

(Reprint No. 1)

SOUTH AUSTRALIA

BAIL ACT, 1985

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 6 July 1992.

It should be noted that the Act has not been revised (for obsolete references, etc.) by the Commissioner of Statute Revision since its last reprinting on 29 June 1990.

SUMMARY OF PROVISIONS**PART I****PRELIMINARY**

Section

1. Short title
3. Interpretation
4. Eligibility for bail
5. Bail authorities

PART II**BAIL AGREEMENTS AND GUARANTEES**

6. Nature of bail agreement
7. Guarantee of bail

PART III**APPLICATIONS FOR RELEASE ON BAIL****DIVISION I—APPLICATIONS GENERALLY**

8. Form of application
9. Power of bail authority to make inquiries and to hear evidence
10. Discretion exercisable by bail authority
11. Conditions of bail
12. Refusal of application

DIVISION II—PROCEDURE ON ARREST

13. Procedure on arrest

PART IV**REVIEW OF DECISIONS OF BAIL AUTHORITIES**

14. Review of decisions of bail authorities
15. Telephone review
- 15a. Review of magistrate's decision by Supreme Court
16. Stay of release on application for review

PART V**ENFORCEMENT AND TERMINATION OF BAIL**

17. Non-compliance with bail agreement constitutes offence
- 17a. Guarantor must inform a member of the police force if the person fails to comply with the bail agreement
18. Arrest of eligible person on non-compliance with bail agreement
19. Estreatment
20. Termination of bail agreement

PART VI**MISCELLANEOUS**

21. Evidence
- 21a. Applications on behalf of the Crown
22. False information on bail applications
23. Period of release on bail not to count as part of sentence
24. This Act not to affect provisions of Justices Act relating to domestic violence
25. Non-application of 48 Geo. III c. 58 in this State
26. Regulations

BAIL ACT, 1985

being

Bail Act, 1985, No. 5 of 1985 [Assented to 7 March 1985]¹

as amended by

Statutes Amendment (Children's Bail) Act, 1986, No. 33 of 1986 [Assented to 10 April 1986]²
Bail Act Amendment Act, 1987, No. 32 of 1987 [Assented to 23 April 1987]³
Statute Law Revision Act, 1990, No. 23 of 1990 [Assented to 26 April 1990]⁴
Director of Public Prosecutions Act 1991 No. 49 of 1991 [Assented to 21 November 1991]⁵
Statutes Repeal and Amendment (Courts) Act 1991 No. 69 of 1991 [Assented to 12 December 1991]⁶

An Act to regulate the granting of bail.

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Bail Act, 1985*.

* * * * *

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“bail authority” means a court or person constituted as a bail authority by or under section 5:

“child” means a person who was, on the day on which an offence was allegedly committed by that person, under the age of 18 years:

“eligible person” means a person who is eligible to apply for release on bail under section 4:

¹ Came into operation 7 July 1985: *Gaz.* 9 May 1985, p. 1399.

² Came into operation 30 March 1987: *Gaz.* 26 February 1987, p. 440.

³ Came into operation 4 October 1987: *Gaz.* 30 July 1987, p. 273.

⁴ Came into operation (except Scheds. 4-7) 29 June 1990: *Gaz.* 14 June 1990, p. 1606.

⁵ Came into operation 6 July 1992: *Gaz.* 25 June 1992, p. 1869

⁶ Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.

Note: 1. Asterisks indicate repeal or deletion of text.

2. For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

“financial condition”, in relation to bail, means a condition requiring an applicant for bail to provide security or obtain guarantees, or requiring a guarantor to provide security; and “non-financial condition” has a correlative meaning:

“guarantee” means an agreement under section 7:

“guarantor” means a person who enters into a guarantee:

“guardian”, in relation to a child, means a parent of the child and any person who is the legal guardian of the child or who has the immediate custody and control of the child:

“telephone” includes any telecommunication device for the transmission of speech:

“victim”, in relation to an offence, means a person who allegedly suffers injury in consequence of the commission of the offence:

“working day” means any day except a Sunday or other public holiday.

(2) For the purposes of this Act, a person will be taken to have been convicted of an offence if a formal finding of guilt has been made against that person by a court whether or not the court proceeds to record a conviction.

Note: For definition of divisional penalties see Appendix 2.

Eligibility for bail

4. (1) The following persons are eligible for release on bail under this Act:

(a) a person who is appearing before a court in answer to a summons;

(ab) a person who has been taken into custody—

(i) on a charge of an offence;

or

(ii) in the case of a child—on suspicion of having committed an offence;

(b) a person who has been convicted of an offence but has not been sentenced for that offence;

(c) a person who has been convicted of, and sentenced for, an offence but has not exhausted all rights of appeal against the conviction or sentence, or to have it reviewed;

(d) a person who is appearing before a court for allegedly failing to observe a condition of a recognizance.

(2) Where a person who has been arrested is being detained pursuant to the *Summary Offences Act, 1953*, for a purpose related to the investigation of an offence, the person is not eligible for release on bail until the end of that detention.

Bail authorities

5. (1) The following are constituted as bail authorities for the purposes of this Act:

(a) the Supreme Court;

(b) a court before which the eligible person has been charged with the offence in respect of which the eligible person has been taken into custody;

(c) a court before which the eligible person has appeared for trial or sentencing;

(d) where the eligible person—

(i) is charged with a summary offence only;

or

(ii) is charged with an indictable offence but has not appeared before a court for trial or sentencing,

—any justice;

(e) where the eligible person has not appeared before a justice charged with the offence in respect of which the eligible person has been taken into custody—any member of the police force who is of or above the rank of sergeant or who is in charge of a police station;

(ea) where the eligible person is appearing before a court in answer to a summons or for allegedly failing to observe a condition of a recognizance—that court;

(f) a person authorized or required to release the eligible person on bail under subsection (2).

(2) Where a warrant for the arrest of any person is issued, the court or justice issuing the warrant may, by endorsement on the warrant, authorize or require a specified person, or a person of a specified class, to release the arrested person on bail.

PART II

BAIL AGREEMENTS AND GUARANTEES

Nature of bail agreement

6. (1) A bail agreement is an agreement under which a person who has been charged with, or convicted of, an offence makes an undertaking to the Crown—

(a) to be present throughout all proceedings (not being of an interlocutory nature)—

(i) where the person has not been convicted of the offence—relating to any preliminary examination of the charge and to the hearing and determination of the charge;

(ii) where the person is convicted of the offence—relating to sentencing and to any appeal from, or review of, the conviction or any sentence;

(b) to comply with any conditions as to the person's conduct while on bail stipulated in the agreement;

and

(c) if the agreement so provides—to forfeit to the Crown a sum stipulated in the agreement if the person fails, without proper excuse, to comply with a term or condition of the agreement.

(1a) For the purposes of subsection (1)—

(a) a child who has been arrested on suspicion of having committed an offence will, for so long as no charge is actually laid against the child, be taken to have been charged with that suspected offence;

and

(b) if the child is not charged with that suspected offence but with some other offence arising out of the same circumstances as that suspected offence—a bail agreement entered into by the child relates to that other offence.

(2) A bail agreement must be in the prescribed form.

(3) Where a bail authority decides to release a person on bail, the bail agreement may be entered into before the bail authority or, unless the bail authority otherwise directs, before—

(a) a justice;

(b) a member of the police force of or above the rank of sergeant or in charge of a police station;

(c) if the person is in prison—the person who is in charge of the prison;

or

(d) any other person specified by the bail authority or any other person of a class specified by the bail authority.

(4) Notwithstanding the provisions of any other Act, a bail authority may for any sufficient reason, on the application of a person on bail or the Crown, or of its own motion, vary the conditions of a bail agreement or revoke a bail agreement.

(5) Where a bail authority revokes a bail agreement, the bail authority (not being a member of the police force) may, if it is necessary to do so, issue a warrant for the arrest of the person who was released under the agreement.

Guarantee of bail

7. (1) A guarantee of bail is an agreement with the Crown under which a person—
- (a) guarantees that a person released under a bail agreement will comply with—
 - (i) all the terms and conditions of the agreement;
 - or
 - (ii) such of the terms and conditions of the agreement as are specified in the guarantee;
- and
- (b) undertakes that, if that person fails to comply with a term or condition of the bail agreement to which the guarantee relates, he or she (the guarantor) will forfeit to the Crown the sum (if any) specified in the guarantee.
- (2) A guarantee of bail must be in the prescribed form.
- (3) A guarantee of bail may be entered into before the bail authority granting bail or, unless the bail authority otherwise directs, before—
- (a) a justice;
 - (b) a member of the police force of or above the rank of sergeant or in charge of a police station;
 - (c) if the person who is to be released on bail is in prison—the person who is in charge of the prison;
- or
- (d) any other person specified by the bail authority or any other person of a class specified by the bail authority.
- (4) A bail authority may for any sufficient reason, on the application of a guarantor, vary the terms of the guarantee or revoke the guarantee.
- (5) Where a bail authority varies or revokes a guarantee, the bail authority may make such consequential variation of the terms of the bail agreement, or revoke the bail agreement, as appears appropriate in the circumstances.
- (6) A guarantor of bail must be of or above the age of 18 years.

PART III
APPLICATIONS FOR RELEASE ON BAIL
DIVISION I—APPLICATIONS GENERALLY

Form of application

8. (1) Subject to subsection (1a), an application of a person for release on bail—

(a) must be in the prescribed form;

(b) must contain the prescribed information;

and

(c) must be made in accordance with any procedure prescribed by the regulations.

(1a) An application for release on bail need not be made in accordance with subsection (1)—

(a) if the bail authority is satisfied that a less formal application should be permitted in view of the applicant's illiteracy, imperfect command of the English language, intellectual limitations or for any other proper reason;

or

(b) if the bail authority has access to an application previously made by the applicant and considers that a further written application is unnecessary.

(2) A person who has the custody of an eligible person must, at the request of that person—

(a) afford such assistance as that person reasonably requires to complete a written application for release on bail;

and

(b) if the custodian is not a bail authority—transmit the application as soon as practicable to a bail authority.

(2a) Where the eligible person is a child, a request may be made on behalf of the child under subsection (2) by a guardian of the child.

(3) Where a written application for release on bail comes before a bail authority for determination, the bail authority may proceed to consider and determine the application notwithstanding that the application was made in the first instance to some other bail authority.

Power of bail authority to make inquiries and to hear evidence

9. (1) Subject to this section, a bail authority to which an application for release on bail is made—

(a) may make inquiries, or direct that inquiries be made, of the applicant and other persons who may be able to furnish information relevant to the determination of the application;

and

(b) if the authority (not being a member of the police force) thinks fit—may take evidence on oath from the applicant or any other person who may be able to furnish information relevant to the determination of the application.

(2) Where a bail authority takes evidence, or proposes to take evidence, on oath under subsection (1)(b), it must at the request of the applicant or the Crown permit such examination, cross-examination or re-examination of the witness as may be appropriate in the circumstances.

Discretion exercisable by bail authority

10. (1) Where an application for bail is made to a bail authority by an eligible person (not being a person who has been convicted of the offence in respect of which he or she has been taken into custody), the bail authority should, subject to this Act, release the applicant on bail unless, having regard to—

- (a) the gravity of the offence in respect of which the applicant has been taken into custody;
- (b) the likelihood (if any) that the applicant would, if released—
 - (i) abscond;
 - (ii) offend again;
 - (iii) interfere with evidence, intimidate or suborn witnesses, or hinder police inquiries;
- (c) where there is a victim of the offence—any need that the victim may have, or perceive, for physical protection from the applicant;
- (d) any need that the applicant may have for physical protection;
- (e) any medical or other care that the applicant may require;
- (f) any previous occasions on which the applicant may have contravened or failed to comply with a term or condition of a bail agreement;
- (g) any other relevant matter,

the bail authority considers that the applicant should not be released on bail.

(2) Where the applicant has been convicted of the offence in respect of which he or she has been taken into custody, the bail authority has, subject to this Act, an unfettered discretion as to whether the applicant should be released on bail.

Conditions of bail

11. (1) Subject to this section, a bail authority may impose one or more of the conditions referred to in subsection (2).

(2) The conditions that may be imposed in relation to the grant of bail are as follows:

- (a) that the applicant agree—
 - (i) to reside at a specified address;
 - (ia) to reside at a specified address and to remain at that place of residence while on bail, not leaving it except for one of the following purposes:
 - (A) remunerated employment;
 - (B) necessary medical or dental treatment for the applicant;
 - (C) averting or minimizing a serious risk of death or injury (whether to the applicant or some other person);

or

- (D) any other purpose approved by an officer of the Department of Correctional Services or, in the case of a child, an officer of the Department of Community Welfare;
- (ii) where there is a victim of the offence in respect of which the applicant has been charged—to comply with such conditions relating to the physical protection of the victim that the authority considers should apply to the applicant while on bail;
- (iii) to be—
- (A) in the case of a child, under the supervision of an officer of the Department of Community Welfare;
- and
- (B) in any other case, under the supervision of an officer of the Department of Correctional Services,
- and to obey the lawful directions of the officer;
- (iv) to report to the police at a specified place and at specified times;
- (v) to surrender any passport that the applicant may possess;
- or
- (vi) to comply with any other condition as to the applicant's conduct that the authority considers should apply while on bail;
- (b) that the applicant provide the bail authority with written assurances from a stipulated number of persons, who are acceptable to the bail authority, that they are acquainted with the applicant and are confident that the applicant will comply with the terms and conditions of a bail agreement;
- (c) that the applicant agree to forfeit to the Crown a sum of money (to be stipulated in the bail agreement) if the applicant fails, without proper excuse, to comply with a term or condition of the bail agreement;
- (d) that the applicant provide security of a specified amount or value to secure payment of a monetary forfeiture agreed to under paragraph (c);
- (e) that the applicant obtain specified guarantees, or guarantees of a specified nature;
- (f) that a guarantor provide security of a specified amount or value to secure payment of a stipulated monetary forfeiture.
- (2a) In deciding on the conditions to be imposed in relation to a grant of bail, a bail authority should give special consideration to any submissions made by the Crown on behalf of a victim of the alleged offence.
- (3) A bail authority should not impose a condition under subsection (2)(a)(ia) or (iii) except on the application, or with the consent, of the Crown.
- (3a) A bail authority should not impose a condition under subsection (2)(a)(ia) without first obtaining a report (whether oral or in writing) from the Crown on the appropriateness of such a condition being imposed in the applicant's case.
- (4) A condition (other than a condition as to the conduct of the applicant while on bail) must not be imposed under this section unless the condition is, in the opinion of the bail authority, reasonably necessary to ensure that the applicant complies with the bail agreement.

(5) A financial condition must not be imposed under this section unless the bail authority is of the opinion that the object of ensuring that the applicant complies with the bail agreement cannot be properly secured by a non-financial condition or combination of non-financial conditions.

(6) It is a condition of every bail agreement that the person released in pursuance of the agreement will not leave the State for any reason—

(a) if the person is under the supervision of an officer of the Department of Correctional Services—without the permission of the Chief Executive Officer of the Department of Correctional Services, or his or her nominee;

(b) if the person is under the supervision of an officer of the Department of Community Welfare—without the permission of the Chief Executive Officer of the Department of Community Welfare, or his or her nominee;

(c) in any other case—without the permission of—

(i) a judge or justice;

or

(ii) a member of the police force of or above the rank of sergeant or in charge of a police station.

(7) A condition imposed under this section must be stipulated in the bail agreement.

(7a) Where it is a condition of a bail agreement that the person released in pursuance of the agreement will remain at a particular place of residence, a member of the police force or an officer of the Department of Correctional Services or the Department of Community Welfare authorized by the Minister for the purpose may enter the residence at any time for the purpose of ascertaining whether or not the person is complying with the condition.

(7b) A person must not hinder a person referred to in subsection (7a) in the exercise of powers under that subsection.

Penalty: Division 7 fine.

(8) Where it is a condition of a bail agreement that the person released in pursuance of this agreement will be under the supervision of an officer of the Department of Community Welfare or the Department of Correctional Services and obey the lawful directions of that officer, the officer to whom the person is assigned for supervision may give reasonable directions—

(a) requiring that person to report to the officer on a regular basis;

(b) requiring that person to notify the officer of any change in the person's place of residence, or in the person's employment;

or

(c) on any other matter stipulated by the bail authority.

(9) Where—

(a) a bail authority imposes a condition under this section;

but

(b) the applicant remains in custody because the condition is not fulfilled,

the applicant must, not more than five working days after the condition is imposed (if he or she is not sooner released), be brought back before a bail authority for a review of the condition.

(10) A bail authority may, on a review of a condition under subsection (9)—

- (a) confirm the condition;
- (b) vary the condition;
- (c) revoke the condition;
- (d) impose any other condition under this section that the bail authority thinks fit.

(11) Where a bail authority imposes a condition requiring a person to remain at a particular place of residence while on bail, the bail authority must ensure that a copy of the bail agreement is furnished to the Minister responsible for the Department of Correctional Services or, if the person is a child, to the Minister responsible for the Department of Community Welfare.

(12) Where a bail authority imposes a condition requiring a person to be under the supervision of an officer of the Department of Correctional Services or the Department of Community Welfare, the bail authority must ensure that a copy of the bail agreement is furnished to the Minister responsible for the relevant Department.

Refusal of application

12. (1) Where a bail authority decides to refuse an application for release on bail, the bail authority must make a written record of the reasons for its decision.

(2) The refusal of an application for release on bail does not preclude further applications.

DIVISION II—PROCEDURE ON ARREST

Procedure on arrest

13. (1) Where a member of the police force arrests a person who is, upon arrest, eligible to apply for release on bail, the member of the police force—

- (a) must, as soon as reasonably practicable after delivering the arrested person to a police station after making the arrest, take reasonable steps to ensure that the arrested person and, where 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) must ensure that the arrested person and, where 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 applies unsuccessfully to a member of the police force for release on bail must, if the eligible person so requests or, in the case of a child, if the child or a guardian so requests, be brought as soon as practicable before a justice for the purpose of making an application for release on bail.

(3) An eligible person must, if not released beforehand, be brought before a justice on the charge in relation to which he or she was arrested as soon as reasonably practicable on the next working day following the day of arrest but in any event not later than 4 p.m. on that day.

(4) A justice before whom a person is brought under subsection (3) must inquire whether that person desires to apply for release on bail and, if the person to whom the inquiry is directed answers affirmatively, the justice must afford the person a reasonable opportunity to apply for release on bail.

