

TASMANIA

JUSTICE LEGISLATION (MANDATORY SENTENCING) BILL 2019

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JUSTICE LEGISLATION (MANDATORY SENTENCING) BILL 2019

*(Brought in by the Minister for Justice, the Honourable Elise
Nicole Archer)*

A BILL FOR

An Act to amend 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:

1. Short title

This Act may be cited as the *Justice Legislation
(Mandatory Sentencing) Act 2019*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Principal Act

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

*No. 59 of 1997

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4. Sections 16B, 16C, 16D and 16E inserted

After section 16A of the Principal Act, the following sections are inserted in Division 1:

16B. Mandatory imprisonment for offence causing serious bodily harm to frontline worker

(1) In this section –

frontline worker means a person who is –

- (a) employed or engaged to provide, on behalf of the State, services relating to the health or safety of persons; and
- (b) a member of a prescribed class of persons who provide, on behalf of the State, services relating to the health or safety of persons.

(2) For the purposes of this section, a frontline worker is to be taken to be on duty at a time if the frontline worker is –

- (a) performing, or attempting to perform, a function relating to the worker's employment or engagement to provide, on behalf of the State, services relating to the health or safety of persons; or
- (b) at a place in the course of such employment or engagement.

(3) Despite section 7, if –

- (a) a person is convicted of an offence, against a provision of an Act, committed in relation to a frontline worker while the frontline worker was on duty; and
- (b) the frontline worker suffered serious bodily harm caused by, or arising from, the offence –

a court that convicts the person, and a court that imposes a sentence upon the conviction of the person, in respect of the offence must, unless there are exceptional circumstances, order the person to serve in respect of the offence a term of imprisonment of not less than 6 months.

- (4) For the purposes of this section, an offence is to be taken to be committed in relation to a frontline worker only if the person who committed the offence knows, or ought reasonably be expected to know, that bodily harm to a frontline worker may be caused by, or arise from, the offence.
- (5) Subsection (3) applies in relation to an offence against a provision of an Act even if the Act –
 - (a) does not indicate that the offence is punishable by imprisonment; or

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- (b) indicates that the offence is punishable by imprisonment for a term of less than 6 months –

but, in either case, the term of imprisonment that is, in accordance with subsection (3), to be imposed in respect of the offence is to be 6 months.

- (6) If an order has been made, in accordance with subsection (3), that a person must serve in respect of an offence a term of imprisonment of not less than 6 months, a court must not –

- (a) make any other order in respect of the offence; or
- (b) amend an order in respect of the offence –

if the effect of that other order or amendment would be that the person is not imprisoned for a term of at least 6 months in respect of the offence.

- (7) Section 10(2)(b)(v) does not apply in relation to an offence to which subsection (3) applies, to the extent that section 10(2)(b)(v) might otherwise be taken to require subsections (3) and (5) to apply to an offence in relation to which a finding of guilt has been made but a conviction has not been recorded.
- (8) Nothing in this section, apart from subsection (9), is to be taken to prevent

the application of section 11 in relation to an offence to which subsection (3) applies.

- (9) Subsection (5) and section 11(2) are each not to be taken to prevent the making of an order imposing, in respect of an offence to which subsection (3) applies, a term of imprisonment of more than 6 months if the order is imposed, in accordance with section 11(1), in respect of more than one offence, including but not limited to more than one offence to which subsection (3) applies.
- (10) Section 12 does not apply in relation to an offence to which subsection (3) applies.
- (11) Nothing in this section, apart from subsections (6) and (10), is to be taken to prevent a court making, in respect of an offence to which subsection (3) applies, an order (including an order imposing a penalty) that is an order in addition to an order imposing in respect of the offence a term of imprisonment in accordance with this section.
- (12) This section does not apply in relation to an offence committed by an offender if –
 - (a) the offender had not attained the age of 18 years at the time at which the offence was committed; or

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- (b) the offender has impaired mental functioning that is causally linked to the offence and that –
 - (i) ought to be regarded as reducing the offender's culpability for the offence; or
 - (ii) is likely to result in imprisonment of the offender being more difficult for the offender, or more of a risk to the health or wellbeing of the offender, than would be the case for an offender who did not have such impaired mental functioning; or
- (c) there are exceptional circumstances.

16C. Mandatory imprisonment for certain sexual offences against children

- (1) In this section –

aggravating circumstance, in relation to an offence, has the same meaning as it has under section 11A in relation to the offence;

minimum period, in relation to –

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- (a) an offence to which subsection (2) applies – means a period of 2 years; or
 - (b) an offence to which subsection (3) applies – means a period of 3 years; or
 - (c) an offence to which subsection (4) or (5) applies – means a period of 4 years.
- (2) Despite section 7, if a court convicts an offender of, or imposes on an offender a sentence on the conviction of the offender for, an offence against section 124 of the *Criminal Code* in relation to a person who had not attained the age of 17 years at the time at which the offence was committed, the court must, if there is an aggravating circumstance in relation to the offence, order the offender to serve in respect of the offence a term of imprisonment of not less than the minimum period in relation to the offence.
- (3) Despite section 7, if a court convicts an offender of, or imposes on an offender a sentence on the conviction of the offender for, an offence against section 125A of the *Criminal Code* in relation to a person who had not attained the age of

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17 years at the time at which the offence was committed, the court must, if there is an aggravating circumstance in relation to the offence, order the offender to serve in respect of the offence a term of imprisonment of not less than the minimum period in relation to the offence.

- (4) Despite subsection (3) and section 7, if –
- (a) a court convicts an offender of, or imposes on an offender a sentence on the conviction of the offender for, an offence against section 125A of the *Criminal Code* in relation to a person who had not attained the age of 17 years at the time at which the offence was committed; and
 - (b) one of the unlawful acts constituting the offence against section 125A of the *Criminal Code* is an offence against section 185 of the *Criminal Code* –

the court must order the offender to serve in respect of the offence a term of imprisonment of not less than the minimum period in relation to the offence.

- (5) Despite section 7, if a court convicts an offender of, or imposes on an offender a sentence on the conviction of the

offender for, an offence against section 185 of the *Criminal Code* in relation to a person who had not attained the age of 17 years at the time at which the offence was committed, the court must order the offender to serve in respect of the offence a term of imprisonment of not less than the minimum period in relation to the offence.

- (6) This section does not apply in relation to an offence committed by an offender if –
- (a) the offender had not attained the age of 18 years at the time at which the offence was committed; or
 - (b) the offender has impaired mental functioning that is causally linked to the offence and that –
 - (i) ought to be regarded as reducing the offender's culpability for the offence; or
 - (ii) is likely to result in imprisonment of the offender being more difficult for the offender, or more of a risk to the health or wellbeing of the offender, than would be the case for an offender who did not have such

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impaired mental
functioning; or

(c) there are exceptional
circumstances.

**16D. Application of Act where section 16C applies
in relation to offence**

(1) In this section –

minimum period, in relation to an
offence, has the same meaning as
it has in section 16C.

(2) Section 10(2)(b)(v) does not apply in relation to an offence to which section 16C applies, to the extent that section 10(2)(b)(v) might otherwise be taken to require section 16C or this section to apply to an offence in relation to which a finding of guilt has been made but a conviction has not been recorded.

(3) If an order that an offender must serve in respect of an offence a term of imprisonment has been made in accordance with section 16C, a court must not –

(a) make any other order in respect
of the offence, other than an order
under section 17 or 18; or

(b) amend an order in respect of the
offence, other than an order under
section 17 or 18 –

if the effect of that other order or amendment would be that the person is not imprisoned for the minimum period in relation to the offence.

- (4) Nothing in this section or section 16C is to be taken to prevent the application of section 11 in relation to an offence to which section 16C applies, providing the offender is sentenced to a term of imprisonment of not less than the minimum period in relation to the offence, whether or not the sentence applies, in addition, to another offence, and whether or not that other offence is an offence to which section 16C applies.
- (5) Subject to subsection (6), nothing in this section or section 16C is to be taken to prevent a court ordering an offender to serve, in respect of an offence to which section 16C applies, a term of imprisonment of more than the minimum period in relation to the offence.
- (6) A court, in imposing on an offender a sentence in relation to an offence to which section 16C applies, must only impose a term of imprisonment that is more than the minimum period in relation to the offence, if the court would, if section 16C did not apply in relation to –
 - (a) the offence committed by the offender; or

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- (b) an offence, whether committed by the offender or another person, to which a court may have regard in determining the sentence to impose on the offender –

impose on that offender, in relation to that offence, that term of imprisonment.

- (7) Section 12 does not apply in relation to an offence to which section 16C applies.
- (8) Nothing in section 16C or this section, apart from subsections (3) and (7), is to be taken to prevent a court making, in respect of an offence to which section 16C applies, an order (including an order imposing a penalty) that is an order in addition to an order imposing in respect of the offence a term of imprisonment in accordance with section 16C and this section.

16E. Determination of whether exceptional circumstances exist under section 16A, 16B or 16C

In determining, for the purposes of section 16A, 16B or 16C, whether exceptional circumstances exist, a court is to have regard to –

- (a) the nature and circumstances of the offence against section 16A, 16B or 16C, as the case may be; and

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- (b) the circumstances of the offender;
and
- (c) any other matter that the court
considers to be relevant.

5. Repeal of Act

This Act is repealed on the first anniversary of the day on which the last uncommenced provisions of this Act commenced.