

(Reprint No. 1)

**SOUTH AUSTRALIA**

**CRIMINAL LAW (SENTENCING) ACT, 1988**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.*

*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.*

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# CRIMINAL LAW (SENTENCING) ACT, 1988

being

Criminal Law (Sentencing) Act, 1988, No. 50 of 1988 [Assented to 5 May 1988]<sup>1</sup>

as amended by

Criminal Law (Sentencing) Act Amendment Act, 1988, No. 76 of 1988 [Assented to 1 December 1988]  
Criminal Law (Sentencing) Act Amendment Act, 1989, No. 47 of 1989 [Assented to 31 August 1989]  
Statutes Amendment (Victims of Crime) Act, 1990, No. 27 of 1990 [Assented to 26 April 1990]<sup>2</sup>  
Statutes Amendment (Criminal Law Sentencing) Act 1991 No. 22 of 1991 [Assented to 18 April 1991]<sup>3</sup>  
Statutes Amendment (Attorney-General's Portfolio) Act 1991 No. 33 of 1991 [Assented to 24 April 1991]<sup>4</sup>

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.*

## **An Act to consolidate and amend the law relating to sentencing and the enforcement of sentences; and to provide for other related matters.**

The Parliament of South Australia enacts as follows:

### PART I PRELIMINARY

#### **Short title**

1. This Act may be cited as the *Criminal Law (Sentencing) Act, 1988*.

#### **Commencement**

2. (1) This Act will come into operation on a day to be fixed by proclamation.  
(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

#### **Interpretation**

3. (1) In this Act, unless the contrary intention appears—  
“appropriate officer”, in relation to proceedings for the enforcement or variation of an order of a court, means—  
(a) in the case of an order of the Supreme Court or a District Criminal Court—the sheriff;  
and

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<sup>1</sup>Came into operation (except ss. 4-20 and 30-75) 12 May 1988: *Gaz.* 12 May 1988, p. 1180; remainder of Act came into operation 1 January 1989: *Gaz.* 15 December 1988, p. 2009.

<sup>2</sup>Came into operation 1 September 1990: *Gaz.* 16 August 1990, p. 582.

<sup>3</sup>Came into operation 30 May 1991: *Gaz.* 30 May 1991, p. 1702.

<sup>4</sup>Came into operation 6 June 1991: *Gaz.* 6 June 1991, p. 1776.

(b) in the case of an order of a court of summary jurisdiction—the clerk of that court or of any other court of summary jurisdiction:

“bond” means an agreement (not being a bail agreement) entered into pursuant to the sentence of a court under which the defendant undertakes to the Crown to comply with the conditions of the agreement:

“community service officer” means an employee in the Department of Correctional Services assigned to the position of community service officer:

“court” means any court of criminal jurisdiction (other than the Children’s Court):

“the Director” means the Executive Director of Correctional Services:

“goods” includes money:

“injury”, in relation to an offence, includes pregnancy, mental injury, shock, fear, grief, distress or embarrassment resulting from the offence:

“the Parole Board” means the *Parole Board of South Australia* established under the *Correctional Services Act, 1982*:

“pecuniary sum” means—

(a) a fine;

(b) compensation;

(c) costs;

(d) a sum payable pursuant to a bond or to a guarantee ancillary to a bond;

or

(e) any other amount payable pursuant to an order or direction of a court, and includes a levy imposed under the *Criminal Injuries Compensation Act, 1978*:

“prescribed unit”, in relation to a sum in default, means—

(a) where a term of imprisonment is to be fixed for enforcement—

(i) \$50;

or

(ii) if some other amount is prescribed, that amount;

(b) where the sum in default is to be worked off by the performance of community service—

(i) \$100;

or

(ii) if some other amount is prescribed, that amount,

and includes any fraction left after dividing the sum in default by the relevant amount:

“probationer” means a defendant who has entered into a bond pursuant to this Act:

“probation officer” means an employee in the Department of Correctional Services assigned to the position of probation officer:

“probative court” means—

- (a) where a bond is entered into pursuant to an order of the Supreme Court—the Supreme Court;
  - (b) where a bond is entered into pursuant to an order of a District Criminal Court—any District Criminal Court;
- or
- (c) where a bond is entered into pursuant to an order of a court of summary jurisdiction—any court of summary jurisdiction:

“sentence” means—

- (a) the imposition of a penalty;
  - (b) the decision of a court to offer a defendant an opportunity to enter into a bond;
  - (c) the fixing or extending of a non-parole period;
- or
- (d) the making of any other order or direction affecting penalty:

“sentence of indeterminate duration” means detention in custody until further order:

“special Act” means an Act, regulation, rule, by-law or other legislative instrument that creates an offence or prescribes a penalty for an offence:

“working day” means any day other than a Saturday, Sunday or public holiday.

(2) For the purposes of this Act, a person who pleads guilty to a charge of an offence will be taken to have been found guilty of the offence unless—

- (a) the plea is subsequently withdrawn;

or

- (b) the person is adjudged incompetent to have made the plea.

(3) For the purposes of this Act, a levy imposed on a person by virtue of the *Criminal Injuries Compensation Act, 1978*, will be taken to have been imposed by order of the court that found the person guilty of the offence that gave rise to the levy.

*Note: For definition of divisional penalties see Appendix 2.*

#### **Powers conferred by this Act are additional**

4. Subject to this Act, the powers conferred on a court by this Act are in addition to, and do not derogate from, the powers conferred by any other Act or law to impose a penalty upon, or make any order or give any direction in relation to, a person found guilty of an offence.

#### **This Act does not affect power to deal with contempt**

5. Nothing in this Act affects the powers of a court to punish a person for contempt of that court.

## PART II

## GENERAL SENTENCING PROVISIONS

## DIVISION I—PROCEDURAL PROVISIONS

**Determination of sentence**

6. For the purpose of determining sentence, a court—
- (a) is not bound by the rules of evidence;
- and
- (b) may inform itself on matters relevant to the determination as it thinks fit.

**Prosecutor to furnish particulars of victim's injury, etc.**

7. (1) Subject to subsection (2), the prosecutor must, for the purpose of assisting a court to determine sentence for an offence, furnish the court with particulars (that are reasonably ascertainable and not already before the court in evidence or a pre-sentence report) of—

- (a) injury, loss or damage resulting from the offence;
- and
- (b) injury, loss or damage resulting from—
    - (i) any other offence that is to be taken into account specifically in the determination of sentence;
- or
- (ii) a course of conduct consisting of a series of criminal acts of the same or a similar character of which the offence for which sentence is to be imposed forms part.

(2) The prosecutor may refrain from furnishing the court with particulars of injury, loss or damage suffered by a person if the person has expressed a wish to that effect to the prosecutor.

(3) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

**Pre-sentence reports**

8. (1) A court may, if of the opinion that it would assist in determining sentence, order the preparation of pre-sentence reports on the physical or mental condition of the defendant, or on the personal circumstances and history of the defendant.

(2) The court should not order the preparation of a pre-sentence report—

- (a) where the information sought by the court cannot be furnished within a reasonable time;

or

- (b) where the penalty to be imposed is a mandatory penalty for which no other penalty can be substituted and a non-parole period is not in question.

(3) A pre-sentence report may be given orally or in writing.

(4) A copy of every written pre-sentence report received by a court must be furnished to the prosecutor and to the defendant or his or her counsel.

(5) The person by whom a pre-sentence report is given is liable to be examined or cross-examined on any of the matters contained in the report and, in the case of a written report, must appear before the court for that purpose if requested to do so.

(6) Where a statement of fact or opinion in a pre-sentence report is challenged by the prosecutor or the defendant, the court must disregard the fact or opinion unless it is substantiated on oath.

#### **Court to inform defendant of reasons, etc., for sentence**

9. (1) A court must, upon sentencing a defendant who is present in court—

- (a) state its reasons for imposing the sentence;
- (b) cause an explanation of the legal effect and obligations of the sentence and, where appropriate, of the consequences of non-compliance with it, to be given in simple language to the defendant;

and

- (c) —
  - (i) if the sentence fixes or extends a non-parole period—inform the defendant of the minimum period that he or she will have to serve in prison before becoming eligible for parole (assuming that maximum remissions are earned);
  - (ii) if the sentence fixes a term of imprisonment (and the sentence is not suspended)—inform the defendant of the minimum period that he or she will have to serve in prison assuming that he or she is not paroled but maximum remissions are earned.

(2) The validity of a sentence is not affected by non-compliance or insufficient compliance with this section.

### **DIVISION II—GENERAL SENTENCING POWERS**

#### **Matters to which a sentencing court should have regard**

10. A court, in determining sentence for an offence, should have regard to such of the following matters as are relevant and known to the court:

- (a) the circumstances of the offence;
- (b) other offences (if any) that are to be taken into account;
- (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—that course of conduct;
- (d) the personal circumstances of any victim of the offence;
- (e) any injury, loss or damage resulting from the offence;
- (f) the degree to which the defendant has shown contrition for the offence—
  - (i) by taking action to make reparation for any injury, loss or damage resulting from the offence;
 or
  - (ii) in any other manner;
- (g) if the defendant has pleaded guilty to the charge of the offence—that fact;
- (h) the degree to which the defendant has co-operated in the investigation of the offence;

- (i) the need to protect the community from the defendant's criminal acts;
- (j) the deterrent effect any sentence under consideration may have on the defendant or other persons;
- (k) the need to ensure that the defendant is adequately punished for the offence;
- (l) the character, antecedents, age, means and physical or mental condition of the defendant;
- (m) the rehabilitation of the defendant;
- (n) the probable effect any sentence under consideration would have on dependants of the defendant;
- (o) any other relevant matter.

#### **Imprisonment not to be imposed except in certain circumstances**

11. (1) A sentence of imprisonment must not be imposed for an offence unless, in the opinion of the court—

- (a) the defendant has shown a tendency to violence towards other persons;
- (b) the defendant is likely to commit a serious offence if allowed to go at large;
- (c) the defendant has previously been convicted of an offence punishable by imprisonment;

or

- (d) any other sentence would be inappropriate, having regard to the gravity or circumstances of the offence.

(2) This section does not apply in relation to a sentence of imprisonment imposed in default of payment of a fine, or for the enforcement of some other sentence.

#### **Court to take account of prospective remission**

12. (1) A court, in fixing the term of a sentence of imprisonment or in fixing or extending a non-parole period in respect of a sentence, must have regard to any remission of sentence to which the prisoner may become entitled under the *Correctional Services Act, 1982*.

(2) It is the intention of Parliament that subsection (1) should be interpreted in accordance with the judgment of the Full Court in *The Queen v. Dube* and *The Queen v. Knowles* (1987) 46 SASR 118 and in so far as the principles of sentencing purportedly inferred by the Full Court from section 302 of the *Criminal Law Consolidation Act, 1936* (the precursor of subsection (1)) were not properly so inferred, those principles must be taken to be founded on this subsection.

(3) This section, as amended by the *Criminal Law (Sentencing) Act Amendment Act, 1989*, applies only in relation to offences committed after the commencement of that amending Act.

#### **Order for payment of pecuniary sum not to be made in certain circumstances**

13. (1) The court must not make an order requiring a defendant to pay a pecuniary sum if the court is satisfied that the means of the defendant, so far as they are known to the court, are such that—

- (a) the defendant would be unable to comply with the order;

or

(b) compliance with the order would unduly prejudice the welfare of dependants of the defendant.

(2) The court is not obliged to inform itself as to the defendant's means, but it should consider any evidence on the subject that the defendant or the prosecutor has placed before it.

#### **Preference must be given to compensation for victims**

14. Where a court considers—

(a) that it is appropriate—

(i) to make an order for compensation (under this Act or any other Act);

and

(ii) to impose a fine or make any other order for the payment of a pecuniary sum;

but

(b) that the defendant has insufficient means to pay both the compensation and the fine or other pecuniary sum,

the court must give preference to compensation.

#### **Discharge without penalty**

15. (1) Where a court finds a person guilty of an offence but finds the offence so trifling that it is inappropriate to impose any penalty, it may—

(a) without recording a conviction, dismiss the charge;

or

(b) upon recording a conviction, discharge the defendant without penalty.

(2) A court may exercise the powers conferred by this section notwithstanding any minimum penalty fixed by a special Act.

#### **Imposition of penalty without conviction**

16. Where a court finds a person guilty of an offence for which it proposes to impose a fine, a sentence of community service, or both and the court is of the opinion—

(a) that the defendant is unlikely to commit such an offence again;

and

(b) that, having regard to—

(i) the character, antecedents, age or physical or mental condition of the defendant;

(ii) the fact that the offence was trifling;

or

(iii) any other extenuating circumstances,

good reason exists for not recording a conviction,

the court may impose the penalty without recording a conviction.

**Reduction of minimum penalty**

17. Where a special Act fixes a minimum penalty in respect of an offence and the court, having regard to—

- (a) the character, antecedents, age or physical or mental condition of the defendant;
  - (b) the fact that the offence was trifling;
- or
- (c) any other extenuating circumstances,

is of the opinion that good reason exists for reducing the penalty below the minimum, the court may so reduce the penalty.

**Court may add or substitute certain penalties**

18. Where, on convicting a defendant or finding a defendant guilty of an offence, the court thinks that good reason exists for departing from the penalty provided by the special Act, the court may sentence the defendant as follows:

- (a) where the special Act prescribes a sentence of imprisonment only for the offence, the court may instead impose—
    - (i) a fine;
    - (ii) a sentence of community service;or
    - (iii) both a fine and a sentence of community service;
  - (b) where the special Act prescribes a sentence of both imprisonment and a fine for the offence, the court may instead impose—
    - (i) a sentence of imprisonment only;
    - (ii) a fine only;
    - (iii) a sentence of community service;or
    - (iv) both a fine and a sentence of community service;
  - (c) where the special Act prescribes a sentence of imprisonment or a fine in the alternative for the offence, the court may instead impose—
    - (i) a sentence of community service;or
    - (ii) both a fine and a sentence of community service;
- or
- (d) where the special Act prescribes a fine only for the offence, the court may instead impose a sentence of community service.

**Limitation on sentencing powers of certain courts of summary jurisdiction**

19. (1) A court of summary jurisdiction does not have power to impose a sentence of imprisonment for a term exceeding seven days, unless the court is constituted of a magistrate.

(2) Where a court of summary jurisdiction proposes to sentence a defendant to imprisonment but is, by virtue of subsection (1), unable to impose a sentence of imprisonment for an appropriate term, the court must remand the defendant in custody or on bail to appear for sentence before a court of summary jurisdiction constituted of a magistrate.

(3) A court of summary jurisdiction, in sentencing a defendant convicted of a minor indictable offence, does not have the power to impose a sentence of imprisonment, or a fine, that exceeds Division 5.

(4) Where a court of summary jurisdiction has convicted a defendant of a minor indictable offence but is, by virtue of subsection (3), unable to impose a sentence of imprisonment for an appropriate term or a fine of an appropriate amount, the court must remand the defendant in custody or on bail to appear for sentence before a District Criminal Court at a time and place fixed by the court of summary jurisdiction.

(5) A District Criminal Court may sentence a defendant remanded to appear before the Court pursuant to subsection (4) as if that Court had convicted the defendant of the offence.

(6) A defendant remanded in custody under this section must be brought for sentence before an appropriate court as soon as reasonably practicable.

#### **This Division does not affect mandatory sentences**

20. Nothing in this Division—

(a) affects the sentence to be imposed by a court for murder or treason;

or

(b) derogates from a provision of a special Act that expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

### **DIVISION III—SENTENCES OF INDETERMINATE DURATION**

#### **Application**

21. (1) Subject to subsection (2), this Division does not apply in relation to a child.

(2) The Supreme Court may exercise its powers under section 23 in relation to a child who is to be sentenced as an adult pursuant to the *Children's Protection and Young Offenders Act, 1979*.

(3) For the purposes of this Division—

“child” means a person who was under the age of 18 years at the time of the commission of the offence in question.

#### **Habitual criminals**

22. (1) This section applies in relation to offences of the following classes, whether committed before or after the commencement of this Act:

Class I: Sections 21 to 25—Wounding

Class II: Sections 26 and 27—Poisoning

Class III: Sections 48, 49, 56, 59, 69 and 72—Sexual Offences

Class IV: Sections 81 and 82—Abortion

Class V: Sections 155 to 158—Robbery  
 Sections 159, 160, 161, 162, 164 and 165—Extortion to 172—Burglary  
 Sections 131, 132 and 173—Larceny  
 Sections 176 to 178 and 182 to 192—Embezzlement, etc.  
 Sections 195, 196, 197 and 199—False pretences, receiving

Class VI: Section 85(1)—Arson

Class VII: Part VI—Forgery

(Classes I to VII refer to offences under the *Criminal Law Consolidation Act, 1935*)

Class VIII: Part IV of the *Crimes Act 1914* of the Commonwealth—Coinage.

(2) Where—

(a) a defendant is convicted of an offence that falls within Class I, II, III or IV and has had two or more previous convictions of an offence of the same class;

or

(b) a defendant is convicted of an offence that falls within Class V, VI, VII or VIII and has had three or more previous convictions of an offence of the same class,

the Supreme Court may, on application by the Crown, in addition to any other sentence imposed in respect of the offence by the court by which the defendant was convicted, declare that the defendant is an habitual criminal and direct that he or she be detained in custody until further order.

(3) A previous conviction for an offence committed outside South Australia will be regarded as a previous conviction for the purposes of subsection (2) if it is substantially similar to an offence of the relevant class of offences.

(4) The detention of a person under this section will commence on the expiration of all terms of imprisonment that the person is liable to serve.

(5) Subject to subsection (6), a person detained under this section will be detained in such prison as the Minister of Correctional Services from time to time directs.

(6) Subject to the *Correctional Services Act, 1982*, that Act applies to a person detained under this section as if the person were serving a sentence of imprisonment.

(7) Subject to this Act, a person will not be released from detention under this section until the Supreme Court, on application by the Crown or the person, discharges the order for detention.

### Offenders incapable of controlling sexual instincts

23. (1) In this section—

“institution” means—

(a) a prison;

(b) a place declared by the Governor by proclamation to be a place in which persons may be detained under this section;

and

(c) in relation to a child, includes a training centre:

“offence to which this section applies” means—

- (a) an offence under section 48, 49, 56, 58, 58a, 59, 69, 72 or 255 of the *Criminal Law Consolidation Act, 1935*;
- (b) an offence under section 23 of the *Summary Offences Act, 1953*;
- (c) any other offence where the evidence indicates that the defendant may be incapable of controlling his or her sexual instincts.

(2) Where a defendant is convicted of an offence to which this section applies by a District Criminal Court or a court of summary jurisdiction, the court may, if of the opinion that the powers under this section should be exercised in relation to the defendant, remand the defendant in custody or on bail to appear for sentence before the Supreme Court.

(3) The Supreme Court may, in relation to—

- (a) a defendant convicted of an offence to which this section applies by the Court;
- or
- (b) a defendant remanded to appear for sentence before the Court pursuant to subsection (2),

before determining sentence, direct that at least two legally qualified medical practitioners, specified by the Court, inquire into the defendant’s mental condition and report to the Court as to whether the defendant is incapable of controlling his or her sexual instincts.

(4) For the purposes of an inquiry under subsection (3), each medical practitioner—

- (a) must carry out an independent personal examination of the defendant;
- (b) may have access to any evidence before the court by which the defendant was convicted;
- and
- (c) may obtain the assistance of a psychologist, social worker, probation officer or any other person.

(5) If—

- (a) each of the medical practitioners reports to the Supreme Court, on oath, that the defendant is incapable of controlling his or her sexual instincts;
- and
- (b) the Court, after hearing any evidence or representations adduced or made by the defendant, is satisfied that the defendant is so incapable,

the Court may declare accordingly and direct that the defendant be detained in custody until further order.

(6) The Supreme Court may exercise its powers under subsection (5) in addition to, or instead of, imposing a sentence of imprisonment for the offence.

(7) If the detention is in addition to a sentence of imprisonment, the detention will commence on the expiration of the term of imprisonment, or of all terms of imprisonment that the person is liable to serve.

(8) A person detained in custody under this section will be detained—

- (a) if the defendant is under 18 years of age—in such institution (not being a prison) as the Minister of Community Welfare from to time directs;

(b) in any other case—in such institution as the Minister of Correctional Services from time to time directs.

(9) The progress and circumstances of a person subject to an order under this section (whether in custody or not) must be reviewed at least once in each period of six months by—

(a) in the case of a person detained in, or released on licence from, a training centre—the *Training Centre Review Board*;

(b) in any other case—the Parole Board.

(10) The results of a review under subsection (9) must be embodied in a written report, a copy of which must be furnished to the person the subject of the report and—

(a) in the case of a report of the *Training Centre Review Board*—to the Minister of Community Welfare;

(b) in the case of a report of the Parole Board—to the Minister of Correctional Services.

(11) Subject to this Act, a person will not be released from detention under this section until the Supreme Court, on application by the Crown or the person, discharges the order for detention.

(12) The Supreme Court may not discharge an order for detention under this section unless—

(a) it has first obtained and considered the report of at least two legally qualified medical practitioners each of whom has independently examined the person;

and

(b) having taken into account both the interests of the person and of the community, it is of the opinion that the order for detention should be discharged.

### Release on licence

24. (1) The Supreme Court may, on application by the Crown or the person, authorize the release on licence of a person detained in custody under this Division.

(2) On the Court authorizing the release of a person under subsection (1), the appropriate board must order the release of the person on licence on the day specified by the Court.

(3) The release of a person on licence under this section will be subject to such conditions as the appropriate board thinks fit and specifies in the licence.

(4) Where the Supreme Court has refused a person's application for release on licence, the person may not further apply for release for a period of six months, or such lesser or greater period as the Court may have directed on refusing the application.

(5) The appropriate board may—

(a) on application by the Crown or the person, vary or revoke a condition of a licence or impose further conditions;

or

(b) on application by the Crown, cancel the release of a person on licence, if satisfied that the person has contravened, or is likely to contravene, a condition of the licence.

(6) Where an application has been made to the appropriate board for cancellation of a person's release on licence, a member of the board may—

(a) summon the person to appear before the board;

or

(b) apply to a justice for a warrant for the apprehension and detention of the person pending determination of the application.

(7) Where a person who has been summoned to appear before the appropriate board fails to attend in compliance with the summons, the board may—

(a) determine the application in his or her absence;

or

(b) direct a member of the board to apply to a justice for a warrant for the apprehension and detention of the person for the purpose of bringing him or her before the board.

(8) A member of the appropriate board may apply to a justice for a warrant for the apprehension and return to custody of a person whose release on licence has been cancelled by the board.

(9) The appropriate board may, if it thinks good reason exists for doing so, cancel a warrant issued under this section at any time before its execution.

(10) Where a person who has been released on licence commits an offence while subject to that licence and is sentenced to imprisonment for the offence, the release on licence is, by virtue of this subsection, cancelled.

(11) Where a person has been subject to a licence under this section for a continuous period of three years, the order for his or her detention under this Division will, unless the Supreme Court, on application by the Crown, orders otherwise, be taken to have been discharged on the expiration of that period.

(12) For the purposes of this section—

“the appropriate board”, in relation to an application under this section, means—

(a) if the person the subject of the application is being detained in a training centre, or has been released on licence from a training centre—the *Training Centre Review Board*;

(b) in any other case—the Parole Board.

### **Court may obtain reports**

25. (1) A court may, for the purpose of obtaining assistance in making a determination under this Division, require the Parole Board, the *Training Centre Review Board* or any other body or person to furnish the court with a report on any matter.

(2) A copy of any report furnished to a court under subsection (1) must be given to each party to the proceedings or to counsel for those parties.

### **Parties**

26. Both the Crown and the person to whom an application under this Division relates are parties to the application.

**Service on guardian**

27. Where the person to whom an application under this section relates is a child, a copy of the application must be served on a guardian of the child, unless—

- (a) it is not practicable to do so;
- or
- (b) the whereabouts of all of the guardians of the child cannot, after reasonable inquiries, be ascertained.

**Appeals**

27a. (1) An appeal lies to the Full Court against—

- (a) a decision of the Supreme Court on an application to discharge an order for detention under this Division;
- (b) a decision of the Supreme Court on an application to release a person on licence under this Division;
- (c) a decision of the Supreme Court on an application by the Crown under section 24(11).

(2) An appeal under this section may be instituted by the Crown or by the person to whom the particular decision relates.

(3) Subject to a contrary order of the Full Court, an appeal cannot be commenced after 10 days from the date of the decision against which the appeal lies.

(4) On an appeal, the Full Court may—

- (a) confirm, reverse or annul the decision subject to appeal;
- (b) make any order that it considers should have been made in the first instance;
- (c) make any consequential or ancillary orders.

(5) Subject to subsection (6), where—

- (a) the Supreme Court decides—
  - (i) to discharge an order for detention under this Division;
  - (ii) to release a person on licence under this Division;or
- (iii) to refuse an application by the Crown under section 24(11);

and

- (b) counsel appearing on behalf of the Crown gives immediate notice that an appeal against the decision will be instituted,

the decision has no force or effect pending the outcome of the appeal.

(6) If the Crown gives notice under subsection (5) of an appeal against a decision of the Supreme Court but then a person acting on behalf of the Crown subsequently files with the Supreme Court a notice that the Crown does not desire to proceed with the appeal, the decision will take effect.

**Proclamations**

28. The Governor may, by proclamation, vary or revoke a proclamation under this Division.

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**Regulations**

29. The Governor may make regulations—

- (a) providing for the care, treatment, rights and duties of persons detained in custody under this Division in consequence of being found to be incapable of controlling his or her sexual instincts;
- (b) providing for the granting of periods of leave for persons so detained;
- (c) providing for any other related matter.

PART III  
IMPRISONMENT  
DIVISION I—SENTENCES OF IMPRISONMENT

**Commencement of sentences and non-parole periods**

30. (1) Where a court imposes a sentence of imprisonment and does not suspend the sentence, the court must specify the date on which, or the time at which, the sentence is to commence or is to be taken to have commenced.

(2) Where a defendant has been in custody in respect of an offence for which the defendant is subsequently sentenced to imprisonment, the court may—

(a) make an appropriate reduction in the term of the sentence, having regard to the period for which the defendant has been in custody;

or

(b) direct that the sentence be taken to have commenced on the day on which the defendant was taken into custody.

(3) Where a court imposes a sentence of imprisonment on a defendant who is not present in court, the court must direct that the sentence is to commence—

(a) on the day on which the defendant is taken into custody pursuant to the warrant of commitment issued in respect of the sentence;

or

(b) if the defendant is subject to some other sentence of imprisonment—on the completion of that other sentence of imprisonment or at some earlier time fixed by the court.

(4) Where a court fixes a non-parole period, the court must specify the date on which the non-parole period is to commence or is to be taken to have commenced.

(5) Where a court directs that a sentence of imprisonment is to be taken to have commenced on the day on which the defendant was taken into custody, any non-parole period fixed by the court in respect of that sentence will be taken to have commenced on that day.

(6) If, on imposing a sentence of imprisonment, the court fails to specify the date on which or the time at which the sentence is to commence or is to be taken to have commenced, the sentence—

(a) will, in the case of a defendant not then in custody, commence on the day on which the defendant is subsequently taken into custody for the offence;

(b) will, in the case of a defendant already in custody for the offence, be taken to have commenced on the day on which the defendant was last so taken into custody;

or

(c) will, in the case of a defendant in custody for some other offence, commence on the day on which the sentence is imposed, unless the sentence is to be served cumulatively pursuant to this Act or any other Act.

**Cumulative sentences**

31. (1) Subject to subsection (2), the court by which a sentence of imprisonment is imposed may direct that the sentence be cumulative upon any other sentence, or sentences, of imprisonment then being served, or to be served, by the defendant.

(2) Where a sentence of imprisonment is imposed for an offence committed by the defendant—

(a) during a period of release on parole;

or

(b) while serving a period of imprisonment pursuant to an order of the Parole Board for breach of parole conditions,

the sentence will (except where one of the sentences to which the defendant is subject is life imprisonment) be cumulative upon the sentence, or sentences, in respect of which the defendant was on parole.

(3) A direction may be given under subsection (1)—

(a) irrespective of the number of cumulative sentences that the defendant is already serving or will, in consequence of the direction, be liable to serve;

and

(b) whether or not the offence for which the defendant has been sentenced is a felony.

## DIVISION II—NON-PAROLE PERIODS

### Duty of court to fix or extend non-parole periods

32. (1) Subject to this section, where a court, on convicting a person of an offence, sentences the person to imprisonment, the court must—

(a) if the person is not subject to an existing non-parole period—fix a non-parole period;

or

(b) if the person is subject to an existing non-parole period—review the non-parole period and extend it by such period as the court thinks fit (but not so that the period of extension exceeds the period of imprisonment that the person becomes liable to serve by virtue of the sentence, or sentences, imposed by the court).

(2) Where the sentence of imprisonment is imposed for an offence committed during a period of release on parole from a previous sentence of imprisonment, the court, in fixing a non-parole period under subsection (1)(a), must have regard to the total period of imprisonment that the person is, by virtue of the new sentence and the balance of the previous sentence, liable to serve.

(3) Subject to subsection (5), the sentencing court may, on application by a prisoner who is serving a sentence of imprisonment but who is not subject to an existing non-parole period, fix a non-parole period.

(4) The fact that the prisoner has completed a non-parole period previously fixed in respect of the same sentence of imprisonment or that a court has previously declined to fix a non-parole period in respect of that sentence does not preclude an application under subsection (3).

(5) The above provisions are subject to the following qualifications:

(a) a non-parole period may not be fixed in respect of a person who is liable to serve a total period of imprisonment of less than one year;

- (b) where a person who is subject to a sentence of life imprisonment is further sentenced to imprisonment by a court of summary jurisdiction, the question of whether a non-parole period should be fixed or extended must be referred to the court by which the sentence of life imprisonment was imposed;
- (c) a court may, by order, decline to fix a non-parole period in respect of a person sentenced to imprisonment if the court is of the opinion that it would be inappropriate to fix such a period because of—
- (i) the gravity of the offence or the circumstances surrounding the offence;
  - (ii) the criminal record of the person;
  - (iii) the behaviour of the person during any previous period of release on parole;
- or
- (iv) any other circumstance.
- (6) The Crown may apply to the sentencing court for an order extending a non-parole period fixed in respect of the sentence, or sentences, of a prisoner, whether the non-parole period was fixed before or after the commencement of this Act.
- (7) In fixing or extending a non-parole period, the court—
- (a) must, if the person in respect of whom the non-parole period is to be fixed or extended is in prison serving a sentence of imprisonment, take into account the period already served;
- and
- (b) in the case of an application by the Crown under subsection (6), must have regard to—
- (i) the likely behaviour of the prisoner should the prisoner be released on parole;
  - (ii) the necessity (if any) to protect some other person or persons generally from the prisoner should the prisoner be released on parole;
  - (iii) the behaviour of the prisoner while in prison but only insofar as it may assist the court to determine how the prisoner is likely to behave should the prisoner be released on parole;
- and
- (iv) such other matters as the court thinks relevant.
- (8) This section does not apply in relation to a person who is serving, or is liable to serve, a sentence of indeterminate duration.
- (9) The Parole Board must, at the request of a sentencing court, make a report to the court on any person in respect of whom the court proposes to fix or extend a non-parole period.
- (10) For the purposes of this section—
- (a) a court that orders that a suspended sentence of imprisonment be carried into effect will be taken to have sentenced the person to whom the order relates to imprisonment;

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(b) the Crown and the prisoner are both parties to an application under this section;

and

(c) "the sentencing court" means—

(i) where the prisoner is subject to a single sentence of imprisonment, or a number of sentences imposed by the one court or by a number of courts of co-ordinate jurisdiction—that court, or a court of co-ordinate jurisdiction;

or

(ii) where the prisoner is subject to a number of sentences of imprisonment imposed by courts of different jurisdiction—the court of the highest jurisdiction or a court whose jurisdiction is co-ordinate with the jurisdiction of that court.

## PART IV

## FINES

**Court to have regard to defendant's means**

33. (1) On imposing a fine upon a defendant, a court may, by order—
- (a) specify a period within which the fine must be paid;
  - or
  - (b) direct that the fine be paid in instalments of a specified amount at specified times or at specified intervals.
- (2) Subject to subsection (3), a court, in determining the time within which a fine is to be paid, must have regard to the effect of the fine—
- (a) on the welfare of dependants of the defendant;
  - and
  - (b) on the defendant's ability to satisfy any order or direction for compensation made, or to be made, by the court under this Act or any other Act.
- (3) The court is not obliged to inform itself as to the matters referred to in subsection (2), but it should consider any evidence on those matters that the defendant or the prosecutor has placed before it.

**Maximum fine where no other maximum provided**

34. Where a fine is imposed in respect of an offence for which the special Act does not prescribe a fine—
- (a) if the special Act provides that imprisonment of a particular division may be imposed for the offence, the fine may not exceed a fine of the equivalent division;
  - and
  - (b) in any other case, the fine may not exceed—
    - (i) where the Supreme Court imposes the fine—a Division 1 fine;
    - (ii) where a District Criminal Court imposes the fine—a Division 3 fine;
    - and
    - (iii) where a court of summary jurisdiction imposes the fine—a Division 5 fine.

**Variation of manner of payment of fine**

35. (1) A defendant upon whom a fine has been imposed by a court may apply to the appropriate officer for an order varying the time or manner of payment of the fine.
- (2) Upon an application under subsection (1), the officer may make such order as the officer thinks appropriate.

## PART V

## BONDS

**Court may not impose bond except under this Part**

36. Notwithstanding any other Act or law to the contrary, a defendant may not enter into a bond except under and in accordance with this Act.

**Part does not apply to murder or treason**

37. The powers vested in a court by this Part—

(a) are exercisable notwithstanding that a special Act prescribes a minimum penalty;

but

(b) are not exercisable in relation to—

(i) murder or treason;

or

(ii) any other offence in respect of which a special Act expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

**Suspension of imprisonment upon defendant entering into a bond**

38. (1) Where a court has imposed a sentence of imprisonment upon a defendant, the court may, if it thinks that good reason exists for doing so, suspend the sentence on condition that the defendant enter into a bond—

(a) to be of good behaviour;

and

(b) to comply with the other conditions (if any) of the bond.

(2) A sentence of imprisonment may not be suspended under this section where the sentence is to be served cumulatively upon another term of imprisonment, or concurrently with another term then being served, or about to be served, by the defendant.

(3) If a probationer under a bond entered into pursuant to this section complies with the conditions of the bond, the sentence of imprisonment is, on the expiration of the bond, wholly extinguished.

**Discharge without sentence upon defendant entering into a bond**

39. (1) Where a court finds a person guilty of an offence the court may, if it thinks that good reason exists for doing so, discharge the defendant with or without recording a conviction and without imposing a penalty, upon condition that the defendant enter into a bond—

(a) to be of good behaviour and to comply with the other conditions (if any) of the bond;

and

(b) to appear before the court for sentence, or conviction and sentence, if the defendant fails during the term of the bond to comply with a condition of the bond.

(2) Where a defendant is discharged under this section—

(a) no fresh prosecution may be commenced in respect of the offence;

and

(b) the defendant will only be liable to sentence, or conviction and sentence, if he or she fails to comply with a condition of the bond.

#### **Term of bond**

40. A bond under this Act is effective for such term, not exceeding three years, as is specified in the bond.

#### **Guarantors, etc.**

41. (1) If the court thinks it appropriate—

(a) a bond under this Act may oblige the defendant to pay a sum specified in the bond in the event of non-compliance with a condition of the bond;

and

(b) the court may require the defendant to find one or more guarantors of such an obligation.

(2) A court—

(a) may require a defendant to find one or more persons to guarantee the defendant's compliance with the conditions of the bond;

and

(b) if such a requirement is made, must specify the amount that any such guarantor will be liable to pay in the event of the defendant's non-compliance with a condition of the bond.

#### **Conditions of bond**

42. (1) Subject to this section, a bond under this Act may include such of the following conditions as the court thinks appropriate and directs be included:

(a) a condition requiring the defendant to be under the supervision of a probation officer for a specified period;

(b) a condition requiring the defendant to reside with a specified person or in a specified place or area;

(c) a condition requiring the defendant not to reside with a specified person or in a specified place or area;

(d) a condition requiring the defendant to perform a specified number of hours of community service;

(e) a condition requiring the defendant to undergo medical or psychiatric treatment in accordance with the terms of the bond;

(f) a condition requiring the defendant to abstain from drugs of a specified class or from alcohol;

(g) a condition requiring the defendant—

(i) to restore misappropriated property to any person apparently entitled to possession of it;

or

- (ii) to pay compensation of a specified amount (in a lump sum or in instalments) to any person for injury, loss or damage resulting from the offence;

or

- (h) any other condition that the court thinks appropriate.

(2) A court must not include a condition requiring the defendant to reside with a specified person or in a specified place unless the court is satisfied that accommodation is available for the defendant with that person or in that place.

(3) A court must not include a condition requiring performance of community service, except where the bond is entered into as a pre-condition of the suspension of a sentence of imprisonment.

(4) A court must not include a condition requiring the defendant to undergo specified medical or psychiatric treatment unless it is satisfied that treatment of the nature specified in the bond has been recommended for the defendant by a legally qualified medical practitioner and is available to the defendant.

#### **Court to furnish Minister with copy of court order**

43. Where a defendant enters into a bond, the conditions of a bond are varied, the term of a bond is extended or a bond is discharged, the court must notify the Director of the terms of the bond, variation or extension, or of the discharge, as the case may require.

#### **Variation or discharge of bond**

44. (1) A probative court may, on the application of a probationer or the Minister of Correctional Services, vary or revoke any condition of a bond.

(2) If the Minister of Correctional Services is satisfied, on the application of a probationer—

- (a) that it is no longer necessary for the probationer to remain under supervision;

and

- (b) that it would not be in the best interests of the probationer to remain under supervision,

the Minister may, by instrument in writing, waive the obligation of the probationer to comply any further with the condition requiring supervision.

(3) Where a probative court is satisfied, on the application of a probationer, that it is no longer necessary for the probationer to remain subject to the bond, the court may, by order, discharge the bond.

## PART VI

## COMMUNITY SERVICE AND SUPERVISION

**Community service not to be ordered unless there is a placement for the defendant**

45. A court must not sentence a defendant to community service, or include in a bond a condition requiring performance of community service, unless the court is satisfied, on the report of an employee in the Department of Correctional Services, that there is, or will be within a reasonable time, a placement for the defendant at a community service centre reasonably accessible to the defendant.

**Ancillary orders for supervision**

46. A court may, in addition to sentencing a defendant to community service, order that the defendant be under supervision by a probation officer for the duration of the sentence.

**Special provisions relating to community service**

47. Where a court imposes a sentence of community service, or includes in a bond a condition requiring the performance of community service, the following provisions apply:

- (a) the court must specify the number of hours of community service to be performed by the person to whom the sentence or bond relates, being not less than 40 or more than 320;
- (b) the court must not specify a number of hours of community service to be performed by a person who is already performing, or is liable to perform, community service, where the aggregate of that number and the number of hours previously specified would exceed 320;
- (c) the court must specify a period, not exceeding 18 months, within which the community service is to be performed;
- (d) the person is required to report to a specified place not later than two working days after the date of the order or bond unless, within that period, the person receives a notice from the Director to the contrary;
- (e) the person is required to perform community service for not less than 4 or more than 24 hours each week and on such day, or days, as the community service officer to whom the person is assigned may direct;
- (f) the person may not be required to perform community service for a continuous period exceeding eight hours;
- (g) one hour of any period of community service exceeding four hours is to be a meal break;
- (h) the person may not be required to perform community service at a time that would interfere with his or her remunerated employment or with a course of training or instruction relating to, or likely to assist him or her in obtaining, such employment, or that would cause unreasonable disruption of the person's commitments in caring for his or her children;
- (i) the person may not be required to perform community service at a time that would cause him or her to offend against a rule of a religion that he or she practises;

- (j) the attendance of the person at any educational or recreational course of instruction approved by the Minister of Correctional Services will be taken to be performance of community service;
  - (k) the person will not be remunerated for the performance of any community service pursuant to the order or bond;
- and
- (l) the person must obey the lawful directions of the community service officer to whom he or she is assigned.

#### **Special provisions relating to supervision**

48. Where a court makes an order, or includes a condition in a bond, requiring the person to whom the order or bond relates to be under supervision by a probation officer, the following provisions apply:

- (a) the court must, in the case of a probationer, specify the period during which the probationer is to be under supervision;
  - (b) the person is required to report to a specified place not later than two working days after the date of the order or bond unless, within that period, the defendant receives a notice from the Director to the contrary;
- and
- (c) the person must obey the lawful directions of the probation officer to whom he or she is assigned.

#### **Director must assign an appropriate officer to a defendant or probationer**

49. (1) The Director must, on receiving a copy of a court order or a bond requiring supervision or the performance of community service, and may thereafter from time to time, assign the person to whom the order or bond relates to a probation officer or a community service officer, as the case may require.

(2) The Director must ensure that the person is notified in writing of the name of the probation officer or community service officer to whom he or she has been assigned and of the place and time at which he or she must first report to that officer.

(3) It is the duty of each probation officer and community service officer to endeavour to ensure that any person assigned to the officer complies with the conditions of the order or bond.

#### **Probation officer or community service officer may give reasonable directions**

50. (1) A probation officer responsible for supervising a person—

- (a) may give reasonable directions to the person—
  - (i) requiring the person to report to the officer on a regular basis;
  - (ii) requiring the person to notify the officer of any change in the person's place of residence or employment;
  - (iii) requiring the person to obtain the officer's written permission before leaving the State for any reason;
  - (iv) requiring the person to reside, or not to reside, in any particular place or area or with any particular person;

or

- (v) requiring the person to take up, or not to take up, any particular employment, to be punctual in reporting to work or not to give up some particular employment;

and

- (b) may give the person other directions of a kind authorized by the Minister of Correctional Services, either generally or in relation to that person.

(2) A community service officer to whom a person is assigned—

- (a) may give reasonable directions to the person—

- (i) requiring the person to report to a community service centre or other place at certain times;
- (ii) requiring the person to notify the officer of any change in the person's place of residence or employment;
- (iii) requiring the person to obtain the officer's written permission before leaving the State for any reason;
- (iv) requiring the person to perform certain projects or tasks as community service;
- (v) requiring the person to undertake, or participate in, courses of instruction at a community service centre or other place;

or

- (vi) requiring the person to behave in a particular manner while undertaking community service;

and

- (b) may give the person other directions of a kind authorized by the Minister of Correctional Services, either generally or in relation to that person.

#### **Powers of Minister in relation to default in performance of community service**

51. (1) Where the Minister of Correctional Services is satisfied that a person who is required to perform community service has failed to obey a direction given by the community service officer to whom the person is assigned, the Minister, instead of commencing proceedings for breach of order or bond, may, by notice in writing served personally, increase the number of hours of community service that the person is required to perform.

(2) Where the Minister increases the hours of community service to be performed under an order or bond, the order or bond will be taken to have been amended accordingly.

(3) The number of hours of community service may not be increased under subsection (1) by more than 24 in aggregate, but such an increase may be made notwithstanding that its effect is to increase the total number of hours to be performed beyond the normal limit of 320 hours.

(4) Where the Minister of Correctional Services is satisfied that a person has failed to comply with an order or bond requiring performance of community service, the Minister may, by notice in writing served personally or by post, suspend the operation of the order or the relevant condition of the bond until proceedings for breach of order or bond have been determined.

PART VII  
RESTITUTION AND COMPENSATION

**Restitution of property**

52. (1) Where the offence of which the defendant has been found guilty, or any other offence that is to be taken into account by the court in determining sentence, involves the misappropriation of property, the court may order the defendant, or any other person in possession of the property, to restore the property to any person who appears to be entitled to possession of the property.

(2) An order under subsection (1) does not prejudice any person's title to the property.

**Compensation**

53. (1) Subject to this section, a court may make an order requiring a defendant to pay compensation for injury, loss or damage resulting from the offence of which the defendant has been found guilty or for any offence taken into account by the court in determining sentence for that offence.

(2) An order for compensation may be made under this section—

(a) either on application by the prosecutor or on the court's own initiative;

and

(b) instead of, or in addition to, dealing with the defendant in any other way.

(2a) Where—

(a) a court finds a defendant guilty of an offence, or takes an offence into account in determining sentence;

and

(b) the circumstances of the offence are such as to suggest that a right to compensation has arisen, or may have arisen, under this section,

the court must, if it does not make an order for compensation, give its reasons for not doing so.

(3) Compensation under this section will be of such amount as the court considers appropriate having regard to any evidence before the court and to any representations made by or on behalf of the prosecutor or the defendant.

(4) Where any property of which a person was dispossessed as a result of the offence is recovered, any damage to the property while it was out of the person's possession is to be treated for the purposes of this section as having resulted from the offence.

(5) The power of a court to award compensation under this section is subject to the following qualifications:

(a) no compensation may be awarded for injury, loss or damage caused by, or arising out of the use of, a motor vehicle except damage to property;

(b) no compensation may be awarded against an employer in favour of an employee or former employee if—

(i) the offence arises from breach of a statutory duty related to employment;

and

(ii) the injury, loss or damage is compensable under the *Workers Rehabilitation and Compensation Act, 1986*;

(c) a court of summary jurisdiction may not award more than \$20 000 (or if a greater amount is prescribed—the prescribed amount) by way of compensation.

\* \* \* \* \*

(7) Compensation may be ordered under this section in relation to an offence notwithstanding that compensation may be ordered under some other statutory provision that relates more specifically to the offence or proceedings in respect of the offence.

(8) Upon making an order for compensation, the court may, by order—

(a) specify a period within which the compensation must be paid;

(b) direct that the compensation be paid in instalments of a specified amount at specified times or at specified intervals.

(9) The amount paid to a person pursuant to an order under this section for compensation for injury, loss or damage must be taken into consideration by a court or any other body in awarding compensation for that injury, loss or damage pursuant to any other Act or law.

**Variation of manner of payment of compensation**

54. (1) A defendant who has been ordered to pay compensation may apply to the appropriate officer for an order varying the time or manner of payment of the compensation.

(2) Upon an application under subsection (1), the officer may make such order as the officer thinks appropriate.

## PART VIII

## COSTS IN SUMMARY JURISDICTION

**Costs**

55. (1) A court of summary jurisdiction may make such order for costs against a person found guilty of an offence as the court thinks fit and may direct the manner and time in which the costs must be paid.

(2) A defendant who has been ordered to pay costs may apply to the appropriate officer for an order varying the time or manner of payment of the costs.

(3) Upon an application under subsection (2), the officer may make such order as the officer thinks appropriate.

PART IX  
ENFORCEMENT OF SENTENCE  
DIVISION I—GENERAL

**Enforcement proceedings must be taken under this Act**

56. Proceedings for enforcement of a sentence may not be commenced except under and in accordance with this Act.

DIVISION II—ENFORCEMENT OF BONDS

**Non-compliance with bond**

57. (1) If it appears to a probative court, by evidence given on oath, that a probationer may have failed to comply with a condition of the probationer's bond, the court may—

(a) (i) issue a summons to the probationer requiring the probationer to appear before the court at the time and place specified in the summons;

or

(ii) issue a warrant for the probationer's arrest;

and

(b) issue a summons to any guarantor.

(2) If a person fails to appear before the court as required by a summons issued under this section, the court may issue a warrant for the person's arrest.

(3) Where a person is arrested pursuant to a warrant issued under this section, the person must be brought before the probative court or a court of summary jurisdiction not later than the next working day and may be remanded in custody or released on bail pending determination of the proceedings.

(4) If a probationer is found guilty of an offence by a court other than the probative court, being an offence committed during the term of the bond, that other court—

(a) if it is of a superior jurisdiction to that of the probative court, must deal with the probationer for the breach of condition arising out of the commission of the offence;

or

(b) if it is of an inferior jurisdiction to that of the probative court, must remand the probationer to the probative court for sentence for the offence.

(5) The court dealing with a probationer for breach of condition must hear any evidence adduced tending to establish that the probationer has failed to comply with a condition of the bond and any evidence or representations that the probationer may wish to adduce or make in reply.

(6) In this section—

“court of an inferior jurisdiction” means—

(a) where the probative court is the Supreme Court—a District Criminal Court or a court of summary jurisdiction;

and

(b) where the probative court is a District Criminal Court—a court of summary jurisdiction:

“court of a superior jurisdiction” means—

(a) where the probative court is a court of summary jurisdiction—the Supreme Court or a District Criminal Court;

and

(b) where the probative court is a District Criminal Court—the Supreme Court.

#### Orders that court may make on breach of bond

58. (1) Where the court is satisfied that the probationer has failed to comply with a condition of the bond, the court—

(a) may, if the bond requires the probationer to pay a sum in the event of non-compliance with a condition of the bond, order that the probationer pay the whole or a part of that sum and direct the manner and time in which payment is to be made;

(b) may order a guarantor to pay the whole or a part of the amount due under the guarantee and direct the time and manner in which payment is to be made;

(c) may, if the probationer has not been sentenced for the original offence—

(i) sentence the probationer for the offence, or convict and sentence the probationer for the offence, as the case may require;

or

(ii) if the court is satisfied that the failure of the probationer to comply with the conditions of the bond was trivial or that there are proper grounds upon which the failure should be excused, refrain from taking any action in respect of the failure;

(d) if the probationer has been sentenced to imprisonment for the original offence and that sentence has been suspended—must, subject to subsection (3), revoke the suspension and order that the sentence be carried into effect.

(2) The court may not order a person to pay an amount pursuant to subsection (1)(a) unless the court is satisfied—

(a) that the person has, or will within a reasonable time have, the means to pay the amount;

and

(b) that payment of the amount would not unduly prejudice the welfare of dependants of the person.

(3) Where a probationer is subject to a suspended sentence of imprisonment and the court is satisfied that the failure of the probationer to comply with the conditions of the bond was trivial or that there are proper grounds upon which the failure should be excused, the court—

(a) may refrain from revoking the suspension;

and

(b) may—

(i) extend the term of the bond by such period, not exceeding one year, as the court thinks fit;

or

(ii) if the bond has expired, require the probationer to enter into a further bond, the term of which must not exceed one year.

(4) Where a court revokes the suspension of a sentence of imprisonment, the court—

- (a) may, if it considers that there are special circumstances justifying it in so doing, reduce the term of the suspended sentence;
- (b) may direct that time spent by the probationer in custody pending determination of the proceedings for breach of condition be counted as part of the term of the suspended sentence;
- (c) may direct that the suspended sentence be cumulative upon any other sentence, or sentences, of imprisonment then being served, or to be served, by the probationer.

(5) Where a court other than the probative court sentences a probationer for the original offence, the court may not impose a sentence that the probative court could not have imposed.

#### **Variation of manner of payment of sum under a bond**

59. (1) A probationer or guarantor who has been ordered to pay a sum under a bond or guarantee may apply to the appropriate officer for an order varying the time or manner of payment of the sum.

(2) Upon an application under subsection (1), the officer may make such order as the officer thinks appropriate.

### **DIVISION III—ENFORCEMENT OF PECUNIARY SUMS**

#### **Whole sum is due and payable upon default in payment of instalment**

60. If, where a court has directed that a person pay a pecuniary sum in instalments, the person defaults in payment of an instalment, the whole of the balance of the pecuniary sum becomes due and payable upon that default.

#### **Reminder notice fees**

60a. (1) Where a person has been in default of payment of a pecuniary sum for 14 days or more, the appropriate officer may cause a reminder notice to be issued and sent by post to the person.

(2) The costs of issuing a reminder notice under this section will be added to the amount in respect of which the notice was issued.

#### **Imprisonment in default of payment**

61. (1) For the purposes of enforcing an order against a person for payment of a pecuniary sum, the court may, at the time of making the order, sentence the person to a term of imprisonment to be served on default in payment of the sum.

(2) Where a person has been in default of payment of a pecuniary sum for more than one month, the appropriate officer—

- (a) may, if the court did not impose a sentence pursuant to subsection (1), sentence the person to a term of imprisonment in respect of the amount outstanding under the order and issue a warrant of commitment for that term;

or

(b) may, if the court did impose such a sentence, issue a warrant of commitment against the person for a term of imprisonment in respect of the amount outstanding.

(3) A term of imprisonment fixed under this section will be calculated at the rate of one day of imprisonment for each prescribed unit of the pecuniary sum or the balance outstanding (as the case may require) but must not in any case exceed six months.

(4) The court or the appropriate officer may direct that a term of imprisonment under this section be cumulative upon any other sentence, or sentences, of imprisonment then being served, or to be served, by the person.

#### Warrants for sale of land or goods

62. (1) Where a person has been in default of payment of a pecuniary sum for more than one month the appropriate officer may, if of the opinion that to do so would supply, or substantially reduce, the amount outstanding, order the sale of land or goods owned by the person, and issue a warrant authorizing the seizure and sale of that land or those goods.

(2) The power to order the sale of land is not exercisable where the amount outstanding, or the aggregate of the amounts outstanding, is less than—

(a) \$10 000;

or

(b) if some other amount is prescribed—that amount.

(3) The goods that may be seized pursuant to a warrant under this section are those that could be taken in bankruptcy proceedings.

(4) If the person in default or any other person alleges that any particular land or goods are not liable to seizure and sale under this section, the person executing the warrant must not proceed to sell that land or those goods until a court has, on the application of the appropriate officer, determined the matter.

(5) For the purposes of determining an application under subsection (4), the court may issue a summons requiring the attendance of such persons as the court thinks fit to call before it.

(6) Where a person other than the person in default claims an interest in land or goods the subject of a warrant under this section, a court may, if satisfied of the validity of the claim—

(a) exclude the land or goods from the warrant;

or

(b) direct the application of the proceeds of the sale in such manner as the court considers just.

(7) The surplus proceeds from a sale pursuant to a warrant under this section must be returned to the person in default.

(8) Goods seized pursuant to a warrant but not sold must be returned to the person in default or left at the place from which they were taken.

(9) If the proceeds from the sale of land or goods pursuant to a warrant are insufficient to meet the amount in respect of which the warrant was issued (including any costs of issue and execution of the warrant), the appropriate officer may fix default imprisonment in respect of the balance outstanding.

**Costs of warrant will be added**

63. The costs of issuing and executing a warrant under this Part will be added to the amount in respect of which the warrant was issued.

**Person in default may pay person executing the warrant**

64. (1) Where a person against whom a warrant has been issued under this Part pays to the person executing the warrant the amount in respect of which the warrant was issued, together with the costs of issuing and executing the warrant, the warrant is satisfied.

(2) A person to whom any money has been paid in accordance with subsection (1) must issue a receipt for the payment and forward the amount to the appropriate officer.

**Postponement or suspension of warrants**

65. (1) Where a person in default of payment of a pecuniary sum applies to an appropriate officer for relief under this section, the officer may, subject to such conditions as to payment of the sum as the officer thinks fit, postpone the issue of a warrant under this Part or suspend its operation (as the case may require).

(2) The conditions referred to in subsection (1) may include a condition requiring that specified security for payment be given.

(3) A postponement or suspension under this section may be revoked by an appropriate officer for breach of condition.

**Ex-parte orders**

66. (1) An order, at the discretion of the court or the appropriate officer, may be made under this Part in the absence of the person in default of payment of the pecuniary sum to which the order relates.

(2) Where an order is made in the absence of the person in default, a copy of the order must be served on the person personally.

(3) Where the order is for imprisonment or sale of land or goods, no action for enforcement of the order may be taken until ten days after service of the order.

**Application to work off pecuniary sum by community service**

67. (1) If the payment of a pecuniary sum would cause severe hardship, the person liable to pay the sum may apply for permission to work off the sum, or the balance outstanding, by community service.

(2) An application under this section—

(a) must be made in writing to the appropriate officer;

and

(b) must include—

(i) a statement of the applicant's assets and liabilities;

(ii) a statement of the applicant's income and recurrent expenditure;

and

(iii) the prescribed information.

(3) The information contained in the application must be verified by statutory declaration.

(4) If the appropriate officer is satisfied that the payment of the pecuniary sum would cause severe hardship to the applicant or his or her dependants, the officer must, within two working days after reaching that decision, refer the application to the Director.

(5) If a position for the applicant at a community service centre is currently available or will become available within a reasonable period, the Director may permit the applicant to enter into an undertaking in a form and on terms approved by the Director to perform community service.

(6) The undertaking must comply with the following provisions:

(a) the period of the community service will be calculated at the rate of eight hours for each prescribed unit of the pecuniary sum or of the balance outstanding;

and

(b) the community service must be performed over a period not exceeding 18 months.

(7) Where a person enters into an undertaking under this section—

(a) the Director must, within two business days of the date of the undertaking, file a copy of the undertaking with the appropriate officer;

and

(b) any process for enforcement of payment of the pecuniary sum will be suspended unless and until notice of the cancellation of the undertaking is filed under this section.

(8) If the appropriate officer is not satisfied that payment of a pecuniary sum would cause severe hardship to an applicant or his or her dependants, the officer must give the applicant written notice to that effect and the applicant may, within seven days after receiving the notice, apply to the court for a review of the decision.

(9) If the court is of the opinion that the evidence supports a finding of severe hardship it may—

(a) reverse the appropriate officer's decision;

and

(b) give such incidental directions as the case may require.

(10) If a person fails to comply with the terms of an undertaking under this section, the Director may, by notice in writing to that person, cancel the undertaking.

(11) The Director must file a copy of the notice of cancellation with the appropriate officer together with a statement of the period of community service (if any) served by the applicant before the date of cancellation (and the period will be expressed in multiples of eight hours, so that if the period amounts to less than eight hours it will be ignored, as will any remainder of less than eight hours).

(12) If the person performs community service in pursuance of an undertaking under this section, the outstanding amount of the pecuniary sum is reduced by one prescribed unit for each eight hours of community service completed by the person.

(13) If the person at any time pays to the Director a part of the amount then outstanding, the number of hours of community service still to be performed will be reduced by the proportion that the amount so paid bears to that outstanding amount (ignoring any fraction or part of an hour).

(14) The Director will release a person from an undertaking if the balance of the amount then outstanding is paid to the Director.

(15) Where a person completes the entire period of community service to be performed in pursuance of an undertaking, the Director must file a notice of that fact with the appropriate officer.

(16) Any notice to be given under this section may be given personally or by post.

(17) This section does not apply where the amount outstanding, or the aggregate of the amounts outstanding, exceeds—

(a) \$2 000;

or

(b) if some other amount is prescribed—that amount.

#### **Remission of pecuniary sum**

68. (1) A court may, on the application of the appropriate officer or of the person liable under an order for payment of a pecuniary sum, remit the outstanding amount under the order if the court is satisfied that, in all the circumstances of the case, no other order under this Part would be appropriate.

(2) Upon a court making an order under subsection (1), the liability of the person in default to comply with the order for payment of the sum is wholly extinguished.

#### **Amount in default is reduced by imprisonment served**

69. (1) Where a person is committed to prison pursuant to a warrant issued under this Part, the amount in respect of which the warrant was issued is reduced by one prescribed unit for each day served in prison pursuant to the warrant.

(2) If the person at any time pays to the appropriate officer or the manager of the prison the amount then outstanding under the warrant, together with the costs of issuing and executing the warrant, the sentence of imprisonment is wholly extinguished.

(3) If the person at any time pays to the appropriate officer or the manager of the prison a part of the amount then outstanding under the warrant, the balance of the term of imprisonment still to be served will be reduced by the proportion that the amount so paid bears to that outstanding amount (ignoring any fraction or any part of a day).

(4) A prison manager to whom any money has been paid must issue a receipt for the payment and forward the amount to the appropriate officer.

(5) Where a person has served a term of imprisonment fixed under this Part, the whole of the amount in respect of which the warrant of commitment was issued is extinguished.

(6) For the purposes of this section, the deduction from a prisoner's earnings of the amount of a levy payable under the *Criminal Injuries Compensation Act, 1978*, will be taken to be payment by the prisoner of that amount.

#### **Civil liability cannot be diminished**

70. Notwithstanding any other provision of this Division, a person cannot diminish a civil liability by undergoing imprisonment or performing community service pursuant to this Division.

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DIVISION IV—ENFORCEMENT OF COMMUNITY SERVICE ORDERS AND  
OTHER ORDERS OF A NON-PECUNIARY NATURE

**Failure to comply with a court order may be punished by imprisonment**

71. (1) Where a person refuses or neglects to comply with an order of a court requiring the person to perform community service, the appropriate officer may—

- (a) sentence the person to a term of imprisonment in respect of the default;
- (b) issue a warrant of commitment against the person;

and

- (c) if the officer thinks it appropriate to do so, direct that the term be cumulative upon any other sentence, or sentences, of imprisonment being served, or to be served, by the person.

(2) Subject to subsection (4), a term of imprisonment fixed under subsection (1) will be calculated at the rate of one day of imprisonment (or, if some other number of days is prescribed, that number) for each eight hours of community service unperformed.

(3) Where a person refuses or neglects to comply with a sentence of a court requiring the person to do some act (other than the performance of community service or the payment of a pecuniary sum), the court that imposed the sentence, or a court of co-ordinate jurisdiction, may, on application by the appropriate officer—

- (a) sentence the person to such term of imprisonment in default as the court thinks fit;

- (b) issue a warrant of commitment against the person;

and

- (c) if the court thinks it appropriate to do so, direct that the term be cumulative upon any other sentence, or sentences, of imprisonment being served, or to be served, by the person.

(4) A term of imprisonment fixed under this section may not exceed six months.

(5) A right of appeal lies against a decision of an appropriate officer under subsection (1) to direct, or not to direct, that a sentence imposed under that subsection be served cumulatively on some other term.

(6) The right of appeal conferred by subsection (5) lies to the court that imposed the order for community service, or a court of co-ordinate jurisdiction.

## PART X

## MISCELLANEOUS

**No right of appeal against decisions of appropriate officers**

72. Subject to any express provision to the contrary, no right of appeal lies against a decision, order or direction of an appropriate officer under this Act.

**Abolition of hard labour<sup>1</sup>**

73. (1) No order or direction for hard labour will be made by a court in respect of a person sentenced to imprisonment.

(2) No person serving a sentence of imprisonment will be required to perform hard labour.

(3) Nothing in this section prevents a prisoner from performing any work, or from being directed to perform any work, pursuant to the *Correctional Services Act, 1982*.

**Evidentiary**

74. In proceedings under this Act for the enforcement of an order of a court, a certificate apparently under the hand of an appropriate officer and specifying the default of any person under the order will, in the absence of proof to the contrary, be proof of the facts certified.

**Regulations**

75. (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe forms for the purposes of this Act;

(b) regulate the practice and procedure of proceedings before appropriate officers.

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<sup>1</sup>For abolition of capital punishment see s. 5a of the *Criminal Law Consolidation Act, 1935*. For abolition of certain corporal punishments—see the *Corporal Punishment Abolition Act, 1971*.

SCHEDULE

*Transitional Provisions*

1. (1) Subject to this clause, this Act applies in relation to a person found guilty of an offence before or after the commencement of this Act.

(2) This Act does not affect a term of imprisonment for the enforcement, or in default of payment, of a pecuniary sum where the term was fixed before the commencement of this Act.

2. In determining an application made under section 32(3) by a prisoner who was in prison immediately before the commencement of the *Prisons Act Amendment Act (No. 2), 1983*, the court must, if the prisoner has already served a period of imprisonment that would be equal to, or exceed, a non-parole period determined in accordance with this section, as reduced by the total number of days of remission credited to the prisoner after that commencement, make an order fixing a non-parole period in respect of that prisoner that expires 30 days after the day on which the order is made.

**APPENDIX 1**

## Legislative History

Section 9(1):	amended by 47, 1989, s. 2
Section 12:	redesignated as s. 12(1) by 47, 1989, s. 3
Section 12(2) and (3):	inserted by 47, 1989, s. 3
Section 16:	amended by 22, 1991, s. 4
Section 18:	amended by 22, 1991, s. 5
Section 27a:	inserted by 76, 1988, s. 2
Section 53(2a):	inserted by 27, 1990, s. 3(a)
Section 53(5):	substituted by 27, 1990, s. 3(b)
Section 53(6):	repealed by 27, 1990, s. 3(b)
Section 60a:	inserted by 33, 1991, s. 10

## APPENDIX 2

## Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	—	\$500
10	—	\$200
11	—	\$100
12	—	\$50

*Note: This appendix is provided for convenience of reference only.*