

TASMANIA

**SENTENCING AMENDMENT (MANDATORY
SENTENCING) BILL 2022**

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SENTENCING AMENDMENT (MANDATORY SENTENCING) BILL 2022

(Brought in by the Minister for Justice, the Honourable Elise Nicole Archer)

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 (Mandatory Sentencing) Act 2022*.

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. Sections 16B, 16C and 16D inserted

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

16B. 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) an offence to which subsection (2) applies – means a period of 2 years; or
- (b) an offence to which subsection (3) applies – means a period of 3 years; or
- (c) an offence to which subsection (4) or (5) applies – means a period of 4 years.

(2) Despite section 7, if a court convicts an offender of, or imposes on an offender a sentence on the conviction of the offender for, an offence against section 124 of the *Criminal Code* in relation to a

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person who had not attained the age of 17 years at the time at which the offence was committed, the court must, if there is an aggravating circumstance in relation to the offence, order the offender to serve in respect of the offence a term of imprisonment of not less than the minimum period in relation to the offence.

- (3) Despite section 7, if a court convicts an offender of, or imposes on an offender a sentence on the conviction of the offender for, an offence against section 125A of the *Criminal Code* in relation to a person who had not attained the age of 17 years at the time at which the offence was committed, the court must, if there is an aggravating circumstance in relation to the offence, order the offender to serve in respect of the offence a term of imprisonment of not less than the minimum period in relation to the offence.
- (4) Despite subsection (3) and section 7, if –
 - (a) a court convicts an offender of, or imposes on an offender a sentence on the conviction of the offender for, an offence against section 125A of the *Criminal Code* in relation to a person who had not attained the age of 17 years at the time at which the offence was committed; and

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- (b) one of the unlawful acts constituting the offence against section 125A of the *Criminal Code* is an offence against section 185 of the *Criminal Code* –

the court must order the offender to serve in respect of the offence a term of imprisonment of not less than the minimum period in relation to the offence.

- (5) Despite section 7, if a court convicts an offender of, or imposes on an offender a sentence on the conviction of the offender for, an offence against section 185 of the *Criminal Code* in relation to a person who had not attained the age of 17 years at the time at which the offence was committed, the court must order the offender to serve in respect of the offence a term of imprisonment of not less than the minimum period in relation to the offence.
- (6) This section does not apply in relation to an offence committed by an offender if –
 - (a) the offender had not attained the age of 18 years at the time at which the offence was committed; or
 - (b) the offender has impaired mental functioning that is causally linked to the 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 health or wellbeing of the offender, than would be the case for an offender who did not have such impaired mental functioning; or

(c) there are exceptional circumstances.

16C. Application of Act where section 16B applies in relation to offence

(1) In this section –

minimum period, in relation to an offence, has the same meaning as it has in section 16B.

(2) Section 10(2)(b)(v) does not apply in relation to an offence to which section 16B applies, to the extent that section 10(2)(b)(v) might otherwise be taken to require section 16B or this section to apply to an offence in relation to which a finding of guilt has been made but a conviction has not been recorded.

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- (3) If an order that an offender must serve in respect of an offence a term of imprisonment has been made in accordance with section 16B, a court must not –
- (a) make any other order in respect of the offence, other than an order under section 17 or 18; or
 - (b) amend an order in respect of the offence, other than an order under section 17 or 18 –

if the effect of that other order or amendment would be that the person is not imprisoned for the minimum period in relation to the offence.

- (4) Nothing in this section or section 16B is to be taken to prevent the application of section 11 in relation to an offence to which section 16B applies, providing the offender is sentenced to a term of imprisonment of not less than the minimum period in relation to the offence, whether or not the sentence applies, in addition, to another offence and whether or not that other offence is an offence to which section 16B applies.
- (5) Subject to subsection (6), nothing in this section or section 16B is to be taken to prevent a court ordering an offender to serve, in respect of an offence to which section 16B applies, a term of

imprisonment of more than the minimum period in relation to the offence.

- (6) A court, in imposing on an offender a sentence in relation to an offence to which section 16B applies, must only impose a term of imprisonment that is more than the minimum period in relation to the offence, if the court would, if section 16B did not apply in relation to –
- (a) the offence committed by the offender; or
 - (b) an offence, whether committed by the offender or another person, to which a court may have regard in determining the sentence to impose on the offender –

impose on that offender, in relation to that offence, that term of imprisonment.

- (7) Section 12 does not apply in relation to an offence to which section 16B applies.
- (8) Nothing in section 16B or this section, apart from subsections (3) and (7), is to be taken to prevent a court making, in respect of an offence to which section 16B applies, an order (including an order imposing a penalty) that is an order in addition to an order imposing, in respect of the offence, a term of imprisonment in accordance with section 16B and this section.

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16D. Determination of whether exceptional circumstances exist under section 16A or 16B

In determining, for the purposes of section 16A or 16B, whether exceptional circumstances exist, a court is to have regard to –

- (a) the nature and circumstances of the offence against section 16A or 16B, as the case may be; and
- (b) the circumstances of the offender; and
- (c) any other matter that the court considers to be relevant.

5. Repeal of Act

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