

South Australia

Criminal Law (Sentencing) Variation Regulations 2013

under the *Criminal Law (Sentencing) Act 1988*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Criminal Law (Sentencing) Variation Regulations 2013*.

2—Commencement

These regulations will come into operation on the day on which Part 4 of the *Statutes Amendment (Serious Firearm Offences) Act 2012* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Criminal Law (Sentencing) Regulations 2000*

4—Insertion of Regulation 6

After regulation 5 insert:

6—Dealing with surrendered items

- (1) For the purposes of sections 24A(4) and 42A(3) of the Act, the Commissioner of Police must deal with a surrendered item in accordance with this regulation.
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- (2) A surrendered item that is a prohibited weapon (within the meaning of the *Summary Offences Act 1953*), or that is an item that cannot otherwise be lawfully possessed in this State, is, by force of this subregulation, forfeited to the Crown.
- (3) The Commissioner of Police must retain a surrendered item (other than a surrendered item forfeited under subregulation (2)) in a location determined by the Commissioner of Police until—
 - (a) the surrendered item is forfeited to the Crown under this or any other Act; or
 - (b) the surrendered item is returned in accordance with this regulation to the person who surrendered it; or
 - (c) the surrendered item is seized or surrendered under the provisions of another Act,whichever occurs first.
- (4) If the condition imposed under section 24(2a)(a) on the release on licence, or 42(a1)(a) on the entry into bond of the person who surrendered the surrendered item is revoked, or the release on licence or bond has been discharged, the person may notify the Commissioner of Police of that fact.
- (5) Subject to this regulation, if the Commissioner of Police—
 - (a) is notified pursuant to subregulation (4); or
 - (b) otherwise becomes aware that the release on licence or bond of the person is no longer subject to the condition imposed under section 24(2a)(a) or 42(a1)(a) (as the case requires), or the release on licence or bond has been discharged,the Commissioner of Police must cause the surrendered item to be returned to the person who surrendered the item.
- (6) If the Commissioner of Police is required to return a surrendered item under subregulation (5), the Commissioner of Police must give notice in writing to the person who surrendered the item setting out—
 - (a) that the surrendered items specified in the notice are to be returned to the person; and
 - (b) the location at which the surrendered items may be collected; and
 - (c) that the surrendered items must be collected from the specified location within 3 months of the date specified in the notice (or such longer time as may be specified by the Commissioner of Police); and
 - (d) that the surrendered items will only be returned if the person holds any necessary authorisation under the *Firearms Act 1977* or any other Act to possess the surrendered item; and

- (e) the effect of subregulations (7) and (8).
- (7) However, the Commissioner of Police may refuse to return a surrendered item to a person if—
 - (a) the person is on conditional release that is subject to a condition prohibiting the person from possessing a firearm, ammunition or part of a firearm; or
 - (b) the person does not hold any necessary authorisation under the *Firearms Act 1977* or any other Act to possess the surrendered item, or is otherwise prohibited from possessing the surrendered item,

and, if the Commissioner of Police does so refuse, he or she must give notice in writing to the person who surrendered the surrendered item setting out—

- (c) the reasons for the refusal; and
 - (d) in the case of a refusal contemplated by subregulation (7)(a)—the effect of subregulation (9).
- (8) If—
 - (a) a surrendered item is not collected within the period specified in subregulation (6)(c); or
 - (b) the person does not, at the end of the period specified in subregulation (6)(c), hold the necessary authorisation under the *Firearms Act 1977* or any other Act to possess the surrendered item, or is otherwise prohibited from possessing the surrendered item,

the surrendered item is, by force of this subregulation, forfeited to the Crown.

- (9) If the Commissioner of Police refuses to return a surrendered item to a person pursuant to subregulation (7)(a)—
 - (a) the surrendered item will be taken to have been surrendered pursuant to a direction under the provision of the Act under which the conditional release was granted (corresponding to section 24A(1) or 42A(1) of the Act); and
 - (b) the surrendered item must be dealt with in accordance with that Act.
- (10) The Commissioner of Police may recover from the person who surrendered the surrendered item the reasonable costs incurred in connection with the storage of the surrendered item.
- (11) This regulation is in addition to, and does not derogate from, the operation of any other Act or law.
- (12) No compensation is payable by the Crown in respect of the forfeiture of a surrendered item under this regulation.

- (13) A notice required to be given to a person under this regulation may—
- (a) be given to the person personally; or
 - (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) at the person's address for service; or
 - (c) be left for the person at the person's last known address or address for service with someone apparently over the age of 16 years.

- (14) In this regulation—

conditional release means—

- (a) a grant of bail under the *Bail Act 1985*; or
- (b) a bond under the Act or the *Criminal Law Consolidation Act 1935*; or
- (c) release from prison on home detention or parole, under the *Correctional Services Act 1982*; or
- (d) release on licence under the Act or the *Criminal Law Consolidation Act 1935*; or
- (e) release on licence, or conditional release from detention, under the *Young Offenders Act 1993*;

surrendered item means a firearm, ammunition or any part of a firearm surrendered pursuant to a direction under section 24A(1) or 42A(1) of the Act.

Part 3—Variation of Schedule 1

5—Variation of Schedule 1—Forms

- (1) Schedule 1, Form 2—delete Form 2 and substitute:

Form 2—Suspended sentence bond

Criminal Law (Sentencing) Act 1988

section 38

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 do not possess a firearm or ammunition or any part of a firearm.
- 3 That you be under the supervision of a community corrections officer for a period of *[insert timeframe]* 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 submit to such tests (including testing without notice) for gunshot residue as the community corrections officer may reasonably require.
- *5 That you perform *[insert number]* hours of community service within *[insert number]* 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.
- *6 That you report, within 2 working days of having signed this bond, at the offices of the Department of Correctional Services at: *[insert details]*.

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.

- 7 That you must not leave the State for any reason except in accordance with the written permission of the CEO.
- 8 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 *[insert date]*.

Judge:

Magistrate:

Justice of the Peace:

- (2) Schedule 1, Form 8—delete Form 8 and substitute:

Form 8—Warrant to apprehend a person charged with breach of a bond

Criminal Law (Sentencing) Act 1988

section 57

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

This warrant is for the apprehension of *[insert name]* of *[insert address]* ("the probationer").

Evidence on oath was given on *[insert date]*, by *[insert name]* of *[insert police station]* that the probationer has failed to comply with the conditions of a bond entered into at the Court on *[insert date]*, in relation to an offence of *[insert offence]*.

Conditions of the bond are that the probationer—

- 1 Be of good behaviour.
- *2 Not possess a firearm or ammunition or any part of a firearm.
- *3 Be under the supervision of a community corrections officer and obey the lawful directions given by that officer.
- *4 Submit to such tests (including testing without notice) for gunshot residue as the community corrections officer may reasonably require.
- *5 Perform *[insert]* hours of community service within *[insert timeframe]*, and obey the lawful directions given by the community corrections officer to whom the probationer is assigned for the purposes of the community service.
- *6 Report within 2 working days of having signed the bond at the office of the Correctional Services Department.
- *7 Not leave the State for any reason.
- *8 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 *[insert details]*.

And I, *[insert name of Judge/Magistrate]*, sitting as a probative court at the *[insert location of probative court]*, 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 *[insert date]*, at *[insert location of probative court]* the State of South Australia.

Signature of Judge/Magistrate:

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 21 February 2013

No 16 of 2013