

House of Assembly—No 21

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South Australia

Statutes Amendment (Criminal Procedure and Evidence) Bill 2026

A BILL FOR

An Act to amend the *Criminal Procedure Act 1921*, the *Evidence Act 1929*, the *Intervention Orders (Prevention of Abuse) Act 2009*, the *Magistrates Court Act 1991*, the *Sentencing Act 2017* 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 (Criminal Procedure and Evidence) Act 2026*.

2—Commencement

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

Part 2—Amendment of *Criminal Procedure Act 1921*

3—Insertion of section 127A

After section 127 insert:

127A—Intervention orders

- 5 (1) If a defendant is committed to a superior court for trial or sentence in relation to an indictable offence, the superior court may, with the consent of the prosecution and the defendant, issue against the defendant an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009* in relation to the matters alleged in the proceedings for the offence (and may do so without receiving evidence in relation to the intervention order).
- 10 (2) An order issued under this section has effect as an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*.

4—Amendment of section 157—Right of appeal in criminal cases

- 15 (1) Section 157(1)(e)—delete "Full Court" and substitute:
Court of Appeal
- (2) Section 157(3)—delete "Full Court" and substitute:
Court of Appeal
- 20 (3) Section 157(3)(a)—delete "and, if correct, is likely to lead to abandonment of that charge"
- (4) Section 157—after subsection (3) insert:
- (4) On an appeal against an interlocutory judgment, the Court of Appeal may exercise any 1 or more of the following powers:
- 25 (a) it may confirm, vary or reverse the judgment subject to the appeal;
- (b) it may make any consequential or ancillary orders that may be necessary or desirable in the circumstances.
- (5) In this section—
interlocutory judgment includes—
- 30 (a) an interlocutory order; and
- (b) an order or ruling relating to the admissibility or giving of evidence.

Part 3—Amendment of *Evidence Act 1929*

5—Amendment of section 29B—Prohibited direction in relation to doubts regarding truthfulness or reliability of victim's evidence

Section 29B(1)—delete subsection (1) and substitute:

- (1) In a trial (whether for a single offence or in which more than 1 offence is charged), a trial judge must not direct the jury that if the jury doubts the truthfulness or reliability of the victim's evidence in relation to—
- (a) a charge; or
 - (b) an unlawful sexual act particularised in the information, that doubt must be taken into account in assessing the truthfulness or reliability of the victim's evidence generally or in relation to other charges or other unlawful acts particularised in the information.

6—Insertion of section 34PA

After section 34P insert:

34PA—Admissibility of discreditable conduct evidence in proceedings involving child sexual offences

- (1) This section applies in a criminal proceeding in which the commission by the defendant of an act that constitutes, or may constitute, a child sexual offence is a fact in issue.
- (2) It is presumed that the following discreditable conduct evidence about the defendant will have strong probative value for the purposes of section 34P(2)(b):
- (a) evidence about the sexual interest the defendant has or had in children (even if the defendant has not acted on the interest);
 - (b) evidence about the defendant acting on a sexual interest the defendant has or had in children.
- (3) Subsection (2) applies whether or not the sexual interest or act to which the discreditable conduct evidence relates was directed at a complainant in the proceeding, any other child or children generally.
- (4) Subsection (2) does not apply to a sexual interest or act of the defendant while the defendant was a child.
- (5) Despite subsection (2), the court may determine that discreditable conduct evidence of a kind described in that subsection does not have strong probative value if it is satisfied that there are sufficient grounds to do so.

(6) The following matters (whether considered individually or in combination) are not to be taken into account when determining whether there are sufficient grounds for the purposes of subsection (5) unless the court considers there are exceptional circumstances in relation to those matters (whether considered individually or in combination) to warrant taking them into account:

- (a) the sexual interest or act to which the discreditable conduct evidence relates (the *discreditable sexual interest or act*) is different from the sexual interest or act alleged in the proceeding (the *alleged sexual interest or act*);
- (b) the circumstances in which the discreditable sexual interest or act occurred are different from circumstances in which the alleged sexual interest or act occurred;
- (c) the personal characteristics of the subject of the discreditable sexual interest or act (for example, the subject's age, sex or gender) are different to those of the subject of the alleged sexual interest or act;
- (d) the relationship between the defendant and the subject of the discreditable sexual interest or act is different from the relationship between the defendant and the subject of the alleged sexual interest or act;
- (e) the period of time between the occurrence of the discreditable sexual interest or act and the occurrence of the alleged sexual interest or act;
- (f) the discreditable sexual interest or act and alleged sexual interest or act do not share distinctive or unusual features;
- (g) the level of generality of the discreditable conduct to which the discreditable conduct evidence relates.

7—Transitional provision

The amendments made to the *Evidence Act 1929* by sections 5 and 6 of this Act—

- (a) do not apply in respect of the procedure to be followed after the commencement of those sections in a trial commenced before that commencement (and such proceedings are to proceed as if those sections had not been enacted); and
- (b) apply in respect of the procedure to be followed in a trial commenced after that commencement.

Part 4—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

8—Amendment of section 20—Application to Court for intervention order

Section 20(1)—after paragraph (a) insert:

- (ab) the Director of Public Prosecutions;

Part 5—Amendment of *Magistrates Court Act 1991*

9—Amendment of section 42—Appeals

Section 42(1a)(b)—delete "and, if correct, is likely to lead to abandonment of the prosecution"

Part 6—Amendment of *Sentencing Act 2017*

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

Section 28—after subsection (4) insert:

- (4a) For the avoidance of doubt, the quashing, on an appeal, of a finding of guilt or sentence for an offence does not, of itself, affect the operation of an intervention order made under this section in relation to the matters alleged in the proceedings for the offence.

11—Amendment of section 52—Interpretation

- (1) Section 52, definition of *serious offence*—delete "(other than a wholly suspended sentence or a sentence that consists only of a community based custodial sentence)"

- (2) Section 52—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- (2) For the purposes of the definition of *serious offence* in subsection (1), a reference to the imposition of a sentence of imprisonment does not include a sentence that has been wholly suspended or a sentence that consists only of a community based custodial sentence, other than in the following circumstances:
- (a) the court has revoked a sentence of home detention under section 73(1)(a) and ordered that the balance of the sentence the person was serving on home detention be served in custody;
 - (b) the court has revoked an intensive correction order under section 83(1) and ordered that the balance of the sentence the person was serving in the community be served in custody;
 - (c) the court has revoked a suspended sentence under section 114(1)(d) and ordered that the sentence be carried into effect.

12—Transitional provision

- (1) The *Sentencing Act 2017* as amended by section 11 applies in relation to a sentence imposed after the commencement of that section regardless of whether—

- (a) the offence for which the defendant is being sentenced was committed before or after that commencement; or

- (b) the sentence of home detention, intensive correction order or suspended sentence referred to in section 52(2) of the *Sentencing Act 2017* (as enacted by section 11) was revoked before or after that commencement.
- (2) To avoid doubt, nothing in section 11 affects any sentence imposed before the commencement of that section.

Part 7—Amendment of *Youth Court Act 1993*

13—Amendment of section 3—Interpretation

- (1) Section 3—after the definition of *evidentiary material* insert:

interlocutory judgment includes—

- (a) an interlocutory order; and
- (b) an order or ruling relating to the admissibility or giving of evidence;
- (2) Section 3, definition of *judgment*—delete the definition and substitute:

judgment means a judgment, order or decision and includes an interlocutory judgment;

14—Amendment of section 22—Appeals

Section 22—after subsection (1) insert:

- (1a) An appeal does not, however, lie against an interlocutory judgment in criminal proceedings unless—
- (a) the judgment stays the proceedings; or
- (b) the judgment—
- (i) refers a youth to be dealt with by a police officer or a family conference pursuant to section 17(2) of the *Young Offenders Act 1993*; or
- (ii) determines that a youth should, or should not, be dealt with in the same way as an adult pursuant to section 17(3)(c) of the *Young Offenders Act 1993*; or
- (c) the judgment destroys or substantially weakens the basis of the prosecution case; or
- (d) the Court or the appellate court is satisfied that there are special reasons why it would be in the interests of the administration of justice to have the appeal determined before commencement or completion of the trial and grants its permission for an appeal.