

Legislative Council—No 169A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 17 October 2013

South Australia

**Criminal Law (Sentencing) (Suspended Sentences)
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) (Suspended Sentences) 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 38—Suspension of imprisonment on entering into bond

- (1) Section 38(1)—delete "Where a court has imposed a sentence of imprisonment upon" and substitute:

15 Subject to this section, if a court has imposed a sentence of imprisonment on

- (2) Section 38(2b)—delete subsection (2b) and substitute:

(2b) The court may not suspend a sentence of imprisonment under this section in any of the following cases:

- (a) the defendant is being sentenced as an adult for a serious and organised crime offence or specified offence against police;
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(b) the defendant is being sentenced as an adult for a designated offence and, during the 5 year period immediately preceding the date on which the relevant offence was committed, a court has suspended a sentence of imprisonment or period of detention imposed on the defendant for a designated offence.

(2ba) Despite subsection (2b), the court may, if satisfied that exceptional circumstances exist for doing so—

(a) suspend a sentence of imprisonment imposed on a defendant for a serious and organised crime offence or specified offence against police, or for a designated offence in the circumstances described in subsection (2b)(b), on condition that the defendant enter into a bond of a kind described in subsection (1); or

(b) make an order under subsection (2a) in respect of a defendant being sentenced for a serious and organised crime offence or specified offence against police, or for a designated offence in the circumstances described in subsection (2b)(b), if the period of imprisonment to which the defendant is liable under 1 or more sentences is more than 3 months but less than 1 year.

(3) Section 38—after subsection (3) insert:

(4) In this section—

designated offence means any of the following offences under the *Criminal Law Consolidation Act 1935*:

- (a) an offence under section 12, 12A, 13 or 13A;
- (b) an offence under section 19;
- (c) an offence under section 19AA;
- (ca) an offence under section 19AC;
- (d) an offence under section 19A;
- (e) an offence under section 23 or 24;
- (f) an offence under section 29A;
- (g) an offence under section 39;
- (h) an offence under section 48, 48A, 49, 50, 56, 58 or 59;
- (i) an offence under section 137;
- (ia) an offence under section 170;
- (j) an offence under section 270B if the offence against the person to which that section applies is a relevant offence referred to in a preceding paragraph;

serious and organised crime offence means—

- (a) any of the following offences under the *Criminal Law Consolidation Act 1935*:
- (i) an offence under section 83E;
 - (ii) an aggravated offence under section 172 or 251, where the aggravating circumstances of the offence are the circumstances referred to in section 5AA(1)(ga)(i) or (ii) of that Act;
 - (iii) an offence under section 244 or 245; or
- (b) any of the following offences under the *Controlled Substances Act 1984*:
- (i) an offence under section 32(1);
 - (ii) an aggravated offence under section 32(2), 32(2a) or 32(3);
 - (iii) an offence under section 33(1);
 - (iv) an aggravated offence under section 33(2) or 33(3);
 - (v) an aggravated offence under section 33A(1), 33A(2), 33A(3), 33A(4) or 33A(5);

specified offence against police means—

- (a) an aggravated offence under section 23(1) or 23(3) of the *Criminal Law Consolidation Act 1935* where the aggravating circumstances of the offence are the circumstances referred to in section 5AA(1)(c) of that Act and the victim is a police officer; or
- (b) an offence of attempted murder or attempted manslaughter under the *Criminal Law Consolidation Act 1935* where the victim is a police officer and the offender committed the offence—
- (i) knowing the victim to be acting in the course of his or her official duty; or
 - (ii) in retribution for something the offender knows or believes to have been done by the victim in the course of his or her official duty.

Schedule 1—Transitional provision

1—Transitional provision

The amendments made by this Act to the *Criminal Law (Sentencing) Act 1988* apply in relation to the sentencing of a person following the commencement of this Act in relation to an offence committed on or after that commencement.