

South Australia

## **Bail Act 1985**

An Act to regulate the granting of bail.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Bail Act 1985*.

### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—

***bail authority*** means a court or person constituted as a bail authority by or under section 5;

***case manager*** means a person responsible for supervision of a person's participation in an intervention program;

***child*** means a person who was, on the day on which an offence was allegedly committed by that person, under the age of 18 years;

***community corrections officer*** means—

- (a) in relation to a child—an officer or employee of an administrative unit of the Public Service whose duties include the supervision of young offenders in the community;
- (b) in any other case—an officer or employee of an administrative unit of the Public Service whose duties include the supervision of adult offenders in the community;

***eligible person*** means a person who is eligible to apply for release on bail under section 4;

***financial condition***, in relation to bail, means a condition requiring an applicant for bail to provide security or obtain guarantees, or requiring a guarantor to provide security; and ***non-financial condition*** has a correlative meaning;

***guarantee*** means an agreement under section 7;

***guarantor*** means a person who enters into a guarantee;

**guardian**, in relation to a child, means a parent of the child and any person who is the legal guardian of the child or who has the immediate custody and control of the child;

**intervention program** means a program that provides—

- (a) supervised treatment; or
- (b) supervised rehabilitation; or
- (c) supervised behaviour management; or
- (d) supervised access to support services; or
- (e) a combination of any one or more of the above,

designed to address behavioural problems (including problem gambling), substance abuse or mental impairment;

**intervention program manager** means a person employed by the South Australian Courts Administration Authority to have general oversight of intervention programs and coordinate the implementation of relevant court orders (and includes a delegate of such a person);

**telephone** includes any telecommunication device for the transmission of speech;

**victim**, in relation to an offence, means a person who allegedly suffers injury in consequence of the commission of the offence;

**working day** means any day except a Sunday or other public holiday.

- (2) For the purposes of this Act, a person will be taken to have been convicted of an offence if a formal finding of guilt has been made against that person by a court whether or not the court proceeds to record a conviction.

#### 4—Eligibility for bail

- (1) The following persons are eligible for release on bail under this Act:
  - (a) a person who has been taken into custody—
    - (i) on a charge of an offence; or
    - (ii) in the case of a child—on suspicion of having committed an offence;
  - (b) a person who has been convicted of an offence but has not been sentenced for that offence;
  - (c) a person who has been convicted of, and sentenced for, an offence but has not exhausted all rights of appeal against the conviction or sentence, or to have it reviewed;
  - (d) a person who is appearing before a court for allegedly failing to observe a condition of a recognizance;
  - (e) a person who appears before a court in answer to a summons (including a person who so appears as a witness);
  - (f) a person who has been arrested on a warrant and is appearing or is to appear before a court as a witness.
- (2) Where a person who has been arrested is being detained pursuant to the *Summary Offences Act 1953* for a purpose related to the investigation of an offence, the person is not eligible for release on bail until the end of that detention.

## **5—Bail authorities**

- (1) The following are constituted as bail authorities for the purposes of this Act:
  - (a) the Supreme Court;
  - (b) a court before which the eligible person has been charged with the offence in respect of which the eligible person has been taken into custody;
  - (c) a court before which the eligible person has appeared for trial or sentencing;
  - (d) where the eligible person—
    - (i) is charged with a summary offence only; or
    - (ii) is charged with an indictable offence but has not appeared before a court for trial or sentencing,the Magistrates Court;
  - (e) where the eligible person—
    - (i) has been arrested on a warrant (other than a warrant endorsed by the court or justice issuing the warrant with a statement excluding the granting of bail by a member of the police force); or
    - (ii) has not appeared before a court charged with the offence in respect of which he or she has been taken into custody,a member of the police force who is of or above the rank of sergeant or who is in charge of a police station;
  - (ea) where the eligible person is appearing before a court in answer to a summons or for allegedly failing to observe a condition of a recognizance—that court;
  - (eb) where the eligible person is appearing, or is to appear, as a witness before a court—that court;
  - (f) a person authorised or required to release the eligible person on bail under subsection (2).
- (2) If a warrant for the arrest of a person is issued, the court or justice issuing the warrant may, by endorsement on the warrant—
  - (a) authorise or require a specified person, or a person of a specified class, to release the arrested person on bail; or
  - (b) exclude the granting of bail to the arrested person by a member of the police force.

## **Part 2—Bail agreements and guarantees**

### **6—Nature of bail agreement**

- (1) A bail agreement with a person who has been charged with, or convicted of, an offence is an agreement under which that person makes an undertaking to the Crown—
  - (a) subject to any directions in the agreement to the contrary, to be present throughout all proceedings—

- (i) where the person has not been convicted of the offence—relating to any preliminary examination of the charge and to the hearing and determination of the charge;
    - (ii) where the person is convicted of the offence—relating to sentencing and to any appeal from, or review of, the conviction or any sentence; and
  - (b) to comply with any conditions as to the person's conduct while on bail stipulated in the agreement; and
  - (c) if the agreement so provides—to forfeit to the Crown a sum stipulated in the agreement if the person fails, without proper excuse, to comply with a term or condition of the agreement.
- (1a) For the purposes of subsection (1)—
  - (a) a child who has been arrested on suspicion of having committed an offence will, for so long as no charge is actually laid against the child, be taken to have been charged with that suspected offence; and
  - (b) if the child is not charged with that suspected offence but with some other offence arising out of the same circumstances as that suspected offence—a bail agreement entered into by the child relates to that other offence.
- (1b) A bail agreement with a person who is appearing or is to appear before a court as a witness in proceedings (other than proceedings relating to an offence for which that person has been charged or convicted) is an agreement under which that person makes an undertaking to the court—
  - (a) to be present at the proceedings in accordance with the terms of the agreement; and
  - (b) to comply with any conditions as to the person's conduct while on bail stipulated in the agreement; and
  - (c) if the agreement so provides—to forfeit to the Crown a sum stipulated in the agreement if the person fails, without proper excuse, to comply with a term or condition of the agreement.
- (2) A bail agreement must be in the prescribed form.
- (3) Where a bail authority decides to release a person on bail, the bail agreement may be entered into before the bail authority or, unless the bail authority otherwise directs, before—
  - (a) a justice; or
  - (b) a member of the police force of or above the rank of sergeant or in charge of a police station; or
  - (c) if the person is in prison—the person who is in charge of the prison; or
  - (d) any other person specified by the bail authority or any other person of a class specified by the bail authority.
- (4) Notwithstanding the provisions of any other Act, a bail authority may for any sufficient reason, on the application of a person on bail or the Crown, or on its own initiative, vary the conditions of a bail agreement or revoke a bail agreement.

- (5) Where a bail authority revokes a bail agreement, the bail authority (not being a member of the police force) may, if it is necessary to do so, issue a warrant for the arrest of the person who was released under the agreement.

## **7—Guarantee of bail**

- (1) A guarantee of bail is an agreement with the Crown under which a person—
- (a) guarantees that a person released under a bail agreement will comply with—
    - (i) all the terms and conditions of the agreement; or
    - (ii) such of the terms and conditions of the agreement as are specified in the guarantee; and
  - (b) undertakes that, if that person fails to comply with a term or condition of the bail agreement to which the guarantee relates, he or she (the guarantor) will forfeit to the Crown the sum (if any) specified in the guarantee.
- (2) A guarantee of bail must be in the prescribed form.
- (3) A guarantee of bail may be entered into before the bail authority granting bail or, unless the bail authority otherwise directs, before—
- (a) a justice; or
  - (b) a member of the police force of or above the rank of sergeant or in charge of a police station; or
  - (c) if the person who is to be released on bail is in prison—the person who is in charge of the prison; or
  - (d) any other person specified by the bail authority or any other person of a class specified by the bail authority.
- (4) A bail authority may for any sufficient reason, on the application of a guarantor, vary the terms of the guarantee or revoke the guarantee.
- (5) Where a bail authority varies or revokes a guarantee, the bail authority may make such consequential variation of the terms of the bail agreement, or revoke the bail agreement, as appears appropriate in the circumstances.
- (6) A guarantor of bail must be of or above the age of 18 years.

## **Part 3—Applications for release on bail**

### **Division 1—Applications generally**

#### **8—Form of application**

- (1) Subject to subsection (1a), an application of a person for release on bail—
- (a) must be in the prescribed form; and
  - (b) must contain the prescribed information; and
  - (c) must be made in accordance with any procedure prescribed by the regulations.

- (1a) An application for release on bail need not be made in accordance with subsection (1)—
  - (a) if the bail authority is satisfied that a less formal application should be permitted in view of the applicant's illiteracy, imperfect command of the English language, intellectual limitations or for any other proper reason; or
  - (b) if the bail authority has access to an application previously made by the applicant and considers that a further written application is unnecessary.
- (2) A person who has the custody of an eligible person must, at the request of that person—
  - (a) afford such assistance as that person reasonably requires to complete a written application for release on bail; and
  - (b) if the custodian is not a bail authority—transmit the application as soon as practicable to a bail authority.
- (2a) Where the eligible person is a child, a request may be made on behalf of the child under subsection (2) by a guardian of the child.
- (3) Where a written application for release on bail comes before a bail authority for determination, the bail authority may proceed to consider and determine the application notwithstanding that the application was made in the first instance to some other bail authority.

### **9—Power of bail authority to make inquiries and to hear evidence**

- (1) Subject to this section, a bail authority to which an application for release on bail is made—
  - (a) may make inquiries, or direct that inquiries be made, of the applicant and other persons who may be able to furnish information relevant to the determination of the application; and
  - (b) if the authority (not being a member of the police force) thinks fit—may take evidence on oath from the applicant or any other person who may be able to furnish information relevant to the determination of the application.
- (2) Where a bail authority takes evidence, or proposes to take evidence, on oath under subsection (1)(b), it must at the request of the applicant or the Crown permit such examination, cross-examination or re-examination of the witness as may be appropriate in the circumstances.

### **10—Discretion exercisable by bail authority**

- (1) Where an application for bail is made to a bail authority by an eligible person who has been charged with, but not convicted of, an offence in respect of which he or she has been taken into custody, the bail authority should, subject to this Act, release the applicant on bail unless, having regard to—
  - (a) the gravity of the offence in respect of which the applicant has been taken into custody;
  - (b) the likelihood (if any) that the applicant would, if released—
    - (i) abscond;
    - (ii) offend again;

- (iii) interfere with evidence, intimidate or suborn witnesses, or hinder police inquiries;
- (iv) commit a breach of an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*;
- (d) any need that the applicant may have for physical protection;
- (e) any medical or other care that the applicant may require;
- (f) any previous occasions on which the applicant may have contravened or failed to comply with a term or condition of a bail agreement;
- (g) any other relevant matter,

the bail authority considers that the applicant should not be released on bail.

- (2) Where the applicant has been convicted of the offence in respect of which he or she has been taken into custody, the bail authority has, subject to this Act, an unfettered discretion as to whether the applicant should be released on bail.
- (3) Where the applicant is a person who is appearing or is to appear before a court as a witness in proceedings (other than proceedings relating to an offence for which that person has been charged or convicted), the bail authority should, subject to this Act, release the applicant on bail unless there is a likelihood that the applicant would, if released, abscond.
- (4) Despite the other provisions of this section, where there is a victim of the offence, the bail authority must, in determining whether the applicant should be released on bail, give primary consideration to the need that the victim may have, or perceive, for physical protection from the applicant.

### **10A—Presumption against bail in certain cases**

- (1) Despite section 10, bail is not to be granted to a prescribed applicant unless the applicant establishes the existence of special circumstances justifying the applicant's release on bail.

- (2) In this section—

*prescribed applicant* means—

- (a) an applicant taken into custody in relation to any of the following offences if committed, or allegedly committed, by the applicant in the course of attempting to escape pursuit by a police officer or attempting to entice a police officer to engage in a pursuit:
  - (i) an offence against section 13 of the *Criminal Law Consolidation Act 1935* in which the victim's death was caused by the applicant's use of a motor vehicle;
  - (ii) an offence against section 19A of the *Criminal Law Consolidation Act 1935*;
  - (iii) an offence against section 29 of the *Criminal Law Consolidation Act 1935* if the act or omission constituting the offence was done or made by the applicant in the course of the applicant's use of a motor vehicle; or

- (b) an applicant taken into custody in relation to an offence against section 17 where there is alleged to have been a contravention of, or failure to comply with, a condition of a bail agreement imposed under section 11(2)(a)(ii); or
- (ba) an applicant taken into custody in relation to an offence against section 31 of the *Intervention Orders (Prevention of Abuse) Act 2009* if the act or omission alleged to constitute the offence involved physical violence or a threat of physical violence; or
- (c) an applicant taken into custody in relation to an offence of contravening or failing to comply with a control order or public safety order issued under the *Serious and Organised Crime (Control) Act 2008*; or
- (d) an applicant taken into custody in relation to an offence against any of the following provisions of the *Criminal Law Consolidation Act 1935*:
  - (i) section 172;
  - (ii) section 248;
  - (iii) section 250;
  - (iv) section 85B.

## 11—Conditions of bail

- (1) Subject to this section, a bail authority may impose one or more of the conditions referred to in subsection (2).
- (2) The conditions that may be imposed in relation to the grant of bail are as follows:
  - (a) that the applicant agree—
    - (i) to reside at a specified address; or
    - (ia) to reside at a specified address and to remain at that place of residence while on bail, not leaving it except for one of the following purposes:
      - (A) remunerated employment; or
      - (B) necessary medical or dental treatment for the applicant; or
      - (C) averting or minimising a serious risk of death or injury (whether to the applicant or some other person); or
      - (D) any other purpose approved by a community corrections officer; or
    - (ii) where there is a victim of the offence in respect of which the applicant has been charged—to comply with such conditions relating to the physical protection of the victim that the authority considers should apply to the applicant while on bail; or
    - (iii) to be under the supervision of a community corrections officer and to obey the lawful directions of the officer; or
    - (iv) to report to the police at a specified place and at specified times; or
    - (v) to surrender any passport that the applicant may possess; or

- (vi) to comply with any other condition as to the applicant's conduct that the authority considers should apply while on bail;
  - (b) that the applicant provide the bail authority with written assurances from a stipulated number of persons, who are acceptable to the bail authority, that they are acquainted with the applicant and are confident that the applicant will comply with the terms and conditions of a bail agreement;
  - (c) that the applicant agree to forfeit to the Crown a sum of money (to be stipulated in the bail agreement) if the applicant fails, without proper excuse, to comply with a term or condition of the bail agreement;
  - (d) that the applicant provide security of a specified amount or value to secure payment of a monetary forfeiture agreed to under paragraph (c);
  - (e) that the applicant obtain specified guarantees, or guarantees of a specified nature;
  - (f) that a guarantor provide security of a specified amount or value to secure payment of a stipulated monetary forfeiture.
- (2a) In deciding on the conditions to be imposed in relation to a grant of bail, a bail authority should give special consideration to any submissions made by the Crown on behalf of a victim of the alleged offence.
- (3) A bail authority should not impose a condition under subsection (2)(a)(ia) or (iii) except on the application, or with the consent, of the Crown.
- (3a) A bail authority should not impose a condition under subsection (2)(a)(ia) without first obtaining a report (whether oral or in writing) from the Crown on the appropriateness of such a condition being imposed in the applicant's case.
- (4) A condition (other than a condition as to the conduct of the applicant while on bail) must not be imposed under this section unless the condition is, in the opinion of the bail authority, reasonably necessary to ensure that the applicant complies with the bail agreement.
- (5) A financial condition must not be imposed under this section unless the bail authority is of the opinion that the object of ensuring that the applicant complies with the bail agreement cannot be properly secured by a non-financial condition or combination of non-financial conditions.
- (6) It is a condition of every bail agreement that the person released in pursuance of the agreement will not leave the State for any reason—
- (a) if the person is under the supervision of a community corrections officer—without the permission of the Chief Executive (or his or her nominee) of the administrative unit of which the community corrections officer is an officer or employee;
  - (c) in any other case—without the permission of—
    - (i) a judge or magistrate; or
    - (ii) a member of the police force of or above the rank of sergeant or in charge of a police station.
- (7) A condition imposed under this section must be stipulated in the bail agreement.

- (7a) Where it is a condition of a bail agreement that the person released in pursuance of the agreement will remain at a particular place of residence, a member of the police force or a community corrections officer authorised by the Minister for the purpose may enter the residence at any time for the purpose of ascertaining whether or not the person is complying with the condition.
- (7b) A person must not hinder a person referred to in subsection (7a) in the exercise of powers under that subsection.  
Maximum penalty: \$2 500.
- (8) Where it is a condition of a bail agreement that the person released in pursuance of this agreement will be under the supervision of a community corrections officer and obey the lawful directions of that officer, the officer to whom the person is assigned for supervision may give reasonable directions—
- (a) requiring that person to report to the officer on a regular basis; or
  - (b) requiring that person to notify the officer of any change in the person's place of residence, or in the person's employment; or
  - (c) on any other matter stipulated by the bail authority.
- (9) Where—
- (a) a bail authority imposes a condition under this section; but
  - (b) the applicant remains in custody because the condition is not fulfilled,
- the applicant must (if he or she is not sooner released) be brought back before a bail authority for a review of the condition as soon as reasonably practicable and, in any event, within five working days after the condition is imposed.
- (10) A bail authority may, on a review of a condition under subsection (9)—
- (a) confirm the condition;
  - (b) vary the condition;
  - (c) revoke the condition;
  - (d) impose any other condition under this section that the bail authority thinks fit.
- (11) Where a bail authority imposes a condition requiring a person—
- (a) to remain at a particular place of residence while on bail; or
  - (b) to be under the supervision of a community corrections officer,
- the bail authority must ensure that a copy of the bail agreement is furnished to the relevant responsible Minister.
- (12) A condition of bail may relate to a place or circumstances outside the State.

## **12—Refusal of application**

- (1) Where a bail authority decides to refuse an application for release on bail, the bail authority must make a written record of the reasons for its decision.
- (2) The refusal of an application for release on bail does not preclude further applications.

## **Division 2—Procedure on arrest**

### **13—Procedure on arrest**

- (1) Where a member of the police force arrests a person who is, upon arrest, eligible to apply for release on bail, the member of the police force—
  - (a) must, as soon as reasonably practicable after delivering the arrested person to a police station after making the arrest, take reasonable steps to ensure that the arrested person and, where the arrested person is a child, any guardian who is present, understands that the arrested person is entitled to apply for release on bail under this Act; and
  - (b) must ensure that the arrested person and, where the arrested person is a child, any guardian who is present, receives—
    - (i) a written statement, in the prescribed form, explaining how, and to what authorities, an application for release on bail may be made under this Act; and
    - (ii) the appropriate form for making an application for release on bail.
- (2) An eligible person who is a child and has applied unsuccessfully to a member of the police force for release on bail must, if the child or a guardian so requests, be brought as soon as practicable before the Youth Court of South Australia for the purpose of making an application for release on bail.
- (3) An eligible person who has been arrested on a charge of an offence must, if not released beforehand, be brought before the appropriate authority on the charge in relation to which he or she was arrested as soon as reasonably practicable on the next working day following the day of arrest but in any event not later than 4 p.m. on that day.
- (4) The appropriate authority before whom a person is brought under subsection (3) must inquire whether that person desires to apply for release on bail and, if the person to whom the inquiry is directed answers affirmatively, the authority must afford the person a reasonable opportunity to apply for release on bail.
- (5) In this section—

***appropriate authority*** means—

- (a) in relation to a child—the *Youth Court of South Australia*;
- (b) in any other case—the Magistrates Court.

## **Part 4—Review of decisions of bail authorities**

### **14—Review of decisions of bail authorities**

- (1) A decision of a bail authority (not being the Supreme Court) is subject to review under this section.

- (2) A review may be carried out under this section on the application of the Crown, the person applying for release on bail or, where the person applying for release on bail is a child, the child or a guardian of the child—
  - (a) by the Supreme Court; or
  - (b) where the decision subject to review is a decision of a member of the police force or a court constituted of justices—by a magistrate.
- (3) On a review, the reviewing authority will reconsider the application for release on bail and may make any decision on that application that should, in the opinion of the reviewing authority, have been made in the first instance.
- (4) Where an application for review of a decision of a bail authority is made, the bail authority must furnish the reviewing authority with any documentary or other material in its possession that may be relevant to the review.
- (5) The reviewing authority must hear and determine an application under this section as expeditiously as possible.

### **15—Telephone review**

- (1) Subject to this section, where—
  - (a) an application for release on bail is made to a member of the police force or a court constituted of justices; and
  - (b) the applicant is dissatisfied with the decision made on the application; and
  - (c) there is no magistrate in the vicinity immediately available to review the decision,  
  
the member of the police force or the justices who made the decision must, on the written application of the applicant or, where the applicant is a child, on the written application of the child or a guardian of the child, contact a magistrate by telephone for the purpose of having the decision reviewed.
- (2) Where a magistrate is contacted under subsection (1), the following provisions apply:
  - (a) the magistrate must make such inquiries as the magistrate thinks necessary to satisfy himself or herself of the genuineness of the application for review; and
  - (b) the member of the police force or justices who made the decision must explain to the magistrate—
    - (i) the circumstances of the application for bail; and
    - (ii) the nature of the decision made on the application; and
    - (iii) the reasons for that decision; and
  - (c) the magistrate must then speak with the person who applied for the bail or any legal practitioner representing or assisting that person, and any other person who may be present and who may, in the opinion of the magistrate, assist in explaining the circumstances of the particular case, for the purpose of ensuring that the magistrate is fully informed—
    - (i) of the grounds and circumstances of the application for bail; and
    - (ii) of the reasons for the applicant's dissatisfaction with the decision taken on the application; and

- (iii) where the applicant is a child—of the circumstances of the child; and
  - (d) if the decision that is the subject of the review was made by justices—the magistrate must then speak with the member of the police force who appeared before the justices and opposed the application for bail (if he or she is present and wishes to speak in relation to the application for review); and
  - (e) the magistrate must then advise the member of the police force or justices who made the original decision of the decision on review, and bail must then be granted or refused in accordance with that decision.
- (3) This section does not apply in relation to a decision made on application to a member of the police force upon arrest where the arrested person (not being a child) can be brought before the Magistrates Court constituted of a magistrate not later than 4 p.m. on the next day following the day of arrest.

### **15A—Review of magistrate's decision by Supreme Court**

- (1) Subject to this section, a decision of a magistrate on a review of a decision of a bail authority is subject to review by the Supreme Court.
- (2) A review may be carried out under this section on the application of the Crown, the person applying for release on bail or, where the person applying for release on bail is a child, the child or a guardian of the child.
- (3) A review under this section may only occur with the permission of the Supreme Court (which should only be granted where it appears that there may have been some error of law or fact).

### **16—Stay of release on application for review**

- (1) Notwithstanding any other provision of this Act, where—
  - (a) —
    - (i) a bail authority decides to release a person on bail; or
    - (ii) on a review by a magistrate of a decision to release a person on bail the magistrate decides to release the person on bail; and
  - (b) a member of the police force or counsel appearing on behalf of the Crown immediately indicates that an application for review of the decision will be made under this Part,the release must be deferred.
- (2) The period of deferral ends when—
  - (a) the review is completed; or
  - (b) a member of the police force or some other person acting on behalf of the Crown files with the bail authority a notice that the Crown does not desire to proceed with the review; or
  - (c) 72 hours elapse,whichever first occurs.
- (3) If a person is released pursuant to subsection (2)(b) or (c), the conditions of bail are those that would have applied had the person's release not been deferred.

## **Part 5—Enforcement and termination of bail**

### **17—Non-compliance with bail agreement constitutes offence**

- (1) A person who, without reasonable excuse, contravenes or fails to comply with a term or condition of a bail agreement is guilty of an offence.  
Maximum penalty: \$10 000 or imprisonment for 2 years.
- (2) A penalty imposed under this section must not exceed the maximum penalty that may be imposed for the principal offence.
- (3) A penalty imposed under this section is in addition to any pecuniary forfeiture that the convicted person suffers or may suffer in consequence of the offence.
- (4) A reference in this section to the principal offence is a reference to—
  - (a) the offence with which the person released on bail was charged; or
  - (b) where that person was charged with a number of offences—that one of the offences that attracts the highest penalty.

### **17A—Guarantor must inform member of police force if person fails to comply with bail agreement**

Where a guarantor knows, or has reasonable cause to suspect, that the person released under the bail agreement has failed to comply with a term or condition of the agreement in relation to which his or her guarantee has been given, the guarantor must take reasonable steps to inform a member of the police force that the failure has, or may have, occurred.

Maximum penalty: \$1 250.

### **18—Arrest of eligible person on non-compliance with bail agreement**

- (1) Where it appears to a court or justice that a person released on bail has contravened or failed to comply with a term or condition of a bail agreement, it may—
  - (a) cancel the right of the person to be at liberty in pursuance of the agreement; and
  - (b) if it appears necessary or desirable to do so—issue a warrant for the person's arrest.
- (2) A member of the police force may arrest without warrant a person released on bail if he or she has reasonable grounds for believing that the person—
  - (a) intends to abscond; or
  - (b) is contravening or failing to comply with a bail agreement; or
  - (c) has contravened or failed to comply with a bail agreement.
- (3) A person who is arrested without warrant pursuant to subsection (2) must, after being delivered into custody at a police station, be brought as soon as practicable before—
  - (a) the court before which the person is bound to appear; or
  - (b) the Magistrates Court.

## **19—Estreatment**

- (1) Where a person who has been released in pursuance of a bail agreement contravenes or fails to comply with a term or condition of the agreement—
  - (a) the court before which that person is bound to appear; or
  - (b) the Magistrates Court,may on the application of the Crown, or on its own initiative, order that a pecuniary forfeiture stipulated in a bail agreement or a guarantee be carried into effect.
- (2) An order for pecuniary forfeiture under subsection (1) may provide that the order is not to be carried into effect until a subsequent day to be fixed by the court making the order.
- (3) Where a court makes an order under this section, the court may at any time for any sufficient reason on the application of the person in relation to whom the order is made, or on its own initiative—
  - (a) reduce the amount of the forfeiture as stipulated in the bail agreement or guarantee; or
  - (b) rescind its order.
- (3a) A court that makes an order under this section may allow time for payment of the amount forfeited and, if appropriate, direct that the amount be paid in instalments.
- (4) The amount of a pecuniary forfeiture that is carried into effect pursuant to an order under this section may be recovered as a fine.

## **20—Termination of bail agreement**

When a person who is on bail is sentenced, or discharged without sentence, the bail agreement and guarantees (if any) terminate.

## **Part 6—Miscellaneous**

### **21—Evidence**

An apparently genuine document purporting to be a bail agreement or guarantee, or a copy of a bail agreement or guarantee, will be accepted by any court or justice as evidence of the bail agreement or guarantee and of its terms and conditions.

#### **21A—Applications on behalf of the Crown**

An application may be made or a consent given under this Act on behalf of the Crown by—

- (a) the Director of Public Prosecutions; or
- (b) a person acting on the instructions of the Crown; or
- (c) any member of the police force.

#### **21B—Intervention programs**

- (1) When a court releases a person who has been charged with an offence on bail, the court may make it a condition of the bail agreement that the person undertake an intervention program.

- (2) However—
- (a) if the person does not agree to the imposition of such a condition, the court cannot impose it; and
  - (b) before the court imposes such a condition the court must satisfy itself that—
    - (i) the person is eligible for the services to be included on the program in accordance with applicable eligibility criteria (if any); and
    - (ii) those services are available for the person at a suitable time and place.
- (3) The court may make appropriate orders for assessment of the person to determine—
- (a) a form of intervention program that is appropriate for the person; and
  - (b) the person's eligibility for the services included on the program,
- and may release the person on bail on condition that he or she undertake the assessment as ordered.
- (4) Where a bail agreement contains a condition under this section—
- (a) the person released on bail under the agreement must comply with conditions regulating his or her participation in the assessment or intervention program notified from time to time by the person's case manager; and
  - (b) a failure to comply with a requirement under paragraph (a) may be regarded as a breach of a condition of the bail agreement.
- (5) The court may, at any time, on application by a person released on bail on condition that he or she participate in an assessment or intervention program, make an order revoking or varying the condition.
- (6) If an intervention program manager considers that—
- (a) a person has failed to comply with a condition regulating the person's participation in an assessment or intervention program; and
  - (b) the failure to comply (of itself or in connection with other matters) suggests that the person is unwilling to participate in the assessment or program as directed,

the manager must refer the matter to the court and the court must then determine whether the failure to comply constitutes a breach of the bail agreement.

- (7) A certificate apparently signed—
- (a) by an intervention program manager as to—
    - (i) whether the services to be included on a program are available for a particular person and, if so, when they will be available; or
    - (ii) whether a particular person is eligible for the services to be included on a program; or
  - (b) by a case manager as to whether a particular person has complied with conditions regulating his or her participation in an assessment or intervention program,

is admissible as evidence of the matter so certified.

### **21C—Power of delegation—intervention program manager**

- (1) An intervention program manager may, by instrument in writing, delegate a power or function under this Act—
  - (a) to a particular person; or
  - (b) to the person for the time being occupying a particular position.
- (2) A power or function so delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) may be absolute or conditional; and
  - (b) does not derogate from the power of the delegator to act in a matter; and
  - (c) is revocable at will.

### **22—False information on bail applications**

A person who provides false information in an application for release on bail knowing it to be false is guilty of an offence.

Maximum penalty: \$1 250.

### **23—Period of release on bail not to count as part of sentence**

Where a person under sentence of imprisonment is released on bail pending the hearing and determination of an appeal, the period of release does not count as part of the sentence.

### **24—Act not to affect provisions relating to intervention and restraining orders**

Nothing in this Act affects the operation of—

- (a) the *Intervention Orders (Prevention of Abuse) Act 2009*; or
- (b) the provisions of the *Summary Procedure Act 1921* relating to restraining orders.

### **25—Non-application of 48 Geo. III c. 58 in this State**

The Act of the Imperial Parliament 48 Geo. III c. 58 has no further force or effect in this State.

### **26—Regulations**

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

## Legislative history

### Notes

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

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1985	5	<i>Bail Act 1985</i>	7.3.1985	7.7.1985 ( <i>Gazette</i> 9.5.1985 p1399)
1986	33	<i>Statutes Amendment (Children's Bail) Act 1986</i>	10.4.1986	30.3.1987 ( <i>Gazette</i> 26.2.1987 p440)
1987	32	<i>Bail Act Amendment Act 1987</i>	23.4.1987	4.10.1987 ( <i>Gazette</i> 30.7.1987 p273)
1990	23	<i>Statute Law Revision Act 1990</i>	26.4.1990	Sch 2—29.6.1990 ( <i>Gazette</i> 14.6.1990 p1606)
1991	49	<i>Director of Public Prosecutions Act 1991</i>	21.11.1991	6.7.1992 ( <i>Gazette</i> 25.6.1992 p1869)
1991	69	<i>Statutes Repeal and Amendment (Courts) Act 1991</i>	12.12.1991	6.7.1992 ( <i>Gazette</i> 2.7.1992 p209)
1993	62	<i>Statutes Amendment (Courts) Act 1993</i>	27.5.1993	ss 19—23—1.7.1993 ( <i>Gazette</i> 24.6.1993 p2047)
1993	94	<i>Statutes Repeal and Amendment (Children's Protection and Young Offenders) Act 1993</i>	4.11.1993	1.1.1994 ( <i>Gazette</i> 4.11.1993 p2177)
1994	22	<i>Domestic Violence Act 1994</i>	26.5.1994	1.8.1994 ( <i>Gazette</i> 14.7.1994 p68)
1995	27	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1995</i>	27.4.1995	ss 4—11—10.7.1995 ( <i>Gazette</i> 29.6.1995 p2973)
1996	67	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1996</i>	15.8.1996	ss 4 & 5—17.10.1996 ( <i>Gazette</i> 17.10.1996 p1361)
1999	42	<i>Statutes Amendment and Repeal (Justice Portfolio) Act 1999</i>	5.8.1999	Pt 3 (ss 5—10)—1.9.2000 ( <i>Gazette</i> 11.5.2000 p2472)
2005	49	<i>Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2005</i>	27.10.2005	Pt 2 (ss 4 & 5) and Sch 1—19.12.2005 ( <i>Gazette</i> 15.12.2005 p4326)
2005	56	<i>Justices of the Peace Act 2005</i>	17.11.2005	Sch 2 (cl 7)—1.7.2006 ( <i>Gazette</i> 22.6.2006 p2012)
2005	81	<i>Statutes Amendment (Vehicle and Vessel Offences) Act 2005</i>	8.12.2005	Pt 3 (s 13)—30.7.2006 ( <i>Gazette</i> 27.7.2006 p2400)

**Bail Act 1985—9.12.2011**

## Legislative history

2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 11 (ss 45—47)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )
2007	48	<i>Statutes Amendment (Victims of Crime) Act 2007</i>	8.11.2007	Pt 2 (s 4)—17.7.2008 ( <i>Gazette 17.7.2008 p3372</i> )
2008	13	<i>Serious and Organised Crime (Control) Act 2008</i>	15.5.2008	Sch 1 (cl 2)—4.9.2008 ( <i>Gazette 4.9.2008 p4227</i> )
2009	18	<i>Cross-border Justice Act 2009</i>	21.5.2009	Sch 1 (cl 2)—1.11.2009 ( <i>Gazette 29.10.2009 p4982</i> )
2009	73	<i>Bail (Arson) Amendment Act 2009</i>	10.12.2009	10.12.2009
<b>2009</b>	<b>85</b>	<b><i>Intervention Orders (Prevention of Abuse) Act 2009</i></b>	<b>10.12.2009</b>	<b>Sch 1 (c11 2—4)—9.12.2011 (<i>Gazette 20.10.2011 p4269</i>)</b>
2012	12	<i>Statutes Amendment (Serious and Organised Crime) Act 2012</i>	10.5.2012	Pt 3 (ss 8—16)—uncommenced

**Provisions amended**

New entries appear in bold.

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

Provision	How varied	Commencement
Pt 1		
s 2	<i>deleted by 23/1990 s 3(1) (Sch 2)</i>	29.6.1990
s 3(1)		
s 3(1)	s 3 redesignated as s 3(1) by 33/1986 s 3(c)	30.3.1987
case manager	inserted by 49/2005 s 4(1)	19.12.2005
child	inserted by 33/1986 s 3(a)	30.3.1987
community corrections officer	inserted by 42/1999 s 5	1.9.2000
guardian	inserted by 33/1986 s 3(b)	30.3.1987
intervention program	inserted by 49/2005 s 4(2)	19.12.2005
intervention program manager	inserted by 49/2005 s 4(2)	19.12.2005
victim	amended by 32/1987 s 3	4.10.1987
s 3(2)	inserted by 33/1986 s 3(c)	30.3.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 4		
s 4(1)	s 4 amended by 33/1986 s 3(d)	30.3.1987
	s 4 amended and redesignated as s 4(1) by 32/1987 s 4	4.10.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 62/1993 s 19	1.7.1993
s 4(2)	inserted by 32/1987 s 4(c)	4.10.1987
s 5		
s 5(1)	amended by 32/1987 s 5	4.10.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 62/1993 s 20	1.7.1993

	amended by 27/1995 s 4	10.7.1995
	amended by 67/1996 s 4(a)	17.10.1996
	amended by 56/2005 Sch 2 cl 7	1.7.2006
s 5(2)	substituted by 67/1996 s 4(b)	17.10.1996
Pt 2		
s 6		
s 6(1)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 62/1993 s 21(a)	1.7.1993
	amended by 42/1999 s 6	1.9.2000
s 6(1a)	inserted by 33/1986 s 3(e)	30.3.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 6(1b)	inserted by 62/1993 s 21(b)	1.7.1993
s 6(3)	substituted by 32/1987 s 6	4.10.1987
s 6(4)	substituted by 32/1987 s 6	4.10.1987
	amended by 17/2006 s 45	4.9.2006
s 6(5)	inserted by 32/1987 s 6	4.10.1987
s 7		
s 7(1)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 7(3) and (4)	substituted by 32/1987 s 7	4.10.1987
s 7(5) and (6)	inserted by 32/1987 s 7	4.10.1987
Pt 3		
s 8		
s 8(1)	substituted by 32/1987 s 8	4.10.1987
s 8(1a)	inserted by 32/1987 s 8	4.10.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 8(2)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 8(2a)	inserted by 33/1986 s 3(f)	30.3.1987
s 8(3)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 9		
s 9(2)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 10		
s 10(1)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 62/1993 s 22(a)	1.7.1993
	(c) deleted by 22/1994 Sch cl 2(a)	1.8.1994
	<b>amended by 85/2009 Sch 1 cl 2</b>	<b>9.12.2011</b>
s 10(2)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 10(3)	inserted by 62/1993 s 22(b)	1.7.1993
s 10(4)	inserted by 22/1994 Sch cl 2(b)	1.8.1994
s 10A	inserted by 81/2005 s 13	30.7.2006
s 10A(2)	substituted by 48/2007 s 4	17.7.2008
	substituted by 13/2008 Sch 1 cl 2	4.9.2008
prescribed applicant	amended by 73/2009 s 3	10.12.2009

	<b>amended by 85/2009 Sch 1 cl 3</b>	<b>9.12.2011</b>
s 11		
s 11(2)	amended by 33/1986 s 3(g)	30.3.1987
	amended by 32/1987 s 9(a)	4.10.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 42/1999 s 7(a), (b)	1.9.2000
s 11(2a)	inserted by 32/1987 s 9(b)	4.10.1987
s 11(3)	amended by 33/1986 s 3(m)	30.3.1987
	substituted by 32/1987 s 9(b)	4.10.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 11(3a)	inserted by 32/1987 s 9(b)	4.10.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 11(4) and (5)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 11(6)	substituted by 32/1987 s 9(c)	4.10.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 27/1995 s 5(a)	10.7.1995
	amended by 42/1999 s 7(c)	1.9.2000
	(b) deleted by 42/1999 s 7(c)	1.9.2000
s 11(7)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 11(7a)	inserted by 32/1987 s 9(d)	4.10.1987
	amended by 42/1999 s 7(d)	1.9.2000
s 11(7b)	inserted by 32/1987 s 9(d)	4.10.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 42/1999 s 7(e)	1.9.2000
s 11(8)	amended by 33/1986 s 3(n)	30.3.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 42/1999 s 7(f)	1.9.2000
s 11(9)	inserted by 32/1987 s 9(e)	4.10.1987
	substituted by 27/1995 s 5(b)	10.7.1995
s 11(10)	inserted by 32/1987 s 9(e)	4.10.1987
s 11(11)	inserted by 32/1987 s 9(e)	4.10.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	substituted by 42/1999 s 7(g)	1.9.2000
s 11(12)	inserted by 32/1987 s 9(e)	4.10.1987
	deleted by 42/1999 s 7(g)	1.9.2000
	inserted by 18/2009 Sch 1 cl 2	1.11.2009
s 12		
s 12(1)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 13		
s 13(1)	amended by 33/1986 s 3(o), (p)	30.3.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 13(2)	amended by 33/1986 s 3(q)	30.3.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990

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	amended by 94/1993 s 5(a)	1.1.1994
	substituted by 27/1995 s 6(a)	10.7.1995
s 13(3)	amended by 33/1986 s 3(r)	30.3.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 94/1993 s 5(a)	1.1.1994
	amended by 67/1996 s 5	17.10.1996
s 13(4)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 94/1993 s 5(b)	1.1.1994
s 13(5)	inserted by 94/1993 s 5(c)	1.1.1994
	amended by 27/1995 s 6(b)	10.7.1995
Pt 4		
s 14		
s 14(2)	amended by 33/1986 s 3(s)	30.3.1987
	amended by 27/1995 s 7	10.7.1995
s 14(3)—(5)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 15		
s 15(1)	amended by 33/1986 s 3(t)	30.3.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 27/1995 s 8(a), (b)	10.7.1995
s 15(2)	amended by 33/1986 s 3(u), (v)	30.3.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 27/1995 s 8(c)—(e)	10.7.1995
s 15(3)	amended by 33/1986 s 3(w), (x)	30.3.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 27/1995 s 8(f)	10.7.1995
s 15A	inserted by 32/1987 s 10	4.10.1987
s 15A(3)	amended by 17/2006 s 46	4.9.2006
s 16	substituted by 32/1987 s 11	4.10.1987
Pt 5		
s 17		
s 17(1)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 27/1995 s 9(a)	10.7.1995
	amended by 42/1999 s 8	1.9.2000
s 17(2)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	substituted by 27/1995 s 9(b)	10.7.1995
s 17(3)	amended by 27/1995 s 9(c)	10.7.1995
s 17(3a)	<i>inserted by 32/1987 s 12</i>	<i>4.10.1987</i>
	<i>deleted by 27/1995 s 9(d)</i>	<i>10.7.1995</i>
s 17A	inserted by 32/1987 s 13	4.10.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 42/1999 s 9	1.9.2000
s 18		
s 18(1) and (2)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990

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s 18(3)	inserted by 32/1987 s 14	4.10.1987
	amended by 27/1995 s 10	10.7.1995
s 19		
s 19(1)	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 27/1995 s 11(a), (b)	10.7.1995
	amended by 17/2006 s 47(1)	4.9.2006
s 19(2)	substituted by 32/1987 s 15(a)	4.10.1987
	amended by 27/1995 s 11(c)	10.7.1995
s 19(3)	amended by 27/1995 s 11(d)	10.7.1995
	amended by 17/2006 s 47(2)	4.9.2006
s 19(3a)	inserted by 32/1987 s 15(b)	4.10.1987
	substituted by 62/1993 s 23	1.7.1993
	amended by 27/1995 s 11(e)	10.7.1995
s 20	amended by 33/1986 s 3(y)	30.3.1987
	substituted by 32/1987 s 16	4.10.1987
Pt 6		
s 21	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
s 21A	inserted by 32/1987 s 17	4.10.1987
	amended by 49/1991 Sch 2	6.7.1992
ss 21B and 21C	inserted by 49/2005 s 5	19.12.2005
s 22	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	amended by 42/1999 s 10	1.9.2000
s 23		
s 23(1)	s 23 redesignated as s 23(1) by 32/1987 s 18	4.10.1987
	substituted by 23/1990 s 3(1) (Sch 2)	29.6.1990
	substituted by 69/1991 s 18	6.7.1992
s 23(2)	inserted by 32/1987 s 18	4.10.1987
s 24	amended by 33/1986 s 3(z)	30.3.1987
	amended by 23/1990 s 3(1) (Sch 2)	29.6.1990
	substituted by 22/1994 Sch cl 2(c)	1.8.1994
	<b>amended by 85/2009 Sch 1 cl 4</b>	<b>9.12.2011</b>

## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2005, Sch 1***

#### **1—Review of services included on intervention programs**

- (1) Either House of Parliament may, not before the first anniversary of the commencement of this Act, require the Ombudsman to carry out an investigation concerning the value and effectiveness of all services included on intervention programs (within the meaning of the *Bail Act 1985* and the *Criminal Law (Sentencing) Act 1988*) in the 12 month period following that commencement (or another period specified by the House).

- (2) For the purposes of the investigation, the Ombudsman may exercise the same investigative powers as are conferred on the Ombudsman by the *Ombudsman Act 1972* in relation to an investigation duly initiated under that Act.
- (3) The Ombudsman must, after completing the investigation, submit a report on the outcome of the investigation to—
  - (a) if the investigation was required by the Legislative Council—the President of the Legislative Council; or
  - (b) if the investigation was required by the House of Assembly—the Speaker of the House of Assembly.
- (4) If the Ombudsman is required to carry out an investigation in accordance with this clause, the Attorney-General must ensure that the Ombudsman is provided with the resources the Ombudsman reasonably requires for the purposes of carrying out the investigation.

### Historical versions

Reprint No 1—6.7.1992

Reprint No 2—1.7.1993

Reprint No 3—1.1.1994

Reprint No 4—1.8.1994

Reprint No 5—10.7.1995

Reprint No 6—17.10.1996

Reprint No 7—1.9.2000

19.12.2005

1.7.2006

30.7.2006

4.9.2006

17.7.2008

4.9.2008

1.11.2009

10.12.2009