

House of Assembly—No 122

As laid on the table and read a first time, 10 April 2024

South Australia

Criminal Law Consolidation (Sexual Predation Offences) Amendment Bill 2024

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*, and to make related amendments to the *Child Safety (Prohibited Persons) Act 2016*, the *Child Sex Offenders Registration Act 2006*, the *Evidence Act 1929* 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 *Criminal Law Consolidation (Sexual Predation Offences) Amendment Act 2024*.

2—Commencement

This Act comes into operation 1 month after the day on which it is assented to by the Governor.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

3—Amendment of section 32C—Spiking of food or beverages

- (1) Section 32C(2) and (3)—delete subsections (2) and (3)
- (2) Section 32C(4), definition of *controlled drug*—delete the definition
- 5 (3) Section 32C(4), definition of *licensed premises*—delete the definition
- (4) Section 32C(4), definition of *prescribed label*—delete the definition
- (5) Section 32C(4), definition of *prescribed drug*—delete the definition

4—Insertion of Part 3 Division 10

Part 3—after Division 9 insert:

10 **Division 10—Sexual predation offences**

41—Conduct falling outside the ambit of this Division

This Division does not apply to the conduct of a person—

- 15 (a) if the victim lawfully consented to the conduct; or
- (b) that lies within the limits of what would be generally
accepted in the community as normal incidents of social
interaction or community life.

42—Sexual predation offences

- 20 (1) A person who, in a prescribed place or during a prescribed
interaction, administers a prescribed sexual predation drug to another
person is guilty of an offence.

Maximum penalty:

- 25 (a) for a basic offence—imprisonment for 10 years;
- (b) for an aggravated offence (other than an offence of a kind
described in paragraph (c) or (d))—imprisonment for 12
years;
- (c) if the victim of the offence was at the time of the offence
under the age of 17 years—imprisonment for 15 years;
- (d) if the victim of the offence was at the time of the offence
under the age of 14 years—imprisonment for life.

- 30 (2) A person who, intending to make another person vulnerable to sexual
assault, supplies or administers liquor to another person is guilty of
an offence.

Maximum penalty:

- (a) for a basic offence—imprisonment for 8 years;

- 5
- (b) for an aggravated offence (other than an offence of a kind described in paragraph (c) or (d))—imprisonment for 10 years;
- (c) if the victim of the offence was at the time of the offence under the age of 17 years—imprisonment for 12 years;
- (d) if the victim of the offence was at the time of the offence under the age of 14 years—imprisonment for 15 years.
- 10 (3) A person who, in a prescribed place (other than the person's place of residence) or during a prescribed interaction, is in possession of a prescribed sexual predation drug is guilty of an offence.
Maximum penalty: Imprisonment for 8 years.
- 15 (4) However, subsection (3) does not apply to the possession of a prescribed sexual predation drug consisting of flunitrazepam (rohypnol) or any other benzodiazepine in the circumstances prescribed by the regulations.
- 20 (5) In proceedings for an offence against subsection (3) relating to a prescribed sexual predation drug consisting of flunitrazepam (rohypnol) or any other benzodiazepine, it is a defence for the defendant to prove that—
- 25 (a) the prescribed sexual predation drug was lawfully prescribed for or supplied to the person; and
- (b) the prescribed sexual predation drug was, at the time, contained in packaging on which was affixed a legally compliant label indicating that the drug was lawfully prescribed for or supplied to the defendant; and
- 30 (c) the defendant advised a prescribed person in respect of the prescribed place that they were in possession of the prescribed sexual predation drug.
- (6) A person who, between the hours of 9 pm on any day and 5 am on the following day, enters or remains in prescribed licensed premises while in possession of a prescription drug or controlled drug (not being a prescribed sexual predation drug) that—
- 35 (a) is such as to be capable of producing a state of intoxication in a person who consumes the drug; and
- (b) is not contained in packaging on which is affixed a legally compliant label indicating that the drug was lawfully prescribed for or supplied to the person,
- is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.
- 40 (7) In proceedings for an offence against subsection (6), it is a defence for the defendant to prove that the prescription drug or controlled drug was lawfully prescribed for or supplied to the defendant, or that the defendant had some other lawful reason for being in possession of the prescription drug or controlled drug.

- 5 (8) In proceedings for an offence against subsection (1) or (2), the prosecution must establish that the defendant intended to administer a prescribed sexual predation drug or liquor to a person, but the prosecution need not establish that the defendant knew that the prescribed sexual predation drug or liquor was, or would be, administered to a particular person.
- 10 (9) In proceedings for an offence against subsection (1) or (3), the prosecution must establish that the defendant knew, or was reckless with respect to, the fact that a particular substance was a prescribed sexual predation drug, but the prosecution need not establish that the defendant knew, or was reckless with respect to, the particular identity of the prescribed sexual predation drug.
- 15 (10) In proceedings for an offence against subsection (3) or (6), it is not necessary for the prosecution to establish that the defendant did, in fact, administer, or intend to administer, the drug to which the offence relates to another person.
- 20 (11) For the purposes of this section, but without limiting the ways in which a prescribed sexual predation drug or liquor can be administered to another person, a person will be taken to **administer** a prescribed sexual predation drug or liquor to another person if the person—
- 25 (a) adds the drug or liquor, or causes another person to add the drug or liquor, to any food or beverage that is, or may be, consumed by the other person; or
- (b) takes any other step that results, or is likely to result, in the other person unknowingly consuming the drug or liquor.
- (12) For the purposes of this section, a reference to **sexual assault** will be taken to be a reference to an offence against a provision of Division 11 or 11A of this Act.
- 30 (13) In this section—
- controlled drug** has the same meaning as in the *Controlled Substances Act 1984*;
- legally compliant label** means a label required by law to be affixed to a prescription drug or controlled drug and specifying—
- 35 (a) the name (or business name) of the person by whom the drug is sold or supplied; and
- (b) the name of the person for whose use the drug is sold or supplied; and
- 40 (c) the trade name or the approved name of the drug or, if it does not have either a trade or approved name, its ingredients;

liquor has the same meaning as in the *Liquor Licensing Act 1997*;

prescribed interaction means—

- (a) an organised romantic or social interaction between 2 persons (whether or not other persons are also present during the interaction);
- (b) any other social interaction between 2 persons (whether or not other persons are also present during the interaction) that takes place over a period of at least 1 hour;
- (c) any other interaction, or interaction of a kind, prescribed by the regulations,

(in each case however described);

prescribed licensed premises means—

- (a) licensed premises within the meaning of the *Liquor Licensing Act 1997*, other than premises in respect of which only a restaurant and catering licence or residential licence is in force; and
- (b) the premises defined in the casino licence, within the meaning of the *Casino Act 1997*, as the premises to which the licence relates;

prescribed person, in respect of a prescribed place, means—

- (a) in the case of licensed premises within the meaning of the *Liquor Licensing Act 1997*—a responsible person for the licensed premises within the meaning of that Act; or
- (b) in the case of the premises defined in the casino licence, within the meaning of the *Casino Act 1997*, as the premises to which the licence relates—a special employee within the meaning of section 28 of that Act; or
- (c) in the case of a campus (however described) of a school, university or other tertiary institution—a member of the teaching or academic staff of the school, university or institution; or
- (d) in the case of residential premises—an occupier of the premises; or
- (e) in any other case—a person, or person of a class, prescribed by the regulations;

prescribed place means—

- (a) licensed premises within the meaning of the *Liquor Licensing Act 1997*; or
- (b) the premises defined in the casino licence, within the meaning of the *Casino Act 1997*, as the premises to which the licence relates; or
- (c) a campus (however described) of a school, university or other tertiary institution; or

- (d) a public place at which a sporting, entertainment, festival or other event is being held; or
- (e) residential premises; or
- (f) any other place, or place of a class, prescribed by the regulations,

but does not include a place, or class of places, declared by the regulations to be excluded from the ambit of this definition;

prescribed sexual predation drug means—

- (a) flunitrazepam (rohypnol) or any other benzodiazepine;
- (b) 4-Hydroxybutanoic acid (GHB);
- (c) 4-Hydroxybutanoic acid lactone (GBL);
- (d) ketamine;
- (e) any other controlled drug prescribed by the regulations;

prescription drug has the same meaning as in the *Controlled Substances Act 1984*;

public place means—

- (a) a place, or part of a place, that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or
- (b) a place, or part of a place, the occupier of which allows, whether or not on payment of money, members of the public to enter.

43—Alternative verdicts

If—

- (a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against this Division has been established; but
- (b) the Judge has instructed the jury that it is open to the jury on the evidence to find the defendant guilty of a specified lesser offence or any 1 of a number of specified lesser offences; and
- (c) the jury is satisfied beyond reasonable doubt that the specified lesser offence, or a particular 1 of the specified lesser offences, has been established,

the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of the lesser offence.

Schedule 1—Related amendments

Part 1—Amendment of *Child Safety (Prohibited Persons) Act 2016*

1—Amendment of section 5—Interpretation

- 5 Section 5(1), definition of *prescribed offence*, (a)—after subparagraph (ii) insert:
- (ia) section 42 (sexual predation offences);

Part 2—Amendment of *Child Sex Offenders Registration Act 2006*

2—Amendment of Schedule 1—Class 1 and 2 offences

- 10 (1) Schedule 1, clause 1(1), definition of *sexual offence*—before paragraph (a) insert:
- (aa) an offence against section 42 of the *Criminal Law Consolidation Act 1935* (sexual predation offences); or
- (2) Schedule 1, clause 3—after paragraph (b) insert:
- (baa) an offence against section 42 of the *Criminal Law Consolidation Act 1935* (sexual predation offences) if the victim was a child;
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Part 3—Amendment of *Evidence Act 1929*

3—Amendment of section 4—Interpretation

- Section 4(1), definition of *sexual offence*—after paragraph (c) insert:
- (ca) an offence under section 42 of the *Criminal Law Consolidation Act 1935* (sexual predation offences); or
- 20

Part 4—Amendment of *Sentencing Act 2017*

4—Amendment of section 28—Intervention orders may be issued on finding of guilt or sentencing

- Section 28(6), definition of *sexual offence*—after paragraph (f) insert:
- 25 (fa) an offence against section 42 of the *Criminal Law Consolidation Act 1935*; or

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

- Section 40(8), definition of *serious sexual offence*, (a)—after "section" insert:
- 30 42,

6—Amendment of section 52—Interpretation

- Section 52, definition of *serious sexual offence*, (a)—after "section" insert:
- 42,

7—Amendment of section 71—Home detention orders

Section 71(5), definition of *prescribed serious sexual offence*, (a)—before subparagraph (I) insert:

- (i1) an offence under section 42 (sexual predation offences);

5 **8—Amendment of section 81—Intensive correction orders**

Section 81(5), definition of *serious sexual offence*, (a)—before subparagraph (I) insert:

- (i1) an offence under section 42 (sexual predation offences);

10 **9—Amendment of section 96—Suspension of imprisonment on defendant entering into bond**

Section 96(9), definition of *serious sexual offence*, paragraph (a), (I)—before subsubparagraph (A) insert:

- (A1) an offence under section 42 (sexual predation offences);