

Legislative Council—No 5A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 21 June 2018

South Australia

**Sentencing (Release on Licence) Amendment
Bill 2018**

A BILL FOR

An Act to amend the *Sentencing Act 2017*.

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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 *Sentencing (Release on Licence) Amendment Act 2018*.

5 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 *Sentencing Act 2017*

3—Amendment of section 58—Discharge of detention order under section 57

- 10 (1) Section 58—after subsection (1) insert:
 - (1a) An order for detention under section 57 cannot be discharged unless the person subject to the order satisfies the Supreme Court that—
 - (a) the person is both capable of controlling and willing to control the person's sexual instincts; or

- (b) the person no longer presents an appreciable risk to the safety of the community (whether as individuals or in general) due to the person's advanced age or permanent infirmity.

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

- (4a) The Supreme Court, when determining an application under this section, must not have regard to the length of time that the person subject to the order may spend in custody if the order is not discharged.

10 (2) Section 58—after subsection (5) insert:

- (6) If the discharge of an order for detention would result in the immediate release of a person subject to the order from custody, the Supreme Court may order that the discharge is not to take effect for such time as it considers necessary for the purpose of enabling the person to undergo a suitable pre-release program.

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4—Amendment of section 59—Release on licence

(1) Section 59—after subsection (1) insert:

- (1a) A person detained in custody under this Division cannot be released on licence unless the person satisfies the Supreme Court that—

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- (a) the person is both capable of controlling and willing to control the person's sexual instincts; or
- (b) the person no longer presents an appreciable risk to the safety of the community (whether as individuals or in general) due to the person's advanced age or permanent infirmity.

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(1b) Section 59—after subsection (4) insert:

- (4a) The Supreme Court, when determining an application under this section, must not have regard to the length of time that the person has spent in custody or may spend in custody if the person is not released on licence.

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(1c) Section 59(10)(b)—delete "the person has contravened, or is likely to contravene, a condition of the licence." and substitute:

- (i) in the case of a person released on licence on the ground referred to in subsection (1a)(b)—there is evidence suggesting that the person may now present an appreciable risk to the safety of the community (whether as individuals or in general); or
- (ii) in any case—the person has contravened, or is likely to contravene, a condition of the licence.

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40 (2) Section 59(19)—delete subsection (19)

5—Amendment of section 61—Court may obtain reports

Section 61(1)—after "this Division" insert:
or Schedule 2

6—Amendment of section 62—Inquiries by medical practitioners

5 Section 62—after "this Division" insert:
or Schedule 2

7—Amendment of section 63—Parties

Section 63—after "this Division" insert:
or Schedule 2

10 **8—Amendment of section 64—Service on guardian**

Section 64—after "this Division" insert:
or Schedule 2

9—Amendment of section 65—Appeals

- (1) Section 65(1)(c)—delete paragraph (c)
15 (2) Section 65(5)(a)(iii)—delete subparagraph (iii)

10—Amendment of Schedule 1—Repeal and transitional provisions

Schedule 1—after Part 2 insert:

Part 3—Transitional provisions relating to
Sentencing (Release on Licence) Amendment
20 *Act 2018*

3—Transitional provisions

- (1) Section 58 of this Act as in force immediately after the
commencement of Part 2 of the *Sentencing (Release on Licence)*
Amendment Act 2018 applies to the following applications:
- 25 (a) an application under that section for the discharge of an
order for detention (whether the order for detention was
made under section 57 of this Act or section 23 of the
repealed Act) where the application is made after that
commencement;
- 30 (b) an application under that section for the discharge of an
order for detention (whether the order for detention was
made under section 57 of this Act or section 23 of the
repealed Act) where the application was made but not
finalised before that commencement;

- (c) an application under section 23A of the repealed Act for the discharge of an order for detention under section 23 of the repealed Act where the application was made but not finalised before that commencement.

5 (2) Section 59 of this Act as in force immediately after the commencement of Part 2 of the *Sentencing (Release on Licence) Amendment Act 2018* applies to the following applications:

- 10 (a) an application under that section for the release on licence from an order for detention (whether the order for detention was made under section 57 of this Act or section 23 of the repealed Act) where the application is made after that commencement;
- 15 (b) an application under that section for the release on licence from an order for detention (whether the order for detention was made under section 57 of this Act or section 23 of the repealed Act) where the application was made but not finalised before that commencement;
- 20 (c) an application under section 24 of the repealed Act for the release on licence from an order for detention under section 23 of the repealed Act where the application was made but not finalised before that commencement.

(3) In this clause—

repealed Act means the *Criminal Law (Sentencing) Act 1988*.

11—Insertion of Schedule 2

25 After Schedule 1 insert:

Schedule 2—Re-consideration of authorisations to release on licence under section 24 of repealed Act or section 59 of this Act

30 **1—Re-consideration of authorisations to release on licence under section 24 of repealed Act or section 59 of this Act**

- 35 (1) This clause applies to a person subject to an order for detention under section 23 of the repealed Act or section 57 of this Act who, before the commencement of this clause, has been authorised by the Supreme Court under section 24 of the repealed Act or section 59 of this Act (as the case may be) to be released on licence.
- (2) After the commencement of this clause, the Supreme Court may, on application by the DPP—
 - 40 (a) cancel the release on licence of a person to whom this clause applies; or
 - (b) confirm the release on licence of a person to whom this clause applies.

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- (3) For the purposes of proceedings under this clause, the DPP may apply to a magistrate for a warrant for the apprehension and detention of the person pending determination of the proceedings.
- (4) A magistrate must, on application under subclause (3), issue a warrant for the apprehension and detention of a person unless it is apparent, on the face of the application, that no reasonable grounds exist for the issue of the warrant.
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- (5) The release on licence of a person to whom this clause applies must not be confirmed unless the person satisfies the Supreme Court that—
- (a) the person is both capable of controlling and willing to control the person's sexual instincts; or
- (b) the person no longer presents an appreciable risk to the safety of the community (whether as individuals or in general) due to the person's advanced age or permanent infirmity.
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- (6) The Supreme Court must, before determining an application under this clause, direct that at least 2 legally qualified medical practitioners (to be nominated by a prescribed authority for the purpose) inquire into the mental condition of the person and report to the Court on whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts.
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- (7) The paramount consideration of the Supreme Court when determining an application under this clause must be to protect the safety of the community (whether as individuals or in general).
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- (8) The Supreme Court must also take the following matters into consideration when determining an application under this clause:
- (a) the reports of the medical practitioners (as directed and nominated under subclause (6)) provided to the Court;
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- (b) any relevant evidence or representations that the person may desire to put to the Court;
- (c) a report provided to the Court by the appropriate board in accordance with the direction of the Court for the purposes of assisting the Court to determine the application, including—
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- (i) any opinion of the appropriate board on the effect that the release on licence of the person has had, or would have, on the safety of the community; and
- (ii) —
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- (A) if the person has been released on licence—a report as to the current circumstances of the person; or

- (B) if the person has not yet been released on licence—a report as to the probable circumstances of the person if the person is so released; and
- 5 (iii) the recommendation of the appropriate board about whether the person is suitable for release on licence;
- (ca) evidence tendered to the Court of the estimated costs directly related to the release of the person on licence;
- 10 (d) any other report required by the Court under section 61 of this Act;
- (e) any other matter that the Court thinks relevant.
- (8a) The Supreme Court, when determining an application under this clause, must not have regard to the length of time that the person has spent in custody or may spend in custody if the person's release on licence is cancelled or not confirmed.
- 15 (9) A copy of any report provided to the Supreme Court under subclause (8) must be given to each party to the proceedings or to counsel for those parties.
- (10) For the purposes of this clause—
- 20 *appropriate board*, in relation to proceedings under this clause, means—
- (a) if the person the subject of the proceedings is being detained in a training centre, or has been released on licence from a training centre—the Training Centre Review Board;
- 25 (b) in any other case—the Parole Board;
- repealed Act* means the *Criminal Law (Sentencing) Act 1988*.