

House of Assembly

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South Australia

Community Based Sentences (Interstate Transfer) Bill 2015

A BILL FOR

An Act to provide for community based sentences imposed in participating jurisdictions to be transferred, by registration, between participating jurisdictions.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Community Based Sentences (Interstate Transfer) Act 2015*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

community based sentence means—

- (a) a sentence of community service imposed under the *Criminal Law (Sentencing) Act 1988*; or
- (b) a sentence of imprisonment suspended on condition that the defendant enter into a bond under section 38 of the *Criminal Law (Sentencing) Act 1988*; or
- (c) a bond to be of good behaviour imposed under section 39 of the *Criminal Law (Sentencing) Act 1988*; or
- (d) in relation to an interstate jurisdiction—a sentence that is a community based sentence under the corresponding law of the jurisdiction; or
- (e) a sentence of a kind prescribed by the regulations to be a community based sentence;

corresponding law means a law of an interstate jurisdiction—

- (a) corresponding, or substantially corresponding, to this Act; or
- (b) prescribed by the regulations to be a corresponding law, whether or not the law corresponds, or substantially corresponds to this Act;

Department means the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

interstate authority in relation to an interstate jurisdiction, means the local authority for the jurisdiction under the corresponding law of the jurisdiction;

interstate jurisdiction means a participating jurisdiction other than this jurisdiction;

interstate sentence, in relation to an interstate jurisdiction, means a community based sentence (within the meaning of the corresponding law of that jurisdiction) in force in an interstate jurisdiction;

jurisdiction means a State or Territory of the Commonwealth;

local authority means the local authority under section 5;

local register means the local register under section 7;

local sentence means a community based sentence in force in this jurisdiction;

offender in relation to a community based sentence, means the person on whom the sentence was imposed;

originating jurisdiction in relation to a community based sentence, means the jurisdiction where the sentence was originally imposed;

participating jurisdiction means—

- (a) this jurisdiction; or
- (b) a State or Territory of the Commonwealth prescribed by the regulations to be a participating jurisdiction;

registration criteria means the registration criteria under section 12;

sentence means an order, decision or other sentence (however described) and includes part of a sentence;

serve in relation to a sentence, includes—

- (a) to comply with or satisfy the sentence; or
- (b) to do any other thing in accordance with the sentence;

this jurisdiction means South Australia.

4—Application of Act

This Act does not apply to—

- (a) a sentence imposed by a court in this State, another State or a Territory, on a person who was not an adult at the time he or she committed the offence in relation to which the sentence was imposed; or
- (b) a sentence in relation to which a prisoner has been released from prison to serve a period of home detention under Part 4 Division 6A of the *Correctional Services Act 1982*; or
- (c) a parole order within the meaning of the *Parole Orders (Transfer) Act 1983*; or
- (d) a sentence of a kind prescribed by regulation for the purposes of this section.

Part 2—Administration

5—Local authority

The **local authority** for this jurisdiction is the Chief Executive of the Department.

6—Delegation

- (1) The local authority may delegate to a person (including a person for the time being performing particular duties or holding or acting in a specified position) a function or power under this Act.
- (2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

- (3) A delegation—
- (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the delegator to act in a matter; and
 - (d) is revocable at will.

7—Local register

The local authority must establish and maintain a register (the *local register*) of interstate sentences registered under this Act.

Part 3—Registration of interstate sentences in this jurisdiction

8—Request for transfer of interstate sentence

The local authority may, in accordance with this Part, register an interstate sentence in this jurisdiction at the request of the interstate authority for the interstate jurisdiction in which the sentence is in force.

9—Form of request for registration

- (1) A request under section 8 must—
- (a) be in writing; and
 - (b) state the following particulars:
 - (i) the offender's name;
 - (ii) the offender's date of birth;
 - (iii) the offender's last-known address;
 - (iv) any other particulars required by the local authority; and
 - (c) be accompanied by the documents referred to in subsection (2).
- (2) For the purposes of subsection (1)(c), the following documents must accompany a request:
- (a) a copy of the interstate sentence certified by the interstate authority;
 - (b) a copy of the offender's consent for the registration of the sentence in this jurisdiction;
 - (c) a copy of any relevant pre-sentence report about the offender held by the interstate jurisdiction in relation to any offence committed by the offender for which the offender is subject to a sentence;
 - (d) a copy of any relevant psychological or other assessment of the offender held by the interstate authority;
 - (e) details of—
 - (i) the offender's criminal record (whether in or outside Australia); and
 - (ii) the offender's compliance with the interstate sentence and any other relevant non-custodial sentence;

- (f) a statement by the interstate authority explaining what part of the sentence has been served in the interstate jurisdiction or any other interstate jurisdiction before the making of the request;
 - (g) a statement by the interstate authority that the authority has explained to the offender, in language likely to be readily understood by the offender, that, if the sentence is registered in this jurisdiction—
 - (i) the offender will be bound by the requirements of the law of this jurisdiction in relation to the sentence; and
 - (ii) a breach of the sentence may result in the offender being re-sentenced in this jurisdiction for the offence; and
 - (iii) the other consequences for a breach of the sentence in this jurisdiction may be different from the consequences for a breach of the sentence in the interstate jurisdiction, and that, in particular, the penalties for breach of the sentence may be different;
 - (h) a statement by the interstate authority that sets out the reasons given by the offender for requesting to register the interstate sentence in this jurisdiction;
 - (i) any other document reasonably required by the local authority.
- (3) For the purposes of subsection (2)(c), the offender is subject to a sentence if the sentence has not been fully served and has not been discharged.
- (4) In considering a request, the local authority may take into account any other information or other documents given to the local authority by the interstate authority.

10—Request for additional information

The local authority may request additional information from an interstate authority about an interstate sentence or an offender the subject of a request under section 8.

11—Withdrawal of offender’s consent

An offender who has consented to the registration of an interstate sentence in this jurisdiction may withdraw his or her consent at any time before (but not after) the registration of the sentence by giving written notice to the local authority.

12—Registration criteria

- (1) The *registration criteria* are that—
- (a) the offender has consented to the interstate sentence being registered in this jurisdiction and has not withdrawn that consent; and
 - (b) there is a corresponding community based sentence under the law of this jurisdiction; and
 - (c) the offender is capable of complying with the sentence in this jurisdiction; and
 - (d) the sentence is capable of being safely, efficiently and effectively administered in this jurisdiction.

- (2) In this section, there is a *corresponding community based sentence under the law of this jurisdiction* for the interstate sentence if—
 - (a) a community based sentence under the law of this jurisdiction corresponds, or substantially corresponds, to the interstate sentence; or
 - (b) a community based sentence under the law of this jurisdiction is declared by the regulations to correspond to the interstate sentence, whether or not the sentence corresponds, or substantially corresponds, to the interstate sentence.
- (3) For the purposes of subsection (2)(a), a community based sentence under a law of this jurisdiction corresponds, or substantially corresponds, to an interstate sentence if and only if the law of this jurisdiction provides that—
 - (a) a penalty of substantially the same nature as the penalty imposed by the interstate sentence can be imposed by the community based sentence; and
 - (b) conditions of substantially the same nature as the conditions to which the interstate sentence is subject can be imposed in relation to the community based sentence.

13—Decision on request

- (1) On request under section 8, the local authority may—
 - (a) register the interstate sentence in this jurisdiction; or
 - (b) register the sentence in this jurisdiction subject to preconditions imposed under section 14; or
 - (c) decline to register the sentence.
- (2) In deciding whether to register an interstate sentence, the local authority—
 - (a) must have regard to the registration criteria; and
 - (b) may have regard to—
 - (i) any matter prescribed by the regulations; and
 - (ii) any other relevant matter.
- (3) The local authority—
 - (a) must not register an interstate sentence unless satisfied that the registration criteria are met; and
 - (b) may decline to register an interstate sentence even if satisfied that the registration criteria are met.
- (4) The local authority may decide whether to register an interstate sentence (including whether to impose any preconditions under section 14) on the information and documents given to the authority under this Part, and any other information or documents available to the authority, without hearing the offender.
- (5) For the avoidance of doubt, the local authority may decide to register an interstate sentence even if—
 - (a) the interstate jurisdiction is not the originating jurisdiction for the sentence; or
 - (b) the sentence has previously been registered in this jurisdiction or this jurisdiction is the originating jurisdiction for the sentence; or

- (c) the authority has previously decided not to register the sentence in this jurisdiction.
- (6) If the local authority decides not to register the interstate sentence, the authority must give written notice of the decision to the offender and the interstate authority.

14—Preconditions for registration

- (1) The local authority may impose preconditions for the registration of an interstate sentence that the offender must meet to show that the offender is capable of complying, and is willing to comply, with the sentence in this jurisdiction.
- (2) Without limiting subsection (1), the local authority may impose preconditions of the following kind:
 - (a) that the offender must satisfy the local authority, before a specified time, that the offender is living in this jurisdiction;
 - (b) that the offender must report to a specified person in this jurisdiction at a specified time and place.
- (3) If the local authority decides to impose a precondition, the local authority must give written notice of the decision and the precondition to the offender and the interstate authority.
- (4) The local authority may, by written notice to the offender and the interstate authority, amend or revoke a precondition.

15—How interstate sentence is registered

- (1) If the local authority decides to register an interstate sentence in this jurisdiction without imposing a precondition for the registration of the sentence, the local authority must register the sentence by entering the required details in the local register.
- (2) If the local authority decides to impose a precondition for the registration of an interstate sentence, the local authority must register the sentence by entering the required details in the local register only if the authority is satisfied that the precondition has been met.
- (3) In this section—
required details means the details of the offender and the interstate sentence prescribed by the regulations.

16—Notice of registration

- (1) If the local authority registers an interstate sentence in this jurisdiction, the local authority must give written notice of the registration to the offender and the interstate authority.
- (2) The notice must state the date the sentence was registered.

17—Effect of registration generally

- (1) If an interstate sentence is registered in this jurisdiction under this Part, the following provisions apply:
 - (a) the sentence becomes a community based sentence in force in this jurisdiction, and ceases to be a community based sentence in force in the interstate jurisdiction;

- (b) the sentence is taken to have been validly imposed by the appropriate court of this jurisdiction;
 - (c) the sentence continues to apply to the offender in accordance with its terms despite anything to the contrary under the law of this jurisdiction;
 - (d) the offence for which the sentence was imposed on the offender (the *relevant offence*) is taken to be an offence against the law of this jurisdiction, and not an offence against the law of the originating jurisdiction;
 - (e) the penalty for the relevant offence is taken to be the relevant penalty for the offence under the law of the originating jurisdiction, and not the penalty for an offence of that kind (if any) under the law of this jurisdiction;
 - (f) any part of the sentence served in an interstate jurisdiction before its registration is taken to have been served in this jurisdiction;
 - (g) the offender may be dealt with in this jurisdiction for a breach of the sentence, whether the breach happened before, or happens after, the registration of the sentence;
 - (h) the law of this jurisdiction applies to the sentence and any breach of it with the changes (if any) prescribed by the regulations.
- (2) Subsection (1)(d) and (e) do not apply if this jurisdiction is the originating jurisdiction.
- (3) Subsection (1)(e) applies only for the purpose of determining the penalty to be imposed for the relevant offence in circumstances in which the offender is, under the law of this jurisdiction, re-sentenced in relation to that offence.
- (4) This section does not affect any right, in the originating jurisdiction, of appeal or review (however described) in relation to—
- (a) the conviction or finding of guilt on which the interstate sentence was based; or
 - (b) the imposition of the interstate sentence.
- (5) Any sentence or decision imposed or made on an appeal or review mentioned in subsection (4) has effect in this jurisdiction as if it were validly imposed or made on an appeal or review in this jurisdiction.
- (6) This section does not give any right to the offender to an appeal or review (however described) in this jurisdiction in relation to the conviction, finding of guilt or imposition of sentence mentioned in subsection (4).
- (7) This section does not apply to an interstate sentence to the extent to which—
- (a) it imposes a fine or other financial penalty (however described); or
 - (b) it requires the making of reparation (however described).
- (8) In this section—
- appropriate court*, of this jurisdiction, means—
- (a) if the interstate sentence was imposed by a court of summary jurisdiction or by a court on appeal from a court of summary jurisdiction—the Magistrates Court; or
 - (b) in any other case—the Supreme Court.

Part 4—Registration of local sentences in interstate jurisdictions

18—Request for transfer of local sentence

The local authority may request the interstate authority for an interstate jurisdiction to register a local sentence in the interstate jurisdiction.

19—Response to request for additional information

The local authority may, at the request of an interstate authority or on its own initiative, give the interstate authority any additional relevant information about a local sentence or offender in relation to whom a request has been made under section 18.

20—Effect of interstate registration

- (1) If a local sentence is registered in an interstate jurisdiction pursuant to a request made under section 18, the following provisions have effect:
 - (a) the sentence becomes a community based sentence in force in the interstate jurisdiction in accordance with the corresponding law of the interstate jurisdiction, and ceases to be a community based sentence in force in this jurisdiction;
 - (b) the offender may be dealt with in the interstate jurisdiction for a breach of the sentence, whether the breach happened before, or happens after, the registration of the sentence;
 - (c) if the sentence is registered in the local register—the sentence ceases to be so registered;
 - (d) proceedings against the offender may not be commenced or continued under the law of this jurisdiction in relation to any breach of the conditions attached to the sentence that occurred before it was registered in the interstate jurisdiction.
- (2) If this jurisdiction is the originating jurisdiction for a local sentence registered in an interstate jurisdiction under this Part, this section does not affect any right of appeal or review (however described) in relation to—
 - (a) the conviction or finding of guilt on which the sentence was based; or
 - (b) the imposition of the sentence.
- (3) If this jurisdiction is the originating jurisdiction for the local sentence registered in an interstate jurisdiction under this Part, this section does not affect the sentence to the extent to which—
 - (a) it imposes a fine or other financial penalty (however described); or
 - (b) it requires the making of reparation (however described),and, to that extent, the sentence remains a sentence in force in this jurisdiction and may be enforced accordingly.

- (4) For the avoidance of doubt, this section does not prevent the local sentence from later being registered in this jurisdiction.

Part 5—Miscellaneous

21—Inaccurate information about local sentence registered interstate

- (1) If—
- (a) a community based sentence that was a local sentence is registered in an interstate jurisdiction; and
 - (b) the local authority becomes aware that information about the sentence or the offender recorded in the register kept under the corresponding law of the interstate jurisdiction (the interstate register) is not, or is no longer, accurate,
- the local authority must tell the interstate authority for the interstate jurisdiction how the information in the interstate register needs to be changed to be accurate.
- (2) Without limiting subsection (1), the local authority must tell the interstate authority about—
- (a) any part of the sentence served in this jurisdiction between the making of the request to register the sentence in the interstate jurisdiction and its registration in the interstate jurisdiction; or
 - (b) the outcome of any appeal or review in this jurisdiction affecting the sentence.

22—Dispute about accuracy of information in interstate register

- (1) If—
- (a) a community based sentence that was a local sentence is registered in an interstate jurisdiction; and
 - (b) the offender claims, in writing, to the interstate authority for the interstate jurisdiction that the information recorded about the sentence or the offender in the register kept under the corresponding law of the interstate jurisdiction (the *interstate register*) is not, or is no longer, accurate, and states in the claim how the information is inaccurate,
- the interstate authority may send the local authority a copy of the claim and an extract from the interstate register containing the information that the offender claims is inaccurate.
- (2) On receipt of a claim and extract under subsection (1), the local authority must check whether the information in the extract is accurate, having regard to the offender's claims, and—
- (a) if satisfied that the information is accurate—inform the interstate authority that the information is accurate; or
 - (b) if satisfied that the information is inaccurate—provide to the interstate authority the correct information.

23—Evidence of registration and registered particulars

- (1) A certificate that appears to be signed by or on behalf of the local authority or the interstate authority for an interstate jurisdiction, and states a matter that appears in or can be ascertained from the register kept under this Act or a corresponding law, is evidence of the matter.
- (2) A certificate under subsection (1) may state a matter by reference to a date or period.
- (3) A certificate that appears to be signed by or on behalf of the local authority or the interstate authority for an interstate jurisdiction, and states any matter prescribed by the regulations, is evidence of the matter.
- (4) A certificate that appears to be signed by or on behalf of the local authority or the interstate authority for an interstate jurisdiction and states any of the following details is evidence of the matter:
 - (a) details of a community based sentence or the offender in relation to a community based sentence;
 - (b) details of any part of a community based sentence that has or has not been served.
- (5) A court must accept a certificate mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.
- (6) A court must or may admit into evidence other documents prescribed by the regulations in the circumstances prescribed by the regulations.

24—Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may—
 - (a) be of general application or vary in their application according to prescribed factors;
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or the local authority.