

Justice Legislation (Sexual Offences and Bail) Act 2004

Act No. 20/2004

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1. Purposes	1
2. Commencement	2
PART 2—AMENDMENT OF CRIMES ACT 1958, EVIDENCE ACT 1958 AND SENTENCING ACT 1991	3
3. New Subdivision inserted	3
(8EAA) Sexual Servitude	3
60AB. Sexual servitude	3
60AC. Aggravated sexual servitude	5
60AD. Deceptive recruiting for commercial sexual services	6
60AE. Aggravated deceptive recruiting for commercial sexual services	6
4. Child pornography	6
5. Offer of minor for involvement in child pornography	7
6. Possession of child pornography	7
7. New Subdivision (14) inserted	7
(14) Sexual Performances involving a Minor	7
70AB. Definitions	7
70AC. Sexual performance involving a minor	8
8. Giving of evidence	8
9. Serious sexual offender	9
PART 3—AMENDMENT OF BAIL ACT 1977	10
10. Failure to answer bail	10
11. Extension of bail in limited circumstance	10
12. New section 16A inserted	10
16A. Written notice of extension of bail	10

<i>Section</i>	<i>Page</i>
PART 4—AMENDMENT OF COUNTY COURT ACT 1958	12
13. Registrar to extend bail when judge fails to arrive	12
ENDNOTES	13



Victoria

No. 20 of 2004

Justice Legislation (Sexual Offences and Bail) Act 2004[†]

[Assented to 18 May 2004]

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The purposes of this Act are—

- (a) to amend the **Crimes Act 1958**—
 - (i) to create offences in relation to sexual servitude and sexual performances involving a minor; and

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

Part 1—Preliminary

s. 2

- (ii) to amend offences in relation to child pornography; and
- (b) to amend the **Evidence Act 1958** in relation to the giving of evidence in cases for sexual servitude offences; and
- (c) to amend the **Sentencing Act 1991** to classify sexual servitude offences as serious offender offences; and
- (d) to amend the **Bail Act 1977** in respect of a failure to answer bail and extension of bail; and
- (e) to amend the **County Court Act 1958** to give a registrar or a deputy registrar the power to extend bail in certain circumstances.

2. Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

Part 2—Amendment of Crimes Act 1958, Evidence Act 1958 and Sentencing Act 1991

s. 3

PART 2—AMENDMENT OF CRIMES ACT 1958, EVIDENCE ACT 1958 AND SENTENCING ACT 1991

3. New Subdivision inserted

After Subdivision (8E) of Division 1 of Part I of the **Crimes Act 1958** insert—

'(8EAA) Sexual Servitude

60AB. Sexual servitude

(1) In this section—

"commercial sexual services" means services for commercial benefit involving the use or display of the body of the person providing the services for the sexual arousal or sexual gratification of others;

"threat" means—

- (a) threat of force; or
- (b) threat to cause a person's deportation; or
- (c) threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of commercial sexual services.

(2) A person who, by the use of—

- (a) force; or
- (b) a threat; or
- (c) unlawful detention; or
- (d) fraud or misrepresentation, including by omission; or

See:
Act No.
6231.
Reprint No. 17
as at
17 June 2003
and
amending
Act Nos
63/2003,
80/2003,
104/2003 and
105/2003.
LawToday:
www.dms.
dpc.vic.
gov.au

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

s. 3

Part 2—Amendment of Crimes Act 1958, Evidence Act 1958 and Sentencing Act 1991

- (e) a manifestly excessive debt—
causes another person to provide, or to continue providing, commercial sexual services is guilty of an offence and liable to level 4 imprisonment (15 years maximum).
- (3) A person who—
- (a) causes or induces another person to provide commercial sexual services;
and
 - (b) knows that, or is reckless as to whether, the other person providing those services will not be free to stop providing those services because of the use of—
 - (i) force; or
 - (ii) a threat; or
 - (iii) unlawful detention; or
 - (iv) fraud or misrepresentation, including by omission; or
 - (v) a manifestly excessive debt—
- is guilty of an offence and liable to level 4 imprisonment (15 years maximum).
- (4) A person who—
- (a) conducts a business that involves the provision of commercial sexual services; and
 - (b) knows that, or is reckless as to whether, the persons providing those services are not free to stop providing those services because of the use of—
 - (i) force; or

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

Part 2—Amendment of Crimes Act 1958, Evidence Act 1958 and Sentencing Act 1991

s. 3

- (ii) a threat; or
 - (iii) unlawful detention; or
 - (iv) fraud or misrepresentation, including by omission; or
 - (v) a manifestly excessive debt—
is guilty of an offence and liable to level 4 imprisonment (15 years maximum).
- (5) For the purposes of sub-section (4), conducting a business includes—
- (a) taking any part in the management of the business; or
 - (b) exercising control or direction over the business; or
 - (c) providing finance for the business.

60AC. Aggravated sexual servitude

- (1) A person is guilty of aggravated sexual servitude if—
- (a) the person commits an offence against section 60AB(2), (3) or (4); and
 - (b) the offence was committed against a person under the age of 18 years; and
 - (c) the accused intended to commit, or was reckless as to committing, the offence against a person under the age of 18 years.
- (2) A person guilty of aggravated sexual servitude is guilty of an offence and liable to level 3 imprisonment (20 years maximum).

60AD. Deceptive recruiting for commercial sexual services

- (1) A person who, intending to induce another person to enter into an engagement to provide commercial sexual services, deceives that other person about the fact that the engagement will involve the provision of commercial sexual services is guilty of an offence and liable to level 6 imprisonment (5 years maximum).
- (2) In sub-section (1), "**commercial sexual services**" has the same meaning as in section 60AB.

60AE. Aggravated deceptive recruiting for commercial sexual services

- (1) A person is guilty of aggravated deceptive recruiting for commercial sexual services if—
 - (a) the person commits an offence against section 60AD; and
 - (b) the offence was committed against a person under the age of 18 years; and
 - (c) the accused intended to commit, or was reckless as to committing, the offence against a person under the age of 18 years.
- (2) A person guilty of aggravated deceptive recruiting for sexual services is guilty of an offence and liable to level 5 imprisonment (10 years maximum).'

4. Child pornography

In section 67A of the **Crimes Act 1958**, in the definition of "child pornography" **omit** "under 16".

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

Part 2—Amendment of Crimes Act 1958, Evidence Act 1958 and Sentencing
Act 1991

s. 5

**5. Offer of minor for involvement in child
pornography**

- (1) In section 69 of the **Crimes Act 1958**, for
"pornography—" **substitute—**
"pornography; or
(c) causes a minor to be in any way concerned in
the making or production of child
pornography; or
(d) offers a minor to be in any way concerned in
the making or production of child
pornography—".
- (2) **Insert** the following heading to section 69 of the
Crimes Act 1958—
**"Procurement etc. of minor for child
pornography"**.

6. Possession of child pornography

- (1) In section 70(2)(c) of the **Crimes Act 1958**, for
"16 years" **substitute** "18 years".
- (2) In section 70(3) of the **Crimes Act 1958**, for
"16 years" **substitute** "18 years".

7. New Subdivision (14) inserted

After Subdivision (13) of Division 1 of Part I of
the **Crimes Act 1958 insert—**

'(14) Sexual Performances involving a Minor

70AB. Definitions

In this Subdivision—

"minor" means person under the age of
18 years;

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

s. 8

Part 2—Amendment of Crimes Act 1958, Evidence Act 1958 and Sentencing
Act 1991

"sexual performance" means live performance that is, or could reasonably be considered to be, for the sexual arousal or sexual gratification of any person.

70AC. Sexual performance involving a minor

A person must not—

- (a) invite a minor to be in any way concerned in a sexual performance; or
- (b) procure a minor for the purpose of being in any way concerned in a sexual performance; or
- (c) cause a minor to be in any way concerned in a sexual performance; or
- (d) offer a minor to be in any way concerned in a sexual performance—

in circumstances where there is payment or reward to the minor or to any other person in respect of the performance.

Penalty: Level 5 imprisonment (10 years maximum).¹

8. Giving of evidence

- (1) After section 37B(1)(a) of the **Evidence Act 1958** insert—

"(ab) an offence under Subdivision (8EAA) of Division 1 of Part I of the **Crimes Act 1958**; or".

- (2) After section 37C(2)(a)(ii) of the **Evidence Act 1958** insert—

"(iii) an offence under Subdivision (8EAA) of Division 1 of Part I of the **Crimes Act 1958**; or".

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

Part 2—Amendment of Crimes Act 1958, Evidence Act 1958 and Sentencing Act 1991

s. 9

9. Serious sexual offender

In Schedule 1 to the **Sentencing Act 1991**, after clause 1(a)(xvi) **insert—**

- "(xvia) section 60AB(2), (3) or (4) (sexual servitude);
- (xvib) section 60AC (aggravated sexual servitude);
- (xvic) section 60AD (deceptive recruiting for commercial sexual services);
- (xvid) section 60AE (aggravated deceptive recruiting for commercial sexual services);".

See:
Act No.
49/1991.
Reprint No. 7
as at
1 January
2004
and
amending
Act Nos
2/2002,
13/2003 and
53/2003.
LawToday:
www.dms.dpc.vic.gov.au

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

Part 3—Amendment of Bail Act 1977

s. 10

See:
Act No.
9008.
Reprint No. 7
as at
1 January
1999
and
amending
Act Nos
11/2001,
61/2001,
35/2002 and
10/2003.
LawToday:
www.dms.
dpc.vic.
gov.au

PART 3—AMENDMENT OF BAIL ACT 1977

10. Failure to answer bail

Section 4(2)(c) of the **Bail Act 1977** is repealed.

11. Extension of bail in limited circumstance

In section 16(3) of the **Bail Act 1977**, for "a court is satisfied that the accused person is by reason of illness or accident or other sufficient cause unable to appear personally" **substitute—**

"a court is satisfied—

- (a) if the accused person is remanded in custody or committed to safe custody, the accused is by reason of illness, accident or other sufficient cause unable to appear personally; or
- (b) if the accused person is released on bail, the accused is not present for sufficient cause—".

12. New section 16A inserted

After section 16 of the **Bail Act 1977** insert—

"16A. Written notice of extension of bail

A court extending bail must cause to be given to the accused person and the surety or sureties, if any, for the appearance of the accused notice in writing stating that—

- (a) bail has been extended by the court in the absence of the accused and the surety; and
- (b) the date, time and place at which the accused person is bound to attend; and

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

Part 3—Amendment of Bail Act 1977

s. 12

(c) the consequences of failure to attend at that time and place."

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

Part 4—Amendment of County Court Act 1958

s. 13

PART 4—AMENDMENT OF COUNTY COURT ACT 1958

13. Registrar to extend bail when judge fails to arrive

In section 7(4) of the **County Court Act 1958**, after "telegram" **insert** "and extend the bail of a person appearing on that day in relation to a criminal proceeding in respect of which the person has been granted bail to the day to which the court is adjourned".

See:
Act No.
6230.
Reprint No. 10
as at
27 September
2001
and
amending
Act Nos
107/1986,
4/2002,
11/2002 and
39/2003.
LawToday:
www.dms.
dpc.vic.
gov.au

Justice Legislation (Sexual Offences and Bail) Act 2004
Act No. 20/2004

Endnotes

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 21 April 2004

Legislative Council: 6 May 2004

The long title for the Bill for this Act was "to amend the **Crimes Act 1958**, the **Evidence Act 1958** and the **Sentencing Act 1991** with respect to sexual offences, child pornography and sexual performances involving a minor and to amend the **Bail Act 1977** and the **County Court Act 1958** with respect to failure to answer bail and extension of bail and for other purposes."