

South Australia

Public Intoxication Act 1984

An Act to provide for the apprehension and care of persons found in a public place under the influence of a drug or alcohol; and to provide for other incidental matters.

Contents

Part 1—Preliminary

- 1 Short title
- 3 Transitional provisions
- 4 Interpretation
- 5 Administrative provisions
- 6 Application of Act

Part 2—Apprehension and care of persons under the influence of a drug or alcohol

- 7 Apprehension of persons under the influence of a drug or alcohol
- 8 Application for declaration
- 9 Transfer of persons detained in sobering-up centres

Part 3—Miscellaneous

- 10 Custody of persons detained
- 11 Offence of ill-treating or neglecting persons detained
- 12 Offence of removing or aiding escape of persons detained
- 13 Immunity from liability
- 14 Summary proceedings
- 15 Regulations

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Public Intoxication Act 1984*.

3—Transitional provisions

- (2) All assets, rights and liabilities vested in the Board immediately prior to the commencement of this Act shall, upon that commencement, vest in the Council.

- (3) A person who was an officer or employee of the Board immediately prior to the commencement of this Act shall, upon that commencement, become an officer or employee of the Council—
- (a) without reduction in salary or wage; and
 - (b) without interruption of or prejudice to his existing and accruing rights in respect of recreation leave, sick leave and long service leave.

- (4) In this section—

the Board means the Alcohol and Drug Addicts Treatment Board established under the repealed Act;

the Council means the Drug and Alcohol Services Council, a health centre incorporated under the *South Australian Health Commission Act 1976*;

the repealed Act means the *Alcohol and Drug Addicts (Treatment) Act 1961* repealed by this Act.

4—Interpretation

In this Act, unless the contrary intention appears:

authorised officer means a person appointed as an authorised officer for the purposes of this Act;

child means a person under the age of eighteen years;

close personal relationship means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

- (a) the relationship between a legally married couple; or
- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

Note—

Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

domestic partner—a person is the domestic partner of another if he or she lives with the other in a close personal relationship;

drug means any substance declared to be a drug for the purposes of this Act;

officer in charge, in relation to a police station, means the member of the police force for the time being in charge of the police station;

person in charge, in relation to a sobering-up centre, means the person for the time being in charge of the sobering-up centre;

relative, in relation to a person, means father, mother, stepfather, stepmother, guardian, spouse, domestic partner, son, daughter, grandparent, grandchild, brother, sister, stepbrother or stepsister of that person, or brother or sister of a parent of that person;

sobering-up centre means premises declared to be a sobering-up centre for the purposes of this Act;

spouse—a person is the spouse of another if they are legally married.

5—Administrative provisions

- (1) The Governor may—
 - (a) by proclamation, declare any premises that have facilities for the care and treatment of persons under the influence of a drug or alcohol to be a sobering-up centre for the purposes of this Act; or
 - (b) by regulation, declare any substance to be a drug for the purposes of this Act.
- (2) The Governor may, by proclamation, vary or revoke any proclamation under this section.
- (3) The Minister may, by instrument in writing, appoint such number of persons to be authorised officers for the purposes of this Act as he thinks necessary or desirable for the proper administration of this Act.

6—Application of Act

This Act applies in relation to any person, whether child or adult.

Part 2—Apprehension and care of persons under the influence of a drug or alcohol

7—Apprehension of persons under the influence of a drug or alcohol

- (1) Where a member of the police force or an authorised officer has reasonable grounds to believe—
 - (a) that a person who is in a public place is under the influence of a drug or alcohol; and
 - (b) that by reason of that fact the person is unable to take proper care of himself, the member of the police force or the authorised officer may apprehend that person.
- (2) The member of the police force or authorised officer—
 - (a) may exercise such force as is reasonably necessary to apprehend a person under this section; and
 - (b) may search the person apprehended for the purpose of removing any object that may be a danger to that person or to others and remove and take custody of any such object and any valuable object found on that person.
- (3) Where a member of the police force or authorised officer has apprehended a person under subsection (1), he shall take that person as soon as reasonably practicable—
 - (a) to the place of residence, if any, at which the apprehended person is permanently or temporarily residing and there release him from custody; or
 - (b) to a place for the time being approved by the Minister for the purposes of this paragraph and there release him from custody; or
 - (c) to a police station; or
 - (d) to a sobering-up centre for admission as a patient.

- (4) Where a person apprehended under this section is taken to a police station pursuant to this section, the officer in charge of that station may detain the person and may give such directions to that person as are reasonably necessary for that purpose, but shall, before the expiration of the period of ten hours from the time of apprehension—
- (a) discharge the person if the person has, in the opinion of the officer in charge, so recovered from the effects of the drug or alcohol as to be able to take care of himself; or
 - (b) if not, cause the person to be transferred to a sobering-up centre for admission as a patient.
- (5) Where a person apprehended under this section is taken to a sobering-up centre pursuant to this section and admitted as a patient, he may be detained at the centre by the person in charge of the centre, but shall be discharged—
- (a) if the person has, in the opinion of the person in charge, so recovered from the effects of the drug or alcohol as to be able to take care of himself; or
 - (b) in any case, before the expiration of the period of eighteen hours from the time of apprehension of the person.
- (6) Where a person apprehended under this section is taken to a police station and detained there, or is taken to a sobering-up centre and admitted as a patient, any object removed from the apprehended person and taken into custody pursuant to subsection (2) shall be returned to the person on, or before, his discharge except where he indicates that he does not desire the return of any such object.
- (7) Where a child is detained pursuant to this section, the person by whom he is detained shall, as soon as practicable after the commencement of the detention, notify a parent or other guardian of the child that the child has been so detained, unless—
- (a) the whereabouts of every such parent or guardian is, after reasonable enquiries, unknown; or
 - (b) it is not, in the circumstances of the case, reasonably practicable to give such a notification.
- (8) Where a person (including a child) is detained pursuant to this section, the person by whom he is detained shall allow him a reasonable opportunity to communicate with a solicitor, relative or friend.
- (9) Notwithstanding any other provision of this section, if—
- (a) a solicitor acting on behalf of a person detained in a police station pursuant to this section, or a relative or friend of a person so detained, requests that he be discharged into the care of the solicitor, relative or friend; and
 - (b) the officer in charge of the police station is satisfied that the solicitor, relative or friend is able and willing to care properly for that person,
- that person shall be discharged into the care of the solicitor, relative or friend.
- (10) Where a child is detained in a police station pursuant to this section, the officer in charge of the station shall take such steps as are reasonably practicable to keep the child from coming into contact with any adult person detained in the station.

- (11) Nothing in this section prevents an officer in charge of a police station or a person in charge of a sobering-up centre from discharging at any time a person detained pursuant to this section for the purpose of receiving medical attention or treatment.

8—Application for declaration

- (1) A person may, before the expiration of thirty days from the date of his discharge from a police station or, as the case may be, from a sobering-up centre, apply to a court of summary jurisdiction, constituted of a special magistrate, for a declaration that at the time of his detention he was not under the influence of a drug or alcohol.
- (2) Where, in proceedings under this section, the court is satisfied that the applicant was not under the influence of a drug or alcohol at the time of his detention under this Part, it shall make a declaration accordingly.
- (3) In any proceedings under this section, the person by whom the applicant was detained, and the person by whom the applicant was apprehended, shall be entitled to appear.
- (4) A declaration made under this section in relation to the detention of a person does not establish that the detention was unlawful.

9—Transfer of persons detained in sobering-up centres

A person detained in a sobering-up centre pursuant to this Part may be transferred to another sobering-up centre during the course of his detention if the persons in charge of the centres mutually agree to the transfer.

Part 3—Miscellaneous

10—Custody of persons detained

- (1) A person who has been detained shall, until he is discharged in accordance with this Act, be deemed to be in lawful custody—
- (a) while he is kept in the police station or sobering-up centre pursuant to this Act; or
 - (b) while he is in the custody of a person in whose charge he is placed by the officer in charge of the police station, or by the person in charge of the sobering-up centre, as the case may be.
- (2) Where a member of the police force or an authorised officer has reasonable cause to believe that a person detained pursuant to this Act has escaped from lawful custody, he may apprehend that person at any time without warrant and return him to the place in which he was being detained.

11—Offence of ill-treating or neglecting persons detained

- (1) A person having the oversight, care or control of a person detained pursuant to this Act who ill-treats or wilfully neglects that person shall be guilty of an offence.
Maximum penalty: \$2 000 or imprisonment for 1 year.
- (2) Nothing in subsection (1) affects or prejudices the operation of any other Act or law in relation to a person who commits an offence against that subsection.

12—Offence of removing or aiding escape of persons detained

A person who, without lawful excuse, removes a person detained pursuant to this Act from the place in which he is being detained, or from the lawful custody of any person, or who aids any person so detained unlawfully to escape from that place or that custody, shall be guilty of an offence.

Maximum penalty: \$2 000 or imprisonment for 1 year.

13—Immunity from liability

- (1) No civil liability shall attach to any person for any act or omission on his part in good faith in the exercise or purported exercise of his powers, or the discharge or purported discharge of his duties, under this Act.
- (2) A liability that would, but for subsection (1), lie against a person shall lie against the Crown.

14—Summary proceedings

Proceedings for an offence against this Act shall be disposed of summarily.

15—Regulations

The Governor may make such regulations as are contemplated by, or are necessary or expedient for the purposes of, this Act.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Public Intoxication Act 1984* repealed the following:

Alcohol and Drug Addicts (Treatment) Act 1961

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1984	47	<i>Public Intoxication Act 1984</i>	24.5.1984	3.9.1984 (<i>Gazette</i> 30.8.1984 p694)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 70 (s 180)—1.6.2007 (<i>Gazette</i> 26.4.2007 p1352)
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 127 (s 289)—1.2.2010 (<i>Gazette</i> 28.1.2010 p320)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
s 3(1)	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 4		
close personal relationship	inserted by 43/2006 s 180(1)	1.6.2007
domestic partner	inserted by 43/2006 s 180(1)	1.6.2007
relative	amended by 43/2006 s 180(2)	1.6.2007
spouse	substituted by 43/2006 s 180(3)	1.6.2007