

South Australia



ANNO QUADRAGESIMO NONO
ELIZABETHAE II REGINAE
A.D. 2000

**CRIMINAL LAW CONSOLIDATION (SEXUAL SERVITUDE)
AMENDMENT ACT 2000**

No. 20 of 2000

[Assented to 8 June 2000]

An Act to amend the Criminal Law Consolidation Act 1935; and to make related amendments to the Criminal Assets Confiscation Act 1996 and the Summary Offences Act 1953.

SUMMARY OF PROVISIONS

1. Short title
2. Repeal of s. 63
3. Amendment of s. 64—Procuring sexual intercourse
4. Insertion of ss. 65A—68
 - 65A. Definitions relating to commercial sexual services
 66. Sexual servitude and related offences
 67. Deceptive recruiting for commercial sexual services
 68. Use of children in commercial sexual services
5. Amendment of s. 74—Persistent sexual abuse of a child
6. Amendment of s. 76—Corroborative evidence in certain cases

SCHEDULE

Related Amendments

1. Amendment of Criminal Assets Confiscation Act 1996
2. Amendment of Summary Offences Act 1953

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Criminal Law Consolidation (Sexual Servitude) Amendment Act 2000*.

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

Repeal of s. 63

2. Section 63 of the principal Act is repealed.

Amendment of s. 64—Procuring sexual intercourse

3. Section 64 of the principal Act is amended by striking out ", not being a common prostitute or a person of known immoral character,".

Insertion of ss. 65A—68

4. The following heading and sections are inserted before the heading "*Unnatural offences*" above section 68A of the principal Act:

Commercial sexual services

Definitions relating to commercial sexual services

65A. (1) For the purposes of this Division (*ie* sections 65A to 68)—

"ask" connotes a request made with serious intendment (as distinct from one made without an actual intention of obtaining the ostensible object of the request);

"child" means a person under the age of 18 years;

"commercial sexual services" means services provided for payment involving the use or display of the body of the person who provides the services for the sexual gratification of another or others;

"compulsion"—a person compels another (the **victim**) if the person controls or influences the victim's conduct by means that effectively prevent the victim from exercising freedom of choice;

"payment" includes any form of commercial consideration;

"sexual servitude" means the condition of a person who provides commercial sexual services under compulsion;

"undue influence"—a person exerts undue influence on another (the **victim**) if the person uses unfair or improper means to influence the victim's conduct.

(2) For the purposes of this Division, a person whose conduct causes a particular result is taken to have intended that result if the person is reckless about whether that result ensues.

Sexual servitude and related offences

66. (1) A person who compels another to provide or to continue to provide commercial sexual services is guilty of the offence of inflicting sexual servitude.

Maximum penalty—

- (a) if the victim is a child under the age of 12 years—imprisonment for life;
- (b) if the victim is a child of or over the age of 12 years—imprisonment for 19 years;
- (c) in any other case—imprisonment for 15 years.

(2) A person who, by undue influence, gets another to provide, or to continue to provide, commercial sexual services is guilty of an offence.

Maximum penalty—

- (a) if the victim is a child under the age of 12 years—imprisonment for life;
- (b) if the victim is a child of or over the age of 12 years—imprisonment for 12 years;
- (c) in any other case—imprisonment for 7 years.

(3) A person charged with an offence against subsection (1) (the **aggravated offence**) may be convicted, on that charge, of an offence against subsection (2) (the **lesser offence**) if the court is not satisfied that the aggravated offence has been established beyond reasonable doubt but is satisfied that the lesser offence has been so established.

(4) The question whether, in a particular case, a defendant's conduct amounts to compulsion or undue influence (or neither) is one of fact to be determined according to the circumstances of the particular case.

(5) Evidence of the following or any combination of the following may be relevant to that question—

- (a) fraud, misrepresentation or suppression of information;
- (b) force or a threat of force;
- (c) any other threat (including a threat to take action that may result in the victim's deportation or a threat to take other lawful action);
- (d) restrictions on freedom of movement;
- (e) supply, or withdrawal of supply, of an illicit drug;
- (f) abuse of a position of guardianship or trust;
- (g) any other form of unreasonable or unfair pressure.

Deceptive recruiting for commercial sexual services

67. A person who—

- (a) offers another (the **victim**) employment or some other form of engagement to provide personal services; and

- (b) knows at the time of making the offer—
 - (i) that the victim will, in the course of or in connection with the employment or engagement, be asked or expected to provide commercial sexual services; and
 - (ii) that the continuation of the employment or engagement, or the victim's advancement in the employment or engagement, will be dependent on the victim's preparedness to provide commercial sexual services; and
- (c) fails to disclose that information to the victim at the time of offering the employment or engagement,

is guilty of an offence.

Maximum penalty—

- (a) if the victim is a child—imprisonment for 12 years;
- (b) in any other case—imprisonment for 7 years.

Use of children in commercial sexual services

68. (1) A person must not employ, engage, cause or permit a child to provide, or to continue to provide, commercial sexual services.

Maximum penalty—

- (a) if the child is under the age of 12 years—imprisonment for life;
- (b) in any other case—imprisonment for 9 years.

(2) A person must not ask a child to provide commercial sexual services.

Maximum penalty—

- (a) if the child is under the age of 12 years—imprisonment for 9 years;
- (b) in any other case—imprisonment for 3 years.

(3) A person must not—

- (a) have an arrangement with a child who provides commercial sexual services under which the person receives, on a regular or systematic basis, the proceeds, or a share in the proceeds, of commercial sexual services provided by the child; or
- (b) exploit a child by obtaining money knowing it to be the proceeds of commercial sexual services provided by the child.

Maximum penalty—

- (a) if the child is under the age of 12 years—imprisonment for 5 years;
- (b) in any other case—imprisonment for 2 years.

(4) In proceedings for an offence against this section, it is not necessary for the prosecution to establish that the defendant knew the victim of the alleged offence to be a child.

(5) However, it is a defence to a charge of an offence against this section if it is proved that the defendant believed on reasonable grounds that the victim had attained 18 years of age.

Amendment of s. 74—Persistent sexual abuse of a child

5. Section 74 of the principal Act is amended by inserting in the definition of "sexual offence" in subsection (11) ", 68" after "58A".

Amendment of s. 76—Corroborative evidence in certain cases

6. Section 76 of the principal Act is amended by striking out "section 63 or 64" and substituting "section 64, 67 or 68".

SCHEDULE
Related Amendments

Amendment of Criminal Assets Confiscation Act 1996

1. The *Criminal Assets Confiscation Act 1996* is amended by inserting before subparagraph (i) of paragraph (c) of the definition of "local forfeiture offence" in section 3 the following subparagraph and redesignating subparagraph (i) and the other subparagraphs of that paragraph as (ii), (iii), (iv), (v), (vi) and (vii) respectively:

(i) section 68(3)¹ of the *Criminal Law Consolidation Act 1935*;

¹ Section 68(3) of the *Criminal Law Consolidation Act 1935* makes it an offence to—

- have an arrangement with a child who provides commercial sexual services under which the person receives, on a regular or systematic basis, the proceeds, or a share in the proceeds, of commercial sexual services provided by the child; or
- exploit a child by obtaining money knowing it to be the proceeds of commercial sexual services provided by the child.

Amendment of Summary Offences Act 1953

2. The *Summary Offences Act 1953* is amended by inserting after section 25 the following section:

Procurement for prostitution

25A. (1) A person must not engage in procurement for prostitution.

Maximum penalty:

For a first offence—\$1 250 or imprisonment for 3 months.

For a subsequent offence—\$2 500 or imprisonment for 6 months.

(2) A person engages in procurement for prostitution if the person—

- (a) procures another to become a prostitute; or
- (b) publishes an advertisement to the effect that the person (or some other person) is willing to employ or engage a prostitute; or
- (c) approaches another person with a view to persuading the other person to accept employment or an engagement as a prostitute.

(3) In this section—

"advertisement" includes a notice exhibited in, or so that it is visible from, a public place.