

South Australia

Criminal Law (Sentencing) Regulations 2000

under the *Criminal Law (Sentencing) Act 1988*

Contents

- 1 Short title
- 4 Interpretation
- 5 Forms
- 7 Enforcement of bonds and guarantees (section 57)
- 8 Review of written payment arrangements (section 64)
- 9 Applications relating to registration of court order for pecuniary sums (section 68)
- 10 Modification of bankruptcy laws (seizure of personal property) (section 70G)
- 11 Enforcement of community service orders
- 12 Enforcement of non-pecuniary orders

Schedule 1—Forms

Schedule 2—Fees

Legislative history

1—Short title

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

4—Interpretation

In these regulations—

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

5—Forms

- (1) The forms set out in Schedule 1 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 Schedule 1 must be modified accordingly.
- (3) If any document the form of which is prescribed by Schedule 1 is to be served on a company, the relevant form must be modified accordingly.

7—Enforcement of bonds and guarantees (section 57)

- (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.

- (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.

8—Review of written payment arrangements (section 64)

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.

9—Applications relating to registration of court order for pecuniary sums (section 68)

- (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).

10—Modification of bankruptcy laws (seizure of personal property) (section 70G)

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.

11—Enforcement of community service orders

- (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.

12—Enforcement of non-pecuniary orders

- (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.

Schedule 1—Forms

Form 1

Criminal Law (Sentencing) Act 1988

Warrant of commitment (Imprisonment on conviction)

Court particulars	
Court of origin	

Defendant's particulars	
Name	Date of birth
Address	

Details of the offence(s) and the term(s) of imprisonment ordered for the offence(s)				
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

Form 2

Criminal Law (Sentencing) Act 1988
 (section 38)

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

Form 3

Criminal Law (Sentencing) Act 1988
(section 39)

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

Form 4

Criminal Law (Sentencing) Act 1988
(section 39)

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

Form 5

Criminal Law (Sentencing) Act 1988
(section 41)

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.

.....

Form 6

Criminal Law (Sentencing) Act 1988

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.....

(Server)

Receipt acknowledged

Form 7

Criminal Law (Sentencing) Act 1988
(section 57)

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

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 _____

(Server)

on the _____ day of _____
20____

(Justice of the Peace)

Form 8

Criminal Law (Sentencing) Act 1988
(section 57)

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

Form 9

Criminal Law (Sentencing) Act 1988

Warrant of commitment

(Imprisonment for non-compliance with an order of a non-pecuniary nature)

Details of court/authorised officer that made order	
Name of court/title of officer	Count no
File no	

Details of defendant	
Name	
Date of birth	
Address	

Details of offences(s) that order arose from	
Date of offence(s)	
Offence location	
Offence(s)	

Details of order	
Terms of order	1 To perform community service of hours 2 Other (give brief particulars)

Details of imprisonment imposed on default	
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

Form 10

Criminal Law (Sentencing) Act 1988
 section 54

Certificate for victims of identity theft

Details of court that issued certificate	
Name of court	
File no	

Details of defendant	
Name	
Date of birth	

Details of offence(s) involving identity theft	
Date of offence(s)	
Offence(s)	
Particulars of offence(s)	

Details of victim of offence(s)	
Name	
Date of birth	
Address	

This certificate is issued under the hand and seal of the Supreme Court/District Court/Magistrates Court* of South Australia this day of 2.....

Signature of
 presiding Justice/Judge/Magistrate*

[Court Seal]

*Delete whichever is inapplicable.

Schedule 2—Fees

1	Reminder notice fee (section 65)	\$16.80
2	Issuance of penalty enforcement order—	
	(a) suspension of driver's licence (section 70E)	\$25.75
	(b) restriction on transacting business with Registrar of Motor Vehicles (section 70F)	\$25.75
	(c) order for sale of property (section 70G)	\$72.00
	(d) garnishee order (section 70H)	\$72.00

- 3 Service and execution of penalty enforcement order—a fee comprised of the costs reasonably incurred in the service or execution, including—
- (a) postage and telephone calls;
 - (b) travelling, accommodation and necessary meals;
 - (c) labour in seizing and removing seized property;
 - (d) cartage, storage and insurance of seized property;
 - (e) maintenance of seized animals;
 - (f) engaging assistants, appraisers, auctioneers or agents;
 - (g) advertisements;
 - (h) conducting sales of seized property.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation revoked by principal regulations

The *Criminal Law (Sentencing) Regulations 2000* revoked the following:

Criminal Law (Sentencing) Regulations 1988

Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2000	16	<i>Gazette 2.3.2000 p1293</i>	6.3.2000: r 2
2000	55	<i>Gazette 25.5.2000 p2709</i>	1.7.2000: r 2
2001	42	<i>Gazette 31.5.2001 p1941</i>	1.7.2001: r 2
2002	79	<i>Gazette 20.6.2002 p2569</i>	1.7.2002: r 2
2003	80	<i>Gazette 29.5.2003 p2214</i>	1.7.2003: r 2
2004	53	<i>Gazette 27.5.2004 p1455</i>	1.7.2004: r 2
2004	247	<i>Gazette 9.12.2004 p4493</i>	9.12.2004: r 2
2005	106	<i>Gazette 26.5.2005 p1555</i>	1.7.2005: r 2
2006	147	<i>Gazette 15.6.2006 p1905</i>	1.7.2006: r 2
2007	98	<i>Gazette 7.6.2007 p2414</i>	1.7.2007: r 2
2008	83	<i>Gazette 5.6.2008 p2002</i>	1.7.2008: r 2

Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>rr 2 and 3</i>	<i>omitted under Legislation Revision and Publication Regulations 2002</i>	<i>1.7.2004</i>
r 5		
r 5(1)	varied by 80/2003 r 4(1)	1.7.2003
r 5(2)	varied by 80/2003 r 4(2)	1.7.2003

r 5(3)	varied by 80/2003 r 4(3)	1.7.2003
r 6	<i>varied by 55/2000 r 3</i>	<i>1.7.2000</i>
	<i>varied by 42/2001 r 3</i>	<i>1.7.2001</i>
	<i>varied by 79/2002 r 3</i>	<i>1.7.2002</i>
	<i>deleted by 80/2003 r 5</i>	<i>1.7.2003</i>
Sch 1	Sch redesignated as Sch 1 by 80/2003 r 6	1.7.2003
	varied by 247/2004 r 4	9.12.2004
Sch 2	inserted by 80/2003 r 7	1.7.2003
	substituted by 53/2004 r 4	1.7.2004
	substituted by 106/2005 r 4	1.7.2005
	substituted by 147/2006 r 4	1.7.2006
	substituted by 98/2007 r 4	1.7.2007

Historical versions

1.7.2004
9.12.2004
1.7.2005
1.7.2006