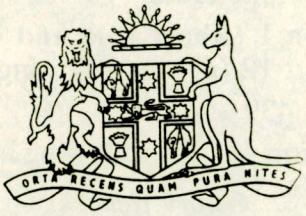
CRIMES LEGISLATION (AMENDMENT) ACT 1990 No. 5

NEW SOUTH WALES

TABLE OF PROVISIONS

CRIMES LEGISLATION (AMENDMENT) ACT 1990 No. 5

NEW SOUTH WALES



Act No. 5, 1990

An Act to amend the Crimes Act 1900 and the Children (Criminal Proceedings) Act 1987 with respect to the sentencing of persons who plead guilty. [Assented to 22 May 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes Legislation (Amendment) Act 1990.

Commencement

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

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended:

(a) by inserting in section 1 (**Short title and contents**) after the matter relating to Part 12 (6) the following matter:

(7) *Guilty pleas - s.* 439

(b) by inserting after section 438 the following heading and section:

Guilty pleas

Guilty plea to be taken into account

439. (1) In passing sentence for an offence on a person who pleaded guilty to the offence, a Court must take into account:

(a) the fact that the person pleaded guilty; and

(b) when the person pleaded guilty or indicated an intention to plead guilty,

and may accordingly reduce the sentence that it would otherwise have passed.

(2) A Court which does not, as a result of this section, reduce the sentence that it passes on a person who pleaded guilty to an offence must state that fact and its reasons for not reducing the sentence when passing sentence.

(3) The failure of a Court to comply with this section does not invalidate any sentence imposed by the Court.

(4) In this section, a reference to a Court includes a reference to a Judge and a Magistrate (whether exercising jurisdiction in respect of an indictable offence or a summary offence) but does not include a reference to the Children's Court or a court exercising the jurisdiction of the Children's Court.

(5) This section applies to proceedings for an offence whether commenced before or after the commencement of this section.

Amendment of Children (Criminal Proceedings) Act 1987 No. 55

4. The Children (Criminal Proceedings) Act 1987 is amended by inserting after section 33A the following section:

Guilty plea to be taken into account

33B. (1) In dealing with a person under section 33 for an offence to which this Division applies to which the person pleaded guilty, the Children's Court must take into account:

(a) the fact that the person pleaded guilty; and

(b) when the person pleaded guilty or indicated an intention to plead guilty,

and may accordingly reduce any order that it would otherwise have made.

(2) If the Children's Court does not, as a result of this section, reduce an order it makes in respect of a person who pleaded guilty to an offence, it must state that fact and its reasons for not reducing the order when making the order.

(3) The failure of the Children's Court to comply with this section does not invalidate any order made under section 33 by the Children's Court.

(4) This section applies to proceedings for an offence whether commenced before or after the commencement of this section.

[*Minister's second reading speech made in -*
Legislative Assembly on 8 May 1990
Legislative Council on 14 May 1990]

BY AUTHORITY
R. MILLIGAN, ACTING GOVERNMENT PRINTER - 1990

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FIRST PRINT

CRIMES LEGISLATION (AMENDMENT) BILL 1990

NEW SOUTH WALES

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to require courts (including the Children's Court) to take into account guilty pleas when determining sentences.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a day or days to be appointed by proclamation.

Clause 3 inserts proposed section 439 into the Crimes Act 1900. The proposed section applies to all courts (other than the Children's Court) by virtue of section 3 of, and the Second Schedule to, that Act and to proceedings commenced before or after the proposed section commences. The proposed section requires a Court, when passing sentence on a person who has pleaded guilty to an offence, to take into account both the fact of the guilty plea and when the person pleaded guilty or indicated an intention to do so. A Court is also required to state when it does not reduce a sentence as a result of the proposed section and to give its reasons for not doing so. The clause also makes a consequential amendment.

Clause 4 inserts proposed section 33B into the Children (Criminal Proceedings) Act 1987. The proposed section applies to the Children's Court and to courts exercising the jurisdiction of that Court and to proceedings commenced before or after the proposed section commences. The proposed section requires the Children's Court, when making a sentencing order as to a person who has pleaded guilty to an offence, to take into account both the fact of the guilty plea and when the person pleaded guilty or indicated an intention to do so. The Court is also required to state when it does not reduce an order as a result of the proposed section and to give its reasons for not doing so.

FIRST PRINT

CRIMES LEGISLATION (AMENDMENT) BILL 1990

NEW SOUTH WALES

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CRIMES LEGISLATION (AMENDMENT) BILL 1990

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No. , 1990

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and may accordingly reduce the sentence that it would otherwise have passed.

(2) A Court which does not, as a result of this section, reduce the sentence that it passes on a person who pleaded guilty to an offence must state that fact and its reasons for not reducing the sentence when passing sentence.

(3) The failure of a Court to comply with this section does not invalidate any sentence imposed by the Court.

(4) In this section, a reference to a Court includes a reference to a Judge and a Magistrate (whether exercising jurisdiction in respect of an indictable offence or a summary offence) but does not include a reference to the Children's Court or a court exercising the jurisdiction of the Children's Court.

(5) This section applies to proceedings for an offence whether commenced before or after the commencement of this section.

Amendment of Children (Criminal Proceedings) Act 1987 No. 55

4. The Children (Criminal Proceedings) Act 1987 is amended by inserting after section 33A the following section:

Guilty plea to be taken into account

33B. (1) In dealing with a person under section 33 for an offence to which this Division applies to which the person pleaded guilty, the Children's Court must take into account:

(a) the fact that the person pleaded guilty; and

(b) when the person pleaded guilty or indicated an intention to plead guilty,

and may accordingly reduce any order that it would otherwise have made.

(2) If the Children's Court does not, as a result of this section, reduce an order it makes in respect of a person who pleaded guilty to an offence, it must state that fact and its reasons for not reducing the order when making the order.

(3) The failure of the Children's Court to comply with this section does not invalidate any order made under section 33 by the Children's Court.

(4) This section applies to proceedings for an offence whether commenced before or after the commencement of this section.