



**STATUTES AMENDMENT (SENTENCING—MISCELLANEOUS) ACT
1999**

No. 13 of 1999

SUMMARY OF PROVISIONS

**PART 1
PRELIMINARY**

1. Short title
2. Commencement
3. Interpretation

**PART 2
AMENDMENT OF THE CRIMINAL LAW CONSOLIDATION ACT 1935**

4. Amendment of s. 348—Interpretation
5. Amendment of s. 352—Right of appeal in criminal cases

**PART 3
AMENDMENT OF THE CRIMINAL LAW (SENTENCING) ACT 1988**

6. Amendment of s. 18A—Sentencing for multiple offences
7. Amendment of s. 38—Suspension of imprisonment on defendant entering into bond
8. Amendment of s. 39—Discharge without sentence on defendant entering into bond
9. Amendment of s. 42—Conditions of bond
10. Amendment of s. 48—Special provisions relating to supervision
11. Amendment of s. 49—CEO must assign a probation officer or community service officer
12. Insertion of s. 50AA
50AA. Powers of probation officer in the case of home detention
13. Amendment of s. 58—Orders that court may make on breach of bond
14. Amendment of s. 71—Community service orders may be enforced by imprisonment



ANNO QUADRAGESIMO OCTAVO

ELIZABETHAE II REGINAE

A.D. 1999

No. 13 of 1999

An Act to amend the Criminal Law Consolidation Act 1935 and the Criminal Law (Sentencing) Act 1988.

[Assented to 18 March 1999]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment (Sentencing—Miscellaneous) Act 1999*.

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 specified in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF THE CRIMINAL LAW CONSOLIDATION ACT 1935**

Amendment of s. 348—Interpretation

4. Section 348 of the principal Act is amended by striking out "him" from the definition of "sentence" and substituting "the person, and also includes an order under section 39 of the *Criminal Law (Sentencing) Act 1988* discharging the convicted person, without imposing a penalty, on the person entering into a bond".

Amendment of s. 352—Right of appeal in criminal cases

5. Section 352 of the principal Act is amended by inserting in subsection (1)(a)(iii) ", or a decision of the court to defer sentencing the convicted person," after "(other than a sentence fixed by law)".

PART 3
AMENDMENT OF THE CRIMINAL LAW (SENTENCING) ACT 1988

Amendment of s. 18A—Sentencing for multiple offences

6. Section 18A of the principal Act is amended by striking out "of a number of offences for which he or she was charged on the one complaint or information" and substituting "by a court of a number of offences".

Amendment of s. 38—Suspension of imprisonment on defendant entering into bond

7. Section 38 of the principal Act is amended by inserting after subsection (2) the following subsections:

(2a) However, if the period of imprisonment to which a defendant is liable under one or more sentences is more than three months but less than one year, the sentencing court may, by order—

- (a) direct that the defendant serve a specified period (being not less than one month) of the imprisonment in prison; and
- (b) suspend the remainder on condition that the defendant enter into a bond of a kind described in subsection (1) that will have effect on the defendant's release from prison.

(2b) The term of a bond under subsection (2a) cannot extend beyond the period of the suspended imprisonment.

(2c) If the court suspends a sentence of imprisonment under this section on the ground that, because of the defendant's ill health, disability or frailty, it would be unduly harsh for the defendant to serve any time in prison, the court may, in addition to any other conditions included in the bond, include a condition (a "home detention condition") requiring the defendant to reside in a specified place and to remain at that place for a specified period of no more than 12 months, not leaving it except for one of the following purposes:

- (a) remunerated employment;
- (b) necessary medical or dental treatment for the defendant;
- (c) averting or minimising a serious risk of death or injury (whether to the defendant or some other person);
- (d) any other purpose approved or directed by the probation officer to whom the defendant is assigned,

(and if the court includes a home detention condition it must also include a condition requiring the defendant to be under the supervision of a probation officer for at least the same period).

Amendment of s. 39—Discharge without sentence on defendant entering into bond

8. Section 39 of the principal Act is amended—

- (a) by striking out paragraph (a) of subsection (1) and substituting the following paragraphs:

**Statutes Amendment (Sentencing—Miscellaneous)
Act 1999**

No. 13 of 1999

(a) to be of good behaviour; and

(ab) to comply with the other conditions (if any) included in the bond; and;

(b) by inserting after subsection (1) the following subsection:

(1a) However, if the defendant is not to be so required to appear before the court, the court cannot impose any conditions under subsection (1)(ab).

Amendment of s. 42—Conditions of bond

9. Section 42 of the principal Act is amended—

(a) by striking out from subsection (1) "this section" and substituting "this Act";

(b) by striking out subsection (1a);

(c) by inserting in subsection (2) "(whether under this or any other section)" after "must not include a condition";

(d) by inserting in subsection (2) "and that the accommodation is suitable in all the circumstances" after "place".

Amendment of s. 48—Special provisions relating to supervision

10. Section 48 of the principal Act is amended by inserting in paragraph (b) "except in the case of a bond with a home detention condition," before "the person is required to report".

Amendment of s. 49—CEO must assign a probation officer or community service officer

11. Section 49 of the principal Act is amended by inserting in subsection (2) ", if necessary," after "and" first occurring.

Insertion of s. 50AA

12. The following section is inserted after section 50 of the principal Act:

Powers of probation officer in the case of home detention

50AA. (1) A probation officer may, at any time—

(a) enter or telephone the residence of a probationer who is subject to a bond with a home detention condition; or

(b) telephone the probationer's place of employment or any other place at which the probationer is permitted or required to attend; or

(c) question any person who is at that residence or place as to the whereabouts of the probationer,

for the purposes of ascertaining whether or not the probationer is complying with the home detention condition.

(2) A person must not—

(a) hinder a probation officer in the exercise of powers under this section; or

**Statutes Amendment (Sentencing—Miscellaneous)
Act 1999**

No. 13 of 1999

- (b) fail to answer truthfully any question put to the person by a probation officer pursuant to those powers.

Maximum penalty: \$2 500.

(3) A probation officer or a member of the police force who believes on reasonable grounds that a probationer who is subject to a bond with a home detention condition is contravening, has contravened or is about to contravene that condition of the bond may arrest the probationer without warrant and take him or her to the nearest police station at which facilities are continuously available for his or her care and custody.

(4) A probationer arrested pursuant to subsection (3) must be brought as soon as practicable before the sentencing court to be dealt with for breach of bond.

Amendment of s. 58—Orders that court may make on breach of bond

13. Section 58 of the principal Act is amended by inserting after subsection (4)(b) the following paragraph:

- (ba) may, in the case of a bond with a home detention condition, direct that the period of compliance by the probationer with that condition be counted as part of the term of the suspended sentence;.

Amendment of s. 71—Community service orders may be enforced by imprisonment

14. Section 71 of the principal Act is amended by inserting after subsection (7) the following subsections:

(8) However, if the court is satisfied that the person's failure to comply with the order is excusable on the ground of the person's obligations to remunerated employment gained since the making of the order, and that the person has the means to pay a fine without the person or his or her dependants suffering hardship, the court may—

- (a) revoke the community service order; and
- (b) impose a fine not exceeding the maximum fine that may be imposed for the offence in respect of which the community service order was made (or, if the order was made in respect of more than one offence—for the offence that attracts the highest fine).

(9) In imposing a fine under subsection (8), the court must take into account the number of hours of community service (if any) that the person performed under the revoked order.

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

E. J. NEAL Governor