

Legislative Council—No 212

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South Australia

Criminal Law (Sentencing) (Sentences of Indeterminate Duration) Amendment Bill 2013

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) (Sentences of Indeterminate Duration) Amendment Act 2013*.

5 2—Commencement

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

3—Amendment provisions

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

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

4—Amendment of section 23—Offenders incapable of controlling, or unwilling to control, sexual instincts

- (1) Section 23(1), definition of *relevant offence*—after paragraph (c) insert:

or

(d) an offence of failing to comply with a reporting obligation relating to reportable contact with a child without a reasonable excuse where the defendant is a registrable offender within the meaning of the *Child Sex Offenders Registration Act 2006*;

5 (2) Section 23(3) to (5)—delete subsections (3) to (5) (inclusive) and substitute:

10 (3) The Supreme Court must, before determining whether to make an order that a person to whom this section applies be detained in custody until further order, direct that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) inquire into the mental condition of a person to whom this section applies and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts.

15 (4) The Supreme Court may order that a person to whom this section applies be detained in custody until further order if satisfied that the order is appropriate.

20 (5) The paramount consideration of the Supreme Court in determining whether to make an order that a person to whom this section applies be detained in custody until further order must be the safety of the community.

25 (5a) The Supreme Court must also take the following matters into consideration in determining whether to make an order that a person to whom this section applies be detained in custody until further order:

- 30 (a) the reports of the medical practitioners (as directed and nominated under subsection (3)) furnished to the Court;
- (b) any relevant evidence or representations that the person may desire to put to the Court;
- (c) any report required by the Court under section 25;
- (d) any other matter that the Court thinks relevant.

(5b) A copy of a report furnished to the Supreme Court under subsection (5a) must be given to each party to the proceedings or to counsel for those parties.

35 (5c) If a person to whom this section applies refuses to cooperate with an inquiry or examination for the purposes of this section, the Supreme Court may, if satisfied that the order is appropriate, order that the person be detained in custody until further order having given—

- 40 (a) paramount consideration to the safety of the community; and
- (b) consideration to any relevant evidence and representations that the person may desire to put to the Court.

(3) Section 23(9)—delete subsection (9) and substitute:

(9) The progress and circumstances of a person subject to an order under this section must be reviewed at least once in each period of 12 months—

(a) if the person is detained in, or released on licence from, a training centre—by the Training Centre Review Board; or

(b) in any other case—by the Parole Board,

for the purpose of making a recommendation about whether the person is—

(c) if the person is in custody—suitable for release on licence under section 24; or

(d) if the person has been authorised to be released, or has been released, on licence under section 24—suitable to be so released.

(4) Section 23(10)—after "under subsection (9)" insert:

, including the recommendation of the relevant Board,

(5) Section 23(10)—after "person the subject of the report" insert:

, the Attorney-General

(6) Section 23(11) and (12)—delete subsections (11) and (12)

5—Insertion of section 23A

After section 23 insert:

23A—Discharge of detention order under section 23

(1) Subject to this Act, a person subject to an order for detention under section 23 will not be released from detention under that section until the Supreme Court, on application by the Director of Public Prosecutions or the person, discharges the order for detention.

(2) The Supreme Court must, before determining an application under this section for the discharge of an order for detention under section 23, direct that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) inquire into the mental condition of the person subject to the order and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts.

(3) The paramount consideration of the Supreme Court when determining an application for the discharge of an order for detention under section 23 must be the safety of the community.

(4) The Supreme Court must also take the following matters into consideration when determining an application for the discharge of an order for detention under section 23:

(a) the reports of the medical practitioners (as directed and nominated under subsection (2)) furnished to the Court;

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- (b) any relevant evidence or representations that the person may desire to put to the Court;
- (c) a report furnished to the Court by the Training Centre Review Board or Parole Board (as the case may be) in accordance with the direction of the Court for the purposes of assisting the Court to determine the application, including—
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- (i) any opinion that the relevant Board may have about the effect the discharge of the order may have on the safety of the community; and
- (ii) a report as to the probable circumstances of the person if the order is discharged; and
- (iii) the recommendation of the relevant Board about whether the order should be discharged;
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- (d) the reports resulting from the periodic reviews under section 23(9) on the progress and circumstances of the person tendered to the Court;
- (e) any other report required by the Court under section 25;
- (f) any other matter that the Court thinks relevant.
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- (5) A copy of a report furnished to the Supreme Court under subsection (4) must be given to each party to the proceedings or to counsel for those parties.

6—Amendment of section 24—Release on licence

- (1) Section 24—after subsection (1) insert:
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- (1a) The Supreme Court must, before determining an application under this section for the release on licence of a person detained in custody under this Division, direct that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) inquire into the mental condition of the person and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts.
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- (1b) The paramount consideration of the Supreme Court when determining an application under this section for the release on licence of a person detained in custody under this Division must be the safety of the community.
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- (1c) The Supreme Court must also take the following matters into consideration when determining an application under this section for the release on licence of a person detained in custody under this Division:
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- (a) the reports of the medical practitioners (as directed and nominated under subsection (1a)) furnished to the Court;
- (b) any relevant evidence or representations that the person may desire to put to the Court;

(c) a report furnished to the Court by the appropriate board in accordance with the direction of the Court for the purposes of assisting the Court to determine the application, including—

(i) any opinion of the appropriate board on the effect that the release on licence of the person would have on the safety of the community; and

(ii) a report as to the probable circumstances of the person if the person is released on licence; and

(iii) the recommendation of the appropriate board as to whether the person should be released on licence;

(d) evidence tendered to the Court of the estimated costs directly related to the release of the person on licence;

(e) the reports resulting from the periodic reviews under section 23(9) on the progress and circumstances of the person tendered to the Court;

(f) any other report required by the Court under section 25;

(g) any other matter that the Court thinks relevant.

(1d) A copy of any report furnished to the Supreme Court under subsection (1c) must be given to each party to the proceedings or to counsel for those parties.

(2) Section 24(2)—before "Court" first occurring insert:

Supreme

7—Amendment of section 25—Court may obtain reports

Section 25(1)—after "this Division" insert:

or Schedule 2

8—Insertion of section 25A

After section 25 insert:

25A—Inquiries by medical practitioners

Where, for the purposes of this Division or Schedule 2, the Supreme Court directs that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority) inquire into the mental condition of a person and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts, each medical practitioner so nominated—

(a) must carry out an independent personal examination of the person; and

(b) may have access to any evidence before the court by which the person was convicted; and

- (c) may obtain the assistance of a psychologist, social worker, community corrections officer or any other person.

9—Insertion of Schedule 2

After Schedule 1 insert:

Schedule 2—Reconsideration of authorisations to release on licence under section 24

1—Reconsideration of authorisations to release on licence under section 24

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- (1) This clause applies to a person subject to an order for detention under section 23 who, before the commencement of this clause, has been authorised by the Supreme Court under section 24 to be released on licence.
 - (2) After the commencement of this clause, the Supreme Court may, on application by the Director of Public Prosecutions—
 - (a) cancel the release on licence of a person to whom this clause applies; or
 - (b) confirm the release on licence of a person to whom this clause applies.
 - (3) For the purposes of proceedings under this clause, the Director of Public Prosecutions may apply to a justice for a warrant for the apprehension and detention of the person pending determination of the proceedings.
 - (4) A justice must, on application under subclause (3), 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.
 - (5) The Supreme Court must, before determining an application under this clause, direct that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) inquire into the mental condition of the person and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts.
 - (6) The paramount consideration of the Supreme Court when determining an application under this clause must be the safety of the community.
 - (7) The Supreme Court must also take the following matters into consideration when determining an application under this clause:
 - (a) the reports of the medical practitioners (as directed and nominated under subclause (5)) furnished to the Court;
 - (b) any relevant evidence or representations that the person the subject of the proceedings may desire to put to the Court;

(c) a report furnished to the Court by the appropriate board in accordance with the direction of the Court for the purposes of assisting the Court to determine the application, including—

(i) any opinion of the appropriate board on the effect that the release on licence of the person has had, or would have, on the safety of the community; and

(ii) —

(A) if the person has been released on licence—a report as to the current circumstances of the person; or

(B) if the person has not yet been released on licence—a report as to the probable circumstances of the person if the person is so released; and

(iii) the recommendation of the appropriate board about whether the person is suitable for release on licence;

(d) evidence tendered to the Court of the estimated costs directly related to the release of the person the subject of the proceedings;

(e) any other report required by the Court under section 25;

(f) any other matter that the Court thinks relevant.

(8) A copy of any report furnished to the Supreme Court under subclause (7) must be given to each party to the proceedings or to counsel for those parties.

(9) For the purposes of this clause—

appropriate board, in relation to proceedings under this clause, means—

(a) if the person the subject of the proceedings is being detained in a training centre, or has been released on licence from a training centre—the Training Centre Review Board;

(b) in any other case—the Parole Board.