

South Australia

CRIMINAL LAW (SENTENCING) REGULATIONS 2000

REGULATIONS UNDER THE CRIMINAL LAW (SENTENCING) ACT 1988

Criminal Law (Sentencing) Regulations 2000

being

No. 16 of 2000: *Gaz.* 2 March 2000, p. 1293¹

as varied by

No. 55 of 2000: *Gaz.* 25 May 2000, p. 2709²

No. 42 of 2001; *Gaz.* 31 May 2001, p. 1941³

¹ Came into operation 6 March 2000: reg. 2.

² Came into operation 1 July 2000: reg. 2.

³ **Came into operation 1 July 2001: reg. 2.**

NOTE:

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

SUMMARY OF PROVISIONS

1. Citation
2. Commencement
3. Revocation
4. Interpretation
5. Forms
6. Fees
7. Enforcement of bonds and guarantees (s. 57)
8. Review of written payment arrangements (s. 64)
9. Applications relating to registration of court order for pecuniary sums (s. 68)
10. Modification of bankruptcy laws (seizure of personal property)(s. 70G)
11. Enforcement of community service orders
12. Enforcement of non-pecuniary orders

SCHEDULE

APPENDIX LEGISLATIVE HISTORY

Citation

1. These regulations may be cited as the *Criminal Law (Sentencing) Regulations 2000*.

Commencement

2. These regulations will come into operation on 6 March 2000.

Revocation

3. The *Criminal Law (Sentencing) Regulations 1988*, as varied, are revoked.

Interpretation

4. In these regulations—

"the Act" means the *Criminal Law (Sentencing) Act 1988*.

Forms

5. (1) The forms set out in the schedule to these regulations are prescribed, and must be used, for the purposes of the Act.

(2) If any enforcement proceedings are to be taken against a guarantor of a bond, the relevant forms in the schedule must be modified accordingly.

(3) If any document the form of which is prescribed by the schedule is to be served on a company, the relevant form must be modified accordingly.

Fees

6. The following fees are prescribed for the purposes of the Act:

1. Reminder notice fee (s. 65(3))	\$13.40
2. Issuance of penalty enforcement order:	
(a) suspension of driver's licence (s. 70E)	\$20.50
(b) restriction on transacting business with Registrar of Motor Vehicles (s. 70F)	\$20.50
(c) order for sale of property (s. 70G)	\$58.00
(d) garnishee order (s. 70H)	\$58.00
3. Service and execution of penalty enforcement order—a fee comprised of the costs reasonably incurred in the service or execution, including—	
· postage and telephone calls;	
· travelling, accommodation and necessary meals;	
· labour in seizing and removing seized property;	
· cartage, storage and insurance of seized property;	
· maintenance of seized animals;	
· engaging assistants, appraisers, auctioneers or agents;	
· advertisements;	
· conducting sales of seized property.	

Enforcement of bonds and guarantees (s. 57)

7. (1) If, pursuant to section 57(1) of the Act, a probative court decides to issue a summons or a warrant of arrest to bring a probationer before the court on a written application made by the Crown alleging breach of bond, the court must endorse the application accordingly.

5.

(2) The court should first issue a summons to a probationer alleged to have breached a bond unless the court has reasonable grounds to believe—

- (a) that service of a summons is not likely to be effected; or
- (b) that the probationer is not likely to comply with a summons.

(3) A summons must be served on the probationer—

- (a) personally; or
- (b) if personal service is not practicable or the probationer cannot, after reasonable enquiries, be found, in such other manner as the court may direct,

not later than 2 clear working days before the date specified in the summons for the hearing of the matter.

(4) If a probationer fails to appear before the probative court in compliance with a summons and the court is satisfied that the summons was duly served on the probationer, the court may, instead of issuing a warrant, deal with the application in the absence of the probationer.

(5) If a guarantor fails to appear before the probative court in compliance with a summons and the court is satisfied that the summons was duly served on the guarantor, the court may make orders in relation to enforcing the guarantee in the absence of the guarantor.

(6) If a probationer is found guilty of an offence committed during the term of a bond by a court that has jurisdiction to deal with proceedings for breach of the bond, the court may, on an oral application by the Crown, proceed to hear and determine the application forthwith if it is satisfied that the probationer has had adequate notice of the intention of the Crown to make such an application.

Review of written payment arrangements (s. 64)

8. The Manager of the Penalty Management Unit must cause each written arrangement entered into under section 64 of the Act to be reviewed on a regular basis, at intervals not exceeding 6 months.

Applications relating to registration of court order for pecuniary sums (s. 68)

9. (1) An application made by an authorised officer under section 68 of the Act—

- (a) for registration as a charge over land of an order of a court imposing a pecuniary sum;
or
- (b) for cancellation of the registration of such an order,

must be made using Form A3 of the forms approved by the Registrar-General under the *Real Property Act 1886*.

(2) An application referred to in subregulation (1) need not be accompanied by a duplicate certificate of title for the land.

(3) No fee is payable in respect of lodging an application referred to in subregulation (1).

Modification of bankruptcy laws (seizure of personal property)(s. 70G)

10. For the purposes of section 70G(3) of the Act, the laws of bankruptcy are modified to the extent that the following personal property of a debtor, although not divisible amongst creditors in a bankruptcy, is available for seizure and sale pursuant to an order for sale under section 70G:

- (a) any motor vehicle, of whatever value; and
- (b) property—
 - (i) that was purchased or acquired with exempt money (being exempt money within the meaning of section 116 of the *Bankruptcy Act 1966* of the Commonwealth); and
 - (ii) that is not otherwise excluded from seizure and sale by virtue of the application of the laws of bankruptcy.

Enforcement of community service orders

11. (1) A notice issued under section 71(3)(a) of the Act must be served on the defendant—

- (a) personally; or
- (b) if personal service is not practicable or the defendant cannot, after reasonable enquiries, be found, in such other manner as the court may direct,

not later than 2 clear working days before the date specified in the notice for the hearing of the matter.

(2) If the defendant fails to attend before the court in compliance with the notice and the court is satisfied that the notice was duly served on the defendant, the court may deal with the matter in the absence of the defendant.

Enforcement of non-pecuniary orders

12. (1) A notice under section 71A(1)(a) of the Act must be served on the defendant—

- (a) personally; or
- (b) if personal service is not practicable or the defendant cannot, after reasonable enquiries, be found, in such other manner as the court may direct,

not later than 2 clear working days before the date specified in the notice for the hearing of the matter.

(2) If the defendant fails to attend before the court in compliance with the notice and the court is satisfied that the notice was duly served on the defendant, the court may deal with the matter in the absence of the defendant.

7.

SCHEDULE

CRIMINAL LAW (SENTENCING) ACT 1988

FORM 1

Warrant of Commitment (Imprisonment on Conviction)

<i>COURT PARTICULARS</i>	
Court of origin	

<i>DEFENDANT'S PARTICULARS</i>	
Name	Date of birth
Address	

<i>DETAILS OF THE OFFENCE(S) AND THE TERM(S) OF IMPRISONMENT ORDERED FOR THE OFFENCE(S)</i>				
File No.	Count No.	Offence (and offence date)	Sentence imposed	CIC Levy
Total sentence of imprisonment to be served			Total CIC Levy	\$
Imprisonment commencement date			Amount paid	\$
Non-parole period set (or minimum term)			Amount outstanding	\$
Non-parole period commencement date				
Name of person who imposed penalty				
Date order made by court				

Date warrant issued	
---------------------	--

To the Commissioner of Police for the State of South Australia and each police officer, and to the Executive Director of the Department of Correctional Services.

The defendant named in this warrant has been dealt with by a court and sentenced to a term of imprisonment. Particulars of the court that imposed the penalty, the charge(s) against the defendant and the sentence(s) imposed appear on this warrant.

You, the Commissioner of Police and police officers, are directed to convey the defendant to a correctional institution and you, the Executive Director, are directed to detain the defendant for such period of time as this warrant directs.

Judge/Magistrate

CRIMINAL LAW (SENTENCING) ACT 1988 (s. 38)

FORM 2

Suspended Sentence Bond

DETAILS OF THE COURT THAT IMPOSED THE SENTENCE(S)

Name of court

DETAILS OF THE PROBATIONER

Name

Date of Birth

Address

DETAILS OF THE OFFENCE(S) TO WHICH THE BOND RELATES AND OF THE SENTENCE(S) THAT THE COURT HAS IMPOSED FOR THOSE OFFENCES

File No.	Count No.	Offence	Sentence Imposed

Total sentence of imprisonment to be served

Non-parole period fixed (if the sentence to be served is 12 months or more)

The court has recorded a conviction against you for the offence(s) listed above and has imposed the sentence(s) shown for each matter. It has, however, ordered that the sentence(s) be suspended if you enter into a bond.

DETAILS OF YOUR BOND ARE:

Length of bond term

(starting from *when you sign this bond/when you are released from prison)

Amount of bond

CONDITIONS OF YOUR BOND ARE:

1. That you be of good behaviour, and comply with all of the conditions of this bond.
2. That you be under the supervision of a community corrections officer for a period of and obey the lawful directions given to you by the community corrections officer to whom you are assigned for the purposes of supervision.
- * 3. That you perform hours of community service within months from the date of this bond, and obey the lawful directions of the community corrections officer to whom you are assigned for the purposes of the community service.
- * 4. That you report, within 2 working days of having signed this bond, at the offices of the Department of Correctional Services at
(NOTE: You need not report if within that 2 day period you receive notice from the Department that it is not necessary to do so).
5. Other conditions:

**Delete if inapplicable.*

WHAT WILL HAPPEN IF YOU COMPLY WITH THE CONDITIONS OF THIS BOND:

If, at the end of the term of this bond, you have complied with all of the conditions mentioned above, the sentence(s) of imprisonment ordered by the court will not have to be served, nor will you have to come back to court.

WHAT WILL HAPPEN IF YOU FAIL TO COMPLY WITH THE CONDITIONS OF THIS BOND:

If you fail to comply with any of the conditions of your bond, the following things may happen:

1. You may be brought back to court, and the court may cancel the order of suspension of the prison sentence(s) imposed on you. You would then have to serve that sentence, or such lesser term of imprisonment as may be fixed by the court.
2. You may be ordered to pay the amount of the bond (as set out above), or any lesser amount fixed by the court.
3. Any person who has agreed to act as a guarantor to this bond may be ordered to pay the amount of money for which they have signed, or any lesser amount fixed by the court.

ACKNOWLEDGMENT BY PROBATIONER

I agree to enter into this bond. I acknowledge that I fully understand its conditions, and I undertake to comply with those conditions. I also understand what will happen to me if I fail to do so.

Probationer

Bond taken before me and duplicate served this day of 20

Judge
Magistrate
Justice of the Peace

CRIMINAL LAW (SENTENCING) ACT 1988 (s. 39)**FORM 3****Good Behaviour Bond***DETAILS OF THE COURT THAT IMPOSED THE SENTENCE(S)***Name of court**

--

*DETAILS OF THE PROBATIONER***Name**

	Date of Birth	
--	----------------------	--

Address

--

DETAILS OF THE OFFENCE(S) THAT THE BOND RELATES TO

File No.	Count No.	Offence

You, the probationer, have been found guilty of the offence(s) listed above. The court this day ordered that you be discharged on a bond *with/without conviction and without a penalty having been imposed on you.

**Delete whichever is inapplicable.*

*DETAILS OF YOUR BOND ARE:***Length of bond term**

--

(starting from when you sign this bond)

Amount of bond

--

THE CONDITION OF YOUR BOND IS THAT YOU BE OF GOOD BEHAVIOUR.

WHAT WILL HAPPEN IF YOU COMPLY WITH THE CONDITION OF THIS BOND:

If, at the end of the term of this bond you have complied with the condition to be of good behaviour, the bond will lapse automatically. You will not be required to come back to court and you cannot be punished further for the offence(s) listed above.

WHAT WILL HAPPEN IF YOU FAIL TO COMPLY WITH THE CONDITION OF THIS BOND:

If you fail to comply with the condition to be of good behaviour, the following things may happen:

1. You may be ordered to pay the above amount of the bond, or any lesser amount fixed by the court.
2. Any person who has agreed to act as a guarantor to this bond may be ordered to pay the amount of money for which they have signed, or any lesser amount fixed by the court.

ACKNOWLEDGMENT BY PROBATIONER

I agree to enter into this bond. I acknowledge that I fully understand the condition to be of good behaviour, and I undertake to comply with that condition. I also understand what will happen to me if I fail to do so.

Probationer

Bond taken before me and duplicate served this day of 20.....

Judge
Magistrate
Justice of the Peace

CRIMINAL LAW (SENTENCING) ACT 1988 (s. 39)

FORM 4

Good Behaviour Bond (with conditions)

DETAILS OF THE COURT THAT IMPOSED THE SENTENCE(S)

Name of court

DETAILS OF THE PROBATIONER

Name **Date of Birth**
Address

DETAILS OF THE OFFENCE(S) THAT THE BOND RELATES TO

File No.	Count No.	Offence

You, the probationer, have been found guilty of the offence(s) listed above. The court this day ordered that you be discharged on a bond *with/without conviction and without a penalty having been imposed on you.

DETAILS OF YOUR BOND ARE:

Length of bond term (starting from when you sign this bond)
Amount of bond

CONDITIONS OF YOUR BOND ARE:

1. That you be of good behaviour, and comply with all the other conditions of this bond.
2. That you appear before a court for *conviction and/sentence for the above offence(s) if you disobey any of the conditions of this bond.
3. That you be under the supervision of a community corrections officer for a period of and obey the lawful directions given to you by the community corrections officer to whom you are assigned for the purposes of supervision.
4. That you report, within 2 working days of having signed this bond, at the offices of the Department of Correctional Services at
(NOTE: You need not report if within that 2 day period you receive notice from the Department that it is not necessary to do so).
5. Other conditions:

WHAT WILL HAPPEN IF YOU COMPLY WITH THE CONDITIONS OF THIS BOND:

If, at the end of the term of this bond you have complied with all of the above conditions, the bond will lapse automatically. You will not be required to come back to court and you cannot be punished further for the offence(s) listed above.

WHAT WILL HAPPEN IF YOU FAIL TO COMPLY WITH THE CONDITIONS OF THIS BOND:

If you fail to comply with the conditions of your bond, the following things may happen:

1. You may be brought back to court, and the court may *convict and/sentence you for the offence(s).
2. You may be ordered to pay the above amount of the bond, or any lesser amount fixed by the court.
3. Any person who has agreed to act as a guarantor to this bond may be ordered to pay the amount of money for which they have signed, or any lesser amount fixed by the court.

**Delete whichever is inapplicable.*

ACKNOWLEDGMENT BY PROBATIONER

I agree to enter into this bond. I acknowledge that I fully understand its conditions and I undertake to comply with those conditions. I also understand what will happen to me if I fail to do so.

Probationer

Bond taken before me and duplicate served this day of 20.....

Judge
Magistrate
Justice of the Peace

CRIMINAL LAW (SENTENCING) ACT 1988 (s. 41)

FORM 5

Guarantee of Bond

I, (D/B / /)

of

and I, (D/B / /)

of

guarantee that

("the probationer") will comply with all of the terms and conditions of the bond (a copy of which is attached) that he or she has entered into this day.

I understand that I am liable to pay the sum of \$ if the probationer breaches any of the conditions of the attached bond.

.....
(Guarantor)

.....
(Guarantor)

Taken before me this day of 20 .

Duplicates served on the guarantor(s) and the probationer.

.....

CRIMINAL LAW (SENTENCING) ACT 1988

FORM 6

Notice of a Community Service Order made by a Court

DETAILS OF THE COURT THAT MADE THE ORDER

Name of court

DETAILS OF THE PERSON AGAINST WHOM THE ORDER HAS BEEN MADE

Name Date of Birth
Address

DETAILS OF THE OFFENCE(S) TO WHICH THE ORDER RELATES

File No.	Count No.	Offence

*The court has *found you guilty/convicted you of the offence(s) listed above and has sentenced you this day as follows:

*The court has reconsidered your sentence under section 70I of the Act and has revoked the order(s) for the pecuniary sum(s) listed in the attached copy of Referral Notice and made a community service order against you instead, the details of which are as follows:

1. You are to perform hours of community service within months from the date of this order, and you must, until such time as you have finished working the required number of hours, obey the lawful directions of the community corrections officer to whom you are assigned for the purposes of the community service.
- *2. You are to be under the supervision of a community corrections officer for a period of from the date of this order and during that period must obey the lawful directions that are given to you by the community corrections officer to whom you are assigned for the purposes of supervision.
3. You are to report, within 2 working days of having signed this notice, at the offices of the Department of at

(NOTE: You need not report if, within that 2 day period, you receive notice from the Department advising that you do not have to comply with this requirement.)

* Delete if inapplicable

Date of Order / / 20.....

WHAT CAN HAPPEN IF YOU FAIL TO COMPLY WITH THIS ORDER

If you fail to comply with any part of the order set out above, you can be sentenced to imprisonment (detention or home detention if you are a youth) for a period not exceeding 6 months, calculated, in the case of a breach of clause 1, on the basis of 1 day for each 8 hours of community service not performed.

Duplicate notice handed to the abovenamed person this
..... day of
..... 20.....
Receipt acknowledged

.....
(Server)

CRIMINAL LAW (SENTENCING) ACT 1988 (s. 57)

FORM 7

Summons to a Person Charged with Breaching a Conditional Bond

On the _____ day of _____, 20____, you entered into a bond, a copy of which is attached.

It is alleged by _____

of _____

that you have failed to comply with a condition of your bond, in that you—

- * failed to be of good behaviour by committing a further offence, particulars of which are detailed in the attached certified copy.
- * failed, in the manner described in the attached affidavit, to comply with the condition that you be under the supervision of a community corrections officer and obey the lawful directions of the officer to whom you are assigned.
- * failed, in the manner described in the attached affidavit, to comply with the condition that you perform community service.
- * failed, in the manner described in the attached affidavit, to comply with the condition that
-
-
-
-

**Delete whichever is inapplicable.*

TAKE NOTICE that you are required to answer the allegation that you have failed to comply with a condition of your bond, and for that purpose you are hereby ordered to appear on the _____ day of _____

20____, at _____ o'clock in the _____ noon at the _____

in the State of South Australia, to answer the allegation and to show cause why you should not be dealt with according to law. If you fail to attend as required by this summons, the court may order that a warrant be issued for your arrest, or make such order against you in your absence as it sees fit, including (except where imprisonment is not available for the offence(s) to which the bond relates) an order for your imprisonment.

Dated the _____ day of _____, 20____, at _____

in the State of South Australia

.....
Judge/Magistrate

17.

PROOF OF SERVICE

I, _____ of _____
make oath and say that I did on the _____ day of _____
20____, between the hours of _____
and _____ in the _____ noon duly serve
at _____
with this summons by delivering a duplicate first to him/her personally.

Sworn before me at _____
on the _____ day of _____
20____. _____
(Server)

(Justice of the Peace)

CRIMINAL LAW (SENTENCING) ACT 1988 (s. 57)

FORM 8

Warrant to Apprehend a Person Charged with Breach of a Bond

To the Commissioner of Police for the State of South Australia, and to each police officer.

This warrant is for the apprehension of

of _____ ("the probationer").

Evidence on oath was given on the _____ day of _____ 20____ ,

by _____ of _____

that the probationer has failed to comply with the conditions of a bond entered into at the _____

Court on the _____ day of _____ 20____ ,

in relation to an offence of _____

Conditions of the bond are that the probationer—

- 1. Be of good behaviour.
- * 2. Be under the supervision of a community corrections officer and obey the lawful directions given by that officer.
- * 3. Perform _____ hours of community service within _____ , and obey the lawful directions given by the community corrections officer to whom the probationer is assigned for the purposes of the community service.
- * 4. Report within 2 working days of having signed the bond at the office of the Correctional Services Department.
- * 5. Other conditions:

**Delete whichever is inapplicable.*

And it is alleged that the probationer has failed to comply with the conditions of the bond in that _____

And I, _____, sitting as a probative court at the _____, being satisfied by evidence on oath that the probationer may have failed to comply with the conditions of the bond, direct you to apprehend the probationer and to bring that person before the _____ Court (or the Magistrates Court) not later than the next working day after the day of the probationer's arrest, to be dealt with according to law.

Dated the _____ day of _____ 20____ , at _____ in the State of South Australia.

.....

Judge/Magistrate

CRIMINAL LAW (SENTENCING) ACT 1988**FORM 9****Warrant of Commitment****(Imprisonment for non-compliance with an order of a non-pecuniary nature)**

<i>DETAILS OF COURT/AUTHORISED OFFICER THAT MADE ORDER</i>	
Name of court/title of officer	Count no.
File no.	

<i>DETAILS OF DEFENDANT</i>	
Name	
Date of birth	
Address	

<i>DETAILS OF OFFENCES(S) THAT ORDER AROSE FROM</i>	
Date of offence(s)	
Offence location	
Offence(s)	

<i>DETAILS OF ORDER</i>	
Terms of order	1. To perform community service of _____ hours 2. Other (give brief particulars)

<i>DETAILS OF IMPRISONMENT IMPOSED ON DEFAULT</i>	
Term of imprisonment ordered	
Imprisonment commencement date	
Name of court or title of officer who imposed sentence	

Date warrant issued	
---------------------	--

To the Commissioner of Police for the State of South Australia and police officers, and to the Executive Director of the Department of Correctional Services.

The defendant named in this warrant has refused or neglected to comply with an order of a court/authorised officer of a non-pecuniary nature, and has been sentenced to a term of imprisonment, details of which appear above.

You, the Commissioner of Police and police officers are directed to convey the defendant to a correctional institution, and you, the Executive Director, are directed to detain the defendant for such period of time as this warrant directs.

.....
Judge/ Magistrate

APPENDIX

LEGISLATIVE HISTORY

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

Regulation 6

Item 1:

varied by 42, 2001, reg. 3(a)

Item 2:

varied by 55, 2000, reg. 3; 42, 2001, reg. 3(b)-(e)