

House of Assembly—No 97A

As reported with amendments, report agreed to and passed remaining stages,
23 May 2005

South Australia

**Statutes Amendment (Sentencing of Sex Offenders)
Bill 2005**

A BILL FOR

An Act to amend the *Criminal Law (Sentencing) Act 1988* and the *Criminal Law Consolidation 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 (Sentencing of Sex Offenders) 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 *Criminal Law (Sentencing) Act 1988*

4—Amendment of section 10—Matters to which a sentencing court should have regard

(1) Section 10(1)—after paragraph (eb) insert:

5 (ec) in the case of a sexual offence committed against a child—the need to give proper effect to the policy stated in subsection (4);

(2) Section 10—after the examples following subsection (3) insert:

10 (4) A primary policy of the criminal law is to protect children from sexual predators by ensuring that, in any sentence for an offence involving sexual exploitation of a child, paramount consideration is given to the need for deterrence.

5—Amendment of section 20A—Interpretation

Section 20A(1)—after the definition of *serious offence* insert:

serious sexual offence means

15 (a) any of the following serious offences:

(i) an offence against section 48, 49, 56, 58, 59, 60, 63, 63B, 66, 67, 68, 72 or 74 of the *Criminal Law Consolidation Act 1935*; or

20 (ii) an attempt to commit or an assault with intent to commit any of those offences; or

(b) an offence against the law of another State or a Territory corresponding to an offence referred to in paragraph (a).

6—Amendment of section 20B—Declaration that person is serious repeat offender

25 Section 20B(1)(a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) the person—

(i) has committed on at least 3 separate occasions an offence to which this section applies (whether or not the same offence on each occasion); and

30 (ii) has been convicted of those offences; or

(b) the person—

(i) has committed on at least 2 separate occasions a serious sexual offence against a person or persons under the age of 14 years (whether or not the same offence on each occasion); and

35 (ii) has been convicted of those offences.

7—Amendment of section 23—Offenders incapable of controlling, or unwilling to control, sexual instincts

- (1) Section 23(1), definition of *offence to which this section applies*—delete the definition and substitute:

5 *person to whom this section applies* means—

- (a) a person convicted by the Supreme Court of a relevant offence; or
- (b) a person remanded by the District Court or the Magistrates Court under subsection (2) to be dealt with by the Supreme Court under this section; or
- 10 (c) a person who is the subject of an application by the Attorney-General under subsection (2a);

relevant offence means—

- (a) an offence under section 48, 49, 56, 58, 59, 63, 63A, 63B, 69, 72 or 74 of the *Criminal Law Consolidation Act 1935*;
- 15 (b) an offence under section 23 of the *Summary Offences Act 1953*;
- (c) any other offence where the evidence indicates that the defendant may be incapable of controlling, or unwilling to control, his or her sexual instincts;

20 *unwilling*—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 his or her sexual instincts.

- (2) Section 23(2) to (6)—delete subsections (2) to (6) and substitute:

- 25 (2) If, in proceedings before the District Court or Magistrates Court, a person is convicted of a relevant offence and—
- (a) the court is of the opinion that the defendant should be dealt with under this section; or
 - (b) the prosecutor applies to have the defendant dealt with under this section,

30 the court will, instead of sentencing the defendant itself, remand the convicted person, in custody or on bail, to appear before the Supreme Court to be dealt with under this section.

- 35 (2a) If a person has been convicted of a relevant offence, the Attorney-General may, while the person remains in prison serving a sentence of imprisonment, apply to the Supreme Court to have the person dealt with under this section.

- 40 (3) The Supreme Court will direct at least 2 legally qualified medical practitioners nominated by the Court to inquire into the mental condition of a person to whom this section applies and report to the Court on whether the person is incapable of controlling, or unwilling to control, his or her sexual instincts.

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- (4) For the purpose of an inquiry under subsection (3), each medical practitioner—
- (a) must carry out an independent personal examination of the person; and
 - (b) may have access to any evidence before the court by which the person was convicted; and
 - (c) may obtain the assistance of a psychologist, social worker, community corrections officer or any other person.
- (5) The Court may order that a person to whom this section applies be detained in custody until further order if—
- (a) the Court, after considering the medical practitioners' reports and any relevant evidence or representations that the person may desire to put to the Court, is satisfied that the order is appropriate; or
 - (b) the person refuses to cooperate with an inquiry or examination under this section and the Court, after considering any relevant evidence and representations that the person may desire to put to the Court, is satisfied that the order is appropriate.
- (6) If a person to whom this section applies has not been sentenced for a relevant offence, the Supreme Court will deal with the question of sentence at the same time as it deals with the question whether an order is to be made under this section and, if the Court decides to make such an order, the order may be made in addition to, or instead of, a sentence of imprisonment.

8—Insertion of new Division

After section 29C insert:

Division 5—Offences involving paedophilia

29D—Sentencing standards for offences involving paedophilia

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- (1) The Parliament declares that—
- (a) the 1997 amendment of sentencing standards reflected an emerging recognition by the judiciary and the community generally of the inherent seriousness of offences involving paedophilia; and
 - (b) the reformed standards should be applied to offences involving paedophilia committed before or after the enunciation of the 1997 amendment of sentencing standards (or committed in part before, and in part after, the enunciation of the 1997 amendment of sentencing standards).

(2) In this section—

1997 amendment of sentencing standards means the change to sentencing standards enunciated in *R v D* (1997) 69 SASR 413;

offences involving paedophilia means all offences to which the 1997 amendment of sentencing standards is applicable (whether individual sentences for the offences have been, or are to be, imposed or a global sentence covering a series of offences¹ or a course of conduct involving a number of criminal incidents²).

reformed standards means sentencing standards as changed by the 1997 amendment of sentencing standards.

Note—

1 See section 18A of the *Criminal Law (Sentencing) Act 1988*.

2 See section 74 of the *Criminal Law Consolidation Act 1935*.

9—Transitional provision

An amendment made by this Act to the *Criminal Law (Sentencing) Act 1988* applies whether the relevant offence occurred before or after the commencement of the amendment.

10—Amendment of section 5AA—Aggravated offences

Section 5AA(1)(e)—delete ", under the age of 12 years" and substitute:

- (i) in the case of an offence against Part 3 Division 11A—under the age of 14 years;
- (ii) in any other case—under the age of 12 years;

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

11—Amendment of section 49—Unlawful sexual intercourse

(1) Section 49(1)—delete "twelve" and substitute:

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(2) Section 49(3)—delete "twelve" and substitute:

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12—Amendment of section 56—Indecent assault

Section 56(2)—delete "12" and substitute:

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13—Amendment of section 63—Production or dissemination of child pornography

Section 63, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—imprisonment for 12 years.

14—Amendment of section 63A—Possession of child pornography

Section 63A(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a first offence—
 - (i) if it is a basic offence—imprisonment for 5 years;
 - (ii) if it is an aggravated offence—imprisonment for 7 years;
- (b) for a subsequent offence—
 - (i) if it is a basic offence—imprisonment for 7 years;
 - (ii) if it is an aggravated offence—imprisonment for 10 years.

15—Amendment of section 63B—Procuring child to commit indecent act etc

(1) Section 63B(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—imprisonment for 12 years.

(2) Section 63B(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence—imprisonment for 12 years.

16—Amendment of section 66—Sexual servitude and related offences

(1) Section 66(1), penalty provision, (a)—delete "12" and substitute:

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(2) Section 66(1), penalty provision, (b)—delete "12" and substitute:

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(3) Section 66(2), penalty provision, (a)—delete "12" and substitute:

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(4) Section 66(2), penalty provision, (b)—delete "12" and substitute:

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17—Amendment of section 68—Use of children in commercial sexual services

(1) Section 68(1), penalty provision, (a)—delete "12" and substitute:

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(2) Section 68(2), penalty provision, (a)—delete "12" and substitute:

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(3) Section 68(3), penalty provision, (a)—delete "12" and substitute:

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18—Amendment of section 74—Persistent sexual abuse of a child

Section 74(11), definition of *sexual offence*—delete "58A" and substitute:

63B