

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

**CONTROLLED SUBSTANCES (DRUG OFFENCE DIVERSION)
AMENDMENT ACT 2000**

No. 87 of 2000

[Assented to 14 December 2000]

An Act to amend the Controlled Substances Act 1984.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of s. 4—Interpretation
4. Substitution of ss. 34 to 40
 34. Application of this Division
 35. Accreditation of drug assessment and treatment services
 36. Referral for assessment
 37. Assessment of referred person
 38. Undertakings
 39. Release from custody for the purposes of assessment or undertaking
 40. Prosecution of simple possession offences
 - 40A. Confidentiality
 - 40B. Expiry of Division
5. Amendment of s. 44—Matters to be considered when court fixes penalty
6. Repeal of s. 61A
7. Transitional provision

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Controlled Substances (Drug Offence Diversion) Amendment Act 2000*.

(2) The *Controlled Substances Act 1984* 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. 4—Interpretation

3. Section 4 of the principal Act is amended by striking out from subsection (1) the definition of "assessment panel" and substituting the following definition:

"assessment service" means a drug assessment service accredited under Division 2 of Part 5;

Substitution of ss. 34 to 40

4. Sections 34 to 40 of the principal Act are repealed and the following sections are substituted:

Application of this Division

34. This Division does not apply in relation to a child who is alleged to have committed a simple possession offence.

Accreditation of drug assessment and treatment services

35. (1) The Minister may, by instrument in writing, accredit such suitably qualified persons or bodies as drug assessment services or drug treatment services as are necessary for the purposes of this Division.

(2) Without limiting subsection (1), the Minister may establish panels of persons with a view to the accreditation of such a panel as a drug assessment service under that subsection.

(3) The Minister may, in an instrument of accreditation, impose conditions on the accreditation.

(4) The Minister may, by notice in writing to an accredited drug assessment service or drug treatment service—

(a) vary or revoke any of the conditions imposed on the accreditation or impose further conditions; or

(b) revoke the accreditation.

Referral for assessment

36. (1) Where a person is alleged to have committed a simple possession offence, a police officer must refer the person to a nominated assessment service and give the person a notice that sets out particulars of the date, place and time at which the person must attend the service.

(2) A copy of the referral notice must be forwarded to the nominated assessment service.

(3) A referral under this section operates as a stay of proceedings (if any) for the alleged offence.

Assessment of referred person

37. (1) On a person being referred to an assessment service under this Division, the service must proceed to carry out and complete its assessment as expeditiously as reasonably practicable.

(2) For the purposes of carrying out the assessment, the service may, by notice in writing given personally or by post, require the person to—

(a) give written consent to—

(i) the release of the person's medical and other treatment records to the service and to any drug treatment service that is to provide treatment to the person pursuant to an undertaking under this Division;

(ii) the release to the service of—

(A) records held by or on behalf of an assessment service or any agency or instrumentality of the Crown relating to previous assessments of, or undertakings entered into by, the person under this Division; and

(B) the person's criminal record (ie, record of any convictions recorded against the person); or

(b) attend the service for such further number of interviews as the service thinks fit; or

(c) submit to an examination, by the service or by any other person, to determine whether the person is experiencing physical, psychological or social problems connected with the misuse of drugs and, if so, the treatment (if any) appropriate for the person.

(3) The assessment service must, by notice in writing to the person given personally or by post, terminate the person's referral to the service—

(a) if the person fails, without reasonable excuse, to attend the service in accordance with the referral notice or with any other notice requiring the person to attend; or

(b) if at any time during the assessment it becomes apparent to the service that—

(i) it would not in the circumstances be appropriate to require the person to enter into an undertaking under this Division; or

(ii) the person does not admit to the allegation (but the service is not required to ascertain this); or

- (iii) the person does not want the service to deal with the matter,
and may, in the same manner, terminate the referral—
- (c) if the person hinders, or does not cooperate with, the service in carrying out the assessment; or
 - (d) if the person, without reasonable excuse, refuses or fails to comply with a requirement under this Division to give written consent to the release of records or to submit to an examination; or
 - (e) if the person refuses to comply with a requirement to enter into an undertaking under this Division or, without reasonable excuse, contravenes or fails to comply with an undertaking entered into under this Division.
- (4) A notice under subsection (3) must set out a short statement of the service's reasons for the termination.
- (5) The service must give a copy of the notice of termination to the Commissioner of Police.

Undertakings

38. (1) An assessment service may, on the completion of an assessment under this Division, require the person alleged to have committed the offence to enter into a written undertaking relating to—

- (a) the treatment that the person will undertake; or
 - (b) participation by the person in a programme of an educative, preventive or rehabilitative nature; or
 - (c) any other matters that will, in the opinion of the service, assist the person to overcome any personal problems that may tend to lead, or that may have led, to the misuse of drugs.
- (2) The undertaking can only require the person to undergo treatment with a drug treatment service that is accredited under this Division.
- (3) If the person enters into the undertaking—
- (a) the person must be given a copy of the undertaking; and
 - (b) any complaint laid against the person for the alleged simple possession offence must be withdrawn; and
 - (c) the person must, if remanded in custody for the alleged simple possession offence but not otherwise subject to detention, be released from detention or, if on bail for the offence, the bail agreement must be discharged.
- (4) The undertaking will be effective for a period, not exceeding 6 months, determined by the service and specified in the undertaking.

(5) The service may, at the request or with the consent of the person bound by the undertaking, vary the terms of the undertaking, but not so that the total period of the undertaking exceeds 6 months.

(6) The service must notify the Commissioner of Police that the person has entered into an undertaking, of any extension to the period of the undertaking and, if it occurs, of the expiry of the undertaking.

Release from custody for the purposes of assessment or undertaking

39. If a person who is in custody has been given a notice under this Division requiring the person to attend an assessment service or any other place, or has entered into an undertaking under this Division requiring the person to attend at any place, the manager of the place in which the person is being detained must cause the person to be brought to the service or other place as required by the notice or undertaking.

Prosecution of simple possession offences

40. (1) A prosecution for a simple possession offence alleged to have been committed by a person cannot proceed unless the person has been referred to an assessment service under this Division and the referral has been terminated by the service.

(2) The fact that a person alleged to have committed a simple possession offence participates in an assessment or enters into an undertaking under this Division does not constitute an admission of guilt, and will not be regarded as evidence tending to establish guilt, in relation to the alleged offence.

(3) If the referral of a person is terminated under this Division, evidence—

- (a) of anything said or done by the person in the course of being assessed or carrying out an undertaking; or
- (b) of the reasons for the termination,

is not admissible in any proceedings against the person for the alleged offence.

(4) On the expiry of an undertaking under this Division, the person who entered into it is immune from prosecution for the alleged offence to which the undertaking related.

Confidentiality

40A. A person who is, or has been, engaged in duties related to the administration of this Division must not disclose information relating to a person referred for assessment under this Division, being information obtained in the course of those duties, unless the disclosure is made—

- (a) in the administration of this Division; or
- (b) as authorised or required by law; or
- (c) with the consent of the person to whom the information relates.

Maximum penalty: \$10 000.

Expiry of Division

40B. This Division expires on the third anniversary of the commencement of this section.

Amendment of s. 44—Matters to be considered when court fixes penalty

5. Section 44 of the principal Act is amended by striking out subparagraph (ii) of paragraph (d) and substituting the following subparagraph:

- (ii) the financial gain that is likely to have accrued to the convicted person as a result of the commission of the offence (but this is not to be taken into consideration if an application for forfeiture of property has been made under the *Criminal Assets Confiscation Act 1996* in respect of that financial gain);.

Repeal of s. 61A

6. Section 61A of the principal Act is repealed.

Transitional provision

7. (1) Subject to subsection (2), Division 2 of Part 5 of the principal Act, as amended by this Act, applies in relation to a simple possession offence whether allegedly committed before or after the commencement of this Act.

(2) Division 2 of Part 5 of the principal Act, as in force immediately before the commencement of this Act, continues to apply in relation to a simple possession offence committed before that commencement if the person alleged to have committed the offence has, at some time before that commencement, been given a notice requiring him or her to appear before an assessment panel in respect of that offence (and, for the purposes of this subsection, section 16 of the *Acts Interpretation Act 1915* applies).

(3) The panels of legal practitioners and health professionals established by the Minister under section 34(2) and (3) of the principal Act, as in force immediately before the commencement of this Act—

- (a) continue in existence and will be maintained by the Minister in the manner contemplated by that section; and
- (b) together form a body that the Minister will accredit as a drug assessment service under and in accordance with the Act as in force after that commencement.