

SOUTH AUSTRALIA

SHERIFF'S ACT 1978

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 17 October 1996.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Repeal and transitional provision
4. Interpretation
5. The Sheriff
6. Deputy Sheriffs and sheriff's officers
7. Provision for case where sheriff should not execute process
8. Duties of the sheriff
9. Sheriff to attend at criminal sittings
10. Procedure on arrest
11. Offences
12. Immunity
13. Summary proceedings
14. Sheriff not disqualified from being justice of the peace
15. No licence required for the purpose of sheriff's sales
16. Regulations

**APPENDIX
LEGISLATIVE HISTORY**

SHERIFF'S ACT 1978

being

Sheriff's Act 1978 No. 82 of 1978
[Assented to 30 November 1978]¹

as amended by

Sheriff's Act Amendment Act 1991 No. 81 of 1991 [Assented to 12 December 1991]¹

Statutes Amendment (Courts Administration Staff) Act 1995 No. 85 of 1995 [Assented to 30 November 1995]²

Statutes Amendment (Attorney-General's Portfolio) Act 1996 No. 67 of 1996 [Assented to 15 August 1996]³

¹ Came into operation 6 July 1992: *Gaz.* 2 July 1992, p. 209.

² Came into operation 14 December 1995: *Gaz.* 14 December 1995, p. 1641.

³ Came into operation 17 October 1996: *Gaz.* 17 October 1996, p. 1361.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

An Act to provide for the appointment of the sheriff and sheriff's officers and to define their powers and duties; to amend the Supreme Court Act, 1935-1975; and for other purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Sheriff's Act 1978*.

Commencement

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

Repeal and transitional provision

3. (1) Sections 84 to 105 (inclusive) of the *Supreme Court Act 1935-1975* and the heading immediately preceding those sections, are repealed.

* * * * *

(3) A person holding office immediately before the commencement of this Act as sheriff or a deputy sheriff under the provisions repealed by subsection (1) of this section shall be deemed to have been appointed, upon the commencement of this Act, as sheriff or a deputy sheriff under this Act.

(4) A person holding office immediately before the commencement of this Act as a sheriff's officer under a provision repealed by subsection (1) of this section shall be deemed to have been appointed upon the commencement of this Act as a sheriff's officer under the corresponding provisions of this Act.

Interpretation

4. In this Act, unless the contrary intention appears—

"**court**" means—

- (a) the Supreme Court; or
- (b) the District Court; or
- (ba) the Environment, Resources and Development Court; or
- (c) the Magistrates Court;

"**judge**" includes a magistrate or a justice.

The Sheriff

5. (1) There will be a sheriff.
- (2) The sheriff will be an officer of the Supreme Court.
- (3) The sheriff will be appointed under the *Courts Administration Act 1993*.

(4) A person cannot be appointed as sheriff, nor can a person holding that office be dismissed or reduced in status after appointment, except on the recommendation, or with the concurrence, of the Chief Justice of the Supreme Court.

Deputy Sheriffs and sheriff's officers

6. (1) There will be such deputy sheriffs and sheriff's officers (appointed under the *Courts Administration Act 1993*) as are necessary to assist the sheriff in the performance of his or her duties.

(2) A person cannot be appointed as a deputy sheriff or sheriff's officer, nor can a person so appointed be dismissed or reduced in status after appointment, except on the recommendation, or with the concurrence, of the sheriff.

(3) The sheriff may, by instrument in writing, appoint any person to be a deputy sheriff or sheriff's officer—

- (a) for the purposes of a particular proceeding; or
- (b) for the period specified in the instrument.

(4) A person appointed under subsection (3) is not, by virtue of that appointment, a Public Service employee and is entitled to such fees as are prescribed.

(5) A deputy sheriff has, in relation to any matter within the scope of his or her appointment, the powers, duties and immunities of the sheriff, but is subject to direction by the sheriff.

Provision for case where sheriff should not execute process

7. (1) Where—

- (a) the sheriff is unable, for any reason, to carry out any of his duties; or
- (b) it is for any other reason expedient to exercise the powers conferred by this subsection,

a court or a judge may appoint a fit and proper person to execute any process, or to carry out the duties of the sheriff in relation to any matter.

(2) Where—

- (a) any process is directed against the sheriff; or
- (b) it is otherwise improper for the sheriff to execute any process,

the court or a judge may appoint any fit and proper person to execute that process.

(3) A person appointed pursuant to subsection (1) or subsection (2) of this section has, in relation to any matter within the scope of his appointment, the powers, duties and immunities of the sheriff.

Duties of the sheriff

8. The sheriff shall—

- (a) execute or cause to be executed all process, civil or criminal, directed to him by a court; and
- (b) perform all other duties imposed on the sheriff by or under an Act; and
- (c) shall observe and carry out any direction of a court.

Sheriff to attend at criminal sittings

9. (1) The sheriff shall—

- (a) attend personally; or
- (b) cause one of his officers to attend,

any criminal sittings of the Supreme Court or a district criminal court.

(2) The sheriff shall, at the request of a court—

- (a) attend personally; or
- (b) cause one of his officers to attend,

any sittings of that court.

Procedure on arrest

10. Subject to the provisions of any other Act, where a person is arrested by the sheriff, a deputy sheriff or a sheriff's officer, the person must be brought before a court as soon as reasonably practicable and must be kept in the meantime in safe custody.

Offences

11. (1) Any person who hinders the sheriff, a deputy sheriff, a sheriff's officer, or a person assisting the sheriff, a deputy sheriff or a sheriff's officer, in the execution of his duty shall be guilty of an offence.

Maximum penalty: \$2 500 or 6 months imprisonment.

(2) The sheriff, a deputy sheriff or a sheriff's officer, may arrest any person who commits an offence under subsection (1) of this section.

(3) A person arrested under subsection (2) of this section shall be brought forthwith before a justice to be dealt with according to law.

(4) Any person who, having reasonable notice that he is required to assist the sheriff in arresting any person, or in preserving the peace, fails to do so without reasonable excuse, shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

(5) A person who falsely represents himself or herself by word or conduct to be the sheriff, a deputy sheriff or a sheriff's officer is guilty of an offence.

Maximum penalty: \$2 500 or 6 months imprisonment.

Immunity

12. (1) Subject to this section, civil liability for any wrongful or negligent act or omission of the sheriff, a deputy sheriff or a sheriff's officer in the course of carrying out duties assigned to him by or under this Act shall be determined in accordance with the law of torts.

(2) The sheriff, a deputy sheriff or a sheriff's officer incurs no personal liability in tort for any act or omission in the course of carrying out those duties.

(3) Any action or claim to which the sheriff, a deputy sheriff or a sheriff's officer would, but for subsection (2) of this section, be liable lies against the Crown.

Summary proceedings

13. Proceedings for an offence against this Act shall be disposed of summarily.

Sheriff not disqualified from being justice of the peace

14. The sheriff is not disqualified, by reason of his office, from appointment as a justice of the peace.

No licence required for the purpose of sheriff's sales

15. No licence or other authority is required under any Act by the sheriff, a deputy sheriff or a sheriff's officer for the purpose of selling real or personal property (by auction or otherwise) in pursuance of the process of a court.

Regulations

16. The Governor may, by regulation—

- (a) regulate the performance of the duties of the sheriff; and
- (b) prescribe, and provide for the recovery of, fees and expenses payable to the sheriff in relation to the execution of process, the service of documents and any other duty of the sheriff under this Act or any other Act; and
- (c) provide for the settlement of disputes as to the amount payable in any case; and
- (d) provide for the giving of security for the payment of fees; and
- (e) prescribe conditions upon which property seized in execution may be withdrawn from sale.

APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Statutes Amendment (Courts Administration Staff) Act 1995, s. 20)

20. (1) An appointment to a non-judicial office or position made or purportedly made before the commencement of this Act in accordance with an Act that is amended by this Act will be taken to have been duly made under the statutory provisions that, as amended by this Act, provide for the making of such an appointment as if this Act had been enacted and in force at the relevant time.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3(2):	repealed by 81, 1991, s. 3
Section 4:	definition of "court" substituted by 81, 1991, s. 4(a); amended by 67, 1996, s. 27
Section 5:	definition of "judge" substituted by 81, 1991, s. 4(b)
Section 5(3):	substituted by 81, 1991, s. 5
Section 6:	amended by 85, 1995, s. 13
Section 6(1):	substituted by 81, 1991, s. 5
Section 6(2):	amended by 85, 1995, s. 14(a)
Section 8:	amended by 85, 1995, s. 14(b)
Section 10:	amended by 81, 1991, s. 6
Section 11(1):	substituted by 81, 1991, s. 7
Section 11(5):	amended by 67, 1996, s. 28(a), (b)
Section 12:	inserted by 67, 1996, s. 28(c)
Section 16:	amended by 81, 1991, s. 8
	amended by 67, 1996, s. 29