

TASMANIA

**CRIMES (MISCELLANEOUS AMENDMENTS)
BILL 2016**

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**CRIMES (MISCELLANEOUS AMENDMENTS)
BILL 2016**

*(Brought in by the Minister for Health, the Honourable
Michael Darrel Joseph Ferguson)*

A BILL FOR

An Act to amend the *Criminal Code Act 1924*, the *Criminal Justice (Mental Impairment) Act 1999* and the *Sentencing Act 1997*

Be it enacted by Her 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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Crimes (Miscellaneous Amendments) Act 2016*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

Crimes (Miscellaneous Amendments) Act 2016
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Part 2 – Criminal Code Act 1924 Amended

PART 2 – CRIMINAL CODE ACT 1924 AMENDED

3. Principal Act

In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

4. Schedule 1 amended (*Criminal Code*)

Schedule 1 to the Principal Act is amended as follows:

- (a) by omitting subsection (2) from section 185;
- (b) by omitting from section 248(c) “crime; or” and substituting “crime –”;
- (c) by omitting paragraph (d) from section 248;
- (d) by omitting paragraph (c) from section 371 and substituting the following paragraph:
 - (c) if the accused person calls no witnesses, he or she may give evidence on oath (but by so doing is not taken to adduce evidence) and counsel for the Crown may, if he or she thinks it is a proper case in which to do so, make a second speech summing up the

*No. 69 of 1924

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Part 2 – Criminal Code Act 1924 Amended

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Crown's evidence and commenting on the evidence of the accused person, if any, and –

- (i) if the accused person has no counsel, the accused person may address the jury in his or her own defence; or
 - (ii) if the accused person has counsel, his or her counsel may address the jury on the accused person's behalf;
- (e) by omitting subsection (1) from section 385;
 - (f) by omitting from section 385(2) "Any such person as aforesaid" and substituting "When a person is convicted of a crime, whether on plea of guilty or otherwise, he or she";
 - (g) by inserting in Appendix A after

Aggravated Armed Robbery.

the following items:

Carjacking.

Aggravated carjacking.

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Part 3 – Criminal Justice (Mental Impairment) Act 1999 Amended

**PART 3 – CRIMINAL JUSTICE (MENTAL
IMPAIRMENT) ACT 1999 AMENDED**

5. Principal Act

In this Part, the *Criminal Justice (Mental Impairment) Act 1999** is referred to as the Principal Act.

6. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *Chief Civil Psychiatrist* the following definition:

controlling authority has the same meaning as
in the *Mental Health Act 2013*;

7. Section 17 amended (Findings at special hearings)

Section 17 of the Principal Act is amended by omitting paragraph (b).

8. Section 18 amended (Effect of findings)

Section 18 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(4) A treatment order made under subsection (2)(c), whether before or after the commencement of the *Crimes*

*No. 21 of 1999

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Part 3 – Criminal Justice (Mental Impairment) Act 1999 Amended

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(Miscellaneous Amendments) Act 2016,
is taken to have been made under
Division 2 of Part 3 of Chapter 2 of the
Mental Health Act 2013.

9. Section 21 amended (Procedure for dealing with persons found not guilty by reason of insanity)

Section 21 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) A treatment order made under subsection (1)(c), whether before or after the commencement of the *Crimes (Miscellaneous Amendments) Act 2016*, is taken to have been made under Division 2 of Part 3 of Chapter 2 of the *Mental Health Act 2013.*

10. Section 21A substituted

Section 21A of the Principal Act is repealed and the following Part is substituted:

PART 3A – BREACH OF CONDITIONS ON RELEASE

21A. Breach of conditions on release

- (1) If it appears that a person (*the defendant*) has breached the conditions on his or her release imposed under section 18(2)(e) or section 21(1)(e), an application may be made to the court, which imposed the

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Part 3 – Criminal Justice (Mental Impairment) Act 1999 Amended

- conditions, for an order under this section.
- (2) An application under subsection (1) may be made by any of the following:
- (a) an authorised person;
 - (b) a police officer;
 - (c) a prosecutor;
 - (d) a probation officer, within the meaning of the *Corrections Act 1997*;
 - (e) the Chief Forensic Psychiatrist.
- (3) A person making an application under subsection (1) must give notice of the application to the defendant.
- (4) The court may issue a warrant for the arrest of the defendant if –
- (a) the defendant fails to appear at the hearing of the application; or
 - (b) the court is satisfied that reasonable efforts to give the defendant notice of the application have been made but those efforts have been unsuccessful.
- (5) If a court finds a defendant guilty of an offence punishable by imprisonment committed while the defendant was on

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release subject to conditions imposed under section 18(2)(e) or section 21(1)(e) (in this section called the *new offence*), a person referred to in subsection (2) –

- (a) may make an oral application to the court, while the defendant is before the court in relation to the new offence, for an order under this section; and
 - (b) is to provide the defendant in writing with the grounds for the oral application, if directed to do so by the court.
- (6) If an application is made under subsection (5) to a court that is not the court that imposed the conditions on the defendant, the court hearing the application may do either of the following:
- (a) deal with the application under this section;
 - (b) adjourn the application to the court that imposed the conditions and either grant the defendant bail or remand the defendant in custody.
- (7) If, on the hearing of an application under this section, the court is satisfied that the defendant has breached the conditions on his or her release, it may –

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Part 3 – Criminal Justice (Mental Impairment) Act 1999 Amended

- (a) confirm the conditions as originally imposed; or
 - (b) impose new conditions on the defendant; or
 - (c) revoke the order imposing the conditions and deal with the defendant for the offence or offences in respect of which the order was made in any manner in which the court could deal with the defendant under section 18(2) or section 21(1), as the case may be.
- (8) In determining how to deal with a defendant who is found to have breached the conditions of his or her release under this section, the court must take into account the extent to which the defendant had complied with the conditions before committing the breach.

11. Section 31 amended (Apprehension of defendant under supervision order)

Section 31 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (3) and substituting the following paragraph:
 - (b) take the defendant to –

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Part 3 – Criminal Justice (Mental Impairment) Act 1999 Amended

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- (i) an approved hospital; or
 - (ii) a secure mental health unit if the prescribed person is of the opinion that the defendant should be taken to a secure mental health unit for treatment or for the protection of the defendant or any other person.
- (b) by omitting from subsection (4) “it is not possible or practicable to take him or her to a secure mental health unit immediately” and substituting “the prescribed person is of the opinion that the defendant should be taken to a secure mental health unit but it is not possible or practicable to do so immediately”;
- (c) by inserting the following subsection after subsection (5):
 - (5A) The custody and escort provisions, within the meaning of the *Mental Health Act 2013*, apply in respect of the taking of a defendant to an approved hospital or a secure mental health unit under this section.

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Part 3 – Criminal Justice (Mental Impairment) Act 1999 Amended

12. Section 35 amended (Matters to which courts are to have regard)

Section 35(2)(a) of the Principal Act is amended by omitting “psychiatrist” and substituting “expert, who may or may not be a medical practitioner”.

13. Section 35A inserted

After section 35 of the Principal Act, the following section is inserted in Division 6:

35A. Interim orders

A court may make any interim order it considers appropriate in the circumstances.

14. Part 4, Division 7A inserted

After section 36 of the Principal Act, the following Division is inserted in Part 4:

Division 7A – Referral of forensic orders

36A. Referral of forensic order to Supreme Court

- (1) If a magistrate is of the opinion, after taking into account the matters required to be considered in determining the order to be made, that a forensic order should be made in respect of a defendant, the magistrate may refer the matter to the Supreme Court for determination.

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- (2) On the referral of a matter to the Supreme Court under subsection (1), the Supreme Court –
- (a) must enquire into the circumstances of the case; and
 - (b) has the same powers to deal with the defendant as if the defendant had been dealt with in the Supreme Court.

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Part 4 – Sentencing Act 1997 Amended

PART 4 – SENTENCING ACT 1997 AMENDED

15. Principal Act

In this Part, the *Sentencing Act 1997** is referred to as the Principal Act.

16. Section 81A amended (Court may receive victim impact statement)

Section 81A of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “or a summary offence that has resulted in the death or serious injury of a person, or a family violence offence,” after “offence,”;
- (b) by inserting in subsection (2A) “or a summary offence that has resulted in the death or serious injury of a person, or a family violence offence,” after “indictable offence,”.

*No. 59 of 1997

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Part 5 – Repeal of Act

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PART 5 – REPEAL OF ACT

17. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.