

House of Assembly—No 174

As laid on the table and read a first time, 11 September 2013

South Australia

**Statutes Amendment (Arrest Procedures and Bail)
Bill 2013**

A BILL FOR

An Act to amend the *Bail Act 1985* and the *Summary Offences Act 1953*.

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Schedule 1—Statute law revision amendments of *Bail Act 1985*

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Arrest Procedures and Bail) Act 2013*.

5 2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Bail Act 1985*

4—Amendment of section 3—Interpretation

- (1) Section 3(1)—after the definition of *community corrections officer* insert:

designated police facility has the same meaning as in section 78 of the
Summary Offences Act 1953;

- (2) Section 3(1)—after the definition of *intervention program manager* insert:

officer in charge, in relation to a police station, means the police officer for
the time being in charge of the police station;

responsible officer, in relation to a police station, means—

- (a) the officer in charge of the police station; or
(b) if a police officer has, for the time being, been designated by the
officer in charge of the police station as the officer with
responsibility for persons accepted into custody at the police
station—that officer;

5—Amendment of section 5—Bail authorities

Section 5(1)(e)—delete paragraph (e) and substitute:

- (e) if the eligible person—
- (i) has been arrested on a warrant (other than a warrant
endorsed by the court or justice issuing the warrant with a
statement excluding the granting of bail by a police officer);
or
- (ii) has not appeared before a court charged with the offence in
respect of which he or she has been taken into custody,
a police officer who is—
- (iii) of or above the rank of sergeant; or
(iv) the responsible officer for a police station;

6—Amendment of section 6—Nature of bail agreement

Section 6(3)(b)—delete paragraph (b) and substitute:

- (b) a police officer who is—
- (i) of or above the rank of sergeant; or
(ii) the responsible officer for a police station; or

7—Amendment of section 7—Guarantee of bail

Section 7(3)(b)—delete paragraph (b) and substitute:

- (b) a police officer who is—
- (i) of or above the rank of sergeant; or
(ii) the responsible officer for a police station; or

8—Amendment of section 11—Conditions of bail

Section 11(6)(c)(ii)—delete subparagraph (ii) and substitute:

- (ii) a police officer who is—
 - (A) of or above the rank of sergeant; or
 - (B) the responsible officer for a police station.

9—Substitution of section 13

Section 13—delete the section and substitute:

13—Procedure on arrest

- (1) If a police officer arrests a person who is, on arrest, eligible to apply for release on bail, the police officer must—
 - (a) as soon as reasonably practicable after delivering the arrested person to a police station or designated police facility after making the arrest, take reasonable steps to ensure that the arrested person (and, if the arrested person is a child, any guardian who is present) understands that the arrested person is entitled to apply for release on bail under this Act; and
 - (b) ensure that the arrested person (and, if the arrested person is a child, any guardian who is present) receives—
 - (i) a written statement, in the prescribed form, explaining how, and to what authorities, an application for release on bail may be made under this Act; and
 - (ii) the appropriate form for making an application for release on bail.
- (2) An eligible person who is a child who has applied unsuccessfully to a police officer for release on bail must, if the child or a guardian so requests, be brought before the Youth Court as soon as practicable for the purpose of making an application for release on bail.
- (3) An eligible person who has been arrested on a charge of an offence must, if not released beforehand, be brought before the appropriate authority on the charge in relation to which he or she was arrested as soon as reasonably practicable but, in any event, not later than 4 pm on the next working day following the day of arrest.
- (4) The appropriate authority before whom a person is brought under subsection (3) must inquire as to whether that person wants to apply for release on bail and, if the person answers in the affirmative, the authority must afford the person a reasonable opportunity to apply for release on bail.
- (5) For the purposes of this section, an eligible person may be brought before the Youth Court or the Magistrates Court—
 - (a) in person or by video link; or

(b) if the person is in custody in a police station or designated police facility that is situated in a remote area and there is no video link available—by audio link.

(6) In this section—

5 *appropriate authority* means—

(a) in relation to a child—the Youth Court; and

(b) in any other case—the Magistrates Court;

remote area, in relation to the situation of a police station or designated police facility, means—

10 (a) 400 kilometres or more; or

(b) if some other distance is prescribed by the regulations for the purposes of this definition—that distance,

from the nearest Youth Court or Magistrates Court (as the case requires);

15 *Youth Court* means the Youth Court of South Australia.

10—Substitution of section 15

Section 15—delete the section and substitute:

15—Telephone review

(1) Subject to this section, if—

20 (a) an arrested person makes an application for release on bail to a police officer or a court constituted of justices; and

(b) the person is dissatisfied with the decision made on the application; and

25 (c) there is no magistrate in the vicinity immediately available to review the decision,

the police officer or justices who made the decision must, on the written application of the person, contact a magistrate by telephone for the purpose of having the decision reviewed.

30 (2) An arrested person dissatisfied with a decision made on application to a police officer on arrest who can be brought before the Magistrates Court constituted of a magistrate by not later than 4 pm on the next day following the day of arrest may not, unless he or she is a child, make an application under subsection (1) for a review of the decision.

35 (3) If the arrested person is a child, the written application under subsection (1) may be made on behalf of the child by a guardian of the child.

40 (4) If, in relation to the original application for bail, compliance with section 8(1) was not required under section 8(1a) in that the application was not required in writing, the application for a telephone review under subsection (1) may be made orally.

(5) If the police officer who made the decision is not immediately available to contact a magistrate, contact must be made by another police officer of or above the rank of sergeant or in charge of a police station.

5 (6) If a magistrate is contacted under subsection (1), the following provisions apply:

(a) the magistrate must make such inquiries as the magistrate thinks necessary to satisfy himself or herself of the genuineness of the application for review;

10 (b) the police officer or justices who made the telephone contact must explain to the magistrate—

(i) the circumstances of the application for bail; and

(ii) the nature of the decision made on the application; and

15 (iii) the reasons for that decision;

(c) the magistrate must then speak with the person who applied for bail or any legal practitioner representing or assisting that person, and any other person who may be present and who may, in the opinion of the magistrate, assist in explaining the circumstances of the particular case for the purpose of ensuring that the magistrate is fully informed—

20 (i) of the grounds and circumstances of the application for bail; and

(ii) of the reasons for the applicant's dissatisfaction with the decision taken on the application; and

25 (iii) if the applicant is a child—of the circumstances of the child;

(d) if the decision that is the subject of the review was made by justices—the magistrate must then speak with—

30 (i) if the police officer who appeared before the justices and opposed the application for bail is present and wishes to speak in relation to the application for review—the police officer; or

(ii) if that police officer is not immediately available—another police officer who is present and wishes to speak in relation to the application for review;

35 (e) the magistrate must then advise the police officer or justices who made the telephone contact of the decision on review, and bail must then be granted or refused in accordance with that decision.

40 (7) For the purposes of subsection (2), an arrested person can be brought before the Magistrates Court—

(a) in person or by video link; or

- (b) if the person is in custody in a police station or designated police facility that is situated in a remote area and there is no video link available—by audio link.

(8) In this section—

remote area, in relation to the situation of a police station or designated police facility, means—

- (a) 400 kilometres or more; or
- (b) if some other distance is prescribed by the regulations for the purposes of this definition—that distance,

from the nearest Magistrates Court.

11—Substitution of section 16

Section 16—delete the section and substitute:

16—Stay of release on application for review

(1) Despite any other provision of this Act, if—

(a) —

- (i) a bail authority decides to release a person on bail; or
- (ii) on a review by a magistrate of a decision of a bail authority, the magistrate decides to release a person on bail; and

(b) a police officer or counsel on behalf of the Crown immediately indicates that an application for review of the decision will be made under this Part,

the release must be deferred.

(2) The period of deferral ends—

(a) if an application for a review is to be made—

- (i) if the reviewing authority is satisfied that there is proper reason to fix a period longer than 72 hours for the period of deferral—at the end of the fixed period; or

(ii) in any other case—

- (A) on the completion of the review; or
- (B) when 72 hours elapses,

whichever occurs first; or

(b) if the Crown does not intend to proceed with the review—

- (i) when the notice of discontinuance is filed on behalf of the Crown with the bail authority; or
- (ii) when 72 hours elapses,

whichever occurs first.

(3) If a person is released on bail under subsection (2) (other than on the completion of a review), the conditions of bail are those that would have applied had the person's release not been deferred.

5 (4) In this section—

reviewing authority means a magistrate or the Supreme Court, as the case may be.

12—Amendment of section 18—Arrest of eligible person on non-compliance with bail agreement

10 (1) Section 18(1)(a)—delete paragraph (a) and substitute:

(a) revoke the bail agreement; and

(2) Section 18(3)—after "police station" insert:

or designated police facility

13—Amendment of section 19A—Arrest of person who is serious and organised crime suspect

15 Section 19A(c)—delete paragraph (c) and substitute:

(c) revoke the bail agreement; and

Part 3—Amendment of *Summary Offences Act 1953*

14—Amendment of section 76—Arrest by owner of property etc

20 Section 76(1)—delete "forthwith" and substitute:

as soon as reasonably practicable

15—Amendment of section 77—Arrest of persons pawning or selling stolen goods

25 Section 77(2)—delete "as soon as practicable" and substitute:

as soon as reasonably practicable

16—Amendment of section 78—Person apprehended without warrant—how dealt with

(1) Section 78—delete subsections (1) and (2) and substitute:

30 (1) Subject to this section, a person who is apprehended without warrant must, as soon as reasonably practicable, be delivered into the custody of—

(a) the police officer in charge of the nearest custodial police station; or

(b) a police officer at a designated police facility.

- 5
- (2) If a person is apprehended without warrant on suspicion of having committed a serious offence, a police officer may, for the purposes of investigating the suspected offence, before dealing with the person in accordance with subsection (1)—
- (a) detain the person for whichever is the lesser of—
- (i) the period necessary to complete the immediate investigation of the suspected offence; or
- (ii) 4 hours or such longer period (not exceeding 8 hours) as may be authorised by a magistrate; and
- 10
- (b) take the person, or cause him or her to be taken, during the course of detention under paragraph (a), to places connected with the suspected offence.
- (2a) In determining the period that has elapsed since the apprehension of a person for the purposes of subsection (2)(a), the following will not be taken into account:
- 15
- (a) any delay occasioned by arranging for a solicitor or other person to be present during the investigation;
- (b) any delay occasioned by allowing the person to receive medical attention;
- 20
- (c) the time that would have been reasonably required to convey the person from the place of apprehension to—
- (i) the nearest custodial police station; or
- (ii) the designated police facility,
- (assuming that the person had been taken as soon as reasonably practicable to the custodial police station or designated police facility).
- 25
- (2) Section 78(3)—delete "Where a person has been delivered into custody at a police station in pursuance of this section" and substitute:
- If a person has been detained in custody under subsection (1)
- 30
- (3) Section 78—after subsection (3) insert:
- (3a) A person who has been apprehended without warrant and detained in custody at a designated police facility must, as soon as reasonably practicable, be delivered into the custody of the police officer in charge of the nearest custodial police station if any of the following occurs:
- 35
- (a) the person declines to make an application for release on bail;
- (b) a decision is made to refuse an application for bail made by the person;

- 5 (c) 2 hours, or such longer period (not exceeding 4 hours) as may be authorised by a magistrate, has elapsed since the person has been detained in custody at the police facility and the person has not been released (whether on bail or otherwise).

(3b) In determining the period that has elapsed since detention in custody at a designated police facility for the purposes of subsection (3a)(c), the following will not be taken into account:

- 10 (a) any delay occasioned by arranging for a solicitor or other person to be present;
- (b) any delay occasioned by allowing the person to receive medical attention;
- (c) any period during which the person is temporarily in the custody of a police officer under subsection (3).

15 (3c) A person who is detained in the custody of a police officer at a designated police facility may be transferred into the custody of another police officer at the police facility.

(4) Section 78(4)—delete "where" and substitute:

if

20 (5) Section 78(5)—delete "Where" and substitute:

If

(6) Section 78(6)—delete subsection (6) and substitute:

(6) The Commissioner may, by instrument in writing, approve the use of any of the following as a designated police facility:

- 25 (a) a specified room, building or structure (whether permanent or temporary);
- (b) a specified vehicle;
- (c) a vehicle of a specified class.

(7) An approval under subsection (6) of a designated police facility must—

- 30 (a) specify the use of the designated police facility—
- (i) for a specified event or purpose; or
- (ii) for a specified police operation; or
- (iii) for an event or a purpose of a specified class; or
- 35 (iv) for a police operation of a specified class; or
- (v) for a specified area of the State outside Metropolitan Adelaide (within the meaning of the *Development Act 1993*); and
- 40 (b) specify conditions for the use of the designated police facility.

- (8) The Commissioner may, by subsequent instrument in writing, vary or revoke an approval under subsection (6).
- (9) In proceedings, a certificate apparently signed by the Commissioner certifying as to a matter relating to an instrument under subsection (6) or (8) constitutes proof, in the absence of proof to the contrary, of the matters so certified.

(10) In this section—

custodial police station means a police station at which cell facilities are available for the continuous care and custody of an apprehended person;

designated police facility, in relation to a person apprehended without warrant, means—

(a) in the case of a person apprehended within an area of the State in respect of which there is an approval in force under subsection (6)—

(i) the place or vehicle used as a designated police facility in accordance with the approval that is nearest the place of apprehension; or

(ii) if the person is apprehended at, or in connection with, an event or police operation in respect of which there is an approval in force under subsection (6)—a place or vehicle used as a designated police facility in accordance with the approval; or

(b) in any other case—

(i) the police station nearest the place of apprehension; or

(ii) if the person is apprehended at, or in connection with, an event or police operation in respect of which there is an approval in force under subsection (6)—a place or vehicle used as a designated police facility in accordance with the approval;

nearest custodial police station, in relation to a person apprehended without warrant, means—

(a) in the case of a person apprehended within a radius of 30 kilometres from the General Post Office at Adelaide—

(i) the police station at Adelaide known as the City Watch House; or

(ii) any other custodial police station within that radius;

(b) in any other case—the custodial police station nearest the place where the person is apprehended;

serious offence means an indictable offence or an offence punishable by imprisonment for 2 years or more.

17—Amendment of section 79—Arrest without warrant if warrant has been issued

- 5 (1) Section 79(2)—delete "forthwith" and substitute:
 , as soon as reasonably practicable,
- (2) Section 79—after subsection (2) insert:
 (3) 10 If a person taken into custody is in need of medical treatment before being delivered as required under this section, the requirement to deliver the person as soon as reasonably practicable does not prevent the immediate provision of necessary medical treatment.

Schedule 1—Statute law revision amendments of *Bail Act 1985*

Provision amended	How amended
Act	Delete "member of the police force" wherever occurring and substitute in each case: police officer Delete "Where" wherever occurring and substitute in each case: If Delete "where" wherever occurring and substitute in each case: if Delete "in pursuance of" wherever occurring and substitute in each case: under
Section 6(4)	Delete "Notwithstanding" and substitute: Despite
Section 8(3)	Delete "notwithstanding" and substitute: despite the fact
Section 10(1)	At the end of paragraphs (a), (b), (d), (e) and (f) insert in each case: and
Section 10(1)(b)	At the end of subparagraphs (i), (ii) and (iii) insert in each case: or
Section 11(8)	Delete "in pursuance of this" and substitute: under the
Section 11(10)(a) to (c)	Delete paragraphs (a) to (c) (inclusive) and substitute: (a) confirm, vary or revoke the condition; and

Provision amended	How amended
Section 11A(1)	Delete "forthwith" and substitute: as soon as reasonably practicable
Section 19(1)	Delete "may on the application of the Crown," and substitute: may, on the application of the Crown
Section 19(3)	Delete "on the application of the person in relation to whom the order is made," and substitute: , on the application of the person in relation to whom the order is made
Section 21C(1)(b)	Delete "occupying a particular position" and substitute: performing particular duties or holding or acting in a particular position