

South Australia

**Criminal Law (Sentencing) (Abolition of
Suspended Sentences for Subsequent Serious
Offences) Amendment Bill 2008**

A BILL FOR

An Act to amend the *Criminal Law (Sentencing) Act 1988*.

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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 (Sentencing) (Abolition of Suspended Sentences for Subsequent Serious Offences) Amendment Act 2008*.

5 2—Commencement

This Act will come into operation 1 month after the day on which it is assented to by the Governor.

3—Amendment provisions

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

Part 2—Amendment of *Criminal Law (Sentencing) Act 1988*

4—Insertion of heading to Part 5 Division 1

Before section 36 insert:

Division 1—Application of Part

5—Insertion of heading to Part 5 Division 2 and section 37A

After section 37 insert:

Division 2—Suspension of imprisonment on defendant entering into bond

37A—Interpretation

(1) In this Division—

drug offence means—

- (a) an offence against Part 5 Division 2 or 3 of the *Controlled Substances Act 1984* or a substantially similar offence against a corresponding previous enactment; or
- (b) a conspiracy to commit, or an attempt to commit, such an offence;

home invasion means a criminal trespass committed in a place of residence while a person is lawfully present in the place and the trespasser knows of the person's presence or is reckless about whether anyone is in the place;

offence against the person means—

- (a) an offence that results in the death of the victim or the victim suffering total incapacity; or
- (b) a conspiracy to commit an offence referred to in paragraph (a); or
- (c) aiding, abetting, counselling or procuring the commission of an offence referred to in paragraph (a);

previous serious offence—see subsection (2)(b);

serious offence means—

- (a) a drug offence; or
- (b) a sexual offence; or
- (c) an offence against the person; or
- (d) 1 of the following offences:
 - (i) an offence of robbery or aggravated robbery;
 - (ii) home invasion;
 - (iii) an offence of damage to property by fire or explosives;
 - (iv) an offence of causing a bushfire;
 - (v) an offence against a corresponding previous enactment substantially similar to an offence referred to in any of the preceding subparagraphs;

(vi) a conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding subparagraphs; or

(e) an offence that is committed in circumstances in which the offender uses violence or a threat of violence for the purpose of committing the offence, in the course of committing the offence, or for the purpose of escaping from the scene of the offence;

sexual offence means—

(a) an offence against section 48, 49, 56, 58, 59, 60, 63, 63B, 66, 67, 68, 72 or 74 of the *Criminal Law Consolidation Act 1935*; or

(b) an offence against a corresponding previous enactment substantially similar to an offence referred to in paragraph (a); or

(c) an attempt to commit or an assault with intent to commit an offence referred to in a preceding paragraph;

total incapacity—a victim suffers total incapacity if the victim is permanently physically or mentally incapable of independent function.

(2) For the purposes of this Division—

(a) an offence will not be regarded as a *serious offence* unless the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years; and

(b) a serious offence of which a defendant has been convicted will not be regarded as a *subsequent serious offence* unless—

(i) the defendant has committed, on at least 1 other separate occasion within a 10 year period of the date on which the serious offence occurs, a serious offence (whether or not the same serious offence on each occasion); and

(ii) the defendant has been convicted of that offence, (a *previous serious offence*).

6—Amendment of section 38—Suspension of imprisonment on defendant entering into bond

Section 38(2), (2a) and (2b)—delete subsections (2) to (2b) (inclusive) and substitute:

(2) A sentence of imprisonment may not be suspended under this section in the following circumstances:

(a) the sentence is to be served cumulatively on another term of imprisonment;

- (b) the sentence is to be served concurrently with another term of imprisonment then being served or about to be served by the defendant;
- (c) the sentence is imposed for a subsequent serious offence.

5 (2a) Subsection (2) is subject to the following qualifications:

- (a) if the period of imprisonment to which a defendant is liable under 1 or more sentences is more than 3 months but less than 1 year, the sentencing court may, by order—

- 10 (i) direct that the defendant serve a specified period (being not less than 1 month) of the imprisonment in prison; and
- 15 (ii) suspend the remainder on condition that the defendant enter into a bond of a kind described in subsection (1) (the term of which cannot extend beyond the period of suspended imprisonment) that will have effect on the defendant's release from prison;

- (b) if a sentence is being imposed for a subsequent serious offence—

- 20 (i) where the defendant is a youth—paragraph (c) of that subsection does not apply to, or in relation to, the sentence; and
- 25 (ii) where the sentence for any previous serious offence committed by the defendant was not suspended—the sentencing court may, if it thinks that good reason exists for doing so, suspend the sentence for the subsequent serious offence under this section.

7—Insertion of heading to Part 5 Division 3

Before section 39 insert:

30 **Division 3—Discharge without sentence on defendant entering into bond**

8—Insertion of heading to Part 5 Division 4

Before section 40 insert:

Division 4—Term and conditions of bond

35 **9—Insertion of heading to Part 5 Division 5**

Before section 43 insert:

Division 5—Miscellaneous