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South Australia

Statutes Amendment (Home Detention) Bill 2015

A BILL FOR

An Act to amend the *Criminal Law (Sentencing) Act 1988*; the *Correctional Services Act 1982*; and the *Young Offenders Act 1993*.

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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 *Statutes Amendment (Home Detention) Act 2015*.

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.

Part 2—Amendment of *Criminal Law (Sentencing) Act 1988*

4—Amendment of section 20AA—Interpretation

Section 20AA(1), definition of *serious firearm offence*, (e)—after subparagraph (ii) insert:

- 5 (iia) is serving a sentence of imprisonment on home detention under a home detention order subject to the condition imposed by section 33BC(1)(d); or

5—Amendment of section 30—Commencement of sentences and non-parole periods

10 Section 30(1)—after "sentence" second occurring insert:
under Part 5

6—Insertion of Part 3 Division 3A

Part 3—after Division 3 insert:

Division 3A—Home detention

15 33BA—Preliminary

In this Division—

home detention officer means a home detention officer appointed by the Minister for Correctional Services under Part 4 Division 6A of the *Correctional Services Act 1982*;

20 *home detention order*—see section 33BB(1);

residence includes, if the defendant is an Aboriginal person, any place specified by the Court as the person's residence.

33BB—Home detention orders

(1) Subject to this section, if—

- 25 (a) a court has imposed a sentence of imprisonment on a defendant; and
(b) the court considers that the sentence should not be suspended under Part 5; and
30 (c) the court considers that the defendant is a suitable person to serve the sentence on home detention,

the court may suspend the sentence under this Division and order that the defendant serve the sentence on home detention (a *home detention order*).

(2) A home detention order—

- 35 (a) must not be made—

(i) unless the court is satisfied that the residence the court proposes to specify in its order is suitable and available for the detention of the defendant and that the defendant will be properly maintained and cared for while detained in that place; or

(ii) if the defendant is being sentenced 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; and

(b) should not be made if the court is not satisfied that adequate resources exist for the proper monitoring of the defendant while on home detention by a home detention officer.

(3) The paramount consideration of the court when determining whether to make a home detention order must be the safety of the community.

(4) The court must also take the following matters into consideration when determining whether to make a home detention order:

(a) the impact that the home detention order is likely to have on—

(i) any victim of the offence for which the defendant is being sentenced; and

(ii) any spouse or domestic partner of the defendant; and

(iii) any person residing at the residence at which the prisoner would, if released, be required to reside;

(b) any report ordered by the court from the CEO or any other person or body for the purpose of assisting the court in determining whether to make a home detention order;

(c) any other matter the court thinks relevant.

33BC—Conditions of home detention order

(1) A home detention order is subject to the following conditions:

(a) a condition requiring the defendant to remain at the residence specified by the court throughout the period of the home detention order and not to leave that residence at any time during that period except for the following purposes:

(i) remunerated employment;

(ii) urgent medical or dental treatment for the defendant;

(iii) attendance at a course of education, training or instruction or any other activity as required by the court or as approved or directed by the home detention officer to whom the defendant is assigned;

- (iv) any other purpose approved or directed by the home detention officer;
- (b) a condition requiring the defendant to be of good behaviour during the period of the home detention order;
- 5 (c) a condition requiring the prisoner to obey the lawful directions of the home detention officer to whom the defendant is assigned during the period of the home detention order;
- 10 (d) a condition prohibiting the prisoner from possessing a firearm or ammunition (both within the meaning of the *Firearms Act 1977*) or any part of a firearm;
- (e) a condition requiring the prisoner to submit to such tests (including testing without notice) for gunshot residue as a home detention officer may reasonably require;
- 15 (f) such other conditions as the court may specify (including, if the court thinks appropriate, a condition that the prisoner be monitored by use of an electronic device).
- (2) A defendant subject to a home detention order will, unless the home detention order is earlier revoked, remain on home detention—
- 20 (a) in the case of a defendant subject to a non-parole period—until he or she is released on parole; or
- (b) in the case of any other defendant—in accordance with Part 4 Division 7 of the *Correctional Services Act 1982*.
- (3) Subject to subsection (4), the court may vary or revoke a condition imposed under this section.
- 25 (4) The court may only vary or revoke the conditions imposed by subsection (1)(d) and (e) if the court is satisfied, by evidence given on oath, that—
- (a) there are cogent reasons to do so; and
- 30 (b) the possession of a firearm, ammunition or part of a firearm by the defendant does not represent an undue risk to the safety of the public.

33BD—Orders that court may make on breach of condition of home detention order etc

- 35 (1) Subject to this section, if the court that imposed a home detention order on a person is satisfied that—
- (a) a person subject to a home detention order has breached a condition of the order; or
- 40 (b) the residence specified by the court at which the person is required to remain throughout the period of the home detention order is no longer suitable for the person and no other suitable residence is available for his or her detention,

the court must revoke the home detention order and order that the sentence of imprisonment that the person was serving on home detention be carried into effect.

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- (2) Despite subsection (1)(a), if the court is satisfied that the failure of the person to comply with the conditions of the home detention order was trivial or that there are proper grounds upon which the failure should be excused, the court—
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- (a) may refrain from revoking the order; and
- (b) may impose a further condition on, or revoke or vary a condition of, the order.
- (3) A person subject to a home detention order is not in breach of a condition requiring the person to remain at his or her residence if the person leaves the residence for the purpose of averting or minimising a serious risk of death or injury (either to the person or some other person).
- 15
- (4) If a court revokes a home detention order and orders that the relevant sentence of imprisonment be carried into effect under subsection (1), the court—
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- (a) may direct that the following periods be counted as part of the term of the sentence:
- (i) the period of compliance by the person with the conditions of the home detention order;
- (ii) the period spent by the person in custody or on home detention pending determination of the proceedings under this section; and
- 25
- (b) may, if it considers that there are special circumstances justifying it in so doing, reduce the term of the sentence of imprisonment; and
- (c) may direct that the sentence be cumulative on any other sentence, or sentences, of imprisonment then being served, or to be served, by the person.
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- (5) The court may, if it thinks it is necessary to do so for the purpose of proceedings under this section—
- 35
- (a) issue a summons to a person subject to a home detention order requiring the person to appear before the court at the time and place specified in the summons; or
- (b) issue a warrant for the person's arrest.
- (6) If a person fails to appear before the court as required by a summons issued under this section, the court may issue a warrant for the person's arrest.
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- (7) If a person is arrested pursuant to a warrant issued under this section, the person must be brought before the court or the Magistrates Court not later than the next working day and may be remanded in custody or released on bail pending determination of the proceedings.

- (8) A warrant issued under this section authorises the detention of the person in custody pending appearance before the court.
- (9) The obligations of a person subject to a home detention order are suspended during any period the person is in custody.
- 5 (10) If a person subject to a home detention order is found guilty of an offence by a court of a superior jurisdiction to that of the court that made the order, being an offence committed during the period of the home detention order, any proceedings for breach of condition arising out of the offence are to be taken in the court of superior
10 jurisdiction.
- (11) If a person subject to a home detention order is found guilty of an offence by a court of an inferior jurisdiction to that of the court that made the order, being an offence committed during the period of the home detention order, the court of inferior jurisdiction must—
- 15 (a) sentence the person for the offence and remand him or her to the court that made the home detention order to be dealt with for breach of condition of the order; or
- (b) remand the person to the court that made the home detention order to be sentenced for the offence and dealt with for
20 breach of condition of the order.
- (12) The court dealing with a person for breach of condition of a home detention order must hear any evidence adduced tending to establish that the person has failed to comply with a condition of the order and any evidence or representations that the person may wish to adduce
25 or make in reply.
- (13) In this section—
- court of an inferior jurisdiction*** means—
- (a) if the court that made the home detention order is the Supreme Court—the District Court, the ERD Court or the
30 Magistrates Court;
- (b) if the court that made the home detention order is the District Court or the ERD Court—the Magistrates Court;
- court of a superior jurisdiction*** means—
- 35 (a) if the court that made the home detention order is the Magistrates Court—the Supreme Court, the District Court or the ERD Court;
- (b) if the court that made the home detention order is the District Court or the ERD Court—the Supreme Court.

33BE—Apprehension and detention of person subject to supervision order without warrant

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- (1) If the CEO suspects on reasonable grounds that a person subject to a home detention order has breached a condition of the order, the person may be apprehended, without warrant, by a police officer or home detention officer and detained in custody for the purposes of proceedings relating to the suspected breach under section 33BD before the court that imposed the order.
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- (2) Section 33BD(7) to (9) (inclusive) apply to a person apprehended under this section as if the person were arrested pursuant to a warrant issued under section 33BD.

33BF—Offence to contravene or fail to comply with condition of home detention order

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A person subject to a home detention order who contravenes or fails to comply with a condition of the order is guilty of an offence.

Maximum penalty: \$10 000 or imprisonment for 2 years.

7—Transitional provision

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- (1) The amendments to the *Criminal Law (Sentencing) Act 1988* made by this Part apply to the sentencing of a defendant after the commencement of this Part, regardless of whether the offence for which the defendant is being sentenced was committed before or after that commencement.
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- (2) However, if, after the commencement of this Part, a sentence imposed on a defendant before the commencement of this Part is quashed on appeal and a new sentence imposed, the amendments to the *Criminal Law (Sentencing) Act 1988* made by this Part do not apply in relation to sentencing the defendant to the new sentence.

Part 3—Amendment of *Correctional Services Act 1982*

8—Amendment of section 4—Interpretation

- (1) Section 4(1), definitions of *Aboriginal people* and *Aborigine*—delete the definitions
- (2) Section 4(1)—after the definition of *drug test* insert:

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home detention means home detention served subject to a home detention order or home detention served by a prisoner under Part 4 Division 6A (as the case requires);

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home detention order means an order made by a court under Part 3 Division 3A of the *Criminal Law (Sentencing) Act 1988* that a prisoner serve a sentence of imprisonment imposed on the prisoner by the court on home detention;

- (3) Section 4—after subsection (2) insert:

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- (3) For the purposes of this Act, unless the contrary intention appears—
- (a) a reference to *imprisonment* (other than in a penalty provision) includes a reference to imprisonment served on home detention subject to a home detention order; and

- (b) a reference to a *prisoner* includes a reference to a person serving a sentence of imprisonment on home detention subject to a home detention order; and
- (c) a reference to the release of a prisoner from a correctional institution or prison includes a reference to the release of a prisoner subject to a home detention order from home detention.

9—Insertion of heading to Part 4 Division 6A Subdivision 1

Before section 37A insert:

Subdivision 1—Release on home detention by CE

10—Amendment of section 37A—Release on home detention by CE

- (1) Section 37A(2)(b) and (c)—delete paragraphs (b) and (c)
- (2) Section 37A(3)(d)—after "appropriate" insert:
(including a condition that the prisoner be monitored by use of an electronic device)
- (3) Section 37A(6), definition of *residence*—delete the definition and substitute:
residence includes, if the defendant is an Aboriginal person, any place specified in the instrument of release as the person's residence.

11—Amendment, redesignation and relocation of section 37B—Home detention officers

- (1) Section 37B(1)—delete "authorised" and substitute:
home detention
- (2) Section 37B(1)—after "Division" insert:
and Part 3 Division 3A of the *Criminal Law (Sentencing) Act 1988*
- (3) Section 37B(2)—delete subsection (2) and substitute:
(2) The CE must—
(a) on the receipt of a copy of a home detention order in respect of a prisoner; or
(b) on the release of a prisoner under this Division,
assign the prisoner to a home detention officer, and the CE may from time to time re-assign the prisoner to another home detention officer.
- (4) Section 37B(3)—delete "An authorised" and substitute:
A home detention
- (5) Section 37B(4)—delete "authorised" and substitute:
home detention

- (6) Section 37B(5)—delete "an authorised" wherever occurring and substitute in each case:

a home detention

- (7) Section 37B—redesignate the section as amended by this section as section 37CA and relocate it so that it is the first section in Part 4 Division 6A Subdivision 2 (see section 12 (Insertion of heading to Part 4 Division 6A Subdivision 2))

12—Insertion of heading to Part 4 Division 6A Subdivision 2

After section 37C insert:

Subdivision 2—General

13—Amendment of section 37D—Crown not liable to maintain prisoners on home detention

Section 37D—after "detention" insert:

(whether the home detention is home detention under this Division or home detention served under a home detention order)

14—Amendment of heading to Part 4 Division 7

Heading to Part 4 Division 7—after "prison" insert:

or home detention

15—Transitional provision

The amendments to the *Correctional Services Act 1982* made by this Part apply in respect of all prisoners serving sentences of imprisonment on the commencement of this Part, regardless of when the prisoners were sentenced.

Part 4—Amendment of *Young Offenders Act 1993*

16—Amendment of section 37A—Conditions of home detention

Section 37A(3), definition of *residence*—delete the definition and substitute:

residence includes, if the youth is an Aboriginal person, any place specified by the Court as the person's residence.