

South Australia



ANNO QUINQUAGESIMO  
ELIZABETHAE II REGINAE  
A.D. 2001

**CRIMINAL LAW (SENTENCING) (SENTENCING PROCEDURES)  
AMENDMENT ACT 2001**

No. 37 of 2001

[Assented to 3 August 2001]

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An Act to amend the Criminal Law (Sentencing) Act 1988 and to make related amendments to the Summary Procedure Act 1921.

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**SUMMARY OF PROVISIONS**

1. Short title
2. Amendment of s. 7A—Victim impact statements
3. Insertion of s. 9B  
    9B. Presence of defendant during sentencing proceedings
4. Amendment of Summary Procedure Act 1921
5. Transitional provision

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

**Short title**

1. (1) This Act may be cited as the *Criminal Law (Sentencing) (Sentencing Procedures) Amendment Act 2001*.

(2) The *Criminal Law (Sentencing) Act 1988* is referred to in this Act as "the principal Act".

**Amendment of s. 7A—Victim impact statements**

2. Section 7A of the principal Act is amended by inserting after subsection (3) the following subsection:

(3A) If the court considers there is good reason to do so, it may exercise any of the powers that it has with regard to a vulnerable witness in order to assist a victim who wishes to read out a victim impact statement to the court.

**Insertion of s. 9B**

3. The following section is inserted in the principal Act after section 9A:

**Presence of defendant during sentencing proceedings**

**9B.** (1) Subject to the following exceptions, a defendant who is to be sentenced for an indictable offence must be present when the sentence is imposed and throughout all proceedings relevant to the determination of sentence.

*Exceptions—*

1. The defendant may, with the prosecutor's consent, be absent during the whole or part of the proceedings.
2. The court may exclude the defendant from the courtroom if satisfied that the exclusion is necessary in the interests of safety or for the orderly conduct of the proceedings. However, if such an exclusion is made, the court should (if practicable) make arrangements to enable the defendant to see and hear the proceedings by videolink.

(2) If the defendant is a body corporate, the requirement is satisfied by the presence of a director or some other representative of the body corporate satisfactory to the court but, in that case, either the prosecutor or the court may waive the requirement.

(3) A court may make any order necessary to secure compliance with this section and, if necessary, issue a warrant to have the defendant (or, if the defendant is a body corporate, a director or other representative of the defendant) arrested and brought before the court.

(4) This section—

- (a) does not prevent the passing of sentence, in the absence of the defendant, in a case where the defendant cannot be found; and
- (b) does not invalidate a sentence passed in the absence of the defendant.

**Amendment of Summary Procedure Act 1921**

**4. The *Summary Procedure Act 1921* is amended—**

*(a)* by inserting after section 103(3) the following subsection:

(3A) However, in determining and imposing sentence, the Court is to observe procedural rules specifically applicable to indictable offences.<sup>1</sup>

<sup>1</sup> See in particular, section 9B of the *Criminal Law (Sentencing) Act 1988*.

*(b)* by inserting after section 105(4) the following subsection:

(4A) However, in determining and imposing sentence, the Court is to observe procedural rules specifically applicable to indictable offences.<sup>1</sup>

<sup>1</sup> See in particular, section 9B of the *Criminal Law (Sentencing) Act 1988*.

**Transitional provision**

**5. The amendments made by the Act are to be considered procedural rather than substantive.**