

Legislative Council—No 17A

As reported with amendments and an amended Title, report adopted, Standing Orders suspended and passed remaining stages, 18 June 2015

South Australia

Criminal Law (High Risk Offenders) Bill 2015

A BILL FOR

An Act to provide for the making of extended supervision orders and continuing detention orders in relation to certain serious offenders; to make related amendments to the *Bail Act 1985* and the *Correctional Services Act 1982*; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Criminal Law (High Risk Offenders) Act 2015*.

2—Commencement

5 This Act will come into operation on a day to be fixed by proclamation.

3—Object of Act

The object of this Act is to provide the means to protect the community from being exposed to an appreciable risk of harm posed by serious sexual offenders and serious violent offenders.

10 4—Interpretation

In this Act, unless the contrary intention appears—

CE means the chief executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982*;

15 *community corrections officer* means an officer or employee of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Correctional Services Act 1982* whose duties include the supervision of offenders in the community;

continuing detention order—see section 14D(2);

20 *detainee* means a person who is detained as a result of being declared liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935*;

extended supervision order means an order under this Act made by the Supreme Court for the supervision of a high risk offender;

government custody means custody as a prisoner or detainee;

25 *high risk offender*—see section 5;

interim supervision order—see section 9;

Parole Board means the Parole Board of South Australia;

prisoner has the same meaning as in the *Correctional Services Act 1982*;

relevant expiry date means—

30 (a) in relation to a high risk offender who is serving a sentence of imprisonment (whether the offender is in prison or on release on home detention or parole)—

35 (i) if the offender is not serving a sentence of life imprisonment—the date on which the term, or terms, of imprisonment to which the offender was sentenced expire; and

(ii) if the offender is serving a sentence of life imprisonment—the date on which the sentence of imprisonment will be taken to have been wholly satisfied; and

(b) in relation to a high risk offender who is subject to an existing extended supervision order—the date on which the extended supervision order expires;

respondent—see section 7(1);

serious offence of violence has the same meaning as in section 83D(1) of the *Criminal Law Consolidation Act 1935*;

serious sexual offence has the same meaning as in section 33(1) of the *Criminal Law (Sentencing) Act 1988*;

serious sexual offender means a person convicted (whether before or after the commencement of this Act) of a serious sexual offence;

serious violent offender means a person convicted (whether before or after the commencement of this Act) of a serious offence of violence;

supervision order means an extended supervision order or an interim supervision order;

youth has the same meaning as in the *Young Offenders Act 1993*.

5—Meaning of high risk offender

For the purposes of this Act, a *high risk offender* is—

(a) a serious sexual offender who was sentenced to a period of imprisonment in respect of the serious sexual offence; or

(b) a person referred to in paragraph (a) who is serving a sentence of imprisonment any part of which is in respect of any of the following offences:

(i) an offence under section 58 or 63A of the *Criminal Law Consolidation Act 1935*;

(ii) an offence under section 44, 45, 65 or 66N(2) of the *Child Sex Offenders Registration Act 2006*;

(iii) an offence under section 99I of the *Summary Procedure Act 1921*;

(iv) an offence prescribed by the regulations for the purposes of this paragraph; or

(c) a serious violent offender who was sentenced to a period of imprisonment in respect of the serious offence of violence; or

(d) a person who is serving a sentence of imprisonment any part of which is in respect of an offence of contravening or failure to comply with a supervision order (see section 17); or

(e) a person who is subject to an extended supervision order.

6—Application of Act

This Act does not apply in relation to a youth.

Part 2—Extended supervision orders

7—Proceedings

- 5 (1) The Attorney-General may make an application to the Supreme Court for an extended supervision order to be made in respect of a person who is a high risk offender (the *respondent*).
- (2) An application for an extended supervision order may only be made within 12 months of the relevant expiry date for the respondent.
- 10 (3) The Supreme Court must, before determining whether to make an extended supervision order, direct that 1 or more legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) examine the respondent and report to the Court on the results of the examination, including—
- (a) if the respondent is a serious sexual offender—an assessment of the likelihood of the respondent committing a further serious sexual offence; or
- 15 (b) if the respondent is a serious violent offender—an assessment of the likelihood of the respondent committing a further serious offence of violence.
- (4) The Supreme Court may, on application under this section, order that the respondent is to be subject to an extended supervision order if satisfied that—
- (a) the respondent is a high risk offender; and
- 20 (b) the respondent poses an appreciable risk to the safety of the community if not supervised under the order.
- (5) The paramount consideration of the Supreme Court in determining whether to make an extended supervision order must be the safety of the community.
- 25 (6) The Supreme Court must also take the following matters into consideration in determining whether to make an extended supervision order in respect of the respondent:
- (a) the likelihood of the respondent committing a further serious sexual offence or serious offence of violence (as the case may be) if not supervised under the order;
- 30 (b) the reports of any medical practitioner (as directed and nominated under subsection (3)) furnished to the Court;
- (c) any report prepared by the Parole Board under section 64(5) of the *Correctional Services Act 1982*;
- 35 (d) any report required by the Court under section 15 (including the results of any statistical or other assessment furnished to the Court as to the likelihood of persons with histories and characteristics similar to those of the respondent committing a further relevant offence);
- (e) any relevant evidence or representations that the respondent may desire to put to the Court;
- 40 (f) any treatment or rehabilitation program in which the respondent has had an opportunity to participate, including his or her willingness to so participate and the extent of such participation;

- (g) in the case of a respondent released on parole—the extent to which he or she has complied with the conditions of his or her release on parole;
- (h) in the case of a respondent subject to an existing extended supervision order—the extent to which he or she has complied with the terms of the order;
- (i) in the case of a respondent who is a registrable offender (within the meaning of the *Child Sex Offenders Registration Act 2006*)—the extent to which he or she has complied with any obligations under that Act;
- (j) the circumstances and seriousness of any offence in respect of which the respondent has been found guilty according to his or her criminal history, and any pattern of offending behaviour disclosed by that history;
- (k) any remarks made by the sentencing court in passing sentence;
- (l) any other matter that the Court thinks relevant.

8—Parties

Both the Attorney-General and the person to whom an application under this Act for an extended supervision order relates are parties to the application.

9—Interim supervision orders

- (1) The Supreme Court may make an interim supervision order if an application for an extended supervision order in relation to a high risk offender has been made and the Court is satisfied—
- (a) that the relevant expiry date for the respondent is likely to occur before the application is determined; and
- (b) that the matters alleged in the material supporting the application would, if proved, justify the making of an extended supervision order.
- (2) An interim supervision order takes effect on the making of the order until the application for the extended supervision order is determined.

10—Supervision orders—terms and conditions

- (1) The following conditions apply in relation to an extended supervision order:
- (a) a condition that the person subject to the order not commit any offence;
- (b) a condition that the person subject to the order is prohibited from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;
- (c) a condition prohibiting the person subject to the order from possessing an offensive weapon unless the Supreme Court permits the person to possess such a weapon and the person complies with the terms and conditions of the permission;
- (d) a condition that the person subject to the order—
- (i) be under the supervision of a community corrections officer; and
- (ii) obey the reasonable directions of the community corrections officer; and

- (iii) submit to such tests (including testing without notice) for gunshot residue as the community corrections officer may reasonably require;
 - (e) any other condition that the Court thinks fit and specifies in the order;
 - (f) any condition imposed by the Parole Board under section 11.
- 5 (2) The conditions referred to in subsection (1)(a) to (e) (inclusive) apply in relation to an interim supervision order.
- (3) The Supreme Court may only vary or revoke the condition imposed by subsection (1)(b) if the Court is satisfied that—
 - (a) there are cogent reasons to do so; and
 - 10 (b) the possession of the firearm, ammunition or part of a firearm by the person does not represent an undue risk to the safety of the public.
- (4) The Supreme Court must, on making or varying a supervision order—
 - (a) take all reasonable steps to explain to the person the subject of the order the terms and conditions of the order and, in particular—
 - 15 (i) the person's obligations under the order; and
 - (ii) the consequences that may follow from a failure to comply with the order; and
 - (b) forward a copy of the order as made or varied to the Parole Board and to the Commissioner of Police.

20 **11—Conditions of extended supervision orders imposed by Parole Board**

- (1) Without limiting section 10(1)(f), the Parole Board may (for example) impose a condition on an extended supervision order—
 - (a) requiring the person subject to the order to—
 - 25 (i) reside at a specified address; or
 - (ii) undertake such activities and programs as determined from time to time by the Board; or
 - (iii) be monitored by use of an electronic device; or
 - (b) providing that a community corrections officer or police officer may, at any time—
 - 30 (i) visit the person subject to the order at the person's residential address; and
 - (ii) access any computer or related equipment that is at the person's residential address or in the possession of the person,
and, for that purpose, enter the premises at that address; or
 - 35 (c) prohibiting or restricting the person subject to the order from—
 - (i) associating or communicating with a specified person or persons of a specified class; or
 - (ii) residing or being present at, or being in the vicinity of, a specified place or premises or a place or premises of a specified class; or

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- (iii) possessing a specified article or weapon, or articles or weapons of a specified class; or
 - (iv) engaging in specified conduct, or conduct of a specified kind; or
 - (v) undertaking specified employment or employment of a specified kind; or
 - (vi) applying for a change of name; or
 - (vii) engaging in any other conduct of a kind specified by the Board.
- 10
- (2) The Parole Board may, on application by the Attorney-General or the person subject to an extended supervision order, or of its own motion, vary or revoke a condition of the order imposed by the Board or impose further conditions on the order.
- 15
- (3) The Parole Board must, on imposing a condition or further condition on, or on varying or revoking a condition of, an extended supervision order—
- (a) provide the person the subject of the order with a copy of the order as varied by the Board; and
 - (b) take all reasonable steps to explain to the person the subject of the order the terms and conditions of the order and, in particular—
 - (i) the person's obligations under the order; and
 - (ii) the consequences that may follow from a failure to comply with the order; and
 - (c) forward a copy of the order as varied by the Board under this section to the Supreme Court and the Commissioner of Police.
- 20
- (4) The Parole Board cannot exercise its powers under subsection (1) or (2) of its own motion in relation to a person subject to an extended supervision order unless the person and the Attorney-General have been afforded a reasonable opportunity to make submissions to the Board on the matter, and the Board has considered any submissions so made.
- 25
- (5) For the purposes of proceedings under subsection (1) or (2), a member of the Parole Board may summon the person the subject of the proceedings to appear before the Board.
- 30
- (6) If a person who has been summoned to appear before the Parole Board fails to attend in compliance with the summons, the Board may—
- (a) determine the proceedings in his or her absence; or
 - (b) direct a member of the Board to—
 - (i) issue a warrant; or
 - (ii) apply to a magistrate for a warrant,
- 35
- for the apprehension and detention of the person for the purpose of bringing him or her before the Board.
- (7) A magistrate must, on application under this section, issue a warrant for the apprehension and detention of a person, unless it is apparent, on the face of the application, that no reasonable grounds exist for the issue of the warrant.
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- (8) The Parole Board may, if it thinks good reason exists for doing so, cancel a warrant issued under this section at any time before its execution.

12—Duration of extended supervision order

- (1) An extended supervision order—
- 5 (a) takes effect—
- (i) on the making of the order; or
- (ii) on the relevant expiry date for the person subject to the order,
 whichever is the later; and
- (b) remains in force for a period of 5 years or such lesser period as is determined
10 by the Supreme Court and specified in the order.
- (2) The obligations of a person subject to an extended supervision order are suspended during any period the person is in government custody.
- (3) Nothing in this section prevents the Court, on application by the Attorney-General, from making a second or subsequent extended supervision order against a person.

13—Variation and revocation of supervision order

- 15 (1) The Supreme Court may, on application made by the Attorney-General or a person subject to a supervision order, vary a condition of the order (including a condition imposed by the Parole Board) or revoke the order.
- (2) A person subject to a supervision order may only apply under subsection (1) with the
20 permission of the Court.
- (3) The Court may only grant permission under subsection (2) if satisfied that—
- (a) there has been a material change in circumstances relating to the person or
 supervision order; and
- (b) it is in the interests of justice to grant permission.

14—Consequential and ancillary orders

- 25 (1) The Supreme Court may, on making or varying a supervision order, make any consequential or ancillary order it thinks fit, including, in a case where the supervision order prohibits the possession of an article or weapon or an article or weapon of a specified class, an order—
- 30 (a) providing for the surrender or confiscation of the article or weapon or such an article or weapon; and
- (b) if the circumstances of the case so require, authorising a police officer—
- (i) to enter and search and, if necessary, use reasonable force to break
 into or open—
- 35 (A) premises or a vehicle in which the article or weapon, or such an article or weapon is suspected to be; or
- (B) part of, or anything in or on, premises or a vehicle in which the article or weapon, or such an article or weapon is suspected to be; and

(ii) to take possession of the article or weapon, or such an article or weapon.

(2) An article or weapon surrendered or confiscated under subsection (1) is forfeited to the Crown and may be sold or disposed of as the Attorney-General thinks fit unless the Court orders that the article or weapon is to be returned to the person subject to the supervision order when the order lapses or is revoked.

(3) The Court may not award costs against a person to whom this Act applies in respect of proceedings under this Act.

Part 2A—Continuing detention orders

14A—Arrest and detention of person subject to supervision order on warrant

(1) If the presiding member or deputy presiding member of the Parole Board suspects on reasonable grounds that a person subject to a supervision order may have breached a condition of the order, the presiding member or deputy presiding member may—

(a) summon the person to attend before the Board; or

(b) for the purpose of bringing the person before the Board, issue a warrant for the arrest of the person.

(2) If a member of the Parole Board (other than the presiding member or deputy presiding member) suspects on reasonable grounds that a person subject to a supervision order may have breached a condition of the order—

(a) the member may summon the person to attend before the Board; or

(b) for the purpose of bringing the person before the Board, the member may apply to—

(i) the presiding member or deputy presiding member of the Board for the issue of a warrant for the arrest of the person; or

(ii) a magistrate for the issue of a warrant for the arrest of the person.

(3) If a police officer suspects on reasonable grounds that a person subject to a supervision order may have breached a condition of the order, the police officer may apply to—

(a) the presiding member or deputy presiding member of the Parole Board; or

(b) if, after making reasonable efforts to contact the presiding member and deputy presiding member, neither is available—a magistrate,

for the issue of a warrant for the arrest of the person.

(4) If a person fails to comply with a summons to attend before the Parole Board issued under this section—

(a) the Board may proceed to deal with the matter in the person's absence; or

(b) for the purpose of bringing the person before the Board, the presiding member or deputy presiding member may issue a warrant for the arrest of the person.

(5) A warrant issued under this section authorises the detention of the person in custody pending appearance before the Parole Board.

- (6) A magistrate must, on application under this section, issue a warrant for the arrest of a person unless it is apparent, on the face of the application, that no reasonable grounds exist for the issue of the warrant.
- (7) If a warrant is issued by a magistrate on an application by a police officer under this section—
- (a) the police officer must, within 2 working days of the warrant being issued, provide the Parole Board with a written report on the matter; and
 - (b) the warrant will expire at the end of the period of 2 working days after the day on which the report is provided to the Board; and
 - (c) the presiding member or deputy presiding member of the Board must consider the report within 2 working days after receipt and—
 - (i) issue a fresh warrant for the continued detention of the person pending appearance before the Board; or
 - (ii) cancel the warrant, order that the person be released from custody and, if appearance before the Board is required, issue a summons for the person to appear before the Board.
- (8) If a warrant expires under subsection (7)(b) or a fresh warrant is not issued under subsection (7)(c)(i), the person must be released from custody.
- (9) The Parole Board may, if it thinks there is good reason to do so, by order, cancel a warrant issued under this section that has not been executed.

14B—Arrest and detention of person subject to supervision order without warrant

- (1) A police officer may, on the authorisation of a senior police officer, without warrant, arrest a person subject to a supervision order if the police officer suspects on reasonable grounds that the person has breached a condition of the order.
- (2) If a person is arrested under subsection (1)—
- (a) the person must be taken to the nearest police station; and
 - (b) within 12 hours of the arrest—the presiding member or deputy presiding member of the Parole Board (or, if neither of those members is available, a magistrate) must be notified of the arrest; and
 - (c) as soon as is reasonably practicable after being so notified—the presiding member or deputy presiding member (or the magistrate) (as the case requires) must, by order, direct that the person—
 - (i) be detained in custody pending attendance before the Board; or
 - (ii) be released and summoned to attend before the Board; or
 - (iii) be released from custody.
- (3) In this section—
- senior police officer* means a police officer of or above the rank of Inspector.

14C—Proceedings before Parole Board under this Part

- (1) The following provisions apply in relation to proceedings relating to an alleged breach of a supervision order before the Parole Board under this Part:
- (a) the person subject to the order and the Attorney-General must be afforded a reasonable opportunity to make submissions to the Board on the matter;
 - (b) if the Board is satisfied that the person has breached a condition of the order, the Board may vary or revoke a condition of the order imposed by the Board under this Act or impose further conditions on the order and, if the person is in custody—
 - (i) direct that the person be released from custody; or
 - (ii) direct that the person be detained in custody pending attendance before the Supreme Court for determination as to whether a continuing detention order should be made in respect of the person.
- (2) The Parole Board must, on imposing a condition or further condition on, or on varying or revoking a condition of, the order—
- (a) provide the person the subject of the order with a copy of the order as varied by the Board; and
 - (b) take all reasonable steps to explain to the person the subject of the order the terms and conditions of the order and, in particular—
 - (i) the person's obligations under the order; and
 - (ii) the consequences that may follow from a failure to comply with the order; and
 - (c) forward a copy of the order as varied by the Board under this section to the Supreme Court and the Commissioner of Police.
- (3) Subject to any order made by the Supreme Court, an order directing that a person be detained in custody under this section authorises the detention of the person in custody pending determination of the Supreme Court proceedings relating to the continuing detention order.

14D—Continuing detention orders

- (1) If the Parole Board directs that a person subject to a supervision order be detained in custody pending attendance before the Supreme Court for determination as to whether a continuing detention order should be made in respect of the person, the matter is referred to the Court by force of this subsection.
- (2) The Supreme Court may, if satisfied that the person—
- (a) has breached a condition of the supervision order; and
 - (b) poses an appreciable risk to the safety of the community if not detained in custody,
- order that the person be detained in custody (a *continuing detention order*) until the expiration of the supervision order, or for such lesser period as may be specified by the Court.

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- (3) The paramount consideration of the Supreme Court in determining whether to make a continuing detention order must be the safety of the community.
- (4) The Supreme Court may, if the Court thinks fit, order that a person the subject of proceedings under this section be detained in custody pending the determination of the proceedings.
- (5) The Attorney-General and the person the subject of proceedings under this section are parties to the proceedings, and the Parole Board has a right to appear and be heard in the proceedings.
- 10 (6) As soon as is reasonably practicable after making a continuing detention order or an order under subsection (4) in respect of a person subject to a supervision order, the Supreme Court must issue a warrant committing the person to a correctional institution for the period specified in the order.
- (7) To avoid doubt—
- 15 (a) if a person is detained in custody under this section until the expiration of his or her supervision order, the supervision order expires on the person's release from custody (but nothing in this paragraph prevents the Supreme Court, on application by the Attorney-General, from making a second or subsequent supervision order against the person); and
- 20 (b) if a person is detained in custody under this section for a lesser period, the person continues to be subject to the supervision order on release from custody for the balance of the duration of the order (and the date of expiry of supervision order under section 12 is not affected by the fact that the obligations of the person under the order were suspended during the period that the person was in custody).

25 **14E—Variation and revocation of continuing detention order**

- (1) The Supreme Court may, on application made by the Attorney-General, the Parole Board or a person subject to a continuing detention order, vary or revoke the order.
- (2) A person subject to a continuing detention order may only apply under subsection (1) with the permission of the Court.
- 30 (3) The Court may only grant permission under subsection (2) if satisfied that—
- (a) there has been a material change in circumstances relating to the person; and
- (b) it is in the interests of justice to grant permission.

Part 3—Miscellaneous

15—Court may obtain reports

- 35 (1) The Supreme Court may, for the purpose of proceedings under this Act, require the Parole Board, the CE or any other body or person to furnish the Court with a report on any matter.
- (2) A copy of any report furnished to the Court under subsection (1) must be given to each party to the proceedings or to counsel for those parties.

16—Inquiries by medical practitioners

Where, for the purposes of an application for an extended supervision order, the Supreme Court directs 1 or more legally qualified medical practitioners (to be nominated by a prescribed authority) to examine the respondent to the application and report to the Court on the results of the examination, each medical practitioner so nominated—

- (a) must carry out an independent personal examination of the respondent; and
- (b) may have access to any evidence before the court by which the respondent was convicted; and
- (c) may obtain the assistance of a psychologist, social worker, community corrections officer or any other person.

19—Appeals

- (1) An appeal lies to the Full Court against a decision of the Supreme Court to make an extended supervision order or a continuing detention order.
- (2) An appeal under this section may be instituted by the Attorney-General or by the person to whom the decision relates.
- (3) Subject to a contrary order of the Full Court, an appeal cannot be commenced after 10 days from the date of the decision against which the appeal lies.
- (4) On an appeal, the Full Court may—
 - (a) confirm, reverse or annul the decision subject to appeal;
 - (b) make any order that it considers should have been made in the first instance;
 - (c) make any consequential or ancillary orders.
- (5) The institution of an appeal under this section does not affect the operation of the decision to which the appeal relates.

20—Regulations

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) be of general application or vary in their application according to prescribed factors; and
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or a prescribed person.

Schedule 1—Related amendments

Part 1—Preliminary

A1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Bail Act 1985*

A2—Amendment of section 4—Eligibility for bail

Section 4—after subsection (2) insert:

- 5 (3) Where a person is being detained under Part 2A of the *Criminal Law (High Risk Offenders) Act 2015*, the person is not eligible for release on bail.

Part 3—Amendment of *Correctional Services Act 1982*

1—Amendment of section 64—Reports by Board

Section 64—after subsection (4) insert:

- 10 (5) The Board must, on the request of the Attorney-General, provide a report to the Attorney-General on the progress and circumstances of a prisoner who is a high risk offender (within the meaning of the *Criminal Law (High Risk Offenders) Act 2015*), including such
15 recommendations as the Board thinks fit as to whether or not an application for an extended supervision order under the *Criminal Law (High Risk Offenders) Act 2015* should be made in respect of the prisoner and, if such order is made, the conditions of the order to which the prisoner should be subject.