

TASMANIA

---

**SENTENCING AMENDMENT (PRESUMPTION OF  
MANDATORY SENTENCING) BILL 2023**

---

**CONTENTS**

1. Short title
2. Commencement
3. Principal Act
4. Section 16B inserted
  - 16B. Presumption of mandatory imprisonment for certain sexual offences against children
5. Repeal of Act



# **SENTENCING AMENDMENT (PRESUMPTION OF MANDATORY SENTENCING) BILL 2023**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

LAURA ROSS, *Clerk of the House*  
14 November 2023

*(Brought in by the Minister for Justice, the Honourable Guy Barnett)*

## **A BILL FOR**

**An Act to amend the *Sentencing Act 1997* to provide for mandatory sentencing in relation to certain sexual offences against children**

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **1. Short title**

This Act may be cited as the *Sentencing Amendment (Presumption of Mandatory Sentencing) Act 2023*.

### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

*Sentencing Amendment (Presumption of Mandatory Sentencing)*  
*Act 2023*  
*Act No. of 2023*

s. 3

---

**3. Principal Act**

In this Act, the *Sentencing Act 1997*\* is referred to as the Principal Act.

**4. Section 16B inserted**

After section 16A of the Principal Act, the following section is inserted in Division 1:

**16B. Presumption of mandatory imprisonment for certain sexual offences against children**

(1) In this section –

*aggravating circumstance*, in relation to an offence, has the same meaning as it has in section 11A in relation to the offence;

*minimum period*, in relation to a relevant offence, means a period of –

- (a) if the relevant offence is specified in subsection (2)(a)(i) or (ii) – 2 years; or
- (b) if the relevant offence is specified in subsection (2)(a)(iii) – 3 years; or

---

\*No. 59 of 1997

*Sentencing Amendment (Presumption of Mandatory Sentencing)*  
*Act 2023*  
*Act No. of 2023*

s. 4

---

- (c) if the relevant offence is specified in subsection (2)(a)(iv) or (v) – 4 years;

***relevant offence*** means an offence specified in subsection (2)(a).

- (2) Despite section 7, a court is to impose a term of imprisonment on an offender in respect of an offence, being a term of imprisonment that is at least the minimum period in relation to the offence, if –

- (a) the court convicts the offender of, or imposes on the offender a sentence on the conviction of the offender for, an offence against –

- (i) section 124 of the *Criminal Code*; or
- (ii) section 124A of the *Criminal Code*; or
- (iii) other than as specified in subparagraph (iv), section 125A of the *Criminal Code*; or
- (iv) section 125A of the *Criminal Code*, if one of the unlawful acts constituting the offence against that section is an

*Sentencing Amendment (Presumption of Mandatory Sentencing)*  
*Act 2023*  
*Act No. of 2023*

s. 4

---

offence against section  
185 of the *Criminal Code*;  
or

(v) section 185 of the  
*Criminal Code*; and

(b) the victim of the offence was a  
person who had not attained the  
age of 18 years at the time at  
which the offence was  
committed; and

(c) there are one or more aggravating  
circumstances in relation to the  
offence, regardless of whether  
those circumstances form an  
element of the offence.

(3) The court may only refuse to impose a  
term of imprisonment on an offender in  
respect of a relevant offence, in  
accordance with subsection (2), if –

(a) the offender had not attained the  
age of 18 years at the time at  
which the relevant offence was  
committed; or

(b) the offender has impaired mental  
functioning that is causally linked  
to the relevant offence and that –

(i) ought to be regarded as  
reducing the offender's

*Sentencing Amendment (Presumption of Mandatory Sentencing)*  
*Act 2023*  
*Act No. of 2023*

s. 4

---

culpability for the  
offence; or

(ii) is likely to result in  
imprisonment of the  
offender being more  
difficult for the offender,  
or more of a risk to the  
health or wellbeing of the  
offender, than would be  
the case for an offender  
who did not have such  
impaired mental  
functioning; or

(c) in the opinion of the court, the  
imposition of such a sentence  
would be unjust when  
considering the circumstances of  
the offence or the offender.

(4) If a court refuses to impose a term of  
imprisonment on an offender in respect  
of a relevant offence, in accordance with  
subsection (2), the court must give  
reasons for that refusal.

(5) Nothing in this section is to be taken to  
prevent the application of section 11 in  
relation to a relevant offence, including  
where –

(a) the sentence for the relevant  
offence is a term of imprisonment

*Sentencing Amendment (Presumption of Mandatory Sentencing)*  
*Act 2023*  
*Act No. of 2023*

s. 5

---

of not less than the minimum period; and

- (b) in accordance with section 11, that sentence also applies to another offence which may, or may not, be a relevant offence.

(6) For the avoidance of doubt –

- (a) subsection (2) does not provide for a mandatory penalty on conviction, in respect of a relevant offence, for the purposes of section 10(2)(b)(v); and
- (b) nothing in this section prevents a court from making, in respect of a relevant offence, any order (including an order imposing a penalty) that is in addition to an order imposing a term of imprisonment in respect of the relevant offence.

## **5. Repeal of Act**

This Act is repealed on the first anniversary of the day on which it commenced.