

House of Assembly—No 85A

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22 September 2020

South Australia

Statutes Amendment (Sentencing) Bill 2020

A BILL FOR

An Act to amend the *Criminal Procedure Act 1921* 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 (Sentencing) Act 2020*.

5 2—Commencement

This Act comes 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.

10 Part 2—Amendment of *Criminal Procedure Act 1921*

4—Amendment of section 108—Division not to apply to certain matters

Section 108—after subsection (2) insert:

- 15 (3) To avoid doubt, subsection (2) applies regardless of whether the Director of Public Prosecutions has made a determination as to the appropriate charge or charges to be proceeded with in relation to the information charging the major indictable offence.

5—Insertion of Part 5 Division 3A

After Part 5 Division 3 insert:

Division 3A—Pleas to alternative offences and attempts in the Magistrates Court

115A—Pleas to alternative offences and attempts in the Magistrates Court

- (1) If, in the Magistrates Court, a person pleads not guilty to an offence charged but guilty to—
- (a) some other offence of which the person might be found guilty on trial for the offence charged; or
 - (b) an attempt to commit the offence charged,
- and the plea of guilty is accepted by the prosecution, then the Court may—
- (c) if the offence to which the person pleads guilty is a major indictable offence—commit the person to a superior court for sentence or sentence the person in accordance with section 116; or
 - (d) in any other case—sentence the person.
- (2) If a person (having pleaded not guilty to an offence charged referred to in subsection (1)) changes or withdraws a plea of guilty accepted under that subsection, nothing in this section is to be taken to prevent the filing of a fresh information in respect of the offence charged.

6—Amendment of section 133—Conviction on plea of guilty of offence other than that charged

- (1) Section 133(a)—after "guilty" insert:
- , sentenced for the offence to which the plea of guilty is entered
- (2) Section 133(c)—delete paragraph (c)

Part 3—Amendment of *Sentencing Act 2017*

7—Repeal of section 38

Section 38—delete the section

8—Amendment of section 39—Reduction of sentences for guilty plea in Magistrates Court etc

(1) Section 39—after subsection (3) insert:

(3a) Without limiting subsection (3), if—

- (a) the maximum reduction available under subsection (2)(a) does not apply in relation to a defendant's plea of guilty because the defendant did not plead guilty within the period specified in that subsection (the *designated period*); and
- (b) the defendant pleads guilty no more than 14 days after the expiration of the designated period; and
- (c) the court is satisfied that the defendant was unable to obtain legal advice within the designated period as a result of—
 - (i) the defendant residing in a remote location; or
 - (ii) the defendant leading an itinerant lifestyle; or
 - (iii) communication difficulties arising from the defendant being unable to speak reasonably fluent English,

the court may nevertheless reduce the sentence that it would otherwise have imposed as if the defendant had pleaded guilty during the designated period.

(2) Section 39(4)—after paragraph (e) insert:

- (f) whether at any stage in the proceedings for the offence—
 - (i) the defendant disputed the factual basis of the plea; and
 - (ii) a hearing occurred in relation to the dispute; and
 - (iii) the dispute was not resolved in favour of the defendant;
- (g) if the prosecution satisfies the court that the defendant intentionally concealed the commission of the offence to which the defendant's sentence relates—that fact, and the period of time for which the concealment persisted;
- (h) whether the prosecution's case against the defendant (the assessment of which should ordinarily be made by reference to evidence in the form of an affidavit, or any other documentary evidence) is so overwhelming that a reduction of the defendant's sentence by the percentage contemplated would be so inappropriate that it would, or may, affect public confidence in the administration of justice;
- (i) whether any genuine remorse on behalf of the defendant for the commission of the offence is so lacking that a reduction of the defendant's sentence by the percentage contemplated would be so inappropriate that it would, or may, affect public confidence in the administration of justice,

9—Amendment of section 40—Reduction of sentences for guilty pleas in other cases

(1) Section 40(3)—delete subsection (3) and substitute:

(3) Subject to this section, if a defendant has pleaded guilty to an offence or offences—

(a) not more than 4 weeks after the defendant's first court appearance in relation to the relevant offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by—

(i) in the case of a serious indictable offence—up to 25%; or

(ii) in any other case—up to 35%;

(b) more than 4 weeks after the defendant's first court appearance in relation to the relevant offence or offences but on the day of, or before, the defendant's committal appearance in relation to the relevant offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by—

(i) in the case of a serious indictable offence—up to 15%; or

(ii) in any other case—up to 25%;

(c) during the period commencing on the day after the defendant's committal appearance in relation to the relevant offence or offences and ending immediately before the defendant is committed for trial for the offence or offences—the sentencing court may reduce the sentence that it would otherwise have imposed by—

(i) in the case of a serious indictable offence—up to 10%; or

(ii) in any other case—up to 15%; or

Note—

See also section 110(3) of the *Criminal Procedure Act 1921*.

(d) during the period commencing immediately after the defendant is committed for trial for the relevant offence or offences and ending immediately after the first date fixed for the arraignment of the defendant in a superior court—the sentencing court may reduce the sentence that it would otherwise have imposed by—

(i) in the case of a serious indictable offence—up to 5%; or

(ii) in any other case—up to 10%;

- (e) during the period commencing immediately after the first date fixed for the arraignment of the defendant in a superior court in relation to the relevant offence or offences and ending at the commencement of the defendant's trial for the relevant offence or offences—the sentencing court may, if satisfied that there is good reason to do so, reduce the sentence that it would otherwise have imposed by up to 5%.

(2) Section 40—after subsection (4) insert:

(4a) Without limiting subsection (4), if—

- (a) the maximum reduction available under subsection (3)(a) does not apply in relation to a defendant's plea of guilty because the defendant did not plead guilty within the period specified in that subsection (the *designated period*); and
- (b) the defendant pleads guilty no more than 14 days after the expiration of the designated period; and
- (c) the court is satisfied that the defendant was unable to obtain legal advice within the designated period as a result of—
- (i) the defendant residing in a remote location; or
 - (ii) the defendant leading an itinerant lifestyle; or
 - (iii) communication difficulties arising from the defendant being unable to speak reasonably fluent English,

the court may nevertheless reduce the sentence that it would otherwise have imposed as if the defendant had pleaded guilty during the designated period.

(3) Section 40(5)—after paragraph (f) insert:

- (g) whether at any stage in the proceedings for the offence—
- (i) the defendant disputed the factual basis of the plea; and
 - (ii) a hearing occurred in relation to the dispute; and
 - (iii) the dispute was not resolved in favour of the defendant;
- (h) if the prosecution satisfies the court that the defendant intentionally concealed the commission of the offence to which the defendant's sentence relates—that fact, and the period of time for which the concealment persisted;
- (i) whether the prosecution's case against the defendant (the assessment of which should ordinarily be made by reference to evidence in the form of an affidavit, or any other documentary evidence) is so overwhelming that a reduction of the defendant's sentence by the percentage contemplated would be so inappropriate that it would, or may, affect public confidence in the administration of justice;

- (j) whether any genuine remorse on behalf of the defendant for the commission of the offence is so lacking that a reduction of the defendant's sentence by the percentage contemplated would be so inappropriate that it would, or may, affect public confidence in the administration of justice,

(4) Section 40(8)—after the definition of *committal appearance* insert:

serious harm has the same meaning as in section 21 of the *Criminal Law Consolidation Act 1935*;

serious indictable offence means an offence that is—

- (a) a serious offence of violence for which the maximum penalty prescribed is, or includes, imprisonment for at least 5 years; or
- (b) a serious sexual offence for which the maximum penalty prescribed is, or includes, imprisonment for at least 5 years; or
- (c) any other offence prescribed by the regulations for the purposes of this definition;

serious offence of violence means—

- (a) an offence under section 11, 13, 13A, 19A(1), 19AB(1), 23, 29(1), 29(2), 29A(1) or 31(1) of the *Criminal Law Consolidation Act 1935*; or
- (b) an offence under section 14 of the *Criminal Law Consolidation Act 1935* where the victim died or suffered serious harm; or
- (c) an offence under section 19A(3) or 19AB(2) of the *Criminal Law Consolidation Act 1935* where serious harm was caused to a person; or
- (d) an offence under a corresponding previous enactment substantially similar to an offence referred to in any of the preceding paragraphs; or
- (e) an attempt to commit or an assault with intent to commit any of the offences referred to in any of the preceding paragraphs;

serious sexual offence means—

- (a) an offence under section 48, 48A, 49, 50, 51, 56, 58, 59, 60, 63, 63B, 66, 67, 68 or 72 of the *Criminal Law Consolidation Act 1935*; or
- (b) an offence under a corresponding previous enactment substantially similar to an offence referred to in the preceding paragraph; or
- (c) an attempt to commit or an assault with intent to commit any of the offences referred to in either of the preceding paragraphs.

10—Transitional provision

- (1) The *Sentencing Act 2017* as amended by this Part applies in relation to the sentencing of a person for an offence to which the person pleads guilty on or after the commencement of this Part (regardless of whether the offence was committed before or after that commencement).

- (2) To avoid doubt, nothing in this Part affects any sentence imposed before the commencement of this Part.