

**CRIMINAL CODE AMENDMENT (SEXUAL OFFENCES)
ACT 1987**

No. 71 of 1987

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**CRIMINAL CODE AMENDMENT (SEXUAL OFFENCES)
ACT 1987**

No. 71 of 1987

AN ACT to amend the Criminal Code.

[Royal Assent 12 November 1987]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Criminal Code Amendment* Short title.
(Sexual Offences) Act 1987.

2—In this Act, the *Criminal Code** is referred to as the Principal Act.
Code.

3—Section 1 of the Code is amended as follows:—

(a) by omitting the definition of “carnal knowledge”;

(b) by omitting the definition of “consent”;

Amendment of
section 1 of
Code
(Interpretation).

* 14 Geo. V No. 69. For the *Criminal Code Act 1924* and the *Criminal Code*, as amended to 1st March 1980, see the continuing Reprint of Statutes. Subsequently amended by No. 19 of 1980, No. 52 of 1981, Nos. 33 and 99 of 1982, No. 77 of 1983, No. 3 of 1984, and No. 17 of 1985.

(c) by inserting the following definition after the definition of “section”:

“sexual intercourse” means the penetration to the least degree of the vagina, anus, or mouth by the penis and includes the continuation of sexual intercourse after such penetration.

Insertion in Code of new section 2A.

4—After section 2 of the Code, the following section is inserted in Chapter I:—

Consent.

2A—(1) In the code, unless the contrary intention appears, a reference to consent means a reference to a consent which is freely given by a rational and sober person so situated as to be able to form a rational opinion upon the matter to which the consent is given.

(2) Without limiting the meaning that may otherwise be attributable to the expression “freely given”, a consent is freely given where—

(a) it is not procured by force, fraud, or threats of any kind;

(b) it is not procured by reason of the person being overborne by the nature or position of another person; or

(c) it is not given by a person so affected by liquor or drugs, or so otherwise affected, as to be incapable of forming a rational opinion upon the matter to which the consent is given.

(3) Where a person, against whom a crime is alleged to have been committed under chapters XIV or XX, suffers grievous bodily harm as a result of, or in connection with, such a crime, the grievous bodily harm so suffered is *prima facie* evidence of the lack of consent on the part of that person.

Amendment of section 18 of Code (Immature age).

5—Section 18 of the Code is amended by omitting subsection (3) and substituting the following subsection:—

(3) A male person under 7 years of age is conclusively presumed to be incapable of having sexual intercourse.

Amendment of section 122 of Code (Unnatural crimes).

6—Section 122 of the Code is amended as follows:—

(a) by omitting “carnal knowledge of” wherever occurring and substituting “sexual intercourse with”;

(b) by omitting “Charge: Unnatural carnal knowledge” and substituting “Charge: Unnatural sexual intercourse”.

7—Section 124 of the Code is repealed and the following section is substituted:—

Substitution of section 124 of Code.

124—(1) Any person who has unlawful sexual intercourse with another person who is under the age of 17 years is guilty of a crime.

Sexual intercourse with young person.

Charge: Sexual intercourse with a young person under the age of 17 years.

(2) It is a defence to a charge under this section to prove that the accused person believed on reasonable grounds that the other person was of or above the age of 17 years.

(3) The consent of a person against whom a crime is alleged to have been committed under this section is a defence to such a charge only where, at the time the crime was alleged to have been committed—

(a) that person was of or above the age of 15 years and the accused person was not more than 5 years older than that person; or

(b) that person was of or above the age of 12 years and the accused person was not more than 3 years older than that person.

8—Section 125 of the Code is repealed and the following section is substituted:—

Substitution of section 125 of Code.

125—Any person who—

(a) is the owner or occupier of any premises; or

Person permitting unlawful sexual intercourse with young person on premises.

(b) has, or acts or assists in, the management or control of any premises,

and who induces or knowingly permits any person under the age of 17 years to be in or upon the premises for the purposes of having unlawful sexual intercourse with another person is guilty of a crime.

Charge: Permitting unlawful sexual intercourse with a young person on premises.

Substitution of section 126 of Code.

9—Section 126 of the Code is repealed and the following section is substituted:—

Unlawful sexual intercourse with insane persons or defectives.

126—(1) Any person who has unlawful sexual intercourse with another person knowing that other person is insane, is guilty of a crime.

Charge: Unlawful sexual intercourse with an insane person.

(2) Any person who has unlawful sexual intercourse with another person knowing that other person is a defective, is guilty of a crime.

Charge: Unlawful sexual intercourse with a defective.

(3) For the purposes of subsection (2), a “defective” means a person suffering from severe subnormality within the meaning of the *Mental Health Act 1963*.

Amendment of section 127 of Code (Indecent assault).

10—Section 127 of the Code is amended as follows:—

(a) by omitting from subsection (1) “a female” and substituting “another person”;

(b) by omitting from subsection (2) “girl” and substituting “person”.

Insertion in Code of new section 127A.

11—After section 127 of the Code, the following section is inserted:—

Aggravated sexual assault.

127A—(1) A person who unlawfully and indecently assaults another person by the penetration to the least degree of the vagina or anus of that other person by—

(a) any part of the human body other than the penis;
or

(b) an inanimate object,

is guilty of a crime.

Charge: Aggravated sexual assault.

(2) In any case where it is provided that the consent of a person to the act charged shall be a defence to a charge under section 124, the like consent to an act charged under this section given under the like conditions as to the age of the parties shall be a defence to a charge under this section.

(3) Except as provided by subsection (2), the consent of a person under 17 years shall be no defence to a charge under this section.

12—Section 128 of the Code is amended as follows:—

Amendment of section 128 of Code (Procuration).

- (a) by omitting paragraph (a);
- (b) by omitting from paragraph (b) “a female” and substituting “another person”;
- (c) by omitting from paragraph (c) “a female” and “she” and substituting “another person” and “such a person” respectively;
- (d) by omitting from paragraph (d) “a female”, “her”, and “she” and substituting “another person”, “that person’s”, and “such a person” respectively.

13—Section 129 of the Code is amended as follows:—

Amendment of section 129 of Code (Procuring by threats, fraud, or drugs).

- (a) by omitting from paragraph (a) “a woman or girl” and “carnal connection” and substituting “another person” and “sexual intercourse” respectively;
- (b) by omitting paragraph (b) and substituting the following paragraph:—
 - (b) by any false pretence or false representation procures another person to have unlawful sexual intercourse, either in this State or elsewhere; or
- (c) by omitting paragraph (c) and substituting the following paragraph:—
 - (c) administers, or causes another person to take, any drug or other thing with intent to stupefy or overpower that person in order to enable any other person to have sexual intercourse with that person,
- (d) by omitting “Charge: Procuring defilement of a female” and substituting “Charge: Procuring by threats, fraud, or administering drugs.”.

Repeal of section 130 of Code (Unlawful detention in brothel, or with intent to defile).

14—Section 130 of the Code is repealed.

Repeal of section 132 of Code (Encouraging seduction).

15—Section 132 of the Code is repealed.

Substitution of section 133 of Code.

16—Section 133 of the Code is repealed and the following section is substituted:—

Incest.

133—(1) Any person who has sexual intercourse with another person knowing that other person to be his or her lineal ancestor, lineal descendant, or sibling, is guilty of a crime whether or not that other person has consented to such sexual intercourse.

Charge: Incest.

(2) Any person of or above the age of 16 years who, with consent, permits another person to have sexual intercourse with him or her knowing that other person to be his or her lineal ancestor, lineal descendant, or sibling, is guilty of a crime.

Charge: Permitting incest.

(3) This section applies whether or not the relationship between the persons is traced through lawful wedlock.

(4) In this section, “sibling” includes half-brother and half-sister.

Substitution of section 136 of Code.

17—Section 136 of the Code is repealed and the following section is substituted:—

Warning relating to uncorroborated evidence.

136—(1) At the trial of a person accused of a crime under chapter XIV or XX, no rule of law or practice shall require a judge to give a warning to the jury to the effect that it is unsafe to convict the person on the uncorroborated evidence of a person against whom the crime is alleged to have been committed.

(2) A judge shall not give a warning of the kind referred to in subsection (1) unless satisfied that the warning is justified in the circumstances.

18—Section 185 of the Code is amended by omitting subsection (1) and substituting the following subsection:— Amendment of section 185 of Code (Rape).

(1) Any person who has sexual intercourse with another person without that person's consent is guilty of a crime.

Charge: Rape.

19—Section 186 of the Code is repealed and the following section is substituted:— Substitution of section 186 of Code.

186—(1) Any person who, by force, takes away or detains another person against that person's will with intent that the other person be married to, or have sexual intercourse with, any person, is guilty of a crime. Abduction.

Charge: Forcible abduction.

(2) Any person who takes away or detains another person against that other person's will with intent that the other person be married to, or have sexual intercourse with, any person, is guilty of a crime.

Charge: Abduction.

20—Section 187 of the Code is repealed.

Repeal of section 187 of Code (Abduction from motives of lucre).

21—Section 188 of the Code is repealed.

Repeal of section 188 of Code (Abduction of young girl with intent to defile).

22—Section 189 of the Code is repealed and the following section is substituted:— Substitution of section 189 of Code.

189—Any person who unlawfully takes away, or causes to be taken away, an unmarried person under the age of 17 years out of the possession and against the will of a parent of that person or a person having the lawful charge or care of that person, is guilty of a crime. Abduction of young persons.

Charge: Abduction of a young person under the age of 17 years.

Substitution of
section 190 of
Code.

23—Section 190 of the Code is repealed and the following section is substituted:—

Defences in
abduction of
young persons.

190—(1) In any proceedings under section 189, it is a defence to prove that the accused person did not know, or did not have reasonable grounds for believing, that the young person was in the lawful charge of the person out of whose possession the young person was taken.

(2) It is not a defence in any proceedings under section 189—

(a) to prove that the young person suggested or consented to being taken away; or

(b) to prove that the accused person believed on reasonable grounds that the young person was of or above the age of 17 years.

Insertion in Code
of new section
307A.

24—After section 307 of the Code, the following section is inserted:—

Change in place
of trial.

307A—(1) A person against whom a crime is alleged to have been committed under chapters XIV or XX, before the trial starts, may make application to a judge to change the place of the trial in respect of that crime.

(2) A judge may at his discretion grant or refuse an application made under subsection (1).

(3) Where a judge grants an application to change the place of a trial, the provisions of subsections (2) and (3) of section 307 apply as if the judge made an order under that section.

(4) Where the place of a trial is changed pursuant to this section, the accused person is entitled to compensation by the Crown for any reasonable additional costs which he may incur by reason of the change in the place of the trial.

(5) For the purposes of determining whether the additional costs referred to in subsection (4) are reasonable, a judge may obtain the assistance of the Registrar of the Supreme Court.

25—Section 335 of the Code is amended by omitting paragraphs (a), (b), (c), and (d) and substituting the following paragraphs:—

Amendment of section 335 of Code (Rape).

- (a) sexual intercourse with a young person under 17 years of age;
- (b) unlawful sexual intercourse with an insane person;
- (c) unlawful sexual intercourse with a defective;
- (d) aggravated sexual assault;

26—Section 336 of the Code is repealed and the following section is substituted:—

Substitution of section 336 of Code.

336—Upon the indictment for sexual intercourse with a young person under 17 years of age, the accused person may be convicted of—

Sexual intercourse with young person.

- (a) unlawful sexual intercourse with an insane person;
- (b) unlawful sexual intercourse with a defective;
- (c) indecent assault;
- (d) assault; or
- (e) aggravated sexual assault.

27—Section 336A of the Code is amended by omitting “female” and substituting “person”.

Amendment of section 336A of Code (Indecent assault).

28—Section 337 of the Code is amended by omitting paragraphs (a), (b), (c), and (d) and substituting the following paragraphs:—

Amendment of section 337 of Code (Incest).

- (a) sexual intercourse with a young person under 17 years of age;
- (b) unlawful sexual intercourse with an insane person;
- (c) unlawful sexual intercourse with a defective;
- (d) indecent assault;
- (e) aggravated sexual assault.

29—After section 337 of the Code, the following section is inserted:—

Insertion in Code of new section 337A.

337A—Upon an indictment for aggravated sexual assault, the accused person may be convicted of—

Aggravated sexual assault.

- (a) rape;
- (b) indecent assault; or
- (c) assault.

Insertion in Code
of new section
371A.

30—After section 371 of the Code, the following section is inserted:—

Recent
complaint.

371A—Where, during the trial of a person accused of a crime under chapters XIV or XX, there is evidence which tends to suggest an absence of complaint by the person upon whom the crime is alleged to have been committed or which tends to suggest delay by that person in making a complaint, the judge shall—

- (a) give a warning to the jury that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the crime was committed is false; and
- (b) inform the jury that there may be good reasons why such a person may hesitate in making, or may refrain from making, a complaint.

Repeal of section
428 of Code
(Custody of
young girls in
certain cases).

31—Section 428 of the Code is repealed.