



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

- (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).



New South Wales

Crimes Amendment (Gang and Vehicle Related Offences) Bill 2001

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Crimes Act 1900 No 40	2
4 Amendment of other Acts	2
Schedules	
1 Amendment of Crimes Act 1900	3
2 Amendment of other Acts	10



New South Wales

Crimes Amendment (Gang and Vehicle Related Offences) Bill 2001

No , 2001

A Bill for

An Act to amend the *Crimes Act 1900* in relation to the commission of certain offences in company, kidnapping, car-jacking, threatening witnesses, recruiting children to carry out criminal activity and the stealing, receiving and unlawful possession of motor vehicles and motor vehicle parts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Crimes Amendment (Gang and Vehicle Related Offences) Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Crimes Act 1900 No 40

The *Crimes Act 1900* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Crimes Act 1900

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(Section 3)

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[1] Section 33A Discharging loaded arms with intent

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Insert at the end of the section:

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- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 20 years.

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[2] Section 33B Use or possession of weapon to resist arrest etc

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Insert at the end of the section:

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- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 15 years.

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[3] Section 35 Malicious wounding or infliction of grievous bodily harm

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Insert at the end of the section:

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- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 10 years.

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[4] Section 59 Assault occasioning actual bodily harm

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Insert at the end of the section:

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- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 7 years.

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[5] Part 3, Division 13A	1
Insert after Part 3, Division 13:	2
Division 13A Kidnapping	3
85A Kidnapping	4
(1) Basic offence	5
A person who takes or detains a person, without the person's consent:	6
(a) with the intention of holding the person to ransom, or	7
(b) with the intention of obtaining any other advantage,	8
is liable to imprisonment for 14 years.	9
(2) Aggravated offence	10
A person is guilty of an offence under this subsection if:	11
(a) the person commits an offence under subsection (1) in the company of another person or persons, or	12
(b) the person commits an offence under subsection (1) and at the time of, or immediately before or after, the commission of the offence, actual bodily harm is occasioned to the alleged victim.	13
A person convicted of an offence under this subsection is liable to imprisonment for 20 years.	14
(3) Specially aggravated offence	15
A person is guilty of an offence under this subsection if the person commits an offence under subsection (1):	16
(a) in the company of another person or persons, and	17
(b) at the time of, or immediately before or after, the commission of the offence, actual bodily harm is occasioned to the alleged victim.	18
A person convicted of an offence under this subsection is liable to imprisonment for 25 years.	19
(4) Alternative verdicts	20
If on the trial of a person for an offence under subsection (2) or (3) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the	21
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accused is guilty of a lesser offence under this section, it may find the accused not guilty of the offence charged but guilty of the lesser offence, and the accused is liable to punishment accordingly.	1 2 3 4
(5) A person who takes or detains a child is to be treated as acting without the consent of the child.	5 6
(6) A person who takes or detains a child does not commit an offence under this section if:	7 8
(a) the person is the parent of the child or is acting with the consent of a parent of the child, and	9 10
(b) the person is not acting in contravention of any order of a court relating to the child.	11 12
(7) In this section:	13
<i>child</i> means a child under the age of 16 years.	14
<i>detaining</i> a person includes causing the person to remain where he or she is.	15 16
<i>parent</i> of a child means a person who has, in relation to the child, all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.	17 18 19
<i>taking</i> a person includes causing the person to accompany a person and causing the person to be taken.	20 21
[6] Section 90A Kidnapping	22
Omit the section.	23
[7] Section 99 Demanding property with intent to steal	24
Insert at the end of the section:	25
(2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.	26 27 28 29 30
[8] Section 154AA Car stealing etc	31
Omit “motor car” from section 154AA (1). Insert instead “motor vehicle”.	32

[9] Section 154AA (2)

Omit the definition of *motor car*. Insert instead:

identification plate means a plate authorised to be placed on a vehicle, or taken to have been placed on a vehicle, under the *Motor Vehicle Standards Act 1989* of the Commonwealth.

motor vehicle means:

- (a) a motor vehicle within the meaning of the *Road Transport (General) Act 1999* (whether or not the vehicle contains the motor intended to form part of it), or
- (b) a motor intended to form part of, or capable of forming part of, any such vehicle, or
- (c) any part of any such motor vehicle containing, or consisting of, an identification plate.

[10] Section 154C

Insert after section 154B:

154C Car-jacking

(1) A person who:

- (a) assaults another person with intent to take a motor vehicle and, without having the consent of the owner or person in lawful possession of it, takes and drives it, or takes it for the purpose of driving it, or
- (b) without having the consent of the owner or person in lawful possession of a motor vehicle, takes and drives it, or takes it for the purpose of driving it, when a person is in or on it,

is liable to imprisonment for 10 years.

(2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.

(3) In this section:	1
<i>circumstances of aggravation</i> means circumstances involving	2
any one or more of the following:	3
(a) the alleged offender is in the company of another person	4
or persons,	5
(b) the alleged offender is armed with an offensive weapon	6
or instrument,	7
(c) the alleged offender maliciously inflicts actual bodily	8
harm on any person.	9
<i>motor vehicle</i> means a motor vehicle within the meaning of the	10
<i>Road Transport (General) Act 1999</i> .	11
[11] Section 188 Receiving stolen property where stealing a serious	12
indictable offence	13
Omit “shall be liable to imprisonment for ten years.”. Insert instead:	14
is liable:	15
(a) if the property is a motor vehicle or a motor vehicle	16
part, to imprisonment for 12 years, or	17
(b) in the case of any other property, to imprisonment for	18
10 years.	19
[12] Section 188 (2)	20
Insert at the end of section 188:	21
(2) In this section:	22
<i>motor vehicle</i> has the same meaning as it has in section	23
154AA.	24

[13] Section 315A	1
Insert after section 315:	2
315A Threatening or intimidating victims or witnesses	3
(1) A person who threatens to do or cause, or who does or causes,	4
any injury or detriment to any other person intending to	5
influence any person not to bring material information about an	6
indictable offence to the attention of a police officer or other	7
appropriate authority is liable to imprisonment for 7 years.	8
(2) In this section:	9
<i>material information</i> means information that a person has that	10
might be of material assistance in securing the apprehension of	11
a person who has committed an indictable offence, or the	12
prosecution or conviction of any such person.	13
[14] Section 349 Punishment of accessories after the fact to murder etc	14
Omit “section 90A” from section 349 (2).	15
Insert instead “section 85A”.	16
[15] Section 351A	17
Insert after section 351:	18
351A Recruiting children to engage in criminal activity	19
(1) A person (not being a child) who recruits a child to carry out or	20
assist in carrying out a criminal activity is liable to	21
imprisonment for 10 years.	22
(2) In this section:	23
<i>child</i> means a person under the age of 18 years.	24
<i>criminal activity</i> means conduct that constitutes a serious	25
indictable offence.	26
<i>recruit</i> means counsel, procure, solicit, incite or induce.	27

[16] Section 428B Offences of specific intent to which Part applies	1
Omit from item (a) of the Table the matter relating to section 90A.	2
Insert instead in appropriate order:	3
85A Kidnapping	4
[17] Section 527C Persons unlawfully in possession of property	5
Omit “shall be liable on conviction before a Local Court constituted by a Magistrate sitting alone to imprisonment for 6 months, or to a fine of 5 penalty units.” from section 527C (1).	6
Insert instead:	7
is liable on conviction before a Local Court:	8
(a) if the thing is a motor vehicle or a motor vehicle part, to imprisonment for 1 year, or to a fine of 10 penalty units, or both, or	9
(b) in the case of any other thing, to imprisonment for 6 months, or to a fine of 5 penalty units, or both.	10
[18] Section 527C (3)	11
Omit the subsection. Insert instead:	12
(3) In this section:	13
<i>motor vehicle</i> has the same meaning as it has in section 154AA.	14
<i>premises</i> includes any structure, building, vehicle, vessel, whether decked or undecked, or place, whether built on or not, and any part of any such structure, building, vehicle, vessel or place.	15
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Schedule 2 Amendment of other Acts	1
(Section 4)	2
2.1 Bail Act 1978 No 161	3
Section 9 Presumption in favour of bail for certain offences—exceptions	4
Insert “85A,” before “90A” in section 9 (1) (c).	5
	6
2.2 Child Protection (Offenders Registration) Act 2000 No 42	7
Section 3 Definitions	8
Insert “85A or” before “90A” in paragraph (b) of the definition of <i>Class 2 offence</i> in section 3 (1).	9
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2.3 Criminal Procedure Act 1986 No 209	11
[1] Schedule 1 Indictable offences triable summarily	12
Insert “, 154C” after “154B (1)” in clause 9 of Table 1.	13
[2] Schedule 1, Table 1	14
Insert “, 315A” after “315” in clause 15 (2).	15

[3] Schedule 1, Table 1	1
Insert after clause 15:	2
15A Offence relating to recruiting children	3
An offence under section 351A of the <i>Crimes Act 1900</i> .	4