

SOUTH AUSTRALIA

BAIL REGULATIONS, 1987

REGULATIONS UNDER THE BAIL ACT, 1985

Bail Regulations, 1987

being

No. 170 of 1987: *Gaz.* 30 July 1987, p. 286¹

¹ Came into operation 4 October 1987: reg. 2.

2.

1. These regulations may be cited as the *Bail Regulations, 1987*.

2. These regulations will come into operation on 4 October, 1987.

3. In these regulations—

"**the Act**" means the *Bail Act, 1985*.

4. (1) For the purposes of the Act, the following forms, set out in the first schedule, must be used:

Form 1—Application for release on bail (section 8(1))

Form 2—Written record of the reasons for the refusal of a bail application (section 12(1))

Form 3—Form granting bail (sections 10 and 11)

Form 4—Bail agreement (section 6(2))

Form 5—Guarantee of bail (section 7(2))

Form 6—Application for review of bail (section 14)

Form 7—Application to vary the conditions of a bail agreement or to revoke a bail agreement (section 6(4))

Form 8—Application to vary the terms of a guarantee of bail or to revoke a guarantee of bail (section 7(4))

Form 9—Notice of discontinuance (section 16(2)).

(2) (a) Form 2 is not required to be used by a Supreme Court Judge.

(b) An application to the Supreme Court for a review of a decision of a bail authority is not to be in the form of form 6 but in the form required by Rules made by the Supreme Court.

5. (1) For the purposes of section 13(1)(b)(i) of the Act, a written statement explaining how, and to what authorities, an application for release on bail may be made under the Act must be in the form set out in the second schedule.

(2) If it appears that an arrested person's native language is a language other than English, the written statement may be in the form of a translation of the form set out in the second schedule into that other language.

6. The *Bail Regulations, 1985*, are revoked.

FIRST SCHEDULE
BAIL ACT, 1985

section 8(1)

SOUTH AUSTRALIA
FORM 1—APPLICATION FOR RELEASE ON BAIL

I apply for bail.

(Given names)

(Surname)

.....
(Applicant's signature)

Date of application / /19

Time of application hours.

DECISION OF BAIL AUTHORITY

Bail Refused (Form 2—Written record of the reasons for the refusal of a bail application—must be completed)

Bail Granted (Form 3—Form granting bail—must be used)

(Tick appropriate box)

.....
(Bail authority's signature)

.....*

Date of decision / /19

Time of decision hours

*Please print the name of the bail authority in full.

BAIL ACT, 1985

section 12(1)

FORM 2—WRITTEN RECORD OF THE REASONS FOR THE REFUSAL OF A BAIL APPLICATION

NAME OF PERSON WHO HAS APPLIED FOR BAIL:

..... (Given names) (Surname)

- 1. The gravity of the offence (list offences considered)
2. The likelihood that the applicant would, if released, abscond—
(a) History of prior breaches of bail (provide details)
(b) Lack of fixed address (provide details)
(c) Lack of social ties (provide details)
(d) Lack of employment (provide details)
(e) Other reasons for fear of absconding
3. The likelihood that the applicant would, if released, offend again—
(a) Provide details of prior offences
(b) Other reasons that make applicant likely to reoffend
4. Other relevant reasons for refusing bail (e.g. interfere with evidence, intimidate or suborn witnesses, hinder police inquiries, physical protection)

..... (Bail authority's signature) *

Date / /19

Time hours

*Please print the name of the bail authority in full.

NOTE: PLEASE ENSURE THAT THE APPLICANT IS GIVEN A COPY OF THIS FORM

ACKNOWLEDGEMENT OF RECEIPT

I acknowledge that I have been provided with—

(a) a copy of the pamphlet "Your Rights and Responsibilities";

and

(b) a copy of the reasons for the refusal of my application to be released on bail.

.....
(Applicant's signature)

Date / /19

Time hours

BAIL ACT, 1985

sections 10 and 11

FORM 3—FORM GRANTING BAIL

..... has been granted
(Given names) (Surname)

bail subject to the conditions listed below and specified on the appropriate bail agreement.

CONDITIONS

- 1. That the person will reside at
- 2. That the person will reside at
and, subject to the *Bail Act, 1985*, remain at that place of residence while on bail.
- 3. That the person will not make contact with
- 4. That the person will place himself or herself under the supervision of an officer of the Department of Community Welfare/Department of Correctional Services and obey the lawful directions of the officer.
- 5. That the person will report to the police at
between the hours of and each day/week commencing on
- 6. That the person will surrender any passport that he or she may possess.
- 7. That the person agrees to forfeit to the Crown the sum of \$ if he or she fails to comply with a term or condition of the bail agreement.
- 8. Other
.....
.....
.....

.....
(Bail authority's signature)

Date / /

Time hours

*Please print the name of the bail authority in full.

BAIL ACT, 1985

section 6(2)

SOUTH AUSTRALIA
FORM 4—BAIL AGREEMENT

PART A

I of
(Given names) (Surname) (Address)
.....
being charged with/convicted of
(Offence)

AGREE to be present at the
..... at
(Name of court)

on the day of 19, at
am/pm, or at any other time when called upon, and to be present throughout all proceedings relating to this
matter until the matter is disposed of.

I AGREE TO COMPLY WITH ALL OF THE CONDITIONS OF BAIL LISTED IN THIS AGREEMENT.

I UNDERSTAND THAT IF I DO NOT APPEAR WHEN REQUIRED, OR IF I FAIL TO COMPLY WITH A
CONDITION OF BAIL, THEN I MAY BE—

- * LIABLE TO BE ARRESTED WITH OR WITHOUT A WARRANT
- * LIABLE TO PAY ANY MONEY THAT I HAVE AGREED TO PAY TO THE CROWN IF I BREACH THIS AGREEMENT
- * CONVICTED OF AN OFFENCE

CONDITIONS OF BAIL

1. I agree that I will not leave the State for any reason without lawful permission under the *Bail Act, 1985*.
2. I agree that—
 - (a) I will reside at
 - (b) I will reside at
and, subject to the *Bail Act, 1985*, will remain at that place of residence while on bail.
 - (c) I will not make contact with
 - (d) I will place myself under the supervision of an officer of the Department of Community Welfare/Department of Correctional Services and obey the lawful directions of the officer.
 - (e) I will report to the police at
.....
between the hours of and each
day/week commencing on
 - (f) I will surrender any passport that I possess.
 - (g) I will forfeit to the Crown the sum of \$ if I fail to comply with a term or
condition of this bail agreement.

8.

(h) (Other)
.....
.....

.....
(Person's signature)

Date / /19

Time hours

Witnessed by an authorized person

.....
(Title, rank or other authorization)

Date / /19

Time hours

NOTE: PLEASE ENSURE THAT IF CONDITION 2(b), 2(d) OR 2(e) APPLIES THAT A COPY OF THIS AGREEMENT IS SENT TO THE APPROPRIATE DEPARTMENT OR POLICE STATION

PART B: TO BE COMPLETED BY BAIL AUTHORITY IF A CONDITION OF BAIL IS ALTERED

Date
Bail Authority
Details of new condition
.....
.....

.....
(Bail authority) (Person granted bail)

Date
Bail Authority
Details of new condition
.....
.....
.....

.....
(Bail authority) (Person granted bail)

Date
Bail Authority
Details of new condition
.....
.....
.....

.....
(Bail authority) (Person granted bail)

BAIL ACT, 1985

section 7(2)

SOUTH AUSTRALIA
FORM 5—GUARANTEE OF BAIL

I/WE of.....
(Given names) (Surname) (Address)

and of

(Given names) (Surname)

(Address)

GUARANTEE that
(Person to be released on bail)

will comply with—

- * all of the terms and conditions of his or her bail agreement
- * those terms and conditions of his or her bail agreement specified in this guarantee.

I/WE UNDERTAKE that if that person fails to comply with a term or condition of the bail agreement then I/we will forfeit to the Crown the sum of \$.

I/WE DECLARE that—

1. I/we know
(Person to be released on bail)
2. I/we are of or above the age of 18 years.
3. I/we will ensure that the person to be released on bail will comply with the terms and conditions of his or her bail agreement in relation to which this guarantee is given.
4. I/we understand that if I/we know, or have reasonable grounds to suspect, that the person to be released on bail has failed to comply with a term or condition of the agreement in relation to which this guarantee is given, then I/we are required to take reasonable steps to inform a member of the police force that the failure has, or may have, occurred, and that if I/we fail to do so then I/we may be liable to a fine of up to \$1 000.
5. I/we understand that this guarantee is in force for so long as the person is on bail, subject to the terms of this guarantee being varied or the guarantee being revoked.

TERMS AND CONDITIONS (IF ANY) TO WHICH THIS GUARANTEE IS RESTRICTED

.....
(Guarantor's signature)

Date / /19

Time hours

.....
(Guarantor's signature)

Date / /19

Time hours

Witnessed by an authorized person

.....
(Title, rank or other authorization)

Date / /19

Time hours

BAIL ACT, 1985

section 14

SOUTH AUSTRALIA
FORM 6—APPLICATION FOR REVIEW OF BAIL

..... of
(Given names) (Surname) (Address)

is charged with/has been convicted of

I, of
(Name of applicant) (Address)

make application to the
(Name of Court)

at
to review a decision of a bail authority, namely

made at
on the day of, 19 ..

.....
(Applicant's signature)

Date / /19 .

NOTICE OF HEARING

- * The person applying for bail
- To: * Police Prosecutor at
- * Crown Prosecutor

NOTE: That the above matter has been listed for hearing at
(Name of court)

on the day of, 19 ..,
at am/pm when all parties to the matter must attend.

.....
(Court officer)

Date / /19

*Delete where not applicable

BAIL ACT, 1985

section 6(4)

SOUTH AUSTRALIA
FORM 7—APPLICATION TO VARY THE CONDITIONS OF A BAIL AGREEMENT
OR TO REVOKE A BAIL AGREEMENT

..... of
(Given names) (Surname) (Address)

is charged with/has been convicted of

and was granted bail on

I, of
(Name of applicant) (Address)

make application to
(Name of bail authority)

at to

- * vary the conditions of the bail agreement
- * revoke the bail agreement

I make this application on the following grounds:

.....
.....
.....
.....

.....
(Applicant's signature)

Date / /19 .

NOTICE OF HEARING

- * The person on bail
- To: * Police Prosecutor at
- * Crown Prosecutor

NOTE that the above matter will be heard at
.....
on the day of, 19 .. ,
at am/pm when all parties to the matter
must attend.

.....
Date / /19 .

*Delete where not applicable

BAIL ACT, 1985

section 7(4)

SOUTH AUSTRALIA
FORM 8—APPLICATION TO VARY THE TERMS OF A GUARANTEE OF BAIL OR TO
REVOKE A GUARANTEE OF BAIL

..... of
(Given names) (Surname) (Address)

is charged with/has been convicted of

and was granted bail on

I, of
(Guarantor) (Address)

make application to
(Name of bail authority)

at to

- * vary the terms on my guarantee of bail
- * revoke my guarantee of bail

I make this application on the following grounds:

.....
.....
.....
.....

.....
(Guarantor's signature)

Date / /19

NOTICE OF HEARING

- * The Guarantor
- To: * The person on bail
- * Police Prosecutor at
- * Crown Prosecutor

NOTE that this matter will be heard at

on the day of, 19 ,
at am/pm when all parties to the matter must attend.

Date / /19

*Delete where not applicable

14.

BAIL ACT, 1985

section 16(2)

SOUTH AUSTRALIA
FORM 9—NOTICE OF DISCONTINUANCE

THE CROWN advises that the application to review the decision
made on the day of, 19,
by
(Bail authority/Magistrate)

.....
to grant bail to
(Given names) (Surname)
.....
(Address)

is withdrawn.

.....
(Person acting on behalf of the Crown)
.....*

Date / /19

Time hours

*Please print the name of the person acting on behalf of the Crown in full.

SECOND SCHEDULE
BAIL ACT, 1985
Section 13(1)(b)(i)—Statement
"YOUR RIGHTS AND RESPONSIBILITIES"

1. GENERAL

The law of bail in South Australia is contained in the *Bail Act, 1985*.

This pamphlet is designed to help you decide whether you are eligible to apply for bail, and to assist you in making such an application.

It will also assist people who want to "stand bail" (i.e. be a guarantor) for you.

If there are things you do not understand, ask the police or telephone your lawyer.

If you do not have a lawyer and you want help you should apply to the Legal Services Commission, telephone (08) 224 1222.

2. WHAT IS BAIL?

Bail is an agreement between the Crown and you requiring you to be at your court hearings and to obey any special conditions set by the Court during the period of its operation.

3. CAN I APPLY FOR BAIL?

You can apply for bail if—

- (a) you are appearing before a court in answer to a summons and you might be remanded in custody;
- (b) you are in custody on a charge of an offence;
- (c) you have been convicted of an offence but not yet sentenced;
- (d) you have been convicted and sentenced, but intend to appeal;
- (e) you are appearing in court for allegedly failing to observe a condition of a recognizance (ie. a bond).

You can also apply for bail if you have been arrested on suspicion of committing an offence and you were under the age of 18 years at the time you allegedly committed the offence and you are in the custody of a member of the police force in charge of a police station.

4. I THINK I QUALIFY FOR BAIL.

TO WHOM DO I APPLY?

There are various "bail authorities" under the Act: the Supreme Court, the Court you were charged before, any Court before which you must appear in relation to the matter, a justice of the peace, a sergeant of police, a police officer of a rank higher than sergeant, a police officer in charge of a police station, the person specified on the warrant for your arrest. Depending on your circumstances you can apply to one of these authorities and you should check with a Court officer, your lawyer or a police officer.

HOW DO I APPLY?

Your application for bail must be in writing. Application forms are available from Court and Police Stations and are easy to understand. You must answer all questions.

If you were under the age of 18 years at the time you allegedly committed the offence for which you are arrested, your parent, guardian or custodian may assist you to make your application.

If you do not understand something, ask a Court officer, your lawyer or a police officer.

5. ON WHAT GROUNDS IS BAIL GRANTED?

Whether or not you are granted bail will depend on many factors, including the seriousness of the alleged offence; the likelihood that you may abscond, offend again, or interfere with a witness; any need you or an alleged victim may have for physical protection; medical matters; whether you have previously not obeyed bail conditions; and any other relevant matter.

6. WHAT IF BAIL IS REFUSED?

If your application is unsuccessful, you can ask for that decision to be reviewed. You can also ask for a review of the conditions imposed on you by the bail agreement.

Generally, the review is made by a Magistrate, who can be contacted (by telephone if necessary) by the person who made the original decision.

Once the Magistrate has been told the facts of the case and the reason why your application was refused, you have the right to put your case. The Magistrate must come to a decision straight away.

7. WHAT IS MEANT BY MY BAIL AGREEMENT?

Failure to obey any conditions of a bail agreement is a criminal offence and can, in some cases, be punished by up to three years jail.

In addition, any moneys pledged to the Crown as part of the agreement may be forfeited and, if necessary, collected in the same way as a fine.

8. WHAT ARE THE CONDITIONS OF BAIL?

They are the rules that you must obey in return for your freedom. They may include such restrictions as not seeing or contacting certain people; staying away from certain places; agreeing to live at a certain address; being under the supervision of a Correctional Services Officer or an officer of the Department for Community Welfare; reporting to the police on a regular basis; or giving up your passport. Conditions are set by the Court to suit individual cases.

9. WHAT IS MY GUARANTOR AND WHAT DOES HE HAVE TO DO?

A guarantor is any person who enters into a guarantee that you will, if freed on bail, obey all conditions of such bail as are set by the police or the Court. Such conditions may be that you agree to reside at a specified address; that you be supervised by an officer of the Department of Correctional Services or of the Department of Community Welfare; that you report to police at a specified place and at specified times; or any other condition considered necessary to suit your particular case.

10. CAN MY GUARANTOR BE LIABLE?

Also if you fail to obey any of the terms or conditions of the bail agreement, your guarantor may have to forfeit to the Crown any sum of money referred to in that guarantee and, in certain circumstances, may be liable to a fine.

11. CONCLUSION

You should also know that your guarantor may, at any time, apply to a court for his or her guarantee to be varied or revoked. For example, this could happen if your guarantor is afraid you may abscond or otherwise not comply with the conditions of your bail agreement.