

## **Legislative Council—No 50A**

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stages, 20 September 2005

South Australia

# **Statutes Amendment (Intervention Programs and Sentencing Procedures) Bill 2005**

A BILL FOR

An Act to amend the *Bail Act 1985*, the *Criminal Law (Sentencing) Act 1988*, the *District Court Act 1991*, the *Magistrates Court Act 1991* and the *Supreme Court Act 1935*.

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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 (Intervention Programs and Sentencing Procedures) Act 2005*.

#### 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 *Bail Act 1985*

### 5 4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *bail authority* insert:

*case manager* means a person responsible for supervision of a person's participation in an intervention program;

- (2) Section 3(1)—after the definition of *guardian* insert:

10 *intervention program* means a program that provides—

- (a) supervised treatment; or
- (b) supervised rehabilitation; or
- (c) supervised behaviour management; or
- (d) supervised access to support services; or
- 15 (e) a combination of any one or more of the above,

designed to address behavioural problems (including problem gambling), substance abuse or mental impairment;

20 *intervention program manager* means a person employed by the South Australian Courts Administration Authority to have general oversight of intervention programs and coordinate the implementation of relevant court orders (and includes a delegate of such a person);

### 5—Insertion of sections 21B and 21C

After section 21A insert:

#### 21B—Intervention programs

25 (1) When a court releases a person who has been charged with an offence on bail, the court may make it a condition of the bail agreement that the person undertake an intervention program.

(2) However—

30 (a) if the person does not agree to the imposition of such a condition, the court cannot impose it; and

(b) before the court imposes such a condition the court must satisfy itself that—

35 (i) the person is eligible for the services to be included on the program in accordance with applicable eligibility criteria (if any); and

(ii) those services are available for the person at a suitable time and place.

(3) The court may make appropriate orders for assessment of the person to determine—

- (a) a form of intervention program that is appropriate for the person; and
- (b) the person's eligibility for the services included on the program,

and may release the person on bail on condition that he or she undertake the assessment as ordered.

(4) Where a bail agreement contains a condition under this section—

- (a) the person released on bail under the agreement must comply with conditions regulating his or her participation in the assessment or intervention program notified from time to time by the person's case manager; and
- (b) a failure to comply with a requirement under paragraph (a) may be regarded as a breach of a condition of the bail agreement.

(5) The court may, at any time, on application by a person released on bail on condition that he or she participate in an assessment or intervention program, make an order revoking or varying the condition.

(6) If an intervention program manager considers that—

- (a) a person has failed to comply with a condition regulating the person's participation in an assessment or intervention program; and
- (b) the failure to comply (of itself or in connection with other matters) suggests that the person is unwilling to participate in the assessment or program as directed,

the manager must refer the matter to the court and the court must then determine whether the failure to comply constitutes a breach of the bail agreement.

(7) A certificate apparently signed—

- (a) by an intervention program manager as to—
  - (i) whether the services to be included on a program are available for a particular person and, if so, when they will be available; or
  - (ii) whether a particular person is eligible for the services to be included on a program; or
- (b) by a case manager as to whether a particular person has complied with conditions regulating his or her participation in an assessment or intervention program,

is admissible as evidence of the matter so certified.

### 21C—Power of delegation—intervention program manager

- (1) An intervention program manager may, by instrument in writing, delegate a power or function under this Act—
- (a) to a particular person; or
  - (b) to the person for the time being occupying a particular position.
- (2) A power or function so delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
- (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will.

## Part 3—Amendment of *Criminal Law (Sentencing) Act 1988*

### 6—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *bond* insert:

*case manager* means a person responsible for supervision of a person's participation in an intervention program;

- (2) Section 3(1)—after the definition of *injury* insert:

*intervention program* means a program that provides—

- (a) supervised treatment; or
- (b) supervised rehabilitation; or
- (c) supervised behaviour management; or
- (d) supervised access to support services; or
- (e) a combination of any one or more of the above,

designed to address behavioural problems (including problem gambling), substance abuse or mental impairment;

*intervention program manager* means a person employed by the South Australian Courts Administration Authority to have general oversight of intervention programs and coordinate the implementation of relevant court orders (and includes a delegate of such a person);

## 7—Insertion of section 9C

After section 9B insert:

### 9C—Sentencing of Aboriginal defendants

5 (1) Before sentencing an Aboriginal defendant, the court may, with the defendant's consent, and with the assistance of an Aboriginal Justice Officer—

- (a) convene a sentencing conference; and
- (b) take into consideration views expressed at the conference.

10 (2) A sentencing conference must comprise—

- 15 (a) the defendant and, if the defendant is a child, the defendant's parent or guardian; and
- (b) the defendant's legal representative (if any); and
- (c) the prosecutor; and
- (d) if the victim chooses to be present at the conference—the victim, and, if the victim so desires, a person of the victim's choice to provide assistance and support; and
- (e) if the victim is a child—the victim's parent or guardian.

20 (3) A sentencing conference may also include (if the court thinks the person may contribute usefully to the sentencing process) one or more of the following:

- 25 (a) a person regarded by the defendant, and accepted within the defendant's Aboriginal community, as an Aboriginal elder;
- (b) a person accepted by the defendant's Aboriginal community as a person qualified to provide cultural advice relevant to sentencing of the defendant;
- (c) a member of the defendant's family;
- (d) a person who has provided support or counselling to the defendant;
- (e) any other person.

30 (4) A person will be taken to be an Aboriginal person for the purposes of this section if—

- 35 (a) the person is descended from an Aboriginal or Torres Strait Islander; and
- (b) the person regards himself or herself as an Aboriginal or Torres Strait Islander or, if the person is a young child, at least one of the parents regards the child as an Aboriginal or Torres Strait Islander; and
- 40 (c) the person is accepted as an Aboriginal or Torres Strait Islander by an Aboriginal or Torres Strait Islander community.

(5) In this section—

*Aboriginal Justice Officer* means a person employed by the South Australian Courts Administration Authority whose duties include—

- (a) assisting the court in sentencing of Aboriginal persons by providing advice on Aboriginal society and culture; and
- (b) assisting the court to convene sentencing conferences under this section; and
- (c) assisting Aboriginal persons to understand court procedures and sentencing options and to comply with court orders;

*family* includes—

- (a) the defendant's lawful spouse or de facto spouse; and
- (b) any person to whom the defendant is related by blood; and
- (c) any person who is, or has been, a member of the defendant's household; and
- (d) any person held to be related to the defendant according to Aboriginal or Torres Strait Islander kinship rules and observances.

## **8—Amendment of section 10—Matters to which a sentencing court should have regard**

Section 10—after subsection (3) insert:

- (4) If a defendant has participated in an intervention program, a court may treat the defendant's participation in the program, and the defendant's achievements in the program, as relevant to sentence.
- (5) However, the fact that a defendant—
  - (a) has not participated in, or has not had the opportunity to participate in, an intervention program; or
  - (b) has performed badly in, or has failed to make satisfactory progress in, such a program,is not relevant to sentence.

## **9—Insertion of sections 19B and 19C**

After section 19A insert:

### **19B—Deferral of sentence for rehabilitation and other purposes**

- (1) A court may, on finding a person guilty of an offence (whether or not it proceeds to conviction), make an order adjourning proceedings to a specified date, and granting bail to the defendant in accordance with the *Bail Act 1985*—
  - (a) for the purpose of assessing the defendant's capacity and prospects for rehabilitation; or

- (b) for the purpose of allowing the defendant to demonstrate that rehabilitation has taken place; or
- (c) for the purpose of assessing the defendant's eligibility for participation in an intervention program; or
- (d) for the purpose of allowing the defendant to participate in an intervention program; or
- (e) for any other purpose the court considers appropriate in the circumstances.

(2) As a general rule, proceedings may not be adjourned under this section (whether by a single adjournment or a series of adjournments) for more than 12 months from the date of the finding of guilt (the *usual maximum*).

(3) A court may adjourn proceedings for a period exceeding the usual maximum if the defendant is, or will be, participating in an intervention program and the court is satisfied that—

- (a) the defendant has, by participating in, or agreeing to participate in, the intervention program, demonstrated a commitment to addressing the problems out of which his or her offending arose; and
- (b) if the proceedings were not adjourned for such a period—
  - (i) the defendant would be prevented from completing, or participating in, the intervention program; and
  - (ii) the defendant's rehabilitation would be prejudiced.

(4) In considering whether to adjourn proceedings for a period exceeding the usual maximum, a court is not bound by the rules of evidence and may (in particular) inform itself on the basis of a written or oral report from a person who may be in a position to provide relevant information.

(5) A person who provides information to the court by way of a written or oral report is liable to be cross-examined on any of the matters contained in the report.

(6) If a statement of fact or opinion in a report is challenged by the prosecutor or the defendant, the court must disregard the fact or opinion unless it is substantiated on oath.

(7) This section does not limit any power that a court has, apart from this section, to adjourn proceedings or to grant bail in relation to any period of adjournment.

### **19C—Mental impairment**

(1) A court that finds a defendant guilty of a summary or minor indictable offence may release the defendant without conviction or penalty if satisfied—

- (a) that the defendant—



- 5
- (i) suffers from a mental impairment that explains and extenuates, at least to some extent, the conduct that forms the subject matter of the offence; and
- (ii) has completed, or is participating to a satisfactory extent in, an intervention program; and
- (iii) recognises that he or she suffers from the mental impairment and is making a conscientious attempt to overcome behavioural problems associated with it; and
- 10 (b) that the release of the defendant under this subsection would not involve an unacceptable risk to the safety of a particular person or the community.
- (2) A court may, at any time before a charge of a summary or minor indictable offence has been finally determined, dismiss the charge if
- 15 satisfied—
- (a) that the defendant—
- (i) suffers from a mental impairment that explains and extenuates, at least to some extent, the conduct that forms the subject matter of the offence; and
- 20 (ii) has completed, or participated to a satisfactory extent in, an intervention program; and
- (iii) recognises that he or she suffers from the mental impairment and is making a conscientious attempt to overcome behavioural problems associated with it; and
- 25 (b) that dismissal of the charge under this subsection would not involve an unacceptable risk to the safety of a particular person or the community; and
- (c) that the court would not, if a finding of guilt were made, make an order requiring the defendant to pay compensation for injury, loss or damage resulting from the offence.
- 30 (3) If the defendant is participating in, but has not completed, an intervention program, the court may, instead of dismissing the charge under subsection (2), release the defendant on an undertaking—
- 35 (a) to complete the intervention program; and
- (b) to appear before the court for determination of the charge—
- (i) after the defendant has completed the intervention program; or
- 40 (ii) if the defendant fails to complete the intervention program.

- (4) In deciding whether to exercise its powers under this section, the court—
- (a) may act on the basis of information that it considers reliable without regard to the rules of evidence; and
  - (b) should, if proposing to dismiss a charge under subsection (2) or release a defendant on an undertaking under subsection (3), consider any information about the interests of possible victims that is before it (but is not obliged to inform itself on the matter).

- (5) In this section—

*court* means—

- (a) the Magistrates Court; or
- (b) the Youth Court; or
- (c) any other court authorised by regulation to exercise the powers conferred by this section;

*mental impairment* means an impaired intellectual or mental function resulting from a mental illness, an intellectual disability, a personality disorder, or a brain injury or neurological disorder (including dementia).

#### **10—Amendment of section 42—Conditions of bond**

- (1) Section 42(1)—after paragraph (d) insert:

- (da) a condition requiring the defendant to undertake an intervention program; or

- (2) Section 42—after subsection (5) insert:

- (6) Before the court imposes a condition requiring a defendant to undertake an intervention program, the court must satisfy itself that—
- (a) the defendant is eligible for the services to be included on the program in accordance with applicable eligibility criteria (if any); and
  - (b) the services are available for the defendant at a suitable time and place.
- (7) The court may make appropriate orders for assessment of a defendant to determine—
- (a) a form of intervention program that is appropriate for the defendant; and
  - (b) the defendant's eligibility for the services included on the program,

and may release the defendant on bail on condition that he or she undertake the assessment as ordered.

- (8) A certificate apparently signed by—
- (a) an intervention program manager as to—
    - (i) whether the services to be included on an intervention program are available for a particular person and, if so, when and where they will be available; or
    - (ii) whether a particular person is eligible for the services to be included on the program; or
  - (b) a case manager as to whether a particular person has complied with conditions regulating his or her participation in an intervention program,

is admissible as evidence of the matter so certified.

### **11—Insertion of section 72C**

After section 72B insert:

#### **72C—Power of delegation—intervention program manager**

- (1) An intervention program manager may, by instrument in writing, delegate a power or function under this Act—
  - (a) to a particular person; or
  - (b) to the person for the time being occupying a particular position.
- (2) A power or function so delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will.

## **Part 4—Amendment of *District Court Act 1991***

### **12—Amendment of section 54—Accessibility of evidence etc**

Section 54(2)—after paragraph (f) insert:

- (fa) a report prepared to assist the Court in determining a person's eligibility for, or progress in, an intervention program (within the meaning of the *Bail Act 1985* or the *Criminal Law (Sentencing) Act 1988*);

**Part 5—Amendment of *Magistrates Court Act 1991***

**13—Amendment of section 51—Accessibility of evidence etc**

Section 51(2)—after paragraph (f) insert:

- (fa) a report prepared to assist the Court in determining a person's eligibility for, or progress in, an intervention program (within the meaning of the *Bail Act 1985* or the *Criminal Law (Sentencing) Act 1988*);

**Part 6—Amendment of *Supreme Court Act 1935***

**14—Amendment of section 131—Accessibility of evidence etc**

Section 131(2)—after paragraph (f) insert:

- (fa) a report prepared to assist the court in determining a person's eligibility for, or progress in, an intervention program (within the meaning of the *Bail Act 1985* or the *Criminal Law (Sentencing) Act 1988*);

**Schedule 1—Review of intervention program services**

**1—Review of services included on intervention programs**

- (1) Either House of Parliament may, not before the first anniversary of the commencement of this Act, require the Ombudsman to carry out an investigation concerning the value and effectiveness of all services included on intervention programs (within the meaning of the *Bail Act 1985* and the *Criminal Law (Sentencing) Act 1988*) in the 12 month period following that commencement (or another period specified by the House).
- (2) For the purposes of the investigation, the Ombudsman may exercise the same investigative powers as are conferred on the Ombudsman by the *Ombudsman Act 1972* in relation to an investigation duly initiated under that Act.
- (3) The Ombudsman must, after completing the investigation, submit a report on the outcome of the investigation to—
  - (a) if the investigation was required by the Legislative Council—the President of the Legislative Council; or
  - (b) if the investigation was required by the House of Assembly—the Speaker of the House of Assembly.
- (4) If the Ombudsman is required to carry out an investigation in accordance with this clause, the Attorney-General must ensure that the Ombudsman is provided with the resources the Ombudsman reasonably requires for the purposes of carrying out the investigation.