

[Act 2001 No 84]



New South Wales

Crimes Amendment (Gang and Vehicle Related Offences) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to make it an offence, with more severe penalties, to commit in company with one or more other persons the existing offences of discharging loaded arms with intent, using or possessing a weapon to resist arrest, malicious wounding or infliction of grievous bodily harm, assault occasioning actual bodily harm and demanding property with intent to steal, and
 - (b) to make it an offence, with a more severe penalty, to kidnap a person in company with one or more other persons or to kidnap a person where the person sustains actual bodily harm, and to make it an additional offence, with a greater penalty, to do both, and
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- (c) to increase penalties for the offences of stealing motor vehicles without motors, stealing motors and stealing identification plates for motor vehicles, of receiving stolen motor vehicles or motor vehicle parts and of being in possession of motor vehicles or motor vehicle parts that might reasonably be suspected of having been stolen or otherwise unlawfully obtained, and
- (d) to create a specific offence of car-jacking, and
- (e) to make it an offence to threaten or intimidate any person to influence the person to withhold material information from police about an indictable offence, and
- (f) to make it an offence to recruit a child to engage in criminal activity, and
- (g) to enable the new offences to be dealt with summarily in certain circumstances.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Bail Act 1978*, the *Child Protection (Offenders Registration) Act 2000* and the *Criminal Procedure Act 1986* set out in Schedule 2.

Schedule 1 Amendment of Crimes Act 1900

Offences in company

Currently, the *Crimes Act 1900* provides for separate offences, and higher penalties, where particular offences are committed in company with one or more persons (for example, robbery).

Schedule 1 [1]–[4] and **[7]** create separate offences with higher penalties if the following offences are committed in company with one or more persons:

- (a) discharging loaded arms with intent to cause grievous bodily harm or to resist or prevent lawful apprehension or detention (the maximum penalty rises from 14 years imprisonment to 20 years if committed in company),

- (b) using, attempting or threatening to use or possessing an offensive weapon or instrument, or threatening injury to person or property, with intent to commit an indictable offence or to prevent or hinder a police officer from investigating an act or circumstance calling for investigation (the maximum penalty rises from 12 years imprisonment to 15 years if committed in company),
- (c) maliciously wounding or inflicting grievous bodily harm on any person (the maximum penalty rises from 7 years imprisonment to 10 years if committed in company),
- (d) assault occasioning actual bodily harm (the maximum penalty rises from 5 years imprisonment to 7 years if committed in company),
- (e) demanding property with menaces or force (the maximum penalty rises from 10 years imprisonment to 14 years if committed in company).

Kidnapping

Schedule 1 [5] inserts a new kidnapping offence which retains the elements of the existing offence while updating its language and concepts and creates separate offences with higher penalties in the following circumstances:

- (a) the offence is committed in company or actual bodily harm is sustained by the alleged victim (maximum penalty rises from 14 years imprisonment to 20 years),
- (b) the offence is committed in company and actual bodily harm is sustained by the alleged victim (maximum penalty rises to 25 years imprisonment).

Schedule 1 [6], [14] and [16] make consequential amendments.

Motor vehicle theft and other offences

Schedule 1 [9] has the effect of making it an offence, with a penalty of 10 years imprisonment, to steal a motor vehicle that does not have a motor or a motor intended for use in a motor vehicle or any part of such a motor vehicle containing, or consisting of, an identification plate. Such thefts can be carried out for the purposes of reassembling stolen motor vehicles and stolen parts from different vehicles to be sold as “rebirthed vehicles”. The amendment treats motor vehicles without motors, and motors and identification plates, in the same way as motor vehicles for the purposes of the car stealing offence contained in section 154AA of the Principal Act. Currently, the theft of goods other than a motor car is subject to a lesser penalty. **Schedule 1 [8]** makes a consequential amendment.

Schedule 1 [11] increases, from 10 years imprisonment to 12 years imprisonment, the penalty for knowingly receiving a stolen motor vehicle (including a motor vehicle that does not have a motor) or a motor vehicle part. **Schedule 1 [12]** makes a consequential amendment.

Schedule 1 [17] increases, from 6 months imprisonment or a fine of 5 penalty units to imprisonment for 1 year or a fine of 10 penalty units, or both, the penalty for being in possession of, or giving custody to another person of, a motor vehicle (including a motor vehicle that does not have a motor) or a motor vehicle part, that may reasonably be suspected of having been stolen or otherwise unlawfully obtained. **Schedule 1 [18]** makes a consequential amendment.

Car-jacking

Schedule 1 [10] inserts proposed section 154C which makes it an offence to assault a person with intent to take a motor vehicle, and, without the consent of the owner or person in lawful possession of the motor vehicle, to take the motor vehicle and drive it or take it for the purpose of driving it. It also makes it an offence, without the consent of the owner or person in lawful possession of a motor vehicle, to take the motor vehicle and drive it or take it for the purpose of driving it when a person is in or on it. The maximum penalty for both offences is 10 years imprisonment. A separate offence is committed if the offences are committed in company with another person or persons, or while armed with an offensive weapon or instrument, or if the offender maliciously inflicts actual bodily harm on the person (maximum penalty 14 years imprisonment).

Threatening or intimidating victims or witnesses

Schedule 1 [13] inserts proposed section 315A which makes it an offence to threaten to do or cause, or to do or cause, any injury or detriment to another person intending to influence a person not to bring material information about an indictable offence to the attention of a police officer or other appropriate authority (maximum penalty 7 years imprisonment).

Recruiting children to engage in criminal activity

Schedule 1 [15] inserts proposed section 351A which makes it an offence for an adult to recruit a child to engage in criminal activity (maximum penalty 10 years imprisonment). Criminal activity will mean conduct that constitutes a serious indictable offence.

Schedule 2 Amendment of other Acts

Schedule 2.1 and **2.2** make consequential amendments to the *Bail Act 1978* and the *Child Protection (Offenders Registration) Act 2000*.

Schedule 2.3 [1]–[3] amend the *Criminal Procedure Act 1986* to enable offences created by the proposed Act (relating to car-jacking, threatening victims etc, and recruiting children) to be dealt with summarily in certain circumstances (reflecting existing procedures for other similar offences).