

House of Assembly

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South Australia

Statutes Amendment (Victims of Crime) Bill 2007

A BILL FOR

An Act to amend the *Bail Act 1985*; the *Correctional Services Act 1982*; the *Evidence Act 1929*; the *Victims of Crime Act 2001*; and the *Youth Court 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 (Victims of Crime) Act 2007*.

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*

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

Section 10A(2)—delete subsection (2) and substitute:

(2) In this section—

prescribed applicant means—

- (a) an applicant taken into custody in relation to any of the following offences if committed, or allegedly committed, by the applicant in the course of attempting to escape pursuit by a police officer or attempting to entice a police officer to engage in a pursuit:
 - (i) an offence against section 13 of the *Criminal Law Consolidation Act 1935* in which the victim's death was caused by the applicant's use of a motor vehicle;
 - (ii) an offence against section 19A of the *Criminal Law Consolidation Act 1935*;
 - (iii) an offence against section 29 of the *Criminal Law Consolidation Act 1935* if the act or omission constituting the offence was done or made by the applicant in the course of the applicant's use of a motor vehicle; or
- (b) an applicant taken into custody in relation to an offence against section 17 where there is alleged to have been a contravention of, or failure to comply with, a condition of a bail agreement imposed under section 11(2)(a)(ii).

Part 3—Amendment of *Correctional Services Act 1982*

5—Amendment of section 5—Victims Register

- (1) Section 5(2)(a)—delete paragraph (a) and substitute:
 - (a) the applicant's name;
 - (ab) the applicant's contact address and (if supplied) phone number or the name, contact address and (if supplied) phone number of a person nominated by the applicant to receive information under this Act on his or her behalf;
- (2) Section 5—after subsection (5) insert:
 - (6) If the Victims Register includes particulars of a person nominated by a registered victim to receive information under this Act on his or her behalf, any information or notification required or authorised by this Act to be given to the registered victim must, instead, be given to the person so nominated (and where such information or notification is to be given at the request of the registered victim, the person so nominated is entitled to make such a request as if he or she were the registered victim).

Part 4—Amendment of *Evidence Act 1929*

6—Insertion of section 29A

After section 29 insert:

29A—Victim who is a witness entitled to be present in court unless court orders otherwise

- (1) A court in a criminal proceeding may only order a victim of the offence who is a witness in the proceeding to leave the courtroom until required to give evidence if the court considers it appropriate to do so, whether to ensure a fair trial or for any other reason.
- (2) Nothing in this section prevents a court from ordering a victim who is a witness in the proceeding to leave the courtroom at any time after giving evidence if the court considers it appropriate to do so.

Part 5—Amendment of *Victims of Crime Act 2001*

7—Amendment of section 3—Objects

Section 3(b)—delete "in the criminal justice system" and substitute:
by public agencies and officials

8—Amendment of section 4—Interpretation

- (1) Section 4—after the definition of *court* insert:

custody includes—

- (a) home detention; and
- (b) detention in a training centre within the meaning of the *Young Offenders Act 1993*; and
- (c) detention as a result of being declared liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935*;

- (2) Section 4, definition of *offender*—delete the definition and substitute:

offender, in relation to an offence, means—

- (a) the person who committed the offence; or
- (b) in the case of conduct that would constitute an offence if it were not for the person's age or mental impairment—the person who engaged in that conduct;

- (3) Section 4—after the definition of *parent* insert:

serious offence means an indictable offence—

- (a) that resulted in the death of, or physical harm to, a victim; or
- (b) that is a sexual offence within the meaning of the *Evidence Act 1929*,

and includes an offence of aiding, abetting, counselling or procuring the commission of such an offence, conspiring to commit such an offence or being an accessory after the fact to such an offence;

9—Substitution of heading to Part 2

Heading to Part 2—delete the heading and substitute:

Part 2—Treatment of victims of crime

10—Amendment of section 5—Reasons for declaration and its effect

- (1) Section 5(1)—delete "in the criminal justice system" and substitute:

by public agencies and officials

- (2) Section 5(2)—delete "in the criminal justice system"

11—Amendment of heading to Part 2 Division 2

Heading to Part 2 Division 2—delete "in the criminal justice system"

12—Substitution of section 7

Section 7—delete the section and substitute:

7—Right to have perceived need for protection taken into account in bail proceedings

If a police officer or a person representing the Crown in bail proceedings is made aware that the victim feels a need for protection from the alleged offender—

- (a) the police officer or other person must ensure that the perceived need for protection is brought to the attention of the bail authority¹; and
- (b) reasonable efforts must be made to notify the victim of the outcome of the bail proceedings and, in particular, any condition imposed to protect the victim from the alleged offender (unless the victim indicates that he or she does not wish to be so informed).

Note—

- 1 See also section 10(4) of the *Bail Act 1985* which requires that where there is a victim of an offence, the bail authority must, in determining whether an applicant for bail should be released on bail, give primary consideration to the need that the victim may have, or perceive, for physical protection from the applicant.

13—Amendment of section 8—Right to information

- (1) Section 8(1)(d)—delete "and, in particular, any condition imposed to protect the victim from the alleged offender"
- (2) Section 8(1)—after paragraph (g) insert:
 - (ga) details of any order made by a court on declaring the offender to be liable to supervision under Part 8A of the *Criminal Law Consolidation Act 1935*;
- (3) Section 8(1)—after paragraph (h) insert:
 - (i) if the offender is subject to a supervision order under Part 8A of the *Criminal Law Consolidation Act 1935* and the offender, or any other person, later makes an application for variation or revocation of the order or an application for review of the supervision order is made—the outcome of the proceedings and, in particular, if the offender is released on licence, any conditions imposed on the licence.
- (4) Section 8(2)—after paragraph (d) insert:

and

 - (e) if the offender was ordered to undertake community service—whether the offender completed the community service; and
 - (f) if the offender was subject to a bond—whether the conditions of the bond were complied with.

14—Insertion of sections 9A and 9B

After section 9 insert:

9A—Victim of serious offence entitled to be consulted in relation to certain decisions

A victim of a serious offence should be consulted before any decision is made—

- (a) to charge the alleged offender with a particular offence; or
- (b) to amend a charge; or
- (c) to not proceed with a charge; or
- (d) to apply under Part 8A of the *Criminal Law Consolidation Act 1935* for an investigation into the alleged offender's mental competence to commit an offence or mental fitness to stand trial.

9B—Victim's entitlement to be present in court

A victim of an offence is entitled to be present in the courtroom during proceedings for the offence unless the court, in accordance with some other Act or law, orders otherwise¹.

Note—

- 1 See also section 29A of the *Evidence Act 1929* (which requires that, where a victim of an offence is a witness in the proceedings, the court can only order the victim to leave the courtroom until required to give evidence if the court considers it appropriate to do so) and section 24 of the *Youth Court Act 1993* (which allows a victim and a person chosen by the victim to provide support for the victim to be present during Youth Court proceedings for the relevant offence).

15—Insertion of section 10A

After section 10 insert:

10A—Victim may request consideration of appeal

- (1) A victim who is dissatisfied with a determination made in relation to the relevant criminal proceedings (being a determination against which the prosecution is entitled to appeal) may request the prosecution to consider an appeal against the determination.
- (2) A request under this section must be made within 10 days after the making of the determination.
- (3) The prosecution must give due consideration to a request made under this section.

16—Amendment of section 18—Application for compensation

Section 18—after subsection (4) insert:

(4a) If—

- (a) the claimant is a child or other person who is not of full legal capacity; and
- (b) the Crown Solicitor and the person acting on behalf of the claimant propose to settle the claim for statutory compensation by agreement; and
- (c) an application is made to a court for an order or orders in respect of that agreement,

the offender must not be joined as a party to the proceedings before the court on that application.

17—Amendment of section 20—Orders for compensation

- (1) Section 20(1)(c)—delete "\$4 200 in the case of a spouse or \$3 000 in the case of a parent" and substitute:

\$10 000

- (2) Section 20(1)(d)(ii)—delete "\$5 000" and substitute:

\$7 000

- (3) Section 20(3)(b)—delete paragraph (b) and substitute:

- (b) in the case of an award of compensation for grief—if both the spouse and the domestic partner of a person killed by homicide, or both parents of a child killed by homicide, have applied for such compensation, the aggregate of the amounts awarded to them by way of such compensation will not exceed \$10 000;

Part 6—Amendment of *Youth Court Act 1993*

18—Amendment of section 24—Persons who may be present in court

Section 24—after subsection (1) insert:

- (1a) For the purposes of subsection (1)(f)(i) it is irrelevant if the proceedings also relate to other offences or alleged offences.