



STATUTES AMENDMENT (TRUTH IN SENTENCING) ACT 1994

No. 35 of 1994

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 AMENDMENT OF CORRECTIONAL SERVICES ACT 1982

4. Amendment of s. 4—Interpretation
5. Amendment of s. 37A—Chief Executive Officer may release certain prisoners on home detention
6. Insertion of s. 42A
 - 42A. Minor breaches of prison regulations
7. Amendment of s. 43—Manager may deal with breaches of prison regulations
8. Amendment of s. 44—Manager may refer any matter to a Visiting Tribunal
9. Insertion of s. 49
 49. Manager may delegate power to deal with breaches of prison regulations
10. Amendment of s. 56—Term of office of members
11. Substitution of s. 66
 66. Release on parole—prisoners imprisoned for less than five years
 67. Release on parole—prisoners imprisoned for five years or more
 68. Conditions of release on parole
12. Amendment of s. 70—Duration of parole for life prisoners
13. Amendment of s. 77—Proceedings before the Board
14. Repeal of Part VII
15. Amendment of s. 89—Regulations
16. Statute revision amendments

PART 3 AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

17. Amendment of s. 9—Court to inform defendant of reasons, etc., for sentence
18. Repeal of s. 12

PART 4**AMENDMENT OF YOUNG OFFENDERS ACT 1993**

19. Amendment of s. 36—Detention of youth sentenced as adult

PART 5**TRANSITIONAL PROVISIONS**

20. Reduction of existing sentences and non-parole periods
21. Sentences imposed after commencement of this Act

SCHEDULE*Statute Revision Amendments*



ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 35 of 1994

An Act to amend the Correctional Services Act 1982, the Criminal Law (Sentencing) Act 1988 and the Young Offenders Act 1993.

[Assented to 2 June 1994]

The Parliament of South Australia enacts as follows:

PART 1 PRELIMINARY

Short title

1. This Act may be cited as the *Statutes Amendment (Truth in Sentencing) Act 1994*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

PART 2 AMENDMENT OF CORRECTIONAL SERVICES ACT 1982

Amendment of s. 4—Interpretation

4. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "sentence of indeterminate duration" the following definition:

"victim", in relation to an offence, means a person who suffered mental or physical injury or nervous shock as a result of the offence.;

(b) by striking out subsection (2).

Amendment of s. 37A—Chief Executive Officer may release certain prisoners on home detention

5. Section 37A of the principal Act is amended—

- (a) by inserting in subsection (1) "and the regulations" after "subject to this section";
- (b) by striking out from subsection (2)(a) "one-third" and substituting "one-half";
- (c) by striking out from subsection (4)(b) ", assuming, where relevant, that the prisoner had earned throughout the period of home detention the maximum number of days of remission each month".

Insertion of s. 42A

6. The principal Act is amended by inserting before section 43 the following section:

Minor breaches of prison regulations

42A. (1) Where the manager of the correctional institution is satisfied that a prisoner has committed a breach of a regulation that is specified to be a regulation to which this section applies, the manager may give the prisoner notice in writing that—

- (a) sets out the date of the alleged offence and briefly states the facts on which the allegation is founded; and
- (b) identifies the particular regulation that is alleged to have been breached; and
- (c) specifies that the prisoner may elect to be charged with, and receive a formal hearing in relation to, the offence; and
- (d) specifies the punishment that the manager proposes to impose if the prisoner does not elect to be charged with the offence.

(2) If the prisoner does not within 24 hours give notice in writing to the manager, or an employee of the Department specified in the manager's notice, that the prisoner elects to be charged with the offence, the manager may, without affording further opportunity for persons—

- (a) to hear or view evidence; or
- (b) to call, examine or cross-examine witnesses; or
- (c) to make submissions on the alleged breach or penalty,

impose on the prisoner one or both of the following penalties:

- (d) forfeiture of any specified amenities or privileges for a specified period not exceeding seven days; or

- (e) exclusion from any work that is performed in association with other prisoners for a specified period not exceeding seven days.

Amendment of s. 43—Manager may deal with breaches of prison regulations

7. Section 43 of the principal Act is amended by striking out paragraph (a) of subsection (2) and substituting the following paragraph:

- (a) forfeiture to the Crown of a sum, not exceeding the amount prescribed for the purposes of this paragraph, payable out of any money held by the manager on behalf of the prisoner, or any allowance to be paid to the prisoner under this Act;.

Amendment of s. 44—Manager may refer any matter to a Visiting Tribunal

8. Section 44 of the principal Act is amended—

- (a) by striking out paragraph (b) of subsection (2);
- (b) by striking out from paragraph (c) of subsection (2) "\$50" and substituting "the amount prescribed for the purposes of this paragraph"; and
- (c) by striking out from subsection (4) "\$200" and substituting "an amount prescribed for the purposes of this subsection".

Insertion of s. 49

9. The following section is inserted after section 48 of the principal Act:

Manager may delegate power to deal with breaches of prison regulations

49. (1) The manager of a correctional institution may, with the approval of the Chief Executive Officer, delegate to any employee of the Department any of his or her powers or functions under this Division.

(2) A delegation under this section—

- (a) may be subject to conditions specified in the delegation; and
- (b) may be revoked by the manager or varied by the manager with the approval of the Chief Executive Officer; and
- (c) does not prevent the manager from acting in any matter.

Amendment of s. 56—Term of office of members

10. Section 56 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

- (1) The presiding member of the Board will be appointed for a term, not exceeding five years, determined by the Governor and specified in the instrument of appointment.

Substitution of s. 66

11. Section 66 of the principal Act is repealed and the following sections are substituted:

Release on parole—prisoners imprisoned for less than five years

66. The Board must order that a prisoner who is liable to serve a total period of imprisonment of less than five years and for whom a non-parole period has been fixed be released from prison or home detention on parole on a day specified by the Board, being a day—

- (a) where, because the commencement of the non-parole period has been back dated, the non-parole period expires prior to the date on which it is fixed, not later than 30 days after the day on which it is fixed; or
- (b) in any other case, not later than 30 days after the day on which the non-parole period expires.

Release on parole—prisoners imprisoned for five years or more

67. (1) Where a prisoner is serving a sentence of life imprisonment or is liable to serve a total period of imprisonment of five years or more and a non-parole period has been fixed in respect of the sentence or sentences—

- (a) the prisoner; or
- (b) the Chief Executive Officer, or any employee of the Department authorised by the Chief Executive Officer,

may apply in the prescribed manner to the Board for the prisoner's release on parole.

(2) This section does not apply to a person who is serving a sentence of indeterminate duration.

(3) An application cannot be made under subsection (1) more than six months before the expiration of the non-parole period fixed in respect of the prisoner's sentence.

(4) In determining an application under this section for the release of a prisoner on parole, the Board must have regard to the following matters:

- (a) any relevant remarks made by the court in passing sentence; and
- (b) the likelihood of the prisoner complying with the conditions of parole; and
- (c) where the prisoner was imprisoned for an offence or offences involving violence, the circumstances and gravity of the offence, or offences, for which the prisoner was sentenced to imprisonment but only insofar as it may assist the Board to determine how the prisoner is likely to behave should the prisoner be released on parole; and
- (d) the behaviour of the prisoner while in prison or on home detention; and

- (e) the behaviour of the prisoner during any previous release on parole; and
- (f) any reports tendered to the Board on the social background, the medical, psychological or psychiatric condition of the prisoner, or any other matter relating to the prisoner; and
- (g) the probable circumstances of the prisoner after release from prison or home detention; and
- (h) any other matters that the Board thinks are relevant.

(5) The Board may, on an application under this section, order that a prisoner (not being a prisoner who is serving a sentence of life imprisonment) be released from prison on parole on a day specified in the order.

(6) The Board may, on an application under this section in respect of a prisoner who is serving a sentence of life imprisonment, recommend to the Governor that the prisoner be released from prison on parole and, if the Board so recommends, the Board—

- (a) must recommend to the Governor—
 - (i) a day on which the prisoner is to be released on parole; and
 - (ii) a period of not less than three years or more than ten years, for which the prisoner should continue on parole; and
- (b) must forward a copy of its recommendations to the Governor for approval.

(7) The Governor may, on receiving the Board's recommendations, order that the prisoner be released from prison on parole on a day and for a period specified in the order, being not less than three years and not more than ten years.

(8) The Board or the Governor cannot specify a release date under this section that is earlier than the day on which the prisoner's non-parole period expires.

(9) The Board must, not more than 30 days after refusing an application by a prisoner for release on parole, notify the prisoner in writing of—

- (a) its refusal; and
- (b) the reasons for its refusal and of any matters that might assist the prisoner in making any further application for parole; and
- (c) a date, not less than six months or more than one year after the date on which the Board refuses the application, before which the Board will not accept any further application by the prisoner for release on parole.

(10) The Board is not obliged to (but may, if in its opinion good reason exists for doing so) accept a further application by a prisoner for release on parole before the date notified by the Board under subsection (9).

Conditions of release on parole

68. (1) The release of a prisoner on parole—

(a) must be subject to the conditions—

(i) that the prisoner not commit any offence; and

(ii) that the prisoner not possess an offensive weapon unless the prisoner has first obtained the permission of the Board to do so and complies with the terms and conditions of that permission; and

(iii) that the prisoner—

(A) be under supervision of a parole officer; and

(B) obey the reasonable directions of the parole officer,

until the expiration of the period of parole or such earlier date as is specified by the Board; and

(b) may be subject to any other condition fixed by the Board or, in the case of a prisoner serving a sentence of life imprisonment, recommended by the Board and approved by the Governor, to be effective until the expiration of the period of parole, or for such lesser period as may be specified in the order.

(2) In fixing or recommending conditions to which the release of a prisoner on parole will be subject, the Board must have regard to the following matters:

(a) any remarks made by the court in passing sentence; and

(b) the likelihood of the prisoner complying with the conditions; and

(c) the circumstances and gravity of the offence, or offences, for which the prisoner was sentenced to imprisonment; and

(d) the behaviour of the prisoner while in prison or on home detention; and

(e) the behaviour of the prisoner during any previous release on parole; and

(f) any reports tendered to the Board on the social background, the medical, psychological or psychiatric condition of the prisoner, or any other matter relating to the prisoner; and

- (g) the probable circumstances of the prisoner after release from prison or home detention; and
- (h) any other matters that the Board thinks are relevant.

(3) In fixing or recommending conditions to which the release on parole of a prisoner will be subject, the Board may designate any condition as a condition that, if breached, will result in automatic cancellation of parole.

(4) A prisoner must not be released pursuant to this Division until the conditions of the prisoner's release on parole have been fixed by the Board or, if the case so requires, recommended by the Board and approved by the Governor.

Amendment of s. 70—Duration of parole for life prisoners

12. Section 70 of the principal Act is amended by inserting in subsection (1)(a) "unless the Governor, on the recommendation of the Board, approves a day on which the parole of the prisoner is to expire, in which case the parole of the prisoner expires on that day" after "of the sentence".

Amendment of s. 77—Proceedings before the Board

13. Section 77 of the principal Act is amended—

(a) by inserting before subsection (2) the following subsection:

(1) On receiving an application made under this Part, the Board must notify the prisoner, the Chief Executive Officer and the Commissioner for Police and, where an offence for which the prisoner is imprisoned is an offence under Part III of the *Criminal Law Consolidation Act 1935* or any other offence involving violence, may notify a victim of the offence—

(a) of the receipt of the application; and

(b) of the day and time fixed for the hearing of the application.;

(b) by inserting after paragraph (b) of subsection (2) the following paragraph:

(ba) if an offence for which the prisoner is imprisoned was an offence under Part III of the *Criminal Law Consolidation Act 1935* or any other offence involving violence, any victim of the offence may make such submissions to the Board in writing as he or she thinks fit; and.

Repeal of Part VII

14. Part VII of the principal Act is repealed.

Amendment of s. 89—Regulations

15. Section 89 of the principal Act is amended by inserting after paragraph (c) of subsection (1) the following paragraph:

(d) prescribing a class of prisoners who may not be released from prison to serve a period of home detention;.

Statute revision amendments

16. The principal Act is further amended in the manner set out in the schedule.

PART 3
AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

Amendment of s. 9—Court to inform defendant of reasons, etc., for sentence

17. Section 9 of the principal Act is amended by striking out paragraph (c) of subsection (1).

Repeal of s. 12

18. Section 12 of the principal Act is repealed.

PART 4
AMENDMENT OF YOUNG OFFENDERS ACT 1993

Amendment of s. 36—Detention of youth sentenced as adult

19. Section 36 of the principal Act is amended by striking out paragraph (a) of subsection (4).

PART 5
TRANSITIONAL PROVISIONS

Reduction of existing sentences and non-parole periods

20. A sentence of imprisonment (including a suspended sentence) imposed before the commencement of this Act and a non-parole period imposed before the commencement of this Act are, on the commencement of this Act, reduced—

(a) by the number of days of remission credited to the prisoner or youth; and

(b) by the maximum number of days of remission that the prisoner or youth could have earned after the commencement of this Act had this Act not repealed Part VII of the *Correctional Services Act 1982*.

Sentences imposed after commencement of this Act

21. (1) A court, in fixing the term of a sentence of imprisonment or in fixing or extending a non-parole period, must, when considering sentences imposed before the commencement of this Act (but after the commencement of the *Prisons Act Amendment Act (No. 2) 1983*) for comparable offences, take into account the abolition of the previous statutory scheme for remission of sentence.

(2) This section applies whether the offence to which the sentence or non-parole period relates was committed before or after the commencement of this Act.

SCHEDULE
Statute Revision Amendments

Provision Amended	How Amended
Section 4(1) definition of " <i>the Department</i> "	Strike out "Department of" and substitute "Department for".
Section 7(2)	Strike out "officer" and substitute "employee"; Strike out "upon" and substitute "on".
Section 7(2a)(a)	Strike out "upon and substitute "on".
Section 7(4)	Strike out "upon" and substitute "on"; Strike out "officer" and substitute "employee".
Section 10(2)(a)	Strike out "Chairman" and substitute "presiding member".
Section 10(2)(b)	Strike out "Deputy Chairman" and substitute "deputy presiding member".
Section 11(1)	Strike out "Chairman" and substitute "presiding member".
Section 11(2)	Strike out "Chairman" and substitute "presiding member".
Section 14(1)	Strike out "Chairman" (first occurring) and substitute "presiding member"; Strike out "Chairman's" and substitute "presiding member's"; Strike out "Deputy Chairman" and substitute "deputy presiding member".
Section 14(2)	Strike out "Chairman" (first occurring) and substitute "presiding member"; Strike out "Deputy Chairman" and substitute "deputy presiding member".
Section 17C(3)	Strike out "upon" and substitute "on".
Section 21A	Strike out "upon" and substitute "on".
Section 24(1)	Strike out "every" and substitute "a".
Section 27(2)	Strike out "officers" and substitute "employees".

Section 27(4)	Strike out "officer" and substitute "employee".
Section 28(3)	Strike out "Upon" and substitute "On".
Section 31(1)	Strike out "Every" and substitute "A".
Section 31(4a)	Strike out "such" and substitute "a".
Section 31(4b)	Strike out "upon" and substitute "on".
Section 31(6)	Strike out "upon" and substitute "on".
Section 33(10)(a)(ii)	Strike out "upon" and substitute "on".
Section 33(10)(a)(iii)	Strike out "upon" and substitute "on".
Section 33(10)(a)(iv)	Strike out "upon" and substitute "on".
Section 33(10)(b)(ii)	Strike out "upon" and substitute "on".
Section 33(10)(c)(iii)	Strike out "upon" and substitute "on".
Section 33 (11)(b)(ii)	Strike out "upon" and substitute "on".
Section 36(8)	Strike out "Notwithstanding" and substitute "Despite the fact".
Section 37B(2)	Strike out "upon" and substitute "on".
Section 37C(3)	Strike out "Upon" and substitute "On".
Section 37C(6)	Strike out "upon" and substitute "on".
Section 43(2)	Strike out "upon" and substitute "on".
Section 44(1)	Strike out "upon" and substitute "on".
Section 44(2)	Strike out "upon" (wherever it occurs) and substitute, in each case, "on".
Section 45(a)(ii)	Strike out "officer" and substitute "employee".
Section 45(a)(iii)	Strike out "officer" and substitute "employee".
Section 45(d)	Strike out "upon" and substitute "on".
Section 46(1)	Strike out "upon" and substitute "on".
Section 46(3)	Strike out "Upon" and substitute "On".
Section 46(4)	Strike out "Upon" and substitute "On".
Section 46(5)	Strike out "upon" and substitute "on".
Section 47(1a)(a)	Strike out "a District Court" and substitute "the District Court".

Section 47(1a)(b)	Strike out "a court of summary jurisdiction" and substitute "the Magistrates Court".
Section 48	Strike out " <i>Justices Act</i> ," and substitute " <i>Summary Procedure Act</i> ".
Section 52(1)	Strike out "officer" and substitute "employee".
Section 52(1)(b)	Strike out "officer" and substitute "employee".
Section 52(2)	Strike out "officer" and substitute "employee".
Section 55(2)(a)	Strike out "Chairman" and substitute "presiding member".
Section 55(4)	Strike out "officer" and substitute "employee".
Section 56(2)	Strike out "Chairman" and substitute "presiding member".
Section 56(3)	Strike out "Upon" and substitute "On".
Section 58(3)	Strike out "Upon" and substitute "On".
Section 59(1)(a)	Strike out "Deputy Chairman" and substitute "deputy presiding member".
Section 59(1)(b)	Strike out "Chairman" (first occurring) and substitute "presiding member"; Strike out "Deputy Chairman" and substitute "deputy presiding member".
Section 60(2)	Strike out "Chairman" and substitute "presiding member".
Section 60(3)	Strike out "Chairman" (first occurring) and substitute "presiding member"; Strike out "Deputy Chairman" and substitute "deputy presiding member".
Section 60(4)(a)	Strike out "Chairman" (first and third occurring) and substitute, in each case, "presiding member"; Strike out "Chairman's" and substitute "presiding member's"; Strike out "Deputy Chairman" (twice occurring) and substitute, in each case, "deputy presiding member".

Section 60(5)(a)	Strike out Chairman (first occurring) and substitute "presiding member"; Strike out "Deputy Chairman" and substitute "deputy presiding member".
Section 64(1)(d)	Strike out "upon" and substitute "on".
Section 64(2)	Strike out "every" (twice occurring) and substitute, in each case, "each".
Section 70(2)	Strike out "Upon" and substitute "On".
Section 71(1)	Strike out "upon" and substitute "on".
Section 71(2)	Strike out "upon" (twice occurring) and substitute, in each case, "on".
Section 72(1)	Strike out "upon" and substitute "on".
Section 74A(b)(ii)	Strike out "upon" and substitute "on".
Section 85B	Strike out "officer" and substitute "employee".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor