

TASMANIA

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

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SENTENCING AMENDMENT (PRESUMPTION OF MANDATORY SENTENCING) BILL 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.

3. Principal Act

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

*No. 59 of 1997

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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
- (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).

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- (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 offence against section 185 of the *Criminal Code*; or
 - (v) section 185 of the *Criminal Code*; and

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- (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 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

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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 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 –

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- (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.