

South Australia

Criminal Law Consolidation (Supervision Requirements) Amendment Bill 2015

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*; and to make related amendments to the *Child Sex Offenders Registration Act 2006* and the *Victims of Crime Act 2001*.

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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 (Supervision Requirements) Amendment Act 2015*.

2—Commencement

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

3—Amendment provisions

- 10 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*

4—Amendment of section 269A—Interpretation

- (1) Section 269A(1)—after the definition of *authorised person* insert:

consumption of a drug includes—

- 5 (a) injection of the drug (either by the person to whom the drug is administered or someone else); and
- (b) inhalation of the drug; and
- (c) any other means of introducing the drug into the body;

- (2) Section 269A(1)—after the definition of *defensible* insert:

10 *dentist* means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the dental profession as a dentist (other than as a student); and
- (b) in the dentists division of that profession;

15 *drug* means alcohol or any other substance that is capable (either alone or in combination with other substances) of influencing mental functioning;

- (3) Section 269A(1)—after the definition of *judge* insert:

20 *medical practitioner* means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

- (4) Section 269A(1)—delete the definition of *supervision order* and substitute:

supervision requirements means requirements applying to a defendant under section 269O;

therapeutic—the consumption of a drug is to be regarded as therapeutic if—

- 25 (a) the drug is prescribed by, and consumed in accordance with the directions of, a medical practitioner or dentist; or
- (b) the drug—
- (i) is a drug of a kind available, without prescription, from registered pharmacists; and
- 30 (ii) is consumed for a purpose recommended by the manufacturer and in accordance with the manufacturer's instructions;

- (5) Section 269A(1)—after the definition of *victim* insert:

voluntary—consumption of a drug is to be regarded as voluntary unless—

- 35 (a) the drug is administered against the will, or without the knowledge, of the person who consumes it; or
- (b) the consumption occurs accidentally; or

- (c) the person who consumes the drug does so under duress, or as a result of fraud or reasonable mistake; or
- (d) the consumption is therapeutic.

5—Substitution of section 269O

5 Section 269O—delete the section and substitute:

269O—Supervision requirements

- (1) If a court declares a defendant to be liable to supervision under this Part, the following provisions apply:
 - (a) the defendant will be subject to supervision requirements in accordance with this section;
 - (b) the supervision requirements will apply to the defendant for—
 - (i) the period specified by the court as the period of imprisonment or supervision (or the aggregate period of imprisonment and supervision) that would, in the court's opinion, have been appropriate if the defendant had been convicted of the offence of which the objective elements have been established¹; or
 - (ii) 2 years,
whichever is the greater (the *limiting term*);
 - (c) the defendant will, on the making of the declaration of supervision, be committed to detention under this Part for a period of 6 months or such longer period as the court may order;
 - (d) if the defendant is to be detained under this Part for a period that is less than the limiting term, the defendant will, at the end of the period of detention, be released on licence on the following conditions:
 - (i) a condition prohibiting the defendant from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;
 - (ii) a condition requiring the defendant to submit to such tests (including testing without notice) for gunshot residue as may be reasonably required by a person or body specified by the court;
 - (iii) any other conditions specified by the court.
- (2) A court may vary or revoke the conditions imposed by subsection (1)(d)(i) and (ii) if the defendant satisfies the court, by evidence given on oath, that—
 - (a) there are cogent reasons to do so; and

9—Substitution of section 269S

Section 269S—delete the section and substitute:

269S—Principle on which court is to act

In deciding whether to release a defendant under this Division, or the conditions of a licence, the court must—

- (a) apply the principle that the primary consideration is the protection of the community; and
- (b) impose such restrictions on the defendant's freedom and personal autonomy as are necessary or desirable for the protection of the community.

10—Amendment of section 269T—Matters to which court is to have regard

(1) Section 269T(1)—after paragraph (b) insert:

- (ba) if the court is of the opinion that the voluntary consumption of a drug by the defendant caused, contributed to or exacerbated the defendant's mental impairment—the need to deter others from engaging in such drug use; and
- (bb) the personal circumstances of any victim or, if any victim was killed as a result of the defendant's conduct, the next of kin of the victim (so far as they are known to the court); and

(2) Section 269T(2a)(a)—delete "order" and substitute:
requirements

11—Substitution of section 269U

Section 269U—delete the section and substitute:

269U—Revision of supervision requirements

- (1) If a person who has been released on licence under this Division contravenes or is likely to contravene a condition of the licence, a court may, on application by the Parole Board (which may be made, in a case of urgency, by telephone), review the supervision requirements.
- (2) After allowing the applicant and the person subject to the requirements a reasonable opportunity to be heard on the application for review, a court may—
 - (a) confirm the present terms of the supervision requirements; or
 - (b) amend the requirements so that they cease to provide for release on licence and provide instead for detention; or
 - (c) amend the requirements by varying the conditions of the licence,

and make any further order or direction that may be appropriate in the circumstances.

- (3) When an application for review of supervision requirements is made, a court may issue a warrant to have the person subject to the requirements arrested and brought before the court and may, if appropriate, make orders for detention of that person until the application is determined.

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12—Amendment of section 269V—Custody, supervision and care

Section 269V(3)—delete subsection (3) and substitute:

- (3) Supervisory responsibilities arising from conditions on which a person is released on licence are to be exercised by the Parole Board.

13—Amendment of section 269VA—Effect of supervening imprisonment

- (1) Section 269VA(1)—delete "order is" and substitute:

requirements are

- (2) Section 269VA(2)—delete "term of a supervision order" and substitute:

period under which a defendant is subject to supervision requirements

14—Amendment of section 269Y—Appeals

Section 269Y(2)—delete "a supervision order" and substitute:

supervision requirements

15—Amendment of section 269Z—Counselling of next of kin and victims

Section 269Z—after "detention" insert:

or in the degree of supervision to which the defendant is subject being significantly reduced

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Schedule 1—Related amendments

Part 1—Related amendment to the *Child Sex Offenders Registration Act 2006*

1—Amendment of section 4—Interpretation

Section 4(1), definition of *supervised sentence* paragraph (e)—delete paragraph (e) and substitute:

- (e) supervision requirements within the meaning of Part 8A of the *Criminal Law Consolidation Act 1935* under which the person the subject of the requirements is released on licence;

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Part 2—Related amendment to the *Victims of Crime Act 2001*

2—Amendment of section 8—Right to information

Section 8(1)(i)—delete paragraph (i) and substitute:

- 5 (i) if the offender is subject to supervision requirements under Part 8A
of the *Criminal Law Consolidation Act 1935* and the offender, or any
other person, later makes an application for variation of the
requirements or an application for review of the requirements is
made—the outcome of the proceedings and, in particular, if the
10 offender is released on licence, any conditions imposed on the
licence.