

Legislative Council—No 247

As received from the House of Assembly and read a first time, 28 September 2017

South Australia

Statutes Amendment (Recidivist and Repeat Offenders) Bill 2017

A BILL FOR

An Act to amend the *Bail Act 1985*; the *Criminal Law (High Risk Offenders) Act 2015*; the *Criminal Law (Sentencing) Act 1988*; and 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 *Statutes Amendment (Recidivist and Repeat Offenders) Act 2017*.

2—Commencement

- (1) Subject to subsection (2), this Act will come into operation on the day on which it is assented to by the Governor.
- (2) Part 5 will come into operation on a day to be fixed by proclamation.

5 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*

4—Amendment of section 10A—Presumption against bail in certain cases

10 Section 10A(2), definition of *prescribed applicant*—after paragraph (e) insert:

or

- (f) an applicant who has been declared to be a recidivist young offender under section 20C of the *Criminal Law (Sentencing) Act 1988* or section 55 of the *Sentencing Act 2017*; or
- 15 (g) an applicant who is a serious repeat offender under section 20B of the *Criminal Law (Sentencing) Act 1988* or within the meaning of Part 3 Division 4 of the *Sentencing Act 2017*.

Part 3—Amendment of *Criminal Law (High Risk Offenders) Act 2015*

20 5—Amendment of section 3—Object of Act

Section 3—delete "serious sexual offenders and serious violent offenders" and substitute:

certain defined categories of offenders

6—Amendment of section 4—Interpretation

25 (1) Section 4—after the definition of *prisoner* insert:

recidivist young offender means a person who has been declared to be a recidivist young offender under section 20C of the *Criminal Law (Sentencing) Act 1988* or section 55 of the *Sentencing Act 2017*;

(2) Section 4—after the definition of *serious offence of violence* insert:

30 *serious repeat offender* means a person who is a serious repeat offender under section 20B of the *Criminal Law (Sentencing) Act 1988* or within the meaning of Part 3 Division 4 of the *Sentencing Act 2017*;

7—Amendment of section 5—Meaning of high risk offender

Section 5—after paragraph (d) insert:

35 or

- (e) a serious repeat offender who is serving a sentence of imprisonment;
or
- (f) a recidivist young offender who is serving a sentence of detention or imprisonment.

5 **8—Amendment of section 6—Application of Act**

- (1) Section 6—delete "This" and substitute:

Subject to this section, this

- (2) Section 6—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- 10 (2) This Act applies in relation to a youth who is a recidivist young offender (with any modifications set out in section 6A or prescribed by regulations made in accordance with that section).

9—Insertion of section 6A

After section 6 insert:

15 **6A—Modification of Act in relation to youths**

- (1) In applying a provision of this Act to a youth serving a sentence of detention—
- (a) a reference to the CE is to be read as a reference to the chief executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Youth Justice Administration Act 2016*; and
 - (b) a reference to a community corrections officer is to be read as a reference to a community youth justice officer under the *Youth Justice Administration Act 2016*; and
 - (c) a reference to custody as a prisoner or imprisonment is to be read as a reference to detention; and
 - (d) a reference to a prison is to be read as a reference to a training centre; and
 - (e) a reference to the Parole Board is to be read as a reference to the Training Centre Review Board; and
 - (f) a reference to the presiding member of the Parole Board is to be read as a reference to a member of the Training Centre Review Board designated, in writing, by the Attorney-General for the purposes of this paragraph; and
 - (g) a reference to the deputy presiding member of the Parole Board is to be read as a reference to a member of the Training Centre Review Board designated, in writing, by the Attorney-General for the purposes of this paragraph; and
 - (h) a reference to a magistrate is to be read as a reference to a magistrate or judge of the Youth Court.

- (2) The regulations—
- (a) may prescribe further modifications of this Act in relation to a youth or a class of youths; and
 - (b) without limiting paragraph (a), may, in relation to any specified class of youths serving a sentence of detention—
 - (i) specify that a modification set out in subsection (1) will not apply; or
 - (ii) prescribe a modification that will apply to the specified class instead of a modification set out in subsection (1).

10—Amendment of section 7—Proceedings

- (1) Section 7(3)—after paragraph (b) insert:

or

- (c) if the respondent is a serious repeat offender or a recidivist young offender—an assessment of the likelihood of the respondent committing a further offence of any kind that resulted in the respondent becoming a serious repeat offender or recidivist young offender (as the case may be).

- (2) Section 7(6)(a)—delete paragraph (a) and substitute:

- (a) the likelihood of the respondent committing—
 - (i) if the respondent is a serious sexual offender—a further serious sexual offence; or
 - (ii) if the respondent is a serious violent offender—a further serious offence of violence; or
 - (iii) if the respondent is a serious repeat offender or a recidivist young offender—a further offence of any kind that resulted in the respondent becoming a serious repeat offender or recidivist young offender (as the case may be),

if not supervised under the order;

11—Transitional provision

The amendments to the *Criminal Law (High Risk Offenders) Act 2015* effected by this Act apply in relation to a person serving a sentence of imprisonment or detention on or after the commencement of this Part (regardless of when the relevant offence was committed).

Part 4—Amendment of *Criminal Law (Sentencing) Act 1988*

12—Amendment of section 21—Application

Section 21(2)—after "*Young Offenders Act 1993*" insert:

or in relation to a recidivist young offender (as defined in section 23)

13—Amendment of section 23—Orders to protect safety of community

(1) Section 23(1), definition of *person to whom this section applies*, (b)—delete paragraph (b) and substitute:

(ab) a serious repeat offender convicted of an offence by the Supreme Court; or

(b) a person remanded by the District Court, the Magistrates Court or the Youth Court under subsection (2) to be dealt with by the Supreme Court under this section; or

(2) Section 23(1)—after the definition of *person to whom this section applies* insert:

prescribed offender means a serious repeat offender or a recidivist young offender;

recidivist young offender means a person who has been declared to be a recidivist young offender under section 20C;

(3) Section 23(1)—after the definition of *relevant offence* insert:

serious repeat offender means a person who is a serious repeat offender under section 20B;

(4) Section 23(1), definition of *unwilling*—delete the definition and substitute:

unwilling—

(a) a person to whom this section applies will be regarded as unwilling to control sexual instincts if there is a significant risk that the person would, given an opportunity to commit a relevant offence, fail to exercise appropriate control of the person's sexual instincts; and

(b) a person to whom this section applies will be regarded as unwilling to control violent impulses if there is a significant risk that the person would, in circumstances that are reasonably likely to arise, fail to exercise appropriate control of the person's violent impulses.

(5) Section 23(2) and (2a)—delete subsections (2) and (2a) and substitute:

(2) If—

(a) a person is convicted of a relevant offence in proceedings before the District Court or Magistrates Court; or

(b) a prescribed offender is convicted of an offence in proceedings before the District Court, the Magistrates Court or the Youth Court,

the court will, if the court is of the opinion that the defendant should be dealt with under this section or if the prosecutor applies to have the defendant dealt with under this section, instead of sentencing the defendant itself, remand the defendant, in custody or on bail, to appear before the Supreme Court to be dealt with under this section.

(2a) The Attorney-General may, while a person who has been convicted of a relevant offence, or a prescribed offender, remains in custody serving a sentence of imprisonment or detention, apply to the Supreme Court to have the person dealt with under this section.

(6) Section 23(2b)—delete "serving a sentence of imprisonment"

(7) Section 23(2b)—after "on parole" insert:

or for release from custody in a training centre or other institution, as the case may be

5 (8) Section 23(3)—delete subsection (3) and substitute:

(3) If the Attorney-General makes an application under subsection (2a) in respect of a person who is in prison serving a sentence of imprisonment or is in custody in a training centre or other institution—

10 (a) the person may not apply for parole or for release from custody until the application under subsection (2a) is determined; and

15 (b) an application for parole or release from custody made by the person before the making of the application under subsection (2a) is stayed until the application under subsection (2a) is determined.

20 (3a) The Supreme Court may, if the Attorney-General has made an application under subsection (2a) in respect of a person who is in prison serving a sentence of imprisonment or is in custody in a training centre or other institution, make an interim order that the person is to remain in custody pending determination by the Supreme Court as to whether to make an order under this section that the person be detained in custody until further order.

25 (3b) The Supreme Court must, before determining whether to make an order that a person to whom this section applies be detained in custody until further order, 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 a person to whom this section applies and report to the Court on—

30 (a) if the person is a prescribed offender—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts or violent impulses; or

35 (b) in any other case—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts.

(9) Section 23(6)—after "relevant offence," insert:

or for an offence that resulted in the person becoming a prescribed offender,

14—Amendment of section 23A—Discharge of detention order under section 23

Section 23A(2)—delete subsection (2) and substitute:

5 (2) The Supreme Court must, before determining an application under this section for the discharge of an order for detention under section 23, 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 subject to the order and report to the Court on—

10 (a) if the person is a prescribed offender (within the meaning of section 23)—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts or violent impulses; or

15 (b) in any other case—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts.

15—Amendment of section 24—Release on licence

Section 24(1a)—delete subsection (1a) and substitute:

20 (1a) The Supreme Court must, before determining an application under this section for the release on licence of a person detained in custody under this Division, 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 —

25 (a) if the person is a prescribed offender (within the meaning of section 23)—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts or violent impulses; or

30 (b) if any other case—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts.

16—Amendment of section 25A—Inquiries by medical practitioners

Section 25A—delete "on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts"

17—Amendment of section 29—Regulations

35 Section 29(a)—delete "in consequence of being found to be incapable of controlling his or her sexual instincts"

18—Transitional provision

- (1) Part 2 Division 3 of the *Criminal Law (Sentencing) Act 1988*, as amended by this Part, applies in relation to a person regardless of when the relevant offence or the offence that resulted in the person becoming a serious repeat offender or a recidivist young offender (as the case may be) was committed or when the person was sentenced for that offence.
- (2) The Supreme Court may make an interim order under section 23(3a) of the *Criminal Law (Sentencing) Act 1988*, as inserted by section 13 of this Act, in relation to a person regardless of whether the Attorney-General made the application under section 23(2a) of that Act before or after the commencement of section 13 of this Act.

Part 5—Amendment of *Sentencing Act 2017*

19—Amendment of section 56—Application of this Division

Section 56(2)—after "*Young Offenders Act 1993*" insert:

or in relation to a recidivist young offender (as defined in section 57)

20—Amendment of section 57—Orders to protect safety of community

- (1) Section 57(1), definition of *person to whom this section applies*, (b)—delete paragraph (b) and substitute:
- (ab) a serious repeat offender convicted of an offence by the Supreme Court; or
 - (b) a person remanded by the District Court, the Magistrates Court or the Youth Court under subsection (2) to be dealt with by the Supreme Court under this section; or
- (2) Section 57(1)—after the definition of *person to whom this section applies* insert:
- prescribed offender* means a serious repeat offender or a recidivist young offender;
- recidivist young offender* means a person who has been declared to be a recidivist young offender under section 20C of the *Criminal Law (Sentencing) Act 1988* or under section 55 of this Act;
- (3) Section 57(1)—after the definition of *relevant offence* insert:
- serious repeat offender* means a person who is a serious repeat offender within the meaning of Division 4;
- (4) Section 57(1), definition of *unwilling*—delete the definition and substitute:
- unwilling*—
- (a) a person to whom this section applies will be regarded as unwilling to control sexual instincts if there is a significant risk that the person would, given an opportunity to commit a relevant offence, fail to exercise appropriate control of the person's sexual instincts; and

- (b) a person to whom this section applies will be regarded as unwilling to control violent impulses if there is a significant risk that the person would, in circumstances that are reasonably likely to arise, fail to exercise appropriate control of the person's violent impulses.

5 (5) Section 57(2) and (3)—delete subsections (2) and (3) and substitute:

(2) If—

(a) a person is convicted of a relevant offence in proceedings before the District Court or Magistrates Court; or

10 (b) a prescribed offender is convicted of an offence in proceedings before the District Court, the Magistrates Court or the Youth Court,

the court will, if the court is of the opinion that the defendant should be dealt with under this section or if the prosecutor applies to have the defendant dealt with under this section, instead of sentencing the defendant itself, remand the defendant, in custody or on bail, to appear before the Supreme Court to be dealt with under this section.

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(3) The Attorney-General may, while a person who has been convicted of a relevant offence, or a prescribed offender, remains in custody serving a sentence of imprisonment or detention, apply to the Supreme Court to have the person dealt with under this section.

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(6) Section 57(4)—delete "serving a sentence of imprisonment"

(7) Section 57(4)—after "on parole" insert:

or for release from custody in a training centre or other institution, as the case may be

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(8) Section 57(5) and (6)—delete subsections (5) and (6) and substitute:

(5) If the Attorney-General makes an application under subsection (3) in respect of a person who is in prison serving a sentence of imprisonment or is in custody in a training centre or other institution—

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(a) the person may not apply for parole or for release from custody until the application under subsection (3) is determined; and

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(b) an application for parole or release from custody made by the person before the making of the application under subsection (3) is stayed until the application under subsection (3) is determined.

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(6) The Supreme Court may, if the Attorney-General has made an application under subsection (3) in respect of a person who is in prison serving a sentence of imprisonment or is in custody in a training centre or other institution, make an interim order that the person is to remain in custody pending determination by the Supreme Court as to whether to make an order under this section that the person be detained in custody until further order.

(6a) The Supreme Court must, before determining whether to make an order that a person to whom this section applies be detained in custody until further order, 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 a person to whom this section applies and report to the Court on—

(a) if the person is a prescribed offender—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts or violent impulses; or

(b) in any other case—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts.

(9) Section 57(12)—after "relevant offence," insert:

or for an offence that resulted in the person becoming a prescribed offender,

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

Section 58(2)—delete subsection (2) and substitute:

(2) The Supreme Court must, before determining an application under this section for the discharge of an order for detention under section 57, 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 subject to the order and report to the Court on—

(a) if the person is a prescribed offender (within the meaning of section 57)—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts or violent impulses; or

(b) in any other case—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts.

22—Amendment of section 59—Release on licence

Section 59(2)—delete subsection (2) and substitute:

(2) The Supreme Court must, before determining an application under this section for the release on licence of a person detained in custody under this Division, 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 —

(a) if the person is a prescribed offender (within the meaning of section 57)—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts or violent impulses; or

- (b) in any other case—whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts.

23—Amendment of section 62—Inquiries by medical practitioners

- 5 Section 62—delete "on whether the person is incapable of controlling, or unwilling to control, the person's sexual instincts"

24—Amendment of section 67—Regulations

Section 67(a)—delete "in consequence of being found to be incapable of controlling the person's sexual instincts"

10 **25—Transitional provision**

Part 3 Division 5 of the *Sentencing Act 2017*, as amended by this Part, applies in relation to a person regardless of when the relevant offence or the offence that resulted in the person becoming a serious repeat offender or a recidivist young offender (as the case may be) was committed or when the person was sentenced for that offence.