

Serial 12
Sentencing Amendment (Mandatory Minimum Sentences) Bill 2012
Mr Elferink

A Bill for an Act to amend the *Sentencing Act* and to make consequential amendments to another Act

NORTHERN TERRITORY OF AUSTRALIA

SENTENCING AMENDMENT (MANDATORY
MINIMUM SENTENCES) ACT 2012

Act No. [] of 2012

Table of provisions

Part 1	Preliminary matters	
1	Short title	1
2	Commencement	1
Part 2	Amendment of Sentencing Act	
3	Act amended	1
4	Section 3 amended.....	1
5	Section 54 amended.....	2
6	Part 3, Division 6A replaced	3
	Division 6A	Mandatory imprisonment for violent offences
	Subdivision 1	Preliminary matters
	78C	Definitions
	78CA	Offence levels
	Subdivision 2	Mandatory imprisonment
	78D	Level 5 offence – first offence
	78DA	Level 5 offence – second or subsequent offence
	78DB	Level 4 offence – any offence
	78DC	Level 3 offence – first offence
	78DD	Level 3 offence – second or subsequent offence
	78DE	Level 2 offence – any offence
	78DF	Level 1 offence – second offence
	78DG	Imposition of term of actual imprisonment
	78DH	Imposition of minimum sentence
	78DI	Exceptional circumstances exemption
	Subdivision 3	General matters
	78E	Other powers not affected
	78EA	Division does not apply to offence committed before commencement
7	Section 78BB renumbered.....	8
8	Schedule 2 replaced.....	8
	Schedule 2	Violent offences

Part 3 **Amendment of Alcohol Reform (Substance
Misuse Assessment and Referral for
Treatment Court) Act**

9 Act amended 9
10 Section 30 amended..... 9



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2012

An Act to amend the to amend the *Sentencing Act* and to make consequential amendments to another Act

[Assented to [] 2012]
[Second reading [] 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Sentencing Amendment (Mandatory Minimum Sentences) Act 2012*.

2 Commencement

This Act commences immediately after the commencement of the *Criminal Code Amendment (Assaults on Workers) Act 2012*.

Part 2 Amendment of Sentencing Act

3 Act amended

This Part amends the *Sentencing Act*.

4 Section 3 amended

- (1) Section 3(1), definition *violent offence*
omit

(2) Section 3(1)

insert (in alphabetical order)

impose a minimum sentence, for Part 3, Division 6A, see section 78DH.

impose a term of actual imprisonment, for Part 3, Division 6A, see section 78DG.

level 1 offence, for Part 3, Division 6A, see section 78CA(5).

level 2 offence, for Part 3, Division 6A, see section 78CA(4).

level 3 offence, for Part 3, Division 6A, see section 78CA(3).

level 4 offence, for Part 3, Division 6A, see section 78CA(2).

level 5 offence, for Part 3, Division 6A, see section 78CA(1).

physical harm, for Part 3, Division 6A, see section 78C.

violent offence means the following:

- (a) for section 39A – see section 39A(2);
- (b) for section 48A – see section 48A(2);
- (c) for sections 65, 67, 68 and 74 – see section 65(1);
- (d) for section 52 and Part 3, Division 6A – see section 78C.

5 Section 54 amended

After section 54(3)

insert

- (4) If the court is required under Division 6A to impose a minimum sentence of 12 months actual imprisonment for an offence, the period fixed under section 53(1) for that offence must be not less than 12 months.

6 Part 3, Division 6A replaced

Part 3, Division 6A

repeal, insert

Division 6A Mandatory imprisonment for violent offences

Subdivision 1 Preliminary matters

78C Definitions

In this Division:

impose a minimum sentence, see section 78DH.

impose a term of actual imprisonment, see section 78DG.

level 1 offence, see section 78CA(5).

level 2 offence, see section 78CA(4).

level 3 offence, see section 78CA(3).

level 4 offence, see section 78CA(2).

level 5 offence, see section 78CA(1).

physical harm, in relation to a person, means a physical injury that interferes with the person's health.

violent offence means:

- (a) an offence against a provision of the Criminal Code listed in Schedule 2; or
- (b) an offence substantially corresponding to an offence mentioned in paragraph (a) against:
 - (i) a law that has been repealed; or
 - (ii) a law of another jurisdiction (including a jurisdiction outside Australia).

78CA Offence levels

- (1) Each of the following is a *level 5 offence*:
 - (a) an offence against section 181 of the Criminal Code;
 - (b) an offence against section 186, 188 (if the offence is committed in circumstances mentioned in section 188(2), other than paragraph (k)), 188A, 189A, 190, 191, 193 or 212 of the Criminal Code if:
 - (i) commission of the offence involves the actual or threatened use of an offensive weapon (as defined in section 1 of the Criminal Code); and
 - (ii) the victim suffers physical harm as a result of the offence.
- (2) An offence against section 188A or 189A of the Criminal Code is a *level 4 offence* if:
 - (a) the victim suffers physical harm as a result of the offence; and
 - (b) the offence is not a level 5 offence.
- (3) An offence against section 188 of the Criminal Code is a *level 3 offence* if the offence:
 - (a) is committed in circumstances mentioned in section 188(2), other than paragraph (k); and
 - (b) is not a level 5 offence.
- (4) An offence against section 186 of the Criminal Code is a *level 2 offence* if:
 - (a) the victim suffers physical harm as a result of the offence; and
 - (b) the offence is not a level 5 offence.
- (5) Any other violent offence is a *level 1 offence*.

Subdivision 2 Mandatory imprisonment**78D Level 5 offence – first offence**

- (1) This section applies if:
 - (a) a court finds an offender guilty of a level 5 offence; and

(b) the offender has not previously been convicted of a violent offence.

(2) The court must impose a minimum sentence of 3 months actual imprisonment.

78DA Level 5 offence – second or subsequent offence

(1) This section applies if:

(a) a court finds an offender guilty of a level 5 offence; and

(b) the offender has previously been convicted of a violent offence.

(2) The court must impose a minimum sentence of 12 months actual imprisonment.

78DB Level 4 offence – any offence

(1) This section applies if a court finds an offender guilty of a level 4 offence (whether or not the offender has previously been convicted of a violent offence).

(2) The court must impose a minimum sentence of 3 months actual imprisonment.

78DC Level 3 offence – first offence

(1) This section applies if:

(a) a court finds an offender guilty of a level 3 offence; and

(b) the victim suffers physical harm as a result of the offence; and

(c) the offender has not previously been convicted of a violent offence.

(2) The court must impose a term of actual imprisonment.

78DD Level 3 offence – second or subsequent offence

(1) This section applies if:

(a) a court finds an offender guilty of a level 3 offence; and

(b) the offender has previously been convicted of a violent offence.

(2) The court must impose a minimum sentence of 3 months actual imprisonment.

78DE Level 2 offence – any offence

- (1) This section applies if a court finds an offender guilty of a level 2 offence (whether or not the offender has previously been convicted of a violent offence).
- (2) The court must impose a term of actual imprisonment.

78DF Level 1 offence – second offence

- (1) This section applies if:
 - (a) a court finds an offender guilty of a level 1 offence; and
 - (b) the offender has previously been convicted of a violent offence.
- (2) The court must impose a term of actual imprisonment.

78DG Imposition of term of actual imprisonment

If a court is required to *impose a term of actual imprisonment* in relation to an offender, the court:

- (a) must record a conviction against the offender; and
- (b) must sentence the offender to a term of imprisonment; and
- (c) may make an order under section 40 or 44 in relation to part, but not the whole of, the term of imprisonment.

78DH Imposition of minimum sentence

- (1) If a court is required to *impose a minimum sentence* of a specified period of actual imprisonment in relation to an offender, the court:
 - (a) must record a conviction against the offender; and
 - (b) must sentence the offender to a term of imprisonment of not less than the specified period; and
 - (c) cannot make an order under section 40 or 44 in relation to the imprisonment for the specified period.
- (2) However, if the offender is a youth (as defined in section 6 of the *Youth Justice Act*):
 - (a) a provision of this subdivision requiring a court to impose a minimum sentence of a specified period does not apply in relation to the offender; and

- (b) the court must instead comply with section 78DG as if that section applied to the case.

78DI Exceptional circumstances exemption

- (1) This section applies if:
 - (a) a court is required to impose a minimum sentence of a specified period of actual imprisonment for an offence; and
 - (b) the court is satisfied that the circumstances of the case are exceptional.
- (2) If this section applies:
 - (a) a provision of this subdivision requiring a court to impose a minimum sentence of a specified period does not apply in relation to the offender; and
 - (b) the court must instead comply with section 78DG as if that section applied to the case.
- (3) In deciding whether it is satisfied as mentioned in subsection (1)(b), the court may have regard to:
 - (a) any victim impact statement or victim report presented to the court under section 106B; and
 - (b) any other matter the court considers relevant.
- (4) For subsection (1)(b), the following do not constitute exceptional circumstances:
 - (a) that the offender was voluntarily intoxicated by alcohol, drugs or a combination of alcohol and drugs at the time the offender committed the offence;
 - (b) that another person:
 - (i) was involved in the commission of the offence; or
 - (ii) coerced the person to commit the offence.

Subdivision 3 General matters

78E Other powers not affected

This Division does not prevent a court from exercising any of its powers that may be exercised consistently with this Division.

78EA Division does not apply to offence committed before commencement

This Division does not apply in relation to an offence committed before the commencement of section 6 of the *Sentencing Amendment (Mandatory Minimum Sentences) Act 2012*.

7 Section 78BB renumbered

Section 78BB

renumber as section 78F

8 Schedule 2 replaced

Schedule 2

repeal, insert

Schedule 2 Violent offences

section 78C, definition *violent offence*

Criminal Code

section 54	Terrorism
section 55	Contribution towards acts of terrorism
section 160	Manslaughter
section 161A	Violent act causing death
section 165	Attempt to murder
section 166	Threats to kill
section 175	Disabling in order to commit crime
section 176	Stupefying in order to commit crime
section 177	Acts intended to cause serious harm or prevent apprehension
section 181	Serious harm
section 182	Attempting to injure by explosive substances
section 185	Setting man-traps
section 186	Harm
section 188	Common assault other than in circumstances mentioned in section 188(2)(k)
section 188A	Assaults on workers
section 189	Unlawful stalking
section 189A	Assaults on police

section 190	Assaults on the Administrator or judges or magistrates
section 191	Assaults on member of crew of aircraft
section 193	Assaults with intent to commit an offence
section 194	Kidnapping for ransom
section 211	Robbery
section 212	Assault with intent to steal

Part 3 Amendment of Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act

9 Act amended

This Part amends the *Alcohol Reform (Substance Misuse Assessment and Referral for Treatment Court) Act*.

10 Section 30 amended

Section 30(3)

omit

and 78BB

insert

to 78F