

Legislative Council

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South Australia

Intervention Orders (Prevention of Abuse) (Section 31 Offences) Amendment Bill 2024

A BILL FOR

An Act to amend the *Intervention Orders (Prevention of Abuse) Act 2009*.

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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 *Intervention Orders (Prevention of Abuse) (Section 31 Offences) Amendment Act 2024*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

3—Amendment of section 31—Contravention of intervention order

- (1) Section 31(2ab)—after "for the purposes of subsection (2aa)," insert:
 - any deemed subsection (1) offence or

(2) Section 31—after subsection (2ab) insert:

(2ac) In proceedings for an offence against subsection (2aa) where it is alleged that a deemed subsection (1) offence should be taken into account in accordance with subsection (2ab), any agreed or undisputed facts received in the sentencing court in sentencing proceedings for the deemed subsection (1) offence are, unless excluded in the discretion of the court dealing with the proceedings for the offence against subsection (2aa), admissible as evidence of the conduct in fact engaged in on the occasion alleged for the purposes of the proceedings.

(3) Section 31(8)—after the definition of *basic offence* insert:

deemed subsection (1) offence means an offence charged against subsection (1) of which a person was found guilty before the commencement of this definition even though the person did not contravene a term of an intervention order imposed under section 13 but instead contravened another term of an intervention order.

4—Insertion of section 31A

After section 31 insert:

31A—Special provisions applying to review or appeal in relation to certain offences against section 31

- (1) Despite any other Act or law but subject to this section, if applicable review proceedings are instituted in a court (whether before or after the commencement of this section) in relation to a person's conviction or sentence for an offence charged against section 31(1)—
- (a) the applicable review proceedings are (to the extent necessary) transferred to the Supreme Court constituted of a single Judge (the *review court*) and jurisdiction is vested by force of this paragraph in the review court to hear and determine the applicable review proceedings; and
 - (b) the person may be prosecuted for an offence against section 31(2) (the *section 31(2) proceedings*) in respect of the conduct to which the conviction for the offence charged against section 31(1) relates and jurisdiction is vested by force of this paragraph in the review court—
 - (i) to hear and determine the section 31(2) proceedings; and
 - (ii) if relevant, to sentence the person for the offence against section 31(2); and
 - (c) the time within which the section 31(2) proceedings may be commenced is extended by force of this paragraph to—

- (i) if the applicable review proceedings are instituted before the commencement of this section—the day that is 2 years after the commencement of this section; or
- (ii) if the applicable review proceedings are instituted after the commencement of this section—the day that is 2 years after the date on which the applicable review proceedings are instituted,

but the information charging the person with the offence against section 31(2) must be laid (in accordance with the rules and procedures applicable to the laying of the information in a court of summary jurisdiction) as soon as reasonably practicable after the applicable review proceedings are instituted; and

- (d) a party to the applicable review proceedings may request that the proceedings be adjourned for a period considered reasonable by the court for the purposes of preparing for the section 31(2) proceedings; and
- (e) if, in review proceedings, the review court sets aside a conviction for an offence charged against section 31(1), the review court must refrain from making, or stay, any order setting aside the sentence imposed on the person in respect of the offence charged against section 31(1) (the *former sentence*) pending determination of any section 31(2) proceedings that have been instituted; and
- (f) any agreed or undisputed facts received in the sentencing court in sentencing proceedings for the offence charged against section 31(1) are, unless excluded in the court's discretion, admissible as evidence of the conduct in fact engaged in on the occasion alleged, for the purposes of the section 31(2) proceedings; and
- (g) the court must, in sentencing the person for an offence against section 31(2), take into account the former sentence and, if it is in the interests of justice to do so, may determine that the former sentence (whether already served or being served) is taken to be the sentence in satisfaction of the offence against section 31(2) (together with any other offences if the former sentence consisted of 1 penalty that was imposed in respect of multiple offences) or, if the court does not propose to make such a determination, sentence the person in accordance with the following requirements, subject to any modifications or additional requirements prescribed by the regulations:

- (i) if the former sentence required the person to pay 1 or more pecuniary sums and the sentence for the offence against section 31(2) also requires the person to pay 1 or more pecuniary sums, the following provisions apply:
- (A) if the former sentence—
- was wholly imposed in respect of the offence charged against section 31(1)—the amount of the pecuniary sums paid by the person in accordance with the former sentence must be deducted from the pecuniary sums imposed in respect of the section 31(2) proceedings; or
 - consisted of 1 penalty that was imposed in respect of multiple offences, 1 of which was the offence charged against section 31(1)—the review court may declare the amount attributable to the offence charged against section 31(1) and such of that amount as has been paid by the person must be deducted from the pecuniary sums imposed in respect of the section 31(2) proceedings;
- (B) the amount resulting after a deduction has occurred under subparagraph (A) will be taken to be the pecuniary sum owed by the person for the purposes of the *Fines Enforcement and Debt Recovery Act 2017*;
- (C) any liability of the Crown, or any other person paid a pecuniary sum in accordance with the former sentence, to repay the pecuniary sum is extinguished;
- (ii) if the former sentence subjected the person to a type of non-pecuniary penalty and the sentence for the offence against section 31(2) subjects the person to the same type of non-pecuniary penalty—

- (A) if the former sentence was wholly imposed in respect of the offence charged against section 31(1)—the period of the non-pecuniary penalty under the former sentence must be deducted from the period imposed in respect of the section 31(2) proceedings; or
 - (B) if the former sentence consisted of 1 penalty that was imposed in respect of multiple offences, 1 of which was the offence charged against section 31(1)—the review court may declare the period of the non-pecuniary penalty attributable to the offence charged against section 31(1) and that period must be deducted from the period imposed in respect of the section 31(2) proceedings.
- (2) The review court may remit section 31(2) proceedings to a court of summary jurisdiction for trial if satisfied that it is appropriate in the circumstances of the case and in such a case—
 - (a) subject to paragraph (b), the trial must be conducted in accordance with the rules and procedures applicable to the trial of such a matter in the court of summary jurisdiction; and
 - (b) subsection (1)(c), (d), (f) and (g) apply to the proceedings in the court of summary jurisdiction as if they were proceedings in the review court.
- (3) For the avoidance of doubt, a person who institutes applicable review proceedings must seek any extension of time required in accordance with the rules and procedures applicable to the review proceedings.
- (4) If applicable review proceedings instituted by a person convicted of an offence charged against section 31(1) are dismissed, any section 31(2) proceedings relating to the offence charged against section 31(1) before the review court will be taken to be dismissed without costs.
- (5) No liability attaches to the Crown in respect of an act or omission relating to—
 - (a) any proceedings against a person for an offence charged against section 31(1) where the person did not contravene a term of an intervention order imposed under section 13; or
 - (b) the imposition and enforcement of any sentence for such an offence.

(6) In this section—

applicable review proceedings means—

- (a) an appeal against a judgement given or order made in proceedings for an offence charged against section 31(1) if a ground of the appeal is that the person did not contravene a term of an intervention order imposed under section 13; or

Note—

Such an appeal may be brought by any party to the proceedings for the offence charged against section 31(1)

- (b) proceedings for judicial review relating to an offence charged against section 31(1) if an order sought in the proceedings is on the basis that the person did not contravene a term of an intervention order imposed under section 13;

conviction for an offence charged against section 31(1) includes the following:

- (a) a formal finding of guilt by a court;
- (b) a finding by a court that the offence has been proved;

non-pecuniary penalty means—

- (a) a period of—
 - (i) imprisonment or detention or suspended imprisonment or detention; or
 - (ii) being subject to a bond or obligation; or
 - (iii) home detention; or
 - (iv) being subject to an intensive correction order; or
 - (v) community service; or
- (b) a caution under the *Young Offenders Act 1993*, other than an informal caution; or
- (c) an undertaking made in connection with a family conference under the *Young Offenders Act 1993*;

pecuniary sum means an amount payable pursuant to an order or direction of a court in proceedings relating to an offence, and includes—

- (a) a fine; and
- (b) compensation; and
- (c) costs; and
- (d) a sum payable pursuant to a bond or to a guarantee ancillary to a bond; and
- (e) a levy imposed under the *Victims of Crime Act 2001*.