

THE CRIMINAL LAW AMENDMENT ACT 1969

No. 3 of 1969

Date of Assent: 21st March 1969

Date of Commencement: 25th March 1969

An Act of Parliament to make amendments to certain laws so as to introduce statutory minimum sentences for certain crimes of violence and for receiving stolen property; to provide for the introduction of imprisonment with hard labour in respect of these and other grave crimes; to alter the basis of the offence of receiving stolen property; to increase the powers of Resident Magistrates in relation to crimes of violence and receiving stolen property; to subject persons released after imprisonment for certain crimes of violence to police supervision; and for matters incidental to the foregoing

ENACTED by the Parliament of Kenya, as follows:—

1. This Act may be cited as the Criminal Law Amendment Act 1969.

Short title.

2. The Penal Code is hereby amended by the repeal of section 26 and the substitution therefor of the following—

Replacement of section 26 of Cap. 63.

Imprisonment.

26. (1) A sentence of imprisonment for any offence shall be to imprisonment or to imprisonment with hard labour as may be required or permitted by the law under which such offence is punishable.

(2) Save as may be expressly provided by the law under which the offence concerned is punishable, a person liable to imprisonment for life or any other period may be sentenced to any shorter term.

(3) A person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or in substitution for imprisonment:

Provided that—

- (i) where the law concerned provides for a minimum sentence of imprisonment, a fine shall not be substituted for imprisonment;
- (ii) where the law concerned provides for imprisonment together with corporal punishment such person shall be sentenced to imprisonment and to corporal punishment.

Replacement of
section 27 of
Cap. 63.

3. The Penal Code is hereby amended by the repeal of section 27 and the substitution therefor of the following—

Corporal
punishment.

27. (1) A sentence of corporal punishment shall be to receive such number of strokes with a cane as may be specified by such sentence.

(2) No sentence of corporal punishment shall be passed upon any female or upon any male sentenced to death.

(3) Whenever a male person under the age of eighteen years is convicted of an offence for which he is liable to imprisonment the court may, in its discretion, sentence him to corporal punishment in addition to or in substitution for any other punishment to which he is liable:

Provided that no sentence of corporal punishment shall be imposed in default of payment of a fine.

(4) No sentence of corporal punishment shall be carried into effect until after the expiration of the time limited by law for the entry of an appeal in connexion with the proceedings concerned or, if such an appeal has been entered, until after the final disposal thereof.

(5) No corporal punishment shall be inflicted on a prisoner unless, immediately before such infliction, a medical officer has examined the

prisoner and has certified that in his opinion such prisoner is physically fit to undergo such punishment.

(6) Corporal punishment shall only be inflicted on a prisoner in the presence of a medical officer, who may at any time during the carrying out of such punishment intervene and postpone the carrying out of the remainder of the punishment if, in his opinion, such postponement is necessary to obviate the risk of grave or permanent injury.

(7) If any person has been sentenced to corporal punishment in substitution for any other punishment to which he might have been liable, and such sentence cannot, either in whole or in part, be carried into effect, such person shall be kept in custody and shall, as soon as possible, be taken before the court which imposed such sentence and such court may, in its discretion, either remit such sentence or the remainder thereof, or pass upon such person any sentence to which he might have originally been liable.

(8) A person sentenced to corporal punishment without imprisonment may be detained in a prison or some other convenient place for such time as may be necessary for carrying the sentence into effect or for ascertaining that the same should not be carried into effect:

Provided that no person under the age of eighteen years shall be detained under this subsection in a prison.

(9) Corporal punishment shall be inflicted with a rod, cane or other instrument of a type approved for the purpose by the Minister, and the Minister may approve different types of rod, cane or other instrument for different ages of persons.

(10) Where no medical officer is readily available for the purposes of subsection (5) or (6) of this section, the duties and powers imposed and conferred by those subsections may be carried out and exercised by any medical practitioner.

Replacement of
section 308 of
Cap. 63.

4. The Penal Code is hereby amended by the repeal of section 308 and the substitution therefor of the following—

Preparations
to commit
felony.

308. (1) Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with the intent to commit any felony is guilty of a felony and is liable to imprisonment with hard labour for a term of not less than ten or more than fourteen years together with corporal punishment.

(2) Any person who, when not at his place of abode, has with him any article for use in the course of or in connexion with any burglary, theft or cheating is guilty of a felony, and where any person is charged with an offence under this subsection proof that he had with him any article made or adapted for use in committing a burglary, theft or cheating shall be evidence that he had it with him for such use.

(3) Any person who is found—

(a) having his face masked or blackened, or being otherwise disguised, with intent to commit a felony; or

(b) in any building whatever by night with intent to commit a felony therein; or

(c) in any building whatever by day with intent to commit a felony therein, having taken precautions to conceal his presence,

is guilty of a felony.

(4) Any person guilty of a felony under subsection (2) or (3) of this section is liable to imprisonment with hard labour for five years or, if he has previously been convicted of a felony relating to property, to such imprisonment for ten years.

5. The Penal Code is hereby amended by the repeal of section 322 and the substitution therefor of the following—

Handling
stolen goods.

322. (1) A person handles stolen goods if (otherwise than in the course of the stealing) knowing or having reason to believe them to be stolen

Replacement of
section 322 of
Cap. 63.

goods he dishonestly receives the goods, or dishonestly undertakes, or assists in, their retention, removal, disposal or realization by or for the benefit of another person, or if he arranges to do so.

(2) A person who handles stolen goods is guilty of a felony and is liable to imprisonment with hard labour for a term of not less than seven or more than fourteen years.

(3) For the purposes of this section—

(a) goods shall be deemed to be stolen goods if they have been obtained in any way whatever under circumstances which amount to felony or misdemeanour, and “steal” means so to obtain;

(b) no goods shall be regarded as having continued to be stolen goods after they have been restored to the person from whom they were stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased as regards those goods to have any right to restitution in respect of the stealing.

(4) Where a person is charged with an offence under this section—

(a) it shall not be necessary to allege or prove that the person charged knew or ought to have known of the particular offence by reason of which any goods are deemed to be stolen goods;

(b) at any stage of the proceedings, if evidence has been given of the person charged having or arranging to have in his possession the goods the subject of the charge, or of his undertaking or assisting in, or arranging to undertake or assist in, their retention, removal, disposal or realization, the following evidence shall, notwithstanding the provisions of any other written law,

be admissible for the purpose of proving that he knew or had reason to believe that the goods were stolen goods—

- (i) evidence that he has had in his possession, or has undertaken or assisted in the retention, removal, disposal or realization of, stolen goods from any offence taking place not earlier than twelve months before the offence charged;
- (ii) (provided that seven days' notice in writing has been given to him of the intention to prove the conviction) evidence that he has within the five years preceding the date of the offence charged been convicted of stealing or of receiving or handling stolen goods.

Amendment of section 7 of Cap. 75.

6. Section 7 of the Criminal Procedure Code is hereby amended by the insertion after subsection (1) of the following new subsection—

(1A) Notwithstanding the provisions of subsection (1) of this section, a subordinate court of the first class held by a Senior Resident Magistrate or a Resident Magistrate may, on the conviction by such court of any person under section 296, 297, 308 or 322 of the Penal Code, pass any sentence authorized for such offence.

Insertion of new section 344A in Cap. 75.

7. The Criminal Procedure Code is hereby amended by the insertion after section 344 of the following new section—

Automatic police supervision.

344A. (1) Any person who is convicted of an offence under section 296, 297, 308 or 322 of the Penal Code shall be subject to police supervision for a period of five years from the date of his release from prison.

(2) A person who is subject to police supervision under this section shall, whilst he is so subject—

- (a) reside within the limits of such area as the Commissioner of Prisons shall, in each case, specify in writing;

- (b) not transfer his residence to any other area without the written consent of the police officer in charge of the specified area;
- (c) not leave the area in which he resides without the written consent of the police officer in charge of that area;
- (d) at all times keep the police officer in charge of the area in which he resides notified of the house or place in which he resides;
- (e) present himself, whenever called upon by the police officer in charge of the area in which he resides, at any place in that area specified by that officer.

8. The Prisons Act is hereby amended by the repeal of section 43 and the substitution therefor of the following—

Replacement of section 43 of Cap. 90.

Labour of prisoners.

43. (1) Every prisoner under sentence of imprisonment with hard labour may be kept to labour, within or without the precincts of any prison, in such type of employment as the Commissioner may direct.

(2) Every prisoner under sentence of imprisonment may be required to engage in such type of employment approved by the Commissioner as the officer in charge may direct.

(3) A medical officer may order that a prisoner shall not be required to perform any labour, or any labour other than light labour, as the case may be, for such period as the physical and mental conditions of the prisoner may require.

9. (1) The Acts specified in the first column of the First Schedule to this Act are hereby amended, in relation to the provisions thereof specified in the second column of that Schedule, in the manner specified in the third column of that Schedule.

Miscellaneous amendments.

(2) The items of the First Schedule to the Criminal Procedure Code corresponding to the items set forth in the Second Schedule to this Act are hereby replaced by the items so set forth or deleted as shown.

FIRST SCHEDULE

(s. 9 (1))

The Penal Code (Cap. 63).	ss. 140, 141, 144 (1), 145 and 146	Insert "with hard labour" after "imprisonment".
	ss. 296 (2) and 297 (2).	Delete all words after "liable to imprisonment" and substitute "with hard labour for a term not less than fourteen and not more than twenty years together with corporal punishment".
The Criminal Procedure Code (Cap. 75).	Heading immediately before s. 343	Delete and substitute "POLICE SUPERVISION".
	s. 343 (1)	Delete "as hereinafter provided" and substitute "as provided by section 344 of this Code".
		Delete the proviso.
	s. 344 (1)	Insert "under section 343 of this Code" after "police supervision".
	s. 345 (1)	Delete "refuses or neglects to comply with any requirement prescribed by section 344 of this Code, or by any rule made thereunder" and substitute "fails to comply with any requirement placed upon him by or by virtue of section 344 or 344A of this Code".

SECOND SCHEDULE

(s. 9 (2))

140	rape	May arrest without warrant	Imprisonment with hard labour for life with or without corporal punishment.	Subordinate court of the first class.
141	Attempted rape	May arrest without warrant	Imprisonment with hard labour for life with or without corporal punishment.	Subordinate court of the first class.
144 (1)	Indecent assault on female	May arrest without warrant	Imprisonment with hard labour for five years with or without corporal punishment	Any subordinate court.
145 (1)	Defilement of girl under fourteen	May arrest without warrant	Imprisonment with hard labour for fourteen years with or without corporal punishment	Subordinate court of the first class.
(2)	Attempted defilement of girl under fourteen	May arrest without warrant	Imprisonment with hard labour for five years with or without corporal punishment.	Subordinate court of the first class.

SECOND SCHEDULE—(Contd.)

146	Defilement of idiot or imbecile	May arrest without warrant	Imprisonment with hard labour for fourteen years with or without corporal punishment.	Subordinate court of the first class.
296 (2)	Robbery with violence	May arrest without warrant	Imprisonment with hard labour for not less than fourteen or more than twenty years together with corporal punishment	Resident Magistrate's Court.
297 (2)	Attempted robbery with violence	May arrest without warrant	Imprisonment with hard labour for not less than fourteen or more than twenty years together with corporal punishment	Resident Magistrate's Court.
308 (1)	Armed preparation for felony	May arrest without warrant	Imprisonment with hard labour for not less than ten or more than fourteen years together with corporal punishment	Resident Magistrate's Court.
(2)	Possession of certain articles	May arrest without warrant	Imprisonment with hard labour for five years or for ten years after previous conviction of a felony relating to property.	Subordinate court of the first or second class.
(3)	Other preparation for felony	May arrest without warrant	Imprisonment with hard labour for five years or for ten years after previous conviction of a felony relating to property.	Subordinate court of the first or second class.
322 (1)	<i>(Delete).</i>			
(2)	Handling stolen property	May arrest without warrant	Imprisonment with hard labour for not less than seven or more than fourteen years.	Resident Magistrate's Court.
(3)	<i>(Delete).</i>			