

Legislative Council—No 28

As received from the House of Assembly and read a first time, 7 August 2014

South Australia

**Criminal Law (Sentencing) (Suspended Sentences)
Amendment Bill 2014**

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 2014*.

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 18A—Sentencing for multiple offences

Section 18A—after its present contents (now to be designated as subsection (1)) insert:

- 15 (2) However, if any of the offences for which the person is being sentenced is a prescribed designated offence, subsection (1) does not apply to the sentencing of the person for that offence (but nothing in this subsection affects the operation of subsection (1) in respect of the other offences).
- 20 (3) In this section—
prescribed designated offence has the same meaning as in section 38.

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

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

5 (2) A sentence of imprisonment may not be suspended under this section if the defendant is being sentenced—

 (a) to a sentence of imprisonment that is to be served cumulatively on another term of imprisonment, or concurrently with another term of imprisonment then being served, or about to be served, by the defendant; or

10 (b) as an adult to a period of imprisonment of 2 years or more for a prescribed designated offence; or

 (c) as an adult for a serious and organised crime offence or specified offence against police; or

15 (d) 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.

20 (2a) Despite subsection (2)(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—

 (a) direct that the defendant serve a specified period (being not less than 1 month) of the imprisonment in prison; and

25 (b) suspend the remainder of the sentence on condition that the defendant enter into a bond of a kind described in subsection (1) that will have effect on the defendant's release from prison.

30 (2b) Despite subsection (2)(b), if a defendant is being sentenced as an adult to a period of imprisonment of 2 years or more for a prescribed designated offence, the sentencing court may, by order—

 (a) direct that the defendant serve a specified period of the imprisonment in prison (which, if a non-parole period has been fixed in respect of the defendant, must be a period that is one-fifth of the non-parole period fixed); and

35 (b) suspend the remainder of the sentence on condition that the defendant enter into a bond of a kind described in subsection (1) that will have effect on the defendant's release from prison.

40 (2) Section 38(2ba)—delete "subsection (2b)" and substitute:

 subsection (2)(c) and (d)

(3) Section 38(2ba)—delete "subsection (2b)(b)" wherever occurring and substitute in each case:

 subsection (2)(d)

(4) Section 38(4)—after the definition of *designated offence* insert:

prescribed designated offence means an offence under section 13 or 23 of the *Criminal Law Consolidation Act 1935*;

6—Amendment of section 58—Orders that court may make on breach of bond

5 (1) Section 58(4)—after paragraph (b) insert:

(baa) may, in the case of a probationer whose sentence of imprisonment was partially suspended under section 38(2b) and even if the term of the sentence now to be served in custody is less than 1 year, fix or extend a non-parole period taking into account the time spent in custody by the probationer before being released on the bond;

10 (2) Section 58(4)(c)—delete paragraph (c) and substitute:

(c) may direct that—

15 (i) in the case of a sentence partially suspended under section 38(2a) or (2b)—any part of the sentence that the probationer has not served in custody; or

(ii) in any other case—the suspended sentence, be cumulative on any other sentence, or sentences, of imprisonment then being served, or to be served, by the probationer.