

## House of Assembly

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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*.

### 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.

## 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:

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;
- (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;
- (d) an offence under section 19AC;

- (e) an offence under section 19A;
- (f) an offence under section 23 or 24;
- (g) an offence under section 29A;
- (h) an offence under section 39;
- (i) an offence under section 48, 48A, 49, 50, 56, 58 or 59;
- (j) an offence under section 137;
- (k) an offence under section 170;
- (l) 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.