



STATUTES AMENDMENT (SENTENCING) ACT 1992

No. 34 of 1992

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ELIZABETHAE II REGINAE

A.D. 1992

No. 34 of 1992

An Act to amend the Criminal Law (Sentencing) Act 1988 and the Children's Protection and Young Offenders Act 1979 and the Correctional Services Act 1982.

[Assented to 21 May 1992]

The Parliament of South Australia enacts as follows:

PART 1

PRELIMINARY

Short title

1. This Act may be cited as the *Statutes Amendment (Sentencing) Act 1992*.

Commencement

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

PART 2

AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

Short title

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

Interpretation

4. Section 3 of the principal Act is amended—

- (a) by striking out the definition of "appropriate officer" and substituting the following definition:

"appropriate officer" means—

- (a) the Sheriff;

or

- (b) the clerk of a court of summary jurisdiction;

- (b) by striking out the definition of "court" and substituting the following definition:

"court"—

(a) means any court of criminal jurisdiction (other than the Children's Court);

and

(b) in relation to the exercise of powers under this Act with respect to the variation, revocation or enforcement of an order of court or other related matters, means the court that made the order or a court of co-ordinate jurisdiction;

and

(c) by striking out from the definition of "probative court" the word "or" preceding paragraph (c) and inserting after paragraph (c) the following paragraph:

(d) where a bond is entered into pursuant to an order of an appellate court on an appeal against the penalty imposed by some other court—that other court.

Insertion of s. 18a

5. The following section is inserted after section 18 of the principal Act:

Sentencing for multiple offences

18a. If a person is found guilty of a number of offences for which he or she was charged on the one complaint or information, the court may sentence the person to the one penalty for all those offences, but the sentence cannot exceed the total of the maximum penalties that could be imposed in respect of each of the offences.

Release on licence

6. Section 24 of the principal Act is amended—

(a) by inserting in paragraph (a) of subsection (5) "or of its own motion," after "on application by the Crown or the person,";

(b) by inserting in paragraph (b) of subsection (5) "or of its own motion," after "on application by the Crown,";

(c) by inserting after subsection (5) the following subsection:

(5a) A board cannot exercise its powers under subsection (5) of its own motion in relation to a person released on licence unless the person and the Crown have been afforded a reasonable opportunity to make submissions to the board on the matter, and the board has considered any submissions so made.;

(d) by striking out subsection (6) and substituting the following subsection:

(6) For the purposes of proceedings under subsection (5), a member of the appropriate board may, on behalf of the board—

(a) summon the person the subject of the proceedings to appear before the board;

or

(b) in the case of proceedings for cancellation of release, apply to a justice for a warrant for the apprehension and detention of the person pending determination of the proceedings.;

(e) by striking out from paragraph (a) of subsection (7) "application" and substituting "proceedings";

(f) by striking out from the definition of “the appropriate board” in subsection (12) “an application” and substituting “proceedings”;

and

(g) by striking out from paragraph (a) of the definition of “the appropriate board” in subsection (12) “application” and substituting “proceedings”.

Duty of court to fix or extend non-parole periods

7. Section 32 of the principal Act is amended—

(a) by striking out from subsection (1) “or” between paragraphs (a) and (b) and by inserting after paragraph (b) the following word and paragraph:

or

(c) if the person is serving a minimum term imposed in respect of an offence against a law of the Commonwealth or is liable to serve such a term on the expiry of an existing non-parole period—fix a non-parole period in respect of the sentence, or sentences, to be served upon the expiry of that minimum term.;

(b) by striking out subsection (3) and substituting the following subsection:

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

(c) by inserting in subsection (6) “or the Chairman of the Parole Board” after “The Crown”;

(d) by inserting after subsection (6) the following subsection:

(6a) The Crown must be notified of any application made by the Chairman of the Parole Board under this section.;

(e) by inserting in subsection (7) (b) “or the Chairman of the Parole Board” after “the Crown”;

and

(f) by striking out paragraph (b) from subsection (10) and substituting the following paragraph:

(b) the prisoner is a party to an application by the Crown or the Chairman of the Parole Board under this section and the Crown is a party to an application by a prisoner.;

Variation of manner of payment of fine

8. Section 35 of the principal Act is amended—

(a) by striking out from subsection (1) “appropriate officer” and substituting “court”;

and

(b) by striking out from subsection (2) “officer” twice occurring and substituting, in each case, “court”.

Term of bond

9. Section 40 of the principal Act is amended by striking out “A” and substituting “Subject to this Act, a”.

Variation or discharge of bond

10. Section 44 of the principal Act is amended by inserting after subsection (1) the following subsections:

(1a) If, on an application for variation under subsection (1), a probative court extends, beyond the term of the bond, the period within which community service is to be performed by the probationer, the term of the bond is extended accordingly, notwithstanding that the term, as so extended, exceeds three years.

(1b) A probative court cannot extend the period within which community service is to be performed by more than six months.

Ancillary orders for supervision

11. Section 46 of the principal Act is amended by inserting “and make such other orders as the court thinks necessary for securing compliance with this Part” after “of the sentence”.

Special provisions relating to community service

12. Section 47 of the principal Act is amended by inserting in paragraph (f) “, except in circumstances approved by the Minister,” after “may not”.

Insertion of ss. 50a and 50b

13. The following sections are inserted after section 50 of the principal Act:

Variation of community service order

50a. (1) The court that sentenced a person to community service, or a court of co-ordinate jurisdiction, may, on application by the person, the Minister of Correctional Services or an appropriate officer, vary the terms of the order for community service, or vary or revoke any ancillary order.

(2) The court cannot, on an application under subsection (1), extend the period within which the community service is to be performed by more than six months.

Power of Minister to cancel unperformed hours of community service

50b. (1) If, on the application of a person required to perform community service pursuant to a bond or an order of a court, the Minister is satisfied—

(a) that, although some hours of community service remain unperformed, the person has substantially complied with the requirement;

(b) that there is no apparent intention on the person's part to deliberately evade his or her obligations under the bond or order;

and

(c) that sufficient reason exists for not insisting on performance of some or all of those hours,

the Minister may, by instrument in writing, waive compliance with the requirement to perform those hours, or a specified number of them.

(2) The Minister cannot exercise his or her powers under subsection (1) to waive performance of more than ten hours under the one bond or order.

(3) The Minister must notify the probative or sentencing court of any exercise of powers under subsection (1).

Variation of manner of payment of compensation

14. Section 54 of the principal Act is amended—

(a) by striking out from subsection (1) “appropriate officer” and substituting “court”;
and

(b) by striking out from subsection (2) “officer” twice occurring and substituting, in each case, “court”.

Costs

15. Section 55 of the principal Act is amended—

(a) by striking out from subsection (2) “appropriate officer” and substituting “court”;
and

(b) by striking out from subsection (3) “officer” twice occurring and substituting, in each case, “court”.

Non-compliance with bond

16. Section 57 of the principal Act is amended—

(a) by striking out subsection (4) and substituting the following subsection:

(4) If a probationer is found guilty of an offence by a court of a superior jurisdiction to that of the probative court, being an offence committed during the term of the bond, any proceedings for breach of condition arising out of the offence are to be taken in the court of superior jurisdiction;

and

(b) by striking out from subsection (6) the definition of “court of inferior jurisdiction”.

Orders that court may make on breach of bond

17. Section 58 of the principal Act is amended by striking out subparagraph (i) of paragraph (b) of subsection (3) and substituting the following subparagraph:

(i)—

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

(B) in the case of a bond requiring performance of community service, extend, by not more than six months, the period within which any remaining hours of community service must be performed;

(C) cancel the whole or a number of any unperformed hours of community service;

(D) revoke or vary any other condition of the bond;

Variation of manner of payment of sum under a bond

18. Section 59 of the principal Act is varied—

(a) by striking out from subsection (1) “appropriate officer” and substituting “court”;
and

(b) by striking out from subsection (2) “officer” twice occurring and substituting, in each case, “court”.

Insertion of s. 59a

19. The following section is inserted in Division III of Part IX of the principal Act before section 60:

Payment of pecuniary sum to the court

59a. Subject to any order of a court or direction of an appropriate officer to the contrary, a pecuniary sum, or any instalment of a pecuniary sum, is payable to a court, notwithstanding that the order for the pecuniary sum is in favour of some person.

Reminder notice fees

20. Section 60a of the principal Act is amended—

(a) by striking out from subsection (2) “The costs” and substituting “Subject to subsection (3), the prescribed costs”;

and

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

(3) The appropriate officer may waive payment of the costs of issuing a reminder notice in such circumstances as the officer thinks just.

Substitution of s. 61

21. Section 61 of the principal Act is repealed and the following sections are substituted:

Imprisonment in default of payment

61. (1) Subject to this Act, an order for payment of a pecuniary sum is enforceable by imprisonment in default of payment.

(2) The term of imprisonment to be served in default of payment will be—

(a) a term calculated on the basis of one day for each prescribed unit of the amount outstanding;

or

(b) six months,

whichever is the lesser.

(3) Where a person is in default of payment of a pecuniary sum, the court may, subject to subsection (4), issue a warrant of commitment for the term of imprisonment appropriate to the amount outstanding under the order.

(4) A warrant must not be issued until the person has been in default of payment for one month, unless—

(a) the court is satisfied that there are reasonable grounds for suspecting that the person will abscond without making payment;

or

(b) the person in default is already serving some other term of imprisonment.

(5) The imprisonment to which a person becomes liable by virtue of a warrant issued under this section (after this section comes into operation) will be cumulative on any other term of imprisonment that the person is liable to serve by virtue of any other such warrant.

Driver's licence disqualification for default

61a. (1) Where a person is in default of payment of a pecuniary sum imposed in relation to an offence committed by him or her, being an offence arising out of the use of a motor vehicle, and the default has endured for one month or more, the court may, instead of issuing a warrant of commitment, disqualify the person from holding or obtaining a driver's licence until the pecuniary sum has been fully satisfied.

(2) On receiving notification from the court of a disqualification under this section, the Registrar of Motor Vehicles must cause written notice of the disqualification to be given personally or by post to the person in default.

(3) A disqualification under this section takes effect 14 days after notice is given in accordance with subsection (2) unless the sum in default is paid before that time.

(4) The court—

(a) may, on application by the person in default, revoke the disqualification if the court is satisfied that the sum in default, although not paid in full, has been reduced and that continued disqualification would result in undue hardship to the person;

and

(b) must, on the person entering into an undertaking under section 67 to work off the sum in default by community service, revoke the disqualification.

(5) Nothing in this section prevents the court from issuing a warrant of commitment against a person for the enforcement of a pecuniary sum during a period of disqualification imposed under this section in respect of that sum, if the court is of the opinion that it is appropriate to do so.

(6) The court must, on a pecuniary sum in respect of which disqualification under this section has been imposed being fully satisfied (whether by payment or imprisonment) or a disqualification being revoked under subsection (4), notify the Registrar of Motor Vehicles in writing accordingly.

(7) In this section—

“driver’s licence” includes a learner’s permit.

Warrants for sale of land or goods

22. Section 62 of the principal Act is amended—

(a) by striking out from subsection (1) “appropriate officer” and substituting “court”;

(b) by striking out from subsection (4) “the appropriate officer” and substituting “an appropriate officer”;

and

(c) by striking out from subsection (9) “the appropriate officer may fix default imprisonment in respect of the balance outstanding” and substitute “the balance outstanding is enforceable by imprisonment in accordance with this Part”.

Person in default may pay person executing the warrant

23. Section 64 of the principal Act is amended by striking out from subsection (2) “appropriate officer” and substituting “court”.

Postponement or suspension of warrants

24. Section 65 of the principal Act is amended—

(a) by striking out from subsection (1) “an appropriate officer” and substituting “the court”;

(b) by striking out from subsection (1) “officer” twice occurring and substituting, in each case, “court”;

and

(c) by striking out from subsection (3) “an appropriate officer” and substituting “the court”.

Ex parte orders

25. Section 66 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) The power to issue a warrant of commitment under this Division or to disqualify a person from holding or obtaining a driver's licence will, unless the court decides otherwise, be exercised without hearing the person in default.

(2) Any other order under this Division may, at the discretion of the court, be made without hearing the person in default and, if so made, must be served on the person personally.;

and

(b) by striking out from subsection (3) "imprisonment or".

Application to work off pecuniary sums by community service

26. Section 67 of the principal Act is amended—

(a) by striking out from paragraph (a) of subsection (2) "appropriate officer" and substituting "court";

(b) by striking out from subsection (4) "appropriate officer" and substituting "court";

(c) by striking out from subsection (4) "officer" and substituting "court";

(d) by striking out from paragraph (a) of subsection (7) "appropriate officer" and substituting "court";

(e) by striking out subsections (8) and (9);

(f) by striking out from subsection (11) "with the appropriate officer" and substituting "in the court";

and

(g) by striking out from subsection (15) "with the appropriate officer" and substituting "in the court".

Remission of pecuniary sum

27. Section 68 of the principal Act is amended by striking out from subsection (1) "the appropriate officer" and substituting "an appropriate officer".

Amount in default is reduced by imprisonment served

28. Section 69 of the principal Act is amended—

(a) by striking out from subsection (1) "Where a person is committed to prison pursuant to a warrant issued under this Part" and substituting "Where a warrant issued under this Part for the imprisonment of a person is executed";

and

(b) by striking out from subsections (2), (3) and (4) "appropriate officer" wherever occurring and substituting, in each case, "court".

Substitution of s. 71

29. Section 71 of the principal Act is repealed and the following sections are substituted:

Community service orders may be enforced by imprisonment

71. (1) Subject to this section, an order of a court requiring performance of community service is enforceable by imprisonment in default of compliance.

(2) The term of imprisonment to be served in default of compliance will be—

(a) a term calculated on the basis of one day for each eight hours of community service remaining to be performed under the order;

or

(b) six months,

whichever is the lesser.

(3) If it appears to the court, by evidence given on oath, that a person has failed to comply with an order requiring performance of community service, the court may—

(a) issue a notice requiring the person to appear before the court at the time and place specified in the notice to show cause why a warrant of commitment should not be issued against the person for the default;

or

(b) issue a warrant for the person's arrest.

(4) If a person fails to appear before the court as required by a notice issued under subsection (3), the court may issue a warrant for the person's arrest.

(5) If the court is satisfied that the person has failed to comply with the order requiring performance of community service, the court may issue a warrant of commitment for the appropriate term of imprisonment determined in accordance with subsection (2).

(6) The court may, on issuing a warrant under subsection (5), direct that the imprisonment to which the person becomes liable by virtue of the warrant be cumulative on any other term of imprisonment being served, or to be served, by the person.

(7) Notwithstanding subsection (5), if the court is satisfied that the failure of a person to comply with an order requiring performance of community service was trivial or that there are proper grounds on which the failure should be excused, the court—

(a) may refrain from issuing a warrant of commitment;

and

(b) may—

(i) extend the term of the order by such period, not exceeding six months, as the court thinks necessary for the purpose of enabling the person to perform the remaining hours of community service (if any);

(ii) if the order has expired, impose a further order, for a term not exceeding six months, requiring the person to perform the number of hours of community service unperformed under the previous order;

(iii) cancel the whole or a number of the unperformed hours of community service under the order.

Other non-pecuniary orders may be enforced by imprisonment

71a. (1) If it appears to the court, by evidence given on oath, that a person has failed to comply with an order requiring the person to do some act (other than the performance of community service or the payment of a pecuniary sum), the court may—

(a) issue a notice requiring the person to appear before the court at the time and place specified in the notice to show cause why the person should not be dealt with for the default;

or

(b) issue a warrant for the person's arrest.

(2) If a person fails to appear before the court as required by a notice issued under subsection (1), the court may issue a warrant for the person's arrest.

(3) If the court is satisfied that the person has failed to comply with the order, the court may sentence the person to such term of imprisonment (not exceeding six months) as the court thinks fit and issue a warrant of commitment accordingly.

(4) The court may, on issuing a warrant under subsection (3), direct that the imprisonment to which the person becomes liable by virtue of the warrant be cumulative on any other term of imprisonment being served, or to be served by the person.

Substitution of s. 72

30. Section 72 of the principal Act is repealed and the following section is substituted:

Appropriate officers

72. (1) Subject to rules of court or the regulations, the powers of a court under section 35, 54, 55 or 59 or Division III or IV of Part IX are exercisable by any appropriate officer.

(2) Where the Sheriff exercises powers under this Act as an appropriate officer in relation to an order of a court of summary jurisdiction, the Sheriff must, as soon as practicable after doing so, notify the clerk of the relevant court of the manner in which the powers have been exercised.

(3) Where the clerk of a court of summary jurisdiction exercises powers under this Act as an appropriate officer in relation to an order of the Supreme Court or a District Court, the clerk must, as soon as practicable after doing so, notify the Sheriff of the manner in which the powers have been exercised.

(4) The clerk of a court of summary jurisdiction must observe any conditions imposed by the Sheriff—

(a) limiting the exercise by clerks of courts of summary jurisdiction of powers as an appropriate officer in relation to orders of the Supreme Court or District Courts;

or

(b) as to the manner in which those powers are to be exercised.

(5) Subject to rules of court or the regulations, where an appropriate officer exercises the powers of a court pursuant to this section in relation to a person and the person is aggrieved by a decision or order made by the appropriate officer, the person may apply to the court for a review of the decision or order.

(6) The court may, on completion of the review—

- (a) confirm the decision or order;
- (b) quash the decision or order and substitute any decision or order that the court thinks should have been made in the first instance;
- (c) make any ancillary order (including an order as to costs) it thinks fit.

PART 3

AMENDMENT OF CHILDREN'S PROTECTION AND YOUNG OFFENDERS ACT 1979

Short title

31. The *Children's Protection and Young Offenders Act 1979* is referred to in this Part as "the principal Act".

Performance of community service

32. Section 58d of the principal Act is amended by inserting in paragraph (d) " , except in circumstances approved by the Minister," after "cannot".

Variation or discharge of bond

33. Section 59 of the principal Act is amended by striking out from subsections (1) (a), (2) and (4) "surety to" wherever occurring and substituting, in each case, "guarantor of".

Breach of bond

34. Section 61 of the principal Act is amended—

- (a) by striking out from paragraph (b) of subsection (2) "surety to" and substituting "guarantor of";
- (b) by striking out from paragraph (b) of subsection (2) "surety" (second occurring) and substituting "guarantor";
- (c) by striking out from subsection (5) "and" between paragraphs (a) and (b);
- (d) by inserting after paragraph (b) of subsection (5) the following paragraph:
 - (c) may, in the case of a bond requiring the child to participate for a specified number of hours in a work project or programme, cancel the whole or a number of any of those hours that remain unperformed.;

and

- (e) by striking out from subsection (6) "surety" wherever occurring and substituting, in each case, "guarantor".

Costs

35. Section 72a of the principal Act is amended—

- (a) by striking out from subsection (2) "the appropriate clerk of";
- and
- (b) by striking out from subsection (3) "clerk" twice occurring and substituting, in each case, "Court".

Insertion of s. 75aa

36. The following section is inserted in Division I of Part IVA of the principal Act before section 75a:

Payment of pecuniary sum to the Court

75aa. Subject to any order of the Court or direction of a clerk of the Court to the contrary, a pecuniary sum, or any instalment of a pecuniary sum, is payable to the Court, notwithstanding that the order for the pecuniary sum is in favour of some person.

Substitution of s. 75b

37. Section 75b of the principal Act is repealed and the following sections are substituted:

Detention in default of payment

75b. (1) Subject to this Act, an order for payment of a pecuniary sum is enforceable by detention (or imprisonment in the case of a guarantor) in default of payment.

(2) The term of detention or imprisonment to be served in default of payment will be—

(a) a term calculated on the basis of one day for each prescribed unit of the amount outstanding;

or

(b) three months,

whichever is the lesser.

(3) Where a child or guarantor is in default of payment of a pecuniary sum, the Children's Court may, subject to subsection (4), issue a mandate or a warrant of commitment for the term of detention or imprisonment appropriate to the amount outstanding under the order.

(4) A mandate or warrant must not be issued until the person has been in default of payment for one month, unless—

(a) the Court is satisfied that there are reasonable grounds for suspecting that the person will abscond without making payment;

or

(b) the person in default is already serving some term of detention or imprisonment.

(5) The detention or imprisonment to which a person becomes liable by virtue of a mandate or warrant issued under this section (after this section comes into operation) will be cumulative on any other term of detention or imprisonment that the person is liable to serve by virtue of any other such mandate or warrant.

Driver's licence disqualification for default

75ba. (1) Where a child is in default of payment of a pecuniary sum imposed in relation to an offence arising out of the use of a motor vehicle and the default has endured for one month or more, the court may, instead of issuing a mandate, disqualify the person from holding or obtaining a driver's licence until the pecuniary sum has been fully satisfied.

(2) On receiving notification from the court of a disqualification under this section, the Registrar of Motor Vehicles must cause written notice of the disqualification to be given personally or by post to the child in default.

(3) A disqualification under this section takes effect 14 days after notice is given in accordance with subsection (2) unless the sum in default is paid before that time.

(4) The Court may, on application by the child, revoke the disqualification if the court is satisfied that the sum in default, although not paid in full, has been reduced and that continued disqualification would result in undue hardship to the child.

(5) Nothing in this section prevents the Court from issuing a mandate against a child for the enforcement of a pecuniary sum during a period of disqualification imposed under this section in respect of that sum, if the Court is of the opinion that it is appropriate to do so.

(6) The Court must, on a pecuniary sum in respect of which disqualification under this section has been imposed being fully satisfied (whether by payment or detention) or a disqualification being revoked under subsection (4), notify the Registrar of Motor Vehicles in writing accordingly.

(7) In this section—

“driver’s licence” includes a learner’s permit.

Warrant for sale of goods

38. Section 75c of the principal Act is amended—

(a) by striking out from subsection (3) “the appropriate” and substituting “a”;

and

(b) by striking out from subsection (8) “the Court may fix default detention (or imprisonment in the case of a surety) in respect of the balance outstanding” and substituting “the balance outstanding is enforceable by detention (or imprisonment in the case of a guarantor) in accordance with this Part”.

Person in default may pay person executing the warrant

39. Section 75e of the principal Act is amended by striking out “the appropriate clerk of”.

Postponement or suspension of warrants

40. Section 75f of the principal Act is amended—

(a) by striking out from subsection (1) “a clerk of”;

(b) by striking out from subsection (1) “clerk” second and third occurring and substituting, in each case, “Court”;

(c) by striking out from subsection (3) “a clerk of”.

and

(d) by inserting after subsection (3) the following subsections:

(4) Subject to rules of court, the powers of the Children’s Court under this section are exercisable by a clerk of the Court.

(5) Subject to rules of court, where a clerk exercises powers of the Children’s Court under this section in relation to a person and the person is aggrieved by a decision made by the clerk, the person may apply to the Court for a review of the decision.

(6) The Court may, on completion of the review—

(a) confirm the decision;

(b) quash the decision and substitute any decision that the Court thinks should have been made in the first instance;

(c) make any ancillary order (including an order as to costs) it thinks fit.

Ex parte orders

41. Section 75h of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) The power to issue a mandate or a warrant of commitment under this Division or to disqualify a person from holding or obtaining a driver's licence will, unless the Court decides otherwise, be exercised without hearing the person in default.

(2) Any other order under this Division may, at the discretion of the Court, be made without hearing the person in default and, if so made, must be served on the person personally.;

and

(b) by striking out from subsection (3) "detention or".

Amount in default is reduced by detention or imprisonment served

42. Section 75i of the principal Act is amended—

(a) by striking out from subsection (1) "Where a person is committed to a training centre or prison pursuant to a mandate or warrant issued under this Division" and substituting "Where a mandate or warrant issued under this Division is executed";

(b) by striking out from subsection (2) "the appropriate clerk of";

(c) by striking out from subsection (3) "the appropriate clerk of";

and

(d) by striking out from subsection (4) "the appropriate clerk of".

Substitution of s. 75l

43. Section 75l of the principal Act is repealed and the following sections are substituted:

Community service orders may be enforced by detention

75l. (1) Subject to this section, an order requiring performance of community service is enforceable by detention.

(2) The period of detention to be served in default of compliance is—

(a) a period calculated on the basis of one day for each eight hours of community service remaining to be performed;

or

(b) three months,

whichever is the lesser.

(3) If it appears to the Children's Court, by evidence given on oath, that a child has failed to comply with an order requiring performance of community service, the Court may—

(a) issue a notice requiring the child to appear before the Court at the time and place specified in the notice to show cause why a mandate should not be issued against the child for the default;

or

(b) issue a warrant for the child's arrest.

(4) If a child fails to appear before the Court as required by a notice issued under subsection (3), the Court may issue a warrant for the child's arrest.

(5) If the Court is satisfied that the child has failed to comply with the order requiring performance of community service, the Court may issue a mandate for the appropriate period of detention determined in accordance with subsection (2).

(6) The Court may, on issuing a mandate under subsection (5), direct that the detention to which the child becomes liable by virtue of the mandate be cumulative on any other period of detention or term of imprisonment being served, or to be served, by the child.

(7) Notwithstanding subsection (5), if the Court is satisfied that the failure of a child to comply with an order requiring performance of community service was trivial or that there are proper grounds on which the failure should be excused, the Court—

(a) may refrain from issuing a mandate;

and

(b) may—

(i) extend the term of the order for community service by such period, not exceeding two months, as the Court thinks necessary for the purpose of enabling the child to perform the remaining hours of community service (if any);

(ii) if the sentence has expired, impose a further order, for a term not exceeding two months, requiring the child to perform the number of hours of community service unperformed under the previous order;

(iii) cancel the whole or a number of the unperformed hours of community service under the order.

Other non-pecuniary orders may be enforced by detention

75/a. (1) If it appears to the Court, by evidence given on oath, that a child has failed to comply with an order requiring the child to do some act (other than the performance of community service or the payment of a pecuniary sum), the court may—

(a) issue a notice requiring the child to appear before the court at the time and place specified in the notice to show cause why he or she should not be dealt with for the default;

or

(b) issue a warrant for the child's arrest.

(2) If a child fails to appear before the Court as required by a notice issued under subsection (1), the court may issue a warrant for the child's arrest.

(3) If the Court is satisfied that the child has failed to comply with the order, the Court may—

(a) sentence the child to such period of detention (not exceeding three months) as the Court thinks fit;

(b) issue a mandate against the child;

(c) if the Court thinks it appropriate to do so, direct that the period of detention be cumulative on any other period of detention or term of imprisonment being served, or to be served, by the child.

PART 4

AMENDMENT OF CORRECTIONAL SERVICES ACT 1982

Short title

44. The *Correctional Services Act 1982* is referred to in this Part as “the principal Act”.

Interpretation

45. Section 4 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Any reference in this Act to the expiry or unexpired balance of a term or sentence of imprisonment is a reference to that term or sentence as reduced by remission credited to the prisoner pursuant to this Act.

Release of prisoner from prison or home detention

46. Section 38 of the principal Act is amended—

(a) by striking out “The” from subsection (2) and substituting “Subject to subsection (3), the”;

and

(b) by inserting after subsection (2) the following subsections:

(3) Subsection (2) does not apply in relation to a prisoner who is serving a term of imprisonment for default in payment of a pecuniary sum.

(4) In this section—

“pecuniary sum” has the same meaning as in the *Criminal Law (Sentencing) Act 1988*.

Board may impose community service for breach of non-designated conditions

47. Section 74aa of the principal Act is amended by inserting in paragraph (d) of subsection (4) “, except in circumstances approved by the Minister,” after “the person cannot”.

Insertion of s. 79a

48. The following section is inserted after section 79 of the principal Act:

Remission to be credited against both non-parole period and head sentence

79a. Remission credited to a prisoner who is serving a non-parole period will be credited against both the non-parole period and the term, or total of the terms, that the prisoner is liable to serve.

Managers to comply with the execution of process

49. Section 84 of the principal Act is amended by inserting “or issued otherwise pursuant to law” after “process or order of a court or justice”.

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

ROMA MITCHELL Governor