



ANNO QUARTO

GEORGI VI REGIS.

A.D. 1940.

No. 54 of 1940.

An Act to amend the Criminal Law Consolidation
Act, 1935.

[Assented to 5th December, 1940.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the "Criminal Law Consolidation Act Amendment Act, 1940". Short titles.

(2) The Criminal Law Consolidation Act, 1935, as amended by this Act, may be cited as the "Criminal Law Consolidation Act, 1935-1940".

(3) The Criminal Law Consolidation Act, 1935, is hereinafter called "the principal Act".

2. This Act is incorporated with the principal Act and that Act and this Act shall be read as one Act. Incorporation.

3. Section 38 of the principal Act is repealed and the following section is enacted and inserted in lieu thereof :— Repeal and re-enactment of s. 38 of the principal Act—

38. (1) Any person who—

(a) drives or rides any vehicle or any animal in a culpably negligent manner, or recklessly, or at a speed, or in manner, which is dangerous to the public ; and

(b) by such negligence, recklessness, or other conduct causes bodily harm to any person,

shall be guilty of a misdemeanour and liable to be imprisoned for any term not exceeding two years, or to a fine not exceeding two hundred pounds, or to both such imprisonment and fine as aforesaid.

Injuring persons by negligent riding or driving.

Criminal Law Consolidation Act Amendment Act, 1940.

(2) Subsection (1) of this section shall be deemed to create a single offence and no objection shall be taken to an information for such offence alleging that the defendant did drive a vehicle "in a culpably negligent manner or recklessly, or at a speed, or in a manner, which was dangerous to the public" on the ground of duplicity or uncertainty.

(3) In this section—

"vehicle" includes any motor vehicle as hereinafter defined, any vehicle propelled by animal power, and any bicycle, tricycle, and other like vehicle propelled by human power :

"motor vehicle" includes any motor car, motor carriage, automobile, motor cycle or other vehicle or carriage driven or propelled or ordinarily capable of being driven or propelled either partly or wholly by any volatile spirit, steam or electricity or by any means other than the animal power, but does not include any vehicle run upon a railway or tramway.

Amendment of ss. 50, 51, and 52 of principal Act—

Punishment for carnal knowledge.

Enactment of s. 52a of principal Act—

Punishment for carnal knowledge.

4. Sections 50, 51 and 52 of the principal Act are amended by striking out at the end of each of those sections the words "and may be whipped".

5. The following section is enacted and inserted in the principal Act after section 52 thereof :—

52a. Where any person is convicted of an offence against section 50, 51, or 52 of this Act, the Court shall order such person to be whipped unless the Court is of opinion that there is adequate reason for not making such an order.

Amendment of s. 63 of principal Act—

Procuring females to become prostitutes.

6. Section 63 of the principal Act is amended—

(a) by striking out the words "under twenty-one years of age" in paragraph (a) thereof :

(b) by striking out the words "under the age of twenty-one years" in paragraph (b) thereof.

Repeal of s. 77 and enactment of ss. 77 and 77a—

Indeterminate sentence where prisoner suffers from venereal disease.

7. Section 77 of the principal Act is repealed and the following sections are enacted and inserted in lieu thereof :—

77. (1) In every case where there is reason to suspect that an offender guilty of any offence of a sexual nature (not being an offence punishable on summary conviction) is suffering from a venereal disease, the court or judge sitting for the trial of that offence shall direct that two or more legally qualified medical practitioners, named by the court or judge, inquire whether the offender is so suffering.

(2) The medical practitioners shall conduct the enquiry by personal examination of the offender and shall give their report on oath to the court or judge.

(3) If the medical practitioners report that the offender is so suffering, the court or judge shall, as part of his sentence, declare that he is suffering from a venereal disease.

(4) Every offender so declared to be suffering from a venereal disease shall, at the expiration of the term of his imprisonment, unless the Governor is then satisfied upon the report of two legally qualified medical practitioners that the offender is no longer suffering from venereal disease, be detained during His Majesty's pleasure and subject to the regulations in some place of confinement set apart by the Governor by proclamation for that purpose.

(5) If the Governor, upon a report by two or more legally qualified medical practitioners is satisfied that any offender so detained is no longer suffering from any venereal disease, the Governor may, by his warrant, direct the release of the offender.

(6) In this section "venereal disease" means syphilis or gonorrhoea.

(7) This section shall apply to offenders under eighteen years of age as well as to other offenders; and an offender who is under eighteen years of age when he is sentenced may be detained pursuant to this section notwithstanding that the detention commences or continues after he attains the age of eighteen years.

The period during which an offender is detained in a reformatory school or kept in the custody and under the control of the Children's Welfare and Public Relief Board pursuant to the Maintenance Act, 1926-1937, shall be deemed to be the term of his imprisonment within the meaning of this section.

77a. (1) In any case where a person has been found guilty of an offence of a sexual nature the court or judge sitting for the trial of that offence may at its or his discretion direct that two or more legally qualified medical practitioners named by the court or judge, inquire as to the mental condition of the offender, and in particular whether his mental condition is such that he is incapable of exercising proper control over his sexual instincts.

Detention
of persons
incapable of
controlling
sexual
instincts.

(2) The medical practitioners shall conduct the inquiry by means of personal examination of the offender and by reference to the depositions and such other records relating to him as they think necessary, and shall give their report on oath to the court or judge.

Criminal Law Consolidation Act Amendment Act, 1940.

(3) If the medical practitioners report to the court or judge that the offender is incapable of exercising proper control over his sexual instincts the court or judge may, either in addition to, or in lieu of imposing any other sentence, declare that the offender is so incapable and direct that he be detained in an institution during His Majesty's pleasure: Provided that the offender shall be entitled to call evidence in rebuttal of such report, and no such order shall be made unless the court or judge shall consider the matters reported to be proved.

Every offender in respect of whom such a direction is given—

- (a) shall be detained in such institution as the Governor directs, and until the Governor gives a direction as to such institution, in any gaol:
- (b) shall not be released until the Governor is satisfied on the report of two legally qualified medical practitioners, that it is expedient to release him.

(4) If the medical practitioners report to the court or judge that the offender is not incapable of exercising proper control over his sexual instincts, but that his mental condition is subnormal to such a degree that he requires care, supervision, and control in an institution either in his own interests or for the protection of others, and the court or judge after considering the report and any evidence submitted in rebuttal thereof is of opinion that the offender requires such care, supervision, and control, the court or judge may—

- (a) direct that the offender be detained in an institution either for such period as the court or judge directs or during His Majesty's pleasure;
or
- (b) pass sentence on the offender and in addition direct as mentioned in paragraph (a).

Every offender in respect of whom such a direction is given—

- (a) shall be detained in such institution as the Governor directs, and until the Governor gives a direction as to such institution, in any gaol:
- (b) where the detention ordered is during His Majesty's pleasure shall not be released until the Governor is satisfied on the report of two legally qualified medical practitioners, that he is fit to be at liberty.

(5) Where the court or judge orders detention during His Majesty's pleasure in addition to imprisonment, the detention shall commence forthwith upon the expiration of the term of the imprisonment.

(6) An offender detained under this section shall be examined at least once in every three months by the Superintendent or deputy superintendent of the Mental Hospital, Parkside, or by some other person appointed by the Governor to conduct examinations under this section. The person making an examination under this subsection shall forthwith furnish a report of the examination to the Director-General of Medical Services.

(7) An offender detained in an institution pursuant to this section may be removed at any time to another institution by order of the Chief Secretary.

(8) In this section "institution" means—

- (a) an institution as defined by the Mental Defectives Act, 1935-1939 :
- (b) any gaol or labour prison :
- (c) any other institution proclaimed by the Governor for the purpose of this section :
- (d) in the case of an offender under the age of eighteen years, an institution as defined by the Maintenance Act, 1926-1937, or any such institution as mentioned in paragraph (a) or (c) of this definition.

8. Section 170 of the principal Act is repealed and the following section is enacted and inserted in lieu thereof :—

Repeal and re-enactment of s. 170 of principal Act—

170. (1) Any person who breaks and enters and commits any felony in any building, or breaks out of any building, having committed any felony therein, shall be guilty of felony and liable to be imprisoned for any term not exceeding eight years.

Breaking and entering buildings and committing felony.

(2) In this section "building" includes any dwelling-house, building within the curtilage of a dwelling-house, schoolhouse, shop, warehouse, counting-house, office, store, garage, pavilion, factory, workshop, dancing hall, place of public entertainment, billiard saloon, dressing-room, and any other building whether of the same class as those previously mentioned in this subsection or not.

9. The following section is enacted and inserted in the principal Act after section 197 thereof :—

Enactment of s. 197a of principal Act—

197a. (1) Any person who receives any property knowing the same to have been taken obtained converted or disposed of outside the State under such circumstances

Receiving goods stolen outside the State.

Criminal Law Consolidation Act Amendment Act, 1946.

that, if the act of taking, obtaining, converting or disposing had been done in the State the person doing it would have been guilty of an offence triable on information in the Supreme Court, shall be guilty of a misdemeanour and liable to be imprisoned for any term not exceeding eight years.

(2) No person shall be liable to conviction under this section if the act of taking, obtaining, converting or disposing was not an offence in the place in which that act was done.

(3) In an information for receiving any property in contravention of this section any number of persons who have at different times so received such property or any part thereof may be charged and tried together, notwithstanding that the principal has not been charged or tried.

(4) If on the trial of any two or more persons prosecuted jointly for receiving any property in contravention of this section it is proved that one or more of such persons separately received any part of such property, it shall be lawful for the jury to convict such of the persons as are proved to have received any part of such property.

Amendment of
s. 199 of
principal Act—
Receiving
where princ-
pal punishable
summarily.

10. Section 199 of the principal Act is amended by striking out in the second line thereof the words "by this Act".

Amendment of
s. 200 (2) of
principal Act—

11. Subsection (2) of section 200 is amended so as to read as follows :—

Proof of
previous
convictions
on charges
for receiving.

(2) The offences referred to in subsection (1) are the following—

(a) any indictable offence against the laws of the Commonwealth or any Territory of the Commonwealth or any State, whether such offence was tried on indictment or summarily ; and

(b) any offence against section 90 or section 93 of the Police Act, 1936-1938, or any offence against any enactment of another State or of any Territory of the Commonwealth, corresponding with either of those sections,

whether committed or tried before or after the passing of the Criminal Law Consolidation Act Amendment Act, 1940.

12. The following heading and section are enacted and inserted in the principal Act after section 328 :—

Enactment of
s. 328a of
principal Act—

Abolition of presumption of marital coercion.

328a. Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is hereby abolished; but on a charge against a wife for any offence other than treason or murder it shall be a good defence to prove that the offence was committed in the presence of and under the coercion of the husband.

Abolition of
presumption of
marital
coercion.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.