender is made liable to imprisonment for life or for any other fixed term, the judge may nevertheless pass a sentence of imprisonment of less duration:

Provided that nothing in this subsection shall prevent the awarding of hard labour or solitary confinement, or whipping, where at present authorised by law, or the directing of the offender to enter into recognizances to keep the peace and be of good behaviour.

(2) Where by any section of this Act an offender is made liable to a fine of any fixed amount, the judge may nevertheless inflict a fine of less amount.

**23.** Part XIII of the Principal Act is amended as follows:—

- (a) Sections four hundred and forty-eight, four hundred and forty-nine, four hundred and fifty, four hundred and fifty-one, four hundred and fifty-two, and four hundred and fifty-three are repealed.
- (b) Section four hundred and fifty-seven: After the words "four hundred and thirty-seven" insert the words "or under section 437A".
- (c) Sections four hundred and fifty-nine and four hundred and sixty are repealed.
- (d) Section four hundred and sixty-one: Omit the words "penal servitude, or".
- (e) Section four hundred and sixty, subsection two, is repealed, and the following substituted therefor:—

(2) Any such license may be revoked by the Governor at his discretion, and shall be revoked by

by a justice on proof before him in a summary way that the licensee has been guilty of a breach of any condition of the license.

Where a license is revoked as aforesaid the person released on license may be taken by any member of the police force and returned to gaol, and may be detained there to undergo the remainder of his sentence.

**24.** Part XIV of the Principal Act is amended as follows:—

- (a) Section five hundred and twenty-nine: Insert after the words "punishable on summary conviction" the words "whether under the provisions of section four hundred and seventy-six of this Act, or otherwise".
- (b) Sections five hundred and thirty-two, five hundred and thirty-three, five hundred and thirty-five, five hundred and thirty-six, five hundred and thirty-seven, five hundred and thirty-eight, five hundred and thirty-nine, five hundred and forty-one, and five hundred and forty-two: Omit the word "above" wherever it occurs in those sections, and insert the words "in addition to" after the words "or the damage done" wherever they occur in the said sections.
- (c) Section five hundred and forty-seven: At the end of subsection one, omit the words "as in any case of a like nature", and insert in lieu thereof the words "for a term not exceeding twelve months, and, in default of its being entered into forthwith, the defendant may be imprisoned for *six* months, unless such recognizance is sooner entered into".

**25.** The following sections are inserted next after section five hundred of the Principal Act:—

500A. Whosoever commits any offence mentioned in section 477 of this Act other than those contained in paragraphs (a), (e), (g), (h), and the amount of money or the value of the property stolen, taken, embezzled, secreted, removed, appropriated, or obtained,

obtained, or attempted to be stolen, taken, embezzled, secreted, removed, appropriated or obtained, or of the reward, does not exceed ten pounds, shall on conviction before two justices be liable to imprisonment for *six* months or to pay a fine of *fifty* pounds.

500B. Whosoever steals any cattle or wilfully kills any cattle with intent to steal the carcase or skin or other part of the cattle so killed, and the value of the said cattle does not exceed ten pounds, shall on conviction before two justices be liable to imprisonment for *six* months or to pay a fine of *fifty* pounds.

500c. Whosoever steals in a dwelling-house any property to the value in the whole of less than five pounds shall on conviction before two justices be liable to imprisonment for *six* months or to pay a fine of *fifty* pounds.

500D. Whosoever steals to the value of ten shillings any goods, article, or material while anywhere placed or exposed during the process or progress of manufacture shall on conviction before two justices be liable to imprisonment for *six* months or to pay a fine of *fifty* pounds.

500E. Whosoever being for the purpose of manufacture, or any special purpose connected with manufacture, employed to make, prepare, or work up any goods, article, or material, or being for any purpose entrusted with any such goods, article, or material, or with any tools or apparatus, sells, pawns, purloins, secretes, embezzles, exchanges, or otherwise fraudulently disposes of the same or any part thereof, shall on conviction before two justices be liable to imprisonment for *six* months or to pay a fine of *fifty* pounds.

500F. Whosoever being the tenant or occupier of any house, building, or lodging, steals any chattel or fixture let to be used therewith, whether the contract was entered into by the accused or by any person on his behalf, shall on conviction before two justices be liable to imprisonment for *six* months or to pay a fine of *fifty* pounds.

500G.

500G. Whosoever takes and uses any cart, waggon, carriage, motor car, bicycle, or other vehicle, or any boat howsoever propelled, or any other means of locomotion, the property of any other person, without the consent of the owner or person in lawful possession thereof, shall on conviction before two justices be liable to imprisonment for *six* months or to pay a fine of *fifty* pounds.

**26.** The following sections are inserted next after section five hundred and forty-three of the Principal Act:—

543A. Whosoever forges or utters any bill of exchange, or any acceptance, indorsement, or assignment thereof, or any promissory note for the payment of money, or any indorsement or assignment thereof, or any undertaking, warrant, order, authority, or request for the payment of money, or the delivery or transfer of any chattel, note, bill, or security, or for procuring or giving credit, or any acquittance, or receipt, for money or goods, or for any note, bill or other security, or any indorsement on, or assignment of any such undertaking, warrant, order, authority, request, receipt, or other instrument, and the amount purporting to be payable under such bill, note, undertaking, warrant, order, authority, or request, or the value of such chattel, note, bill, or security, or the amount of credit to be procured, or given, does not exceed ten pounds, shall on conviction before two justices be liable to imprisonment for *six* months or pay a fine of *fifty* pounds.

543B. Whosoever draws, makes, signs, accepts, or indorses any bill of exchange or promissory note, or any such undertaking, warrant, order, authority or request, as in the last preceding section mentioned, by procuration or otherwise, for or in the name, or on the account of any person without lawful authority or excuse, or offers, utters, disposes of, or puts off any such instrument so drawn, made, signed, accepted or indorsed, with intent in any such case to defraud, and the amount purporting to

to be payable under such bill, note, undertaking, warrant, order, authority, or request, or the value of such chattel, note, bill, or security, or the amount of credit to be procured or given does not exceed ten pounds, shall on conviction before two justices be liable to imprisonment for *six* months or to pay a fine of *fifty* pounds.

543c. Whosoever when any cheque or draft on any bank is crossed with the name of a banker or with two transverse lines with the words "bank" or the words "and company", or any abbreviation thereof, respectively, or with the word "credit", followed by the name of any individual or firm, obliterates, adds to, or alters any such crossing, or utters any cheque or draft whereon any such obliteration, addition, or alteration has been made, knowing the same to have been made, with intent in any such case to defraud, and the amount purporting to be payable under such cheque or draft does not exceed ten pounds, shall on conviction before two justices be liable to imprisonment for *six* months, or to pay a fine of *fifty* pounds.

**27.** Part XV of the Principal Act is amended as follows :—

- (a) Section five hundred and fifty-eight : Insert at the end of subsection two the following words : "Such recognizance may also contain additional conditions with respect to all or any of the following matters"—
  - (i) The supervision of the offender by a probation officer during the period specified in the recognizance, and such other conditions for securing such supervision as may be specified therein.
  - (ii) For prohibiting the offender from associating with thieves and other undesirable persons, or from frequenting undesirable places.
  - (iii) As to the abstention of the offender from intoxicating liquor.
  - (iv) Generally for securing that the offender shall lead an honest and industrious life.

(b)

- (b) Section five hundred and fifty-nine: In subsection two, after the words "of any such order", insert the words "or may direct that the recognizance mentioned in section five hundred and fifty-eight, subsection two, shall be further conditioned that the offender shall perform any order made or any directions given under section five hundred and fifty-nine, subsection one, and may in the sentence passed upon the offender sentence him to such additional terms as to the court may seem fitting to be served by him in the event of his failure to give such security or to comply with such condition of the recognizance".
- (c) The same section is further amended by adding at the end of subsection two the words "or recognizance so conditioned being entered into".
- (d) Section five hundred and sixty-one is repealed, and the following is substituted :—
  - 561. (1) If during the period specified in the recognizance an offender so discharged
    - (a) is proved to any justice to have failed to report his address and occupation to the person at the times and in the manner prescribed by the last preceding section ; or
    - (b) is charged by an officer of police with getting his livelihood by dishonest means, and, being brought before any justice, it appears to such justice that there are reasonable grounds for believing that he is getting his livelihood by dishonest means ; or
    - (c) on being charged with an offence punishable on indictment, or summary conviction, and on being required by the justice or justices before whom he is charged to give his name and address, refuses to do so, or gives a false name or a false address ; or
    - (d)



(d) is convicted of any offence against the Act of the Governor and Legislative Council of New South Wales, passed in the fifteenth year of Her Majesty's reign, and numbered four, entitled "An Act for the more effectual prevention of Vagrancy and for the punishment of idle and disorderly Persons, Rogues, and Vagabonds, and Incurrible Rogues in the Colony of New South Wales", or of any indictable offence, or of any offence punishable on summary conviction, and for which imprisonment for a period exceeding one month may be imposed ;

then, and in any of such cases, the court or judge or the justice or justices before whom such proof is given, or before whom the offender is so charged, or convicted, may, whether the period named in the recognizance has or has not expired, forfeit the recognizance, and may direct him to be committed to prison to perform his sentence as aforesaid or so much thereof as remains to be performed, under the provisions hereinbefore contained, and he shall be so committed accordingly, and the judge or justice or justices may grant any necessary warrant for his committal.

(2) Upon the production of a certificate under the hand of the clerk of the peace stating that as the result of proceedings under the preceding subsection of this section the recognizance is liable to be forfeited or that the offender is liable to be committed to prison any court or judge or any justice or justices may exercise all or any of the powers vested by the said subsection in the judge or justice or justices therein mentioned.

**28.** The following section is inserted next after section five hundred and sixty of the Principal Act:—

560A. The Governor may appoint fit persons to be probation officers for the purposes of this Act, and may remove any person so appointed and may make regulations for the carrying out of the provisions of this Act relating to probation.

**29.** Part XVI of the Principal Act is amended as follows:—Section five hundred and seventy, subsection two: In the proviso omit all the words after the word “district” and insert in lieu thereof the words “such two or more chairmen may preside concurrently at such trials or proceedings as aforesaid, but only one of such chairmen shall preside at any one such trial or proceeding”.

**30.** Section seven of the Habitual Criminals Act, 1905, is repealed and the following substituted:—

7. If the Governor determines that an habitual criminal is sufficiently reformed, or for other good cause, he may direct his release on a license under the provisions of section four hundred and sixty-three of the Principal Act.

THE SCHEDULE.

Reference to Act.	Title or short title.	Extent of repeal.
No. 40, 1900 ...	Crimes Act, 1900 ...	Section 10—The whole. Section 36—The definition of “Grievous bodily harm.” Section 79—The words “or any term not less than five years.”
No. 2, 1910 ...	Crimes (Girls’ Protection) Act, 1910.	The whole.
No. 21, 1911 ...	Crimes (Girls’ Protection) Amendment Act, 1911.	The whole.