

South Australia



STATUTES AMENDMENT (PAEDOPHILES) ACT 1995

No. 51 of 1995

SUMMARY OF PROVISIONS

**PART 1
PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation

**PART 2
AMENDMENT OF SUMMARY PROCEDURE ACT 1921**

4. Amendment of s. 4—Interpretation
5. Insertion of s. 99AA
99AA. Paedophile restraining orders
6. Amendment of s. 99D—Firearms orders

**PART 3
AMENDMENT OF CORRECTIONAL SERVICES ACT 1982**

7. Amendment of s. 4—Interpretation
8. Amendment of s. 68—Conditions of release on parole



ANNO QUADRAGESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1995

No. 51 of 1995

An Act to amend the Summary Procedure Act 1921 and the Correctional Services Act 1982.

[Assented to 27 July 1995]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Paedophiles) Act 1995*.

Commencement

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

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF SUMMARY PROCEDURE ACT 1921**

Amendment of s. 4—Interpretation

4. Section 4 of the principal Act is amended by striking out the definition of "restraining order" in subsection (1) and substituting the following definition:

"restraining order" means an order under section 99 (including a firearms order supplementary to that order) or an order under section 99AA;

Insertion of s. 99AA

5. The following section is inserted after section 99 of the principal Act:

Paedophile restraining orders

99AA. (1) On a complaint under this Division, the Court may make a restraining order against the defendant if—

- (a) the defendant has been found loitering near children; and
- (b) —
 - (i) the defendant has been found guilty of a child sexual offence within the previous five years; or
 - (ii) the defendant, having been sentenced to imprisonment for a child sexual offence, has been released from prison within the previous five years; or
 - (iii) the defendant has been found loitering near children on at least one previous occasion and there is reason to think that the defendant may, unless restrained, again loiter near children; and
- (c) the Court is satisfied that the making of the order is appropriate in the circumstances.

(2) A restraining order under this section may restrain the defendant from—

- (a) loitering near children at or in the vicinity of a specified place or class of places or in specified circumstances; or
- (b) loitering near children in any circumstances.

(3) In considering whether or not to make a restraining order under this section and in considering the terms of the restraining order, the Court must have regard to the following:

- (a) whether the defendant's behaviour has aroused, or may arouse, reasonable apprehension or fear in a child or other person;
- (b) whether there is reason to think that the defendant may, unless restrained, commit a child sexual offence or otherwise act inappropriately in relation to a child;
- (c) the prior criminal record (if any) of the defendant;
- (d) any evidence of sexual dysfunction suffered by the defendant;
- (e) any apparent pattern in the defendant's behaviour, any apparent connection between the defendant's behaviour and the presence of children and any apparent justification for the defendant's behaviour;
- (f) any other matter that, in the circumstances of the case, the Court considers relevant.

(4) For the purposes of this section—

(a) a defendant loiters near children if—

- (i) the defendant loiters, without reasonable excuse, at or in the vicinity of a school, public toilet or place at which children are regularly present; and
- (ii) children are present at the school, toilet or place at the time of the loitering; and

(b) a **child sexual offence** means any of the following offences committed against or in relation to a child under 16 years of age (including a substantially similar offence against the law of another place):

- (i) rape;
- (ii) indecent assault;
- (iii) incest;
- (iv) an offence involving unlawful sexual intercourse;
- (v) an offence involving an act of gross indecency;
- (vi) an offence involving child prostitution;
- (vii) an offence involving indecency or sexual misbehaviour including an offence against section 58A of the *Criminal Law Consolidation Act 1935* or against section 23 or 33 of the *Summary Offences Act 1953*;
- (viii) an attempt to commit, or assault with intent to commit, any of the offences referred to in the above subparagraphs;
- (ix) any other offence (such as homicide or abduction), if there are reasonable grounds to believe that any of the offences referred to in the above subparagraphs was also committed by the same person against or in relation to the child in the course of, or as part of events surrounding, the commission of the offence.

Amendment of s. 99D—Firearms orders

6. Section 99D of the principal Act is amended by inserting in subsection (1) "under section 99" after "restraining order".

PART 3
AMENDMENT OF CORRECTIONAL SERVICES ACT 1982

Amendment of s. 4—Interpretation

7. Section 4 of the principal Act is amended by inserting after the definition of "the Chief Executive Officer" in subsection (1) the following definition:

"child sexual offence" means any of the following offences committed against or in relation to a child under 16 years of age (including a substantially similar offence against the law of another place):

- (a) rape;
- (b) indecent assault;
- (c) incest;
- (d) an offence involving unlawful sexual intercourse;
- (e) an offence involving an act of gross indecency;
- (f) an offence involving child prostitution;
- (g) an offence involving indecency or sexual misbehaviour including an offence against section 58A of the *Criminal Law Consolidation Act 1935* or against section 23 or 33 of the *Summary Offences Act 1953*;
- (h) an attempt to commit, or assault with intent to commit, any of the offences referred to in the above paragraphs;
- (i) any other offence (such as homicide or abduction), if there are reasonable grounds to believe that any of the offences referred to in the above paragraphs was also committed by the same person against or in relation to the child in the course of, or as part of the events surrounding, the commission of the offence;

Amendment of s. 68—Conditions of release on parole

8. Section 68 of the principal Act is amended by inserting after subsection (1) the following subsection:

(1a) If the prisoner was sentenced to imprisonment for a child sexual offence, the Board must consider imposing the following conditions on the release of the prisoner:

- (a) a condition preventing the prisoner from loitering, without reasonable excuse, at or in the vicinity of a school, public toilet or place at which children are regularly present while children are present at the school, toilet or place;
- (b) a condition preventing the prisoner from engaging in remunerative or voluntary work with children or at a place used for the education, care or recreation of children;

- (c) a condition preventing the prisoner from providing or offering to provide accommodation to a child who is not related to the prisoner by blood or marriage or of whom the prisoner does not have lawful custody.

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

ROMA MITCHELL Governor