

South Australia

Criminal Law Consolidation (Assaults Causing Death) Amendment Bill 2016

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935* and to make related amendments to the *Criminal Law (Sentencing) Act 1988*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Criminal Law Consolidation (Assaults Causing Death) Amendment Act 2016*.

2—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 Consolidation Act 1935*

10 3—Insertion of section 22A

After section 22 insert:

22A—Assault causing death committed while intoxicated

- 15 (1) A person commits an offence against this subsection if—
 - (a) he or she, without the consent of another person (the *victim*), intentionally makes physical contact (directly or indirectly) with the victim, knowing that the victim might reasonably object to the contact in the circumstances (whether or not the victim was at the time aware of the contact); and
 - 20 (b) the person is, at the time the physical contact is made, intoxicated; and
 - (c) the physical contact causes the death of the victim.

- (2) A person who commits an offence against subsection (1) is guilty of an offence.

Penalty:

- (a) in the case of an offender aged 16 years or more at the time of the offence—imprisonment for not less than 8 years and not more than 25 years;
- (b) in any other case—imprisonment for not more than 25 years.

- (3) A person commits an offence against this subsection if—

- (a) he or she, without the consent of another person (the *victim*), intentionally makes physical contact (directly or indirectly) with the victim, knowing that the victim might reasonably object to the contact in the circumstances (whether or not the victim was at the time aware of the contact); and
- (b) the physical contact causes the death of the victim.

- (4) A person who commits an offence against subsection (3) is guilty of an offence.

Maximum penalty: Imprisonment for 20 years.

- (5) In proceedings for an offence against this section, it is not necessary for the prosecution to establish that—

- (a) the death of the victim was reasonably foreseeable; or
- (b) the defendant intended to cause harm to, or the death of, the victim.

- (6) For the purposes of this section, physical contact with a victim will be taken to cause the death of the victim if the physical contact is the sole cause of the victim's death or substantially contributes to the victim's death.

- (7) If at the trial of a person for an offence against subsection (1) the defendant proves that his or her alleged intoxication was not self-induced (within the meaning of Part 8), the defendant may be found not guilty of an offence against that subsection but guilty of an offence against subsection (3).

- (8) If at the trial of a person for an offence against subsection (1) the jury is not satisfied that the offence is proven but is satisfied that the person has committed an offence against subsection (3), the jury may bring in a verdict that the accused is guilty of that offence.

- (9) If at the trial of a person for murder or manslaughter the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence against this section, the jury may bring in a verdict that the accused is guilty of that offence.

- (10) Despite any other Act or law, a minimum penalty for an offence against subsection (1) cannot be—

- (a) reduced or mitigated in any way; or

(b) substituted by any other penalty or sentence.

(11) In this section—

intoxicated—a person is intoxicated if the use of any mental or physical faculty of the person is lost or appreciably impaired owing to the influence of alcohol or any other substance or combination of substances.

Schedule 1—Related amendment

Part 1—Amendment of *Criminal Law (Sentencing) Act 1988*

1—Amendment of section 32—Duty of court to fix or extend non-parole periods

Section 32(5)—after paragraph (ba) insert:

(bb) if fixing a non-parole period in respect of a person sentenced to imprisonment for an offence for which a mandatory minimum period of imprisonment is prescribed, any non-parole period fixed under this section must be a period not less than the prescribed mandatory minimum period of imprisonment;