



CRIMINAL LAW CONSOLIDATION (DETENTION OF INSANE OFFENDERS) AMENDMENT ACT 1992

No. 22 of 1992

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ELIZABETHAE II REGINAE

A.D. 1992

No. 22 of 1992

An Act to amend the Criminal Law Consolidation Act 1935.

[Assented to 14 May 1992]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Criminal Law Consolidation (Detention of Insane Offenders) Amendment Act 1992*.

(2) The *Criminal Law Consolidation Act 1935* is referred to in this Act as “the principal Act”.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 292—Verdict of not guilty on ground of insanity

3. Section 292 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsection:

(2) The court must order that a person found not guilty on the ground of insanity be detained in a secure psychiatric institution until further order of the court.

Amendment of s. 293—Insanity affecting capacity to plead

4. Section 293 of the principal Act is amended—

(a) by striking out from subsection (1) “shall direct him to be kept in strict custody until the Governor’s pleasure is known” and substituting “must order that the person be detained in a secure psychiatric institution until further order of the court”;

(b) by striking out from subsection (2) “kept in strict custody in such place and in such manner as it thinks fit until the Governor’s pleasure is known” and

substituting “detained in a secure psychiatric institution until further order of the court”;

and

(c) by striking out subsection (3).

Substitution of s. 293a

5. Section 293a of the principal Act is repealed and the following section is substituted:

Special provisions relating to detention of insane offenders

293a. (1) A person subject to a detention order will, subject to this section, be detained in such secure psychiatric institution as the Minister of Health from time to time approves.

(2) Where a detention order is made in relation to a person, the medical practitioner supervising the treatment of the person—

(a) must, as soon as practicable (but no later than 12 months) after the making of the detention order, prepare a written treatment plan for the person, setting out details of the diagnosis and prognosis of the person’s psychiatric problems, the psychiatric or other medical treatment proposed for the person and any proposals for the rehabilitation of the person;

and

(b) must, at the end of each year that the person remains subject to the order (whether released on licence or not), prepare a revised treatment plan for the person, setting out details of any changes to the matters covered by the previous plan and including a summary of treatment actually given to the person during the year.

(3) A copy of a treatment plan prepared under subsection (2) (a) or (b) must be filed by the medical practitioner in the court that made the detention order and copies must also be furnished to the Crown and the person to whom the report relates.

(4) The Minister of Health—

(a) must, on a detention order being made in relation to a person, cause a list to be prepared of the names and addresses of the person’s next of kin and of the victims (if any) of the offence with which the person was charged;

and

(b) must, on any application under this section being made in relation to the person, ensure that those next of kin and victims are provided with counselling services in respect of the application.

(5) A person does not, in disclosing information about the person to whom the application relates during the course of providing counselling pursuant to subsection (4), breach any code or rule of professional ethics.

(6) Subject to this section, a person will not be released from detention until the court that made the detention order discharges the order on application by the Crown or the person.

(7) The court that made a detention order in relation to a person may, on application by the Crown or the person—

(a) release the person on licence subject to such conditions as the court thinks fit and specifies in the licence;

or

(b) vary the conditions of such a licence.

(8) The Crown and the person to whom the application relates are parties to an application under this section.

(9) The Crown must, for the purposes of assisting the court in determining an application under this section, furnish the court with particulars of the views of the following persons as to the impact it would have on them should the application be dismissed or granted:

(a) the next of kin of the person to whom the application relates;

and

(b) the victims (if any) of the offence with which the person was charged.

(10) The validity of the court's determination on an application under this section is not affected by non-compliance or insufficient compliance with subsection (9).

(11) The court cannot release a person on licence, vary the conditions of a licence or discharge a detention order under this section unless—

(a) it has first obtained and considered the report of at least three legally qualified medical practitioners each of whom has separately examined the person and, in the case of a proposed release on licence or discharge, at least two of whom are psychiatrists with experience in forensic psychiatry (one not being employed in the part of the institution in which the person is being detained);

and

(b) it is satisfied that the person's next of kin and the victims (if any) of the offence with which the person was charged have been given reasonable notice of the application.

(12) Notice is not required to be given under subsection (11) (b) to a person whose whereabouts cannot, after reasonable enquiries, be ascertained.

(13) In determining an application for the release of a person on licence or for variation of the conditions of his or her licence, the court—

(a) must seek to make a determination that is the least restrictive of the person's freedom and personal autonomy as is consistent with the safety of the community;

and

(b) to that end, must have regard to—

(i) whether the person is suffering from a mental illness or has an intellectual impairment;

(ii) whether, if the person were to be released, his or her behaviour (whether or not arising from a mental illness or intellectual impairment) would be likely to constitute a danger to another person, or to other persons generally;

(iii) whether there would be adequate resources available to the person in the community for his or her treatment and support;

(iv) whether the person would be likely to comply with the conditions of his or her licence;

and

(v) such other matters as the court thinks relevant.

(14) In fixing or varying the conditions of a licence, the court must also have regard to the interests (so far as they are known to the court) of the person's next of kin and of the victims (if any) of the offence with which the person was charged.

(15) The court that released a person on licence under this section may, on application by the Crown, cancel the release if satisfied that the person has contravened, or is likely to contravene, a condition of the licence.

(16) Where a person who has been released on licence under this section commits an offence while subject to that licence and is sentenced to imprisonment for the offence, the release on licence is, by virtue of this subsection, cancelled and the detention order is suspended while the person is in prison serving the term of imprisonment.

(17) Where the circumstances of a person released on licence pursuant to this section have not been reviewed by the court for a period of three years (either pursuant to an application under this subsection or an application for discharge of the detention order), the Minister must apply to the court that released the person on licence for a review of the detention order.

(18) On completion of a review, the court may discharge the detention order unless it is satisfied that, in the interests of the safety of another person, or of other persons generally, the order should remain in force.

(19) Where the court refuses a person's application for his or her release on licence, for variation of the conditions of his or her licence or for his or her detention order to be discharged, the person cannot further apply for release, variation or discharge, as the case may be, for a period of six months or such greater or lesser period as the court may have directed on refusing the application.

(20) In this section—

“detention order” means an order for detention made under section 292 or 293:

“next of kin” of a person means a person's spouse (or putative spouse), parents and children:

“psychiatrist” means a person registered under the *Medical Practitioners Act 1983* as a specialist in psychiatry:

“victim”, in relation to an offence, means a person who suffered mental or physical injury or nervous shock as a result of the offence.

Transitional provisions

6. (1) A person who is, immediately prior to the commencement of this Act, being kept in custody during the Governor's pleasure pursuant to section 292 or 293 of the principal Act will, on that commencement, be taken to be detained until further order of the court pursuant to the principal Act as amended by this Act.

(2) A person who is, immediately prior to the commencement of this Act, subject to a licence pursuant to section 293a of the principal Act will, on that commencement, be taken

to have been released by the court on licence pursuant to the principal Act as amended by this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor