

Western Australia

Sentence Administration Act 1995

As at 16 Dec 1999

Version 00-e0-03

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Sentence Administration Act 1995

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Western Australia

Sentence Administration Act 1995

An Act to provide for the administration of sentences imposed on offenders.

[Assented to 16 January 1996]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Sentence Administration Act 1995*.

2. Commencement

The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

3. This Act to be read with *Sentencing Act 1995*

This Act is to be read with the *Sentencing Act 1995*.

4. Interpretation and abbreviations

(1) If not defined in this Act words and phrases in this Act have the same definitions as in the *Sentencing Act 1995* and in particular, in Part 13 of that Act.

(2) In this Act —

“**Board**” means the Parole Board;

“**community corrections activities**” are activities approved as such under section 85;

“**community corrections centre**” means a place declared to be a community corrections centre under section 84;

“**community corrections officer**” (“CCO”) means a person who under section 98 is appointed as a CCO or as an honorary CCO and includes a person who under section 96 has been conferred with some or all of the functions of a CCO;

“**community order**” means a community based order or an intensive supervision order imposed under the *Sentencing Act 1995*;

“**department**” means the department principally assisting the Minister with the administration of this Act;

“departmental officer” means a person appointed under section 98 (1) (a);

“departmental staff ” means the people appointed or engaged under section 98 and the people authorized to work as unpaid volunteers under section 99;

“early release order” means —

- (a) a parole order;
- (b) a home detention order;
- (c) a work release order;

“home detention order” (“HDO”) means a home detention order made under Part 5;

“parole order” is an order made under Part 3 that a prisoner be released on parole;

“release” means release from custody;

“work and development order” (“WDO”) means a work and development order made under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*;

“work release order” (“WRO”) means a work release order made under Part 4.

(3) In this Act these abbreviations are used —

“CCO” for community corrections officer;

“CEO” for chief executive officer;

“HDO” for home detention order;

“WDO” for work and development order;

“WRO” for work release order.

[Section 4 amended by No. 29 of 1998 s.12.]

[5. Repealed by No. 69 of 1996 s.82.]

Part 2 — General matters about people in custody

Division 1 — Preliminary

6. Interpretation

In this Part words and phrases have the same definitions, and calculations are to be made in the same way, as in Part 13 of the *Sentencing Act 1995*.

Division 2 — Matters affecting the service of terms

7. When a term begins

- (1) Unless this section provides otherwise or an order is made under section 87 (d) or 88 (3) of the *Sentencing Act 1995*, a term, other than indefinite imprisonment, begins on the day it is imposed, or if the prisoner is not then in custody, on the day he or she is arrested under a warrant issued in respect of the sentence.
- (2) If a term is cumulative on one or more other terms then that term begins on the earliest date on which the prisoner could be released in relation to the last to be served of those other terms, whether or not the release would otherwise be under —
 - (a) a parole order; or
 - (b) a recognizance release order, or a parole order, made under the *Crimes Act 1914* of the Commonwealth.

8. Order of service of fixed terms

- (1) A prisoner sentenced to serve 2 or more fixed terms is to serve those terms in this order —
 - (a) firstly, those that are not parole terms are to be served according to whether they are concurrent or cumulative with one another;
 - (b) secondly, the non-parole periods of those that are parole terms are to be served according to whether those parole terms are concurrent or cumulative with one another;

- (c) thirdly, unless and until released on parole, the balance of any parole terms after the end of any non-parole periods are to be served according to whether they are concurrent or cumulative with one another.
- (2) If while serving a fixed term a prisoner is sentenced to serve another fixed term, other than a fixed term ordered to be served partly cumulatively on another term, service of the former is suspended if necessary so that the terms can then be served in the order required by subsection (1).
- (3) In this section —
 - “**fixed term**” includes a period of imprisonment ordered under section 58 or 59 of the *Sentencing Act 1995*;
 - “**non-parole period**”, in relation to a parole term, means the period that under section 93 of the *Sentencing Act 1995* the prisoner has to serve before he or she is eligible to be released on parole.

[Section 8 amended by No. 29 of 1998 s.13.]

9. Effect of escaping from custody

- (1) A term does not elapse while a prisoner is at large, having escaped lawful custody while serving it.
- (2) A prisoner who is returned to lawful custody after having escaped from it while serving a fixed term, must serve —
 - (a) the part of the term he or she had yet to serve at the time of escaping; plus
 - (b) one third of the lesser of —
 - (i) the period during which he or she was absent from lawful custody; or
 - (ii) the period beginning on the date of escape and ending on the date when, but for the escape, the fixed term would have ended,

in addition to any term imposed for escaping lawful custody.

Sentence Administration Act 1995

Part 2 General matters about people in custody

Division 3 Reports about certain people in custody

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10. Effect of time before an appeal

- (1) Any period that a prisoner spends on bail while he or she is appealing against a conviction or a sentence does not count as time served in respect of any term that the prisoner is liable to serve.
- (2) Any period that a prisoner spends in custody while he or she is appealing against a conviction or a sentence counts as time served in respect of any term that he or she is then serving, but not in respect of any other term that he or she is liable to serve.

11. No release if prisoner in custody for another matter

Despite this Act and the *Sentencing Act 1995*, a prisoner must not be released (whether under an early release order or otherwise) in respect of a term if at the time the release could be ordered he or she is by law required to be kept in custody in respect of another matter.

Division 3 — Reports about certain people in custody

[12. *Repealed by No. 69 of 1996 s.83.*]

13. Report to Minister about a person in custody during Governor's pleasure

- (1) At any time the Minister, in writing, may request the CEO to provide a report of the kind mentioned in subsection (2).
- (2) Whenever the CEO gets a written request to do so from the Minister, or whenever the CEO thinks there are special circumstances which justify doing so, the CEO must give the Minister a written report on the place or places where a person who is ordered to be detained in strict custody under section 282 of *The Criminal Code* is or should be detained in safe custody.

[Section 13 amended by No. 69 of 1996 s.84.]

14. Report to Minister about a person in custody

(1) In this section —

“person in custody” means —

- (a) a prisoner sentenced to a fixed term, whether a parole term or not;
- (b) a prisoner sentenced to a life term;
- (c) a prisoner sentenced to indefinite imprisonment;
- (d) a person in strict or safe custody by virtue of an order made under section 282 of *The Criminal Code*.

[(e) deleted]

(2) At any time the Minister, in writing, may request the Board to report about a person in custody.

(3) The Board must give the Minister a written report about a person in custody —

- (a) whenever it gets a written request to do so from the Minister;
- (b) whenever it thinks there are special circumstances which justify doing so; and
- (c) in any event in the case of a person referred to in subsection (1) (d) or (e), at least once in every year.

(4) A report —

- (a) under subsection (3) (a) must; and
- (b) under subsection (3) (b) or (c) may,

recommend whether or not the Governor should be advised to exercise any power vested in the Governor to release the person in custody and, if release is recommended, as to the requirements or conditions (if any) that should apply to the person's release.

Sentence Administration Act 1995

Part 2 General matters about people in custody

Division 4 Releasing people in custody during the Governor's pleasure

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- (5) If a report under subsection (3) about a person in custody recommends that the person be released, the report must, in addition to any other matters the Board thinks fit, report —
- (a) on the nature and circumstances of the offence that gave rise to the person being in custody;
 - (b) on the degree of risk that the release of the person appears to present to the personal safety of people in the community or of any individual in the community; and
 - (c) if parole is recommended — on the period for which the person should be on parole and on the requirements or conditions (if any) to which the person should be subject while on parole.

[Section 14 amended by No. 69 of 1996 s.85.]

Division 4 — Releasing people in custody during the Governor's pleasure

15. Operation of this Division

The powers in this Division are in addition to the power of the Governor to at any time release people who are in custody during the Governor's pleasure.

16. Parole from custody during Governor's pleasure

- (1) The release by the Governor of a person in strict or safe custody by virtue of an order made under section 282 of The Criminal Code may, if the Governor thinks fit, be by means of a parole order made by the Governor.
- (2) The parole order may not be made unless a report about the person has been given by the Board to the Minister under section 14.
- (3) The release date is that set by the Governor.
- (4) The parole period is that set by the Governor; but it must be at least 6 months and not more than 5 years.

- (5) The Minister must cause a copy of every parole order made in respect of a person described in subsection (1) (a) and a written explanation of the circumstances giving rise to it to be tabled in each House of Parliament within 15 sitting days of that House after it is made.

[Section 16 amended by No. 69 of 1996 s.86.]

Part 3 — Parole

Division 1 — Preliminary

17. Interpretation

In this Part words and phrases have the same definitions, and calculations are to be made in the same way, as in Part 13 of the *Sentencing Act 1995*.

18. Paramount consideration and interpretation

In deciding whether or not to release a person eligible for parole, on parole, the person exercising the power shall give paramount consideration to the protection and interest of the community.

Division 2 — Reports about people eligible for parole

19. Report to Board about prisoner serving parole term

- (1) In the case of a prisoner serving a parole term that is not a special term, if the CEO, having regard to the matters referred to in section 26 (3), considers there are circumstances which justify doing so, the CEO may report to the Board about any such matter.
- (2) In the case of a prisoner serving a special term, the CEO must report to the Board about the matters referred to in section 26 (3).
- (3) A report by the CEO under subsection (1) or (2) must be given to the Board on or before the date when the prisoner concerned is eligible to be released on parole.

- (4) In this section —
- “**special term**” means a parole term of at least 3 years imposed for an offence —
- (a) under any of these chapters of *The Criminal Code* —
- (i) Chapter XXVIII — Homicide: Suicide: Concealment of birth;
 - (ii) Chapter XXIX — Offences endangering life or health;
 - (iii) Chapter XXX — Assaults;
 - (iv) Chapter XXXI — Sexual offences;
 - (v) Chapter XXXIII — Offences against liberty;
 - (vi) Chapter XXXIII A — Threats;
 - (vii) Chapter XXXIII B — Intimidation;
 - (viii) Chapter XXXVIII — Stealing with violence: Extortion by threats;
- or
- (b) under any of these repealed enactments in *The Criminal Code* —
- (i) section 197;
 - (ii) Chapter XXXI A — Sexual assaults;
 - (iii) Chapter XXXII — Assaults on females: Abduction.
- (5) A reference in subsection (4) (a) to a chapter of *The Criminal Code* includes a reference to that chapter as enacted at any time before this Act commences.
- (6) A reference in subsection (4) (b) to an enactment of *The Criminal Code* includes a reference to that enactment as enacted at any time before it was repealed.

20. Periodic reports to Minister about prisoner serving life term or indefinite imprisonment

(1) In this section —

“prisoner” means a person serving a sentence described in column 1 of the Table to this section.

(2) The Board must give the Minister a written report about a prisoner at the times stated in columns 2 and 3 of the Table to this section, whether or not it has given the Minister a report about the prisoner under section 14.

(3) If a report under subsection (2) recommends that the prisoner be released, the report must, in addition to any other matters the Board thinks fit, report —

(a) on the nature and circumstances of the offence for which the sentence was imposed;

(b) on the degree of risk that the release of the prisoner appears to present to the personal safety of people in the community or of any individual in the community; and

(c) on the period for which the prisoner should be on parole and on the requirements or conditions (if any) to which the prisoner should be subject while on parole.

(4) A report under subsection (2) may recommend whether or not the Governor should be advised to exercise any power vested in the Governor to release the prisoner and, if release is recommended, as to the requirements or conditions (if any) that should apply to the prisoner’s release.

TABLE

Type of custody.	When a report is due.	When subsequent reports are due.
Life imprisonment for an offence other than murder or wilful murder.	7 years after the term was imposed.	Every 3 years after that.
Life imprisonment for murder.	At the end of the minimum period of imprisonment set by the court under section 90 (1) of the <i>Sentencing Act 1995</i> .	Every 3 years after that.
Life imprisonment for wilful murder.	At the end of the minimum period of imprisonment set by the court under section 90 (2) of the <i>Sentencing Act 1995</i> .	Every 3 years after that.
Strict security life imprisonment, other than where, under section 91 (3) of the <i>Sentencing Act 1995</i> , the prisoner has been ordered not to be paroled.	At the end of the minimum period of imprisonment set by the court under section 91 (1) of the <i>Sentencing Act 1995</i> .	Every 3 years after that.
Indefinite imprisonment.	One year after the day on which the sentence began.	Every 3 years after that.

Division 3 — Paroling prisoner serving parole term

21. Board to parole prisoner

- (1) Subject to section 26, the Board must make a parole order in respect of a prisoner serving a parole term.
- (2) The release date in such a parole order is to be the day when the prisoner is eligible to be released on parole under section 93 of the *Sentencing Act 1995*.

- (3) The parole period is to be calculated under section 22.

22. Parole period

- (1) Subject to section 94 of the *Sentencing Act 1995*, the parole period for a prisoner released under a parole order made under section 21 in respect of a parole term is the lesser of —

- (a) the period beginning on the release date and ending when two thirds of the parole term have elapsed; or
- (b) the period calculated by deducting from the prescribed period a period equal to the pre-release period.

- (2) In this section —

“the prescribed period” is one third of the parole term or —

- (a) 6 months if that calculation produces a result of less than 6 months; or
- (b) 24 months if that calculation produces a result of more than 24 months;

“the pre-release period” is the period (if any) that —

- (a) began when the non-parole period (as defined in section 8 (3)) ended; and
- (b) ended when the prisoner was released on parole, but it does not include any period during which the prisoner was not serving that parole term or those parole terms.

Division 4 — Paroling prisoner serving life term or indefinite imprisonment

23. Life imprisonment: Governor may parole prisoner

- (1) The Governor may make a parole order in respect of a prisoner serving life imprisonment but only if —

- (a) the prisoner has served the minimum period set by the court under section 90 of the *Sentencing Act 1995*; and
- (b) a report about the prisoner has been given by the Board to the Minister under section 14 or 20.

- (2) The release date in the parole order is that set by the Governor.
- (3) The parole period in the parole order is to be set by the Governor and must be at least 6 months and not more than 5 years.

24. Strict security life imprisonment: Governor may parole prisoner

- (1) Unless a court has made an order under section 91 (2) of the *Sentencing Act 1995*, the Governor may make a parole order in respect of a prisoner serving strict security life imprisonment but only if —
 - (a) the prisoner has served the minimum period set by the court under section 91 (1) of that Act; and
 - (b) a report about the prisoner has been given by the Board to the Minister under section 14 or 20.
- (2) The release date in the parole order is that set by the Governor.
- (3) The parole period in the parole order is to be set by the Governor and must be at least 6 months and not more than 5 years.
- (4) The Minister must cause a copy of every parole order made under subsection (1) and a written explanation of the circumstances giving rise to it to be tabled in each House of Parliament within 15 sitting days of that House after it is made.

25. Indefinite imprisonment: Governor may parole prisoner

- (1) An offender sentenced to indefinite imprisonment may be released only under a parole order made by the Governor.
- (2) The Governor may make a parole order in respect of a prisoner sentenced to be imprisoned indefinitely.
- (3) The parole order may not be made unless a report about the prisoner has been given by the Board to the Minister under section 14 or 20.

- (4) The release date is that set by the Governor.
- (5) The parole period is to be set by the Governor and must be at least 6 months and not more than 2 years.

Division 5 — Postponing, deferring or refusing parole

26. Board may postpone, defer or refuse parole

- (1) This section applies in the case of a prisoner who is serving a parole term and who is eligible to be released on parole.
- (2) Instead of making a parole order releasing the prisoner on the date when under section 21 he or she would otherwise have to be released on parole, the Board may —
 - (a) postpone the parole of the prisoner by making a parole order in which the specified release date is a later date;
 - (b) defer making a parole order; or
 - (c) refuse to make a parole order.
- (3) The Board must not make an order under subsection (2) unless there appears to the Board to be special circumstances which justify it in doing so having regard to —
 - (a) the nature and circumstances of the offence for which the parole term was imposed;
 - (b) the degree of risk that the release of the prisoner appears to present to the personal safety of people in the community or of any individual in the community;
 - (c) any other matter relevant to deciding that the prisoner ought not be released on the date when under section 21 he or she would otherwise have to be released on parole.
- (4) In deciding whether to exercise the powers in subsection (2) the Board is to consider any information about the prisoner brought to its attention including any report by the CEO made under section 19.

27. Prisoner to be notified of postponement etc.

- (1) If under section 26 the Board postpones, defers or refuses parole, written notice of the decision must be given to the prisoner as soon as practicable.
- (2) The written notice must —
 - (a) subject to section 114, include the reasons for the decision; and
 - (b) inform the prisoner of his or her right to make submissions under subsection (3).
- (3) A prisoner whose release on parole has been postponed, deferred or refused may make written submissions to the Board about the Board's decision and reasons (if any are supplied).

28. Effect of Board deferring or refusing parole

If the Board defers making or refuses to make a parole order under this Division it is not precluded from subsequently making a parole order.

29. Prisoner may refuse to be released on parole

- (1) A parole order is not to be made in respect of a prisoner if the prisoner has given written notice that he or she does not want to be released on parole.
- (2) The prisoner may subsequently give written notice that he or she does want to be released on parole.
- (3) The written notice must be given to the Board which, if the parole order is to be made by the Governor, must forward it to the Minister.

Division 6 — Parole order

30. Parole order: nature of

- (1) A parole order is an order that on a release date specified in the order a prisoner is to be released on parole for a parole period

specified in the order if he or she gives a written undertaking that while on parole he or she will comply with —

- (a) the standard obligations in section 31;
 - (b) any of the additional requirements in section 32 that are specified in the parole order; and
 - (c) section 76.
- (2) It is a condition of every parole order that if the prisoner commits an offence (in this State or elsewhere) while on parole, then —
- (a) if the prisoner is sentenced to imprisonment for the offence, the parole order shall be cancelled under Part 6; or
 - (b) in any other case, the parole order may be cancelled under section 37.
- (3) A parole order may relate to more than one term.
- (4) A prisoner who is released under a parole order is nevertheless still subject to the sentence or sentences of imprisonment to which the parole order relates.

31. Parole order: standard obligations

The standard obligations of a parole order are that the prisoner —

- (a) must report to a community corrections centre within 72 hours after being released, or as otherwise directed by a CCO; and
- (b) must notify a CCO of any change of address or place of employment within 2 clear working days after the change.

32. Parole order: additional requirements

- (1) A parole order may contain such of these additional requirements as the Board or the Governor (as the case may be) thinks fit —

- (a) a requirement as to where the prisoner must reside;
 - (b) a requirement that the prisoner wear any device for monitoring purposes;
 - (c) a requirement that the prisoner permit the installation of any device or equipment at the place where the prisoner resides for monitoring purposes;
 - (d) a requirement that the prisoner must not leave this State except with and in accordance with the written permission of the CEO;
 - (e) requirements to facilitate the prisoner's rehabilitation; or
 - (f) prescribed requirements.
- (2) Without limiting subsection (1) a parole order may contain as additional requirements all or any of the standard obligations applicable to a WRO under paragraphs (a) and (b) of section 51.

33. Prisoner's undertaking

- (1) A prisoner must give the written undertaking required by a parole order on or before the release date specified in it and if he or she does not, the parole order is to be taken as having been cancelled.
- (2) If —
- (a) a parole order was not made in respect of a prisoner because the prisoner gave notice that he or she did not want to be released on parole; or
 - (b) a parole order was cancelled by the operation of subsection (1),
- and the prisoner subsequently gives the Board written notice that he or she wants to be released on parole, the Board or the Governor (as the case may be) may then make a parole order.
- (3) The release date in a parole order under subsection (2) is that set by the Board or the Governor (as the case may be).

34. CEO to ensure parolee is supervised

- (1) The CEO must ensure that a CCO is assigned to supervise a prisoner while on parole.
- (2) However, if at any time the CEO is satisfied that —
 - (a) the prisoner is complying with his or her undertaking in a satisfactory manner; and
 - (b) the risk of the prisoner re-offending if not subject to supervision by a CCO is minimal,

the CEO may recommend to the Board that the prisoner no longer be supervised by a CCO.

- (3) If the CEO makes such a recommendation, the Board may direct the CEO that the prisoner need not be supervised while on parole and the CEO may cease the supervision of the prisoner.
- (4) If the CEO ceases the supervision of a prisoner, the CEO is to inform the prisoner.
- (5) The fact that a prisoner ceases to be under supervision does not affect the prisoner's duty to obey the requirements of his or her undertaking.
- (6) The Board at any time may cancel a direction given to the CEO under subsection (3).

Division 7 — Amendment, suspension and cancellation of parole order

35. Amendment or cancellation before release

- (1) A parole order may be amended or cancelled after it is made and before the prisoner concerned is released under it —
 - (a) by the Board, if it was made by the Board; or
 - (b) by the Governor or the Board, if it was made by the Governor.

- (2) Written notice of a decision to cancel a parole order is to be given by the Board to the prisoner as soon as practicable, even where the Governor cancelled the order.
- (3) The written notice must —
 - (a) subject to section 114, include the reasons for the decision; and
 - (b) inform the prisoner of his or her right to make submissions under subsection (4).
- (4) A prisoner whose parole order has been cancelled may make written submissions about the decision and reasons for it (if any are supplied) to the Board.

36. CEO may suspend parole during parole period

- (1) The CEO may, at any time while a prisoner is on parole, suspend the parole order concerned, irrespective of whether it was made by the Board or by the Governor.
- (2) Written notice of a decision to suspend a parole order is to be given by the CEO to the Board as soon as practicable and in any event before the end of the parole period specified in the parole order.
- (3) The written notice must include reasons for the decision.

37. Board may amend, suspend or cancel parole during parole period

The Board may, at any time while a prisoner is on parole, amend, suspend or cancel the parole order concerned, irrespective of whether it was made by the Board or by the Governor.

38. Amendment by Board

- (1) If under section 37 the Board amends a parole order, the amended parole order applies accordingly.

- (2) Written notice of the decision to amend the parole order is to be given by the Board to the prisoner as soon as practicable.

39. Suspension by CEO or Board

- (1) If under section 36 the CEO, or under section 37 the Board, suspends a parole order, the Board is to set the period of suspension.
- (2) The period of suspension may be for a fixed or indefinite period, as the Board thinks fit.
- (3) When a parole order is suspended any other parole order that is then applicable to the prisoner is then to be taken as suspended also.
- (4) Written notice of a decision to suspend a parole order is to be given by the Board or the CEO (as the case may be) to the prisoner as soon as practicable after he or she is returned to custody.
- (5) The written notice must —
- (a) subject to section 114, include the reasons for the decision; and
 - (b) inform the prisoner of his or her right to make submissions under subsection (6).
- (6) A prisoner whose parole order has been suspended may make written submissions to the Board about the decision and reasons for it (if any are supplied).
- (7) The Board may cancel the suspension of a parole order at any time before the suspension period ends.

40. Cancellation by the Board

- (1) If under section 37 the Board cancels a parole order, any other parole order that is then applicable to the prisoner is then to be taken as cancelled also.

- (2) Written notice of a decision to cancel a parole order is to be given by the Board to the prisoner as soon as practicable after he or she is returned to custody.
- (3) The written notice must —
 - (a) subject to section 114, include the reasons for the decision; and
 - (b) inform the prisoner of his or her right to make submissions under subsection (4).
- (4) A prisoner whose parole order has been cancelled may make written submissions to the Board about the decision and reasons (if any are supplied).

41. Amendment etc. of parole orders made by the Governor

- (1) If in respect of a prisoner subject to a parole order made by the Governor —
 - (a) under section 34 the Board —
 - (i) directs the CEO that the prisoner need not be supervised on parole; or
 - (ii) cancels such a direction;
 - (b) under section 35 or 37 the Board amends or cancels the parole order; or
 - (c) under section 36 the CEO, or under section 37 the Board, suspends the parole order and the suspension is not cancelled by the Board within 30 days afterwards,
the Board must give the Minister as soon as practicable —
 - (d) written notice of and reasons for the decision and a summary of any submissions made by the prisoner under section 35, 39 or 40; and
 - (e) if the parole order has been cancelled, a report containing a recommendation as to whether or not the Governor should be advised to again exercise the power to release the prisoner on parole.

- (2) The Governor may cancel a decision referred to in subsection (1).

42. Board may re-release after parole cancelled

- (1) If a parole order made by the Board is cancelled by the Board, the Board may subsequently —
- (a) restore the cancelled parole order; or
 - (b) make another parole order in respect of the prisoner.
- (2) If a parole order made by the Board is cancelled by virtue of section 70, the Board may make another parole order in respect of the prisoner.
- (3) If the Board restores a cancelled parole order, the cancellation has no further effect and the prisoner is to resume being on parole as if the parole order had not been cancelled.
- (4) If the Board makes another parole order in respect of the prisoner, the parole period is the shorter of —
- (a) a period equal to the parole period of the cancelled parole order; or
 - (b) the period beginning on the release date and ending when the prisoner will have served the whole of the term.

43. Governor may re-release after parole cancelled

- (1) If a parole order made by the Governor is cancelled, the Governor may subsequently make another parole order in respect of the prisoner.
- (2) If the Governor makes another parole order in respect of the prisoner, the parole period is that set by the Governor; but it must be at least 6 months and not more than 5 years and must not be longer than the parole period of the cancelled parole order.

44. Period on parole under new parole order deemed to be time served

If under section 42 or 43 another parole order is made in respect of a prisoner and —

- (a) the Board does not cancel the parole order during the parole period; and
- (b) the prisoner does not commit an offence (in this State or elsewhere) during the parole period for which he or she is sentenced to imprisonment, other than suspended imprisonment (whether the sentence is imposed during or after the parole period),

then the prisoner is taken to have served the term, or the aggregate of terms, to which the parole order relates.

Division 8 — Miscellaneous

45. Resolution of doubtful cases

- (1) If a doubt or difficulty arises to which this section applies and neither this Act nor the *Sentencing Act 1995* nor the *Sentencing (Consequential Provisions) Act 1995* makes adequate provision for it, the CEO may apply in a summary way to a Judge of the Supreme Court for an order resolving the doubt or difficulty.
- (2) On such an application the Judge may make any order he or she considers just and for that purpose may make a declaration as to —
 - (a) the length of any term, any part of a term, or any parole period;
 - (b) any date relevant to a sentence of imprisonment or to the parole or release of a prisoner; or
 - (c) the manner in which the Board is to determine such matters.
- (3) This section applies to doubts or difficulties as to —

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- (a) the effect of any sentence of imprisonment, including the date it commences, how it is served in relation to other such sentences, when it ends, and when it has been or has been deemed to have been served;
- (b) any matter relating to parole, including the date when a prisoner is eligible to be released on parole, the parole period applicable in any case and the effect of the suspension or cancellation of parole; or
- (c) the term to be served by a prisoner who escapes from lawful custody,

irrespective of whether the sentence was imposed before, on or after the commencement of this Act.

Part 4 — Work release order

46. Certain prisoners may apply to Board for WRO

A prisoner may apply to the Board to be released under a WRO if —

- (a) he or she is at least 17 years old;
- (b) he or she is not serving a life term or indefinite imprisonment;
- (c) he or she is not a person referred to in section 16 (1) (a) or (b);
- (d) at the release date that would be specified in the WRO if it were made, he or she will have been in custody under sentence for a continuous period of at least 12 months; and
- (e) within 6 months after the release date that would be specified in the WRO if it were made, he or she would in any event be eligible for release (whether under a parole order or not).

47. CEO to report to Board about prisoners who apply for WRO

- (1) The CEO must report to the Board about every prisoner who applies to be released under a WRO.
- (2) A report by the CEO under subsection (1) must be given to the Board as soon as practicable after a prisoner applies to be released under a WRO.
- (3) A report by the CEO under subsection (1) must report about the risk that the release of the prisoner under a WRO will or may pose to the personal safety of people in the community or of any individual in the community.

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48. Board to decide whether to make a WRO

- (1) The Board must consider the case of every prisoner who applies to be released under a WRO and may, in respect of such a prisoner —
 - (a) make a WRO;
 - (b) defer the making of a WRO; or
 - (c) refuse to make a WRO.
- (2) The Board must not make a WRO in respect of a prisoner unless satisfied that the prisoner is a person whose release would pose a minimum risk to the personal safety of people in the community or of any individual in the community.
- (3) Except with the prior approval of the Governor, a WRO must not be made in respect of a prisoner serving a fixed term, or an aggregate of fixed terms, of more than 15 years.
- (4) A WRO may relate to more than one term.
- (5) A WRO may be made in respect of a prisoner even though a previous WRO made in respect of the same term or terms has been cancelled.

49. Prisoner to be notified of refusal to make WRO

- (1) If the Board refuses to make a WRO, written notice of the decision is to given by the Board to the prisoner as soon as practicable.
- (2) The written notice must —
 - (a) subject to section 114, include the reasons for the decision; and
 - (b) inform the prisoner of his or her right to make submissions under subsection (3).
- (3) A prisoner whose release on a WRO has been refused may make written submissions to the Board about the Board's decision and the reasons for it (if any are supplied).

- (4) The Board must consider the submissions and may make a further decision under section 48.

50. WRO: nature of

- (1) A WRO is an order that on a release date specified in the order a prisoner is to be released if he or she gives a written undertaking that while the WRO is in force he or she will comply with —
- (a) the standard obligations in section 51;
 - (b) any additional requirements imposed by the Board under section 52; and
 - (c) section 76.
- (2) It is a condition of every WRO that if the prisoner commits an offence (in this State or elsewhere) while the WRO is in force, then —
- (a) if the prisoner is sentenced to imprisonment for the offence, the WRO shall be cancelled; or
 - (b) in any other case, the WRO may be cancelled.
- (3) A WRO ceases to be in force when the period of the WRO ends, or when it is cancelled, whichever happens first.
- (4) The period of a WRO is the period —
- (a) beginning on the day when the prisoner is released under the WRO; and
 - (b) ending on the first to occur of —
 - (i) the release date in a parole order made in respect of the prisoner;
 - (ii) the date when under section 92 or 95 of the *Sentencing Act 1995*, the prisoner must be released.
- (5) A prisoner who is released under a WRO is nevertheless still subject to the sentence or sentences of imprisonment to which the WRO relates.

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51. WRO: standard obligations

The standard obligations of a WRO are that the prisoner —

- (a) must, in each period of 7 days, do the prescribed number of hours of community corrections activities;
- (b) must —
 - (i) seek or engage in gainful employment or in vocational training; or
 - (ii) engage in gratuitous work for an organization approved by the CEO;
- (c) must not leave the State; and
- (d) must not change address or place of employment without the prior permission of a CCO.

52. WRO: additional requirements

- (1) The Board may impose such additional requirements as it thinks fit on a WRO.
- (2) Without limiting the generality of subsection (1), additional requirements may include —
 - (a) requiring the prisoner to wear any device for monitoring purposes;
 - (b) requiring the prisoner to permit the installation of any device or equipment at the place where the prisoner resides for monitoring purposes.

53. Prisoner's undertaking

- (1) A prisoner must give the written undertaking required by section 50 (1) on or before the release date specified in the WRO and if he or she does not, the WRO is to be taken as having been cancelled.
- (2) If a WRO is cancelled by the operation of subsection (1) and the prisoner subsequently gives the Board written notice that he or

she is prepared to give the required written undertaking, the Board, if it thinks fit, may then make a WRO.

54. Prisoner may be paroled or returned to custody after WRO

- (1) The making of a WRO does not affect the operation of Part 3, and in particular Divisions 3 and 5 of that Part.
- (2) If under Division 5 of Part 3 the Board refuses to make a parole order or a prisoner subject to a WRO refuses to be released on parole or to give the written undertaking required by a parole order, the Board may cancel the WRO.

55. Board or CEO may suspend WRO

- (1) The Board or the CEO may suspend a WRO at any time during the period of the order.
- (2) The power in subsection (1) is in addition to the power in section 56.

56. CEO may suspend WRO or refer case to Board or both

- (1) If a prisoner subject to a WRO is charged with or convicted of an offence, or if the CEO is satisfied that a prisoner has failed to comply with a requirement of a WRO, the CEO may —
 - (a) suspend the WRO;
 - (b) refer the prisoner's case to the Board to consider; or
 - (c) suspend the order and refer the prisoner's case to the Board to consider.
- (2) If the CEO suspends the WRO of a prisoner who is charged with an offence the CEO must, when the charge has been determined —
 - (a) if the prisoner is not convicted of the charge — lift the suspension; or
 - (b) if the prisoner is convicted of the charge —
 - (i) cancel the suspension;

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- (ii) suspend the order for a further period; or
- (iii) refer the prisoner's case to the Board to consider.

57. Suspension by Board or CEO

- (1) This section applies where a WRO is suspended under section 55 or 56.
- (2) Written notice of a decision to suspend a WRO is to be given by the Board or the CEO (as the case may be) to the prisoner as soon as practicable.
- (3) The period of suspension may be for a fixed or indefinite period as the Board or the CEO (as the case may be) thinks fit.
- (4) If the CEO suspends a WRO for a fixed period of one month or more, or if an indefinite suspension extends for a month, the CEO must refer the prisoner's case to the Board to consider.
- (5) If the CEO suspends a WRO and the prisoner's case is not referred to the Board, the CEO may cancel the suspension of the WRO at any time before the suspension ends.
- (6) If the Board suspends a WRO, it may cancel the suspension at any time before the suspension ends.
- (7) If the case of a prisoner is referred to the Board under section 56 or this section, the Board may vary the suspension period of or cancel the CEO's suspension order, or cancel the WRO.

58. Board may cancel WRO

- (1) In addition to the power to cancel a WRO in sections 54 and 57, the Board may cancel a WRO at any time.
- (2) Written notice of any decision to cancel a WRO is to be given by the Board to the prisoner as soon as practicable.
- (3) Subject to section 114, the written notice must include the reasons for the decision.

Part 5 — Home detention order

59. Certain prisoners may apply to CEO for HDO and CEO may make HDO

- (1) A prisoner may apply to the CEO to be released under an HDO if —
 - (a) the term or terms that he or she is serving or is yet to serve are not parole terms;
 - (b) the term, or aggregate of terms, that he or she is serving or is yet to serve is less than 12 months; and
 - (c) at the release date that would be specified in the HDO if it were made, he or she will have served —
 - (i) one month of the term or the aggregate of terms (as the case may be); or
 - (ii) one third of the term or the aggregate of terms (as the case may be),whichever is the longer.
- (2) The CEO must consider the case of every prisoner who applies to be released under an HDO and may, in respect of such a prisoner —
 - (a) make an HDO; or
 - (b) refuse to make an HDO.
- (3) In deciding whether to make an HDO, the CEO must have regard to —
 - (a) the nature and circumstances of the offence for which the prisoner is imprisoned;
 - (b) the degree of risk that the release of the prisoner appears to present to the personal safety of people in the community or of any individual in the community; and
 - (c) the views of other people residing at the place where it is proposed the prisoner will remain while subject to the HDO.

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- (4) Subsection (3) is a directory provision only and a breach of that subsection does not affect any issue relating to the lawfulness of the release of a prisoner under an HDO.
- (5) An HDO may relate to more than one term.

60. HDO: nature of

- (1) An HDO is an order that on a release date specified in the order a prisoner is to be released if he or she gives a written undertaking that while the HDO is in force he or she will comply with —
 - (a) the standard obligations in section 61;
 - (b) any additional requirements imposed by the CEO under section 62; and
 - (c) section 76.
- (2) It is a condition of every HDO that if the prisoner commits an offence (in this State or elsewhere) while the HDO is in force, then —
 - (a) if the prisoner is sentenced to imprisonment for the offence, the HDO shall be cancelled; or
 - (b) in any other case, the HDO may be cancelled.
- (3) An HDO ceases to be in force when the period of the HDO ends, or when it is cancelled, whichever happens first.
- (4) The period of an HDO is the period —
 - (a) beginning on the day when the prisoner is released under the HDO; and
 - (b) ending on the day when the prisoner would have been released under section 92 or 95 of the *Sentencing Act 1995* had he or she not been released under the HDO.
- (5) A prisoner who is released under an HDO is nevertheless still subject to the sentence or sentences of imprisonment to which the HDO relates.

61. HDO: standard obligations

- (1) The standard obligations of an HDO are that the prisoner —
 - (a) must remain at and not leave the place specified in the HDO except as provided by subsection (2);
 - (b) must, in each period of 7 days, do the prescribed number of hours of community corrections activities; and
 - (c) must not leave the State.
- (2) A prisoner may only leave the place specified in an HDO —
 - (a) to do the community corrections activities referred to in subsection (1);
 - (b) to work in gainful employment approved by a CCO;
 - (c) with the approval of a CCO, to engage in vocational training;
 - (d) with the approval of a CCO, to seek gainful employment;
 - (e) to obtain urgent medical or dental treatment for the prisoner;
 - (f) for the purpose of averting or minimizing a serious risk of death or injury to the prisoner or to another person;
 - (g) to obey an order issued under a written law (such as a summons) requiring the prisoner's presence elsewhere;
 - (h) for a purpose approved of by a CCO; or
 - (i) on the order of a CCO.

62. HDO: additional requirements

- (1) The CEO may impose such additional requirements as he or she thinks fit on an HDO.
- (2) Without limiting the generality of subsection (1), additional requirements may include —
 - (a) requiring the prisoner to wear any device for monitoring purposes;

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- (b) requiring the prisoner to permit the installation of any device or equipment at the place where the prisoner is required by the HDO to remain for monitoring purposes.

63. Powers of CCO in relation to home detention

- (1) A CCO may give such reasonable directions to a prisoner subject to an HDO as are necessary for the proper administration of the order including, without limiting the generality of the foregoing, directions as to —
 - (a) when the prisoner may leave the place where he or she is required by the order to remain;
 - (b) the period of any authorized absence from the place where he or she is required by the order to remain;
 - (c) when the prisoner must return to the place where he or she is required by the order to remain;
 - (d) the method of travel to be used by the prisoner during any absence from the place where he or she is required by the order to remain; and
 - (e) the manner in which the prisoner must report his or her whereabouts.
- (2) To ascertain whether or not a prisoner is complying with an HDO, a CCO may, at any time —
 - (a) enter or telephone the place where the prisoner is required by the order to remain;
 - (b) enter or telephone the prisoner's place of employment or any other place where the prisoner is permitted or required to attend; or
 - (c) question any person at any place referred to in paragraph (a) or (b).
- (3) A person must not —
 - (a) hinder a person exercising powers under subsection (2);
or

- (b) fail to answer a question put pursuant to subsection (2) (c) or give an answer that the person knows is false or misleading in a material particular.

Penalty: \$2 000 or imprisonment for 12 months or both.

64. CEO may amend, suspend or cancel HDO

Subject to this Part, the CEO may amend, suspend or cancel an HDO at any time.

65. Amendment by CEO

- (1) Under section 64, an HDO may be amended by —
 - (a) substituting a different place for the place where a prisoner is required by the HDO to remain;
 - (b) amending or revoking any of the additional requirements imposed on the HDO; or
 - (c) imposing additional requirements or further additional requirements on the HDO.
- (2) Written notice of a decision to amend an HDO is to be given by the CEO to the prisoner as soon as practicable.

66. Suspension by CEO

- (1) Under section 64 an HDO may be suspended for a fixed or indefinite period as the CEO thinks fit.
- (2) Written notice of a decision to suspend an HDO is to be given by the CEO to the prisoner as soon as practicable.
- (3) The CEO may cancel the suspension of an HDO at any time before the suspension ends.

67. Cancellation by CEO

- (1) If under section 64 an HDO is cancelled, written notice of the decision to cancel is to be given by the CEO to the prisoner as soon as practicable.

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- (2) Subject to section 114, the written notice must include reasons for the decision.

Part 6 — Provisions applicable to early release orders

68. Period of early release order counts as time served

If during the period of an early release order —

- (a) the prisoner does not commit an offence (in this State or elsewhere) for which he or she is sentenced to imprisonment (whether the sentence is imposed during or after that period); and
- (b) the early release order is not cancelled,

then the period of the early release order is to be taken as time served in respect of the term, or the aggregate of terms, to which the early release order relates.

69. Effect of suspension

- (1) If an early release order in respect of a prisoner serving a fixed term is suspended, the prisoner is then liable to resume serving the fixed term in custody and, unless the suspension ceases or the early release order is cancelled, is to be released in accordance with section 95 of the *Sentencing Act 1995*.
- (2) If an early release order in respect of a prisoner serving a life term is suspended, the prisoner is then liable to resume serving the life term in custody.
- (3) The suspension of an early release order ceases at the end of the suspension period or when before then the suspension is cancelled.
- (4) When the suspension of an early release order ceases, the early release order and any other early release order taken to be suspended again have effect unless during the period of suspension the early release order was itself cancelled.
- (5) Nothing in this section prevents another early release order being made under this Act in respect of a prisoner.

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70. Offending while on early release order: automatic cancellation

- (1) If a prisoner, while subject to an early release order, commits an offence (in this State or elsewhere) and is sentenced to imprisonment (other than suspended imprisonment) for that offence —
 - (a) any early release order applicable to the prisoner when the offence was committed is cancelled by virtue of this section; and
 - (b) any early release order made in respect of the prisoner on or after the date on which the offence was committed and before the sentence of imprisonment was imposed is cancelled by virtue of this section, irrespective of whether it had taken effect or not.
- (2) For the purposes of subsection (1) it does not matter if the sentence of imprisonment for the offence committed while subject to the early release order is imposed on the prisoner —
 - (a) after the period of the order; or
 - (b) after the date when, but for the cancellation of the order by virtue of subsection (1), the prisoner would have served or be taken to have served the term to which the order relates.

71. Effect of cancellation

- (1) If an early release order, other than a WRO, in respect of a prisoner serving a fixed term is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the fixed term in custody and is not entitled to be released until he or she has served the whole of that term.
- (2) If a WRO in respect of a prisoner serving a fixed term is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the fixed term in custody and is to be released in accordance with section 95 of the *Sentencing Act 1995*.

- (3) If a parole order in respect of a prisoner serving a life term is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the life term in custody.
- (4) If a parole order in respect of a prisoner serving indefinite imprisonment is cancelled after the prisoner is released under the order, the prisoner is then liable to resume serving the indefinite imprisonment in custody.
- (5) If a parole order in respect of a person referred to in section 16 (1) (a) or (b) is cancelled after the person is released under the order, the person is liable to be again kept in strict or safe custody at the Governor's pleasure.
- (6) Nothing in this section prevents another early release order being made under this Act in respect of a prisoner.

72. Returning prisoner to custody

- (1) When an early release order is suspended or cancelled, the warrant of commitment that relates to the sentence of imprisonment to which the early release order relates is again in force and the prisoner may be arrested and kept in custody under that warrant.
- (2) Despite subsection (1), if an early release order is suspended or cancelled as mentioned in subsection (1), a warrant to have the prisoner arrested and returned to custody may be issued, whenever necessary —
 - (a) by a Supreme Court Judge or a District Court Judge;
 - (b) by the Board if it suspended or cancelled the order; or
 - (c) by the CEO if the CEO suspended or cancelled the order.
- (3) Notwithstanding sections 44 and 68, a warrant under subsection (2) may be issued, and the prisoner may be arrested, whether under that warrant or under the warrant of commitment referred to in subsection (1) at any time —
 - (a) during or after the period of the early release order; or

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- (b) after the date when, but for the suspension or cancellation of the early release order, the prisoner would have served or be taken to have served the term to which the order relates.

73. Clean street time counts as time served

- (1) Subject to subsections (2) and (3), if an early release order in respect of a prisoner serving a fixed term is cancelled after the prisoner is released under the order —
 - (a) the period beginning on the day when the prisoner was released under the order and ending on the day when the order is cancelled counts as time served in respect of the fixed term; and
 - (b) the period (if any) beginning on the day when the order is cancelled and ending on the day when the prisoner concerned is returned to custody does not count as time served in respect of the fixed term.
- (2) Subject to subsection (3), if an early release order in respect of a prisoner serving a fixed term is suspended and, without the suspension ceasing, is subsequently cancelled, then —
 - (a) the period beginning on the day when the prisoner was released under the order and ending on the day when the order is suspended counts as time served in respect of the fixed term;
 - (b) the period (if any) beginning on the day when the order is suspended and ending on the day when the prisoner is returned to custody does not count as time served in respect of the fixed term.
- (3) If a WRO in respect of a prisoner serving a fixed term is cancelled after the prisoner is released under the order, subsections (1) and (2) apply as if “the period” in paragraph (a) of each of them were deleted and “half the period” were substituted.

- (4) For the purposes of subsection (1), the day when an early release order is cancelled is —
 - (a) if it is cancelled by a decision of the Board or the CEO (as the case may be) — the day of the decision; or
 - (b) if it is cancelled by virtue of section 70 —
 - (i) the day when the offence that resulted in the cancellation was committed; or
 - (ii) if the CEO cannot ascertain the day when that offence was committed — the latest day on which that offence could have been committed, as determined by the CEO.
- (5) For the purposes of subsection (2), the day when an early release order is suspended is the day of the decision to suspend the order.

74. Prisoner under sentence until discharged

- (1) Subject to this Part, a person sentenced to imprisonment and released under an early release order remains under and subject to that sentence until discharged from it.
- (2) Subject to this Part, a person sentenced to imprisonment is discharged from the sentence —
 - (a) if released under a parole order — at the end of the parole period;
 - (b) if released under a WRO — at the end of the period of the WRO unless the sentence is a parole term;
 - (c) if released under an HDO — at the end of the period of the HDO.
- (3) Subsections (1) and (2) do not affect the operation of sections 68, 70, 71, 72 and 73.

Part 7 — Provisions applicable to offenders on community orders, early release orders or work and development orders

75. Interpretation

In this Part —

“**centre**” means a community corrections centre;

“**community corrections order**” means a community order, an early release order or a WDO;

“**offender**” means an offender who is subject to a community corrections order.

76. Offender’s obligations

- (1) An offender must comply with the lawful orders or directions of any CCO.
- (2) An offender —
 - (a) who under a community corrections order is required to do community work —
 - (i) must do such community work as the supervisor of a centre determines and directs; and
 - (ii) must do that work to the satisfaction of the person supervising the work;
 - (b) who under a community corrections order is required to do community corrections activities —
 - (i) must do such community corrections activities as the supervisor of a centre determines and directs; and
 - (ii) must do those activities to the satisfaction of the person supervising them;
 - (c) who is at a centre, or who is doing community work or community corrections activities, or who is performing

any requirement of a programme requirement under a community order —

- (i) must not be in possession of, use, or be under the influence of alcohol, a drug (other than a drug prescribed for him or her), glue, petrol or any other substance capable of adversely affecting a person;
 - (ii) must, if so directed by the supervisor of a centre, submit to testing for any substance referred to in subparagraph (i);
 - (iii) must not disturb or interfere with another offender doing anything under a community corrections order;
 - (iv) must not commit any act or omission of insubordination or misconduct that is subversive of the good order or management of a centre or of the conduct of anything required to be done under a community corrections order;
 - (v) must not assault, threaten, insult or use abusive language to a member of the departmental staff;
 - (vi) must comply with any prescribed obligations;
and
 - (vii) must comply with any rules made by the CEO under section 86.
- (3) A CCO is to ensure, so far as is practicable, that orders given to an offender do not —
- (a) conflict with the offender's religious or cultural beliefs;
or
 - (b) result in interference with the times, if any, when the offender normally works or attends an educational or vocational training establishment.

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77. Consequences of contravening the obligations

If an offender contravenes any requirement of section 76, the supervisor of a centre may reprimand the offender or —

- (a) if the offender is subject to a community order, report the matter to the CEO and recommend that the offender be charged with an offence under section 131 of the *Sentencing Act 1995*;
- (b) if the offender is subject to a parole order or a WRO —
 - (i) report the matter to the CEO; or
 - (ii) report the matter to the Board,

and recommend that the order be suspended or cancelled under Part 3 or 4 (as the case may be);

- (c) if the offender is subject to an HDO, report the matter to the CEO and recommend that the order be suspended or cancelled under Part 5; or
- (d) if the offender is subject to a WDO, report the matter to the CEO and recommend that the order be cancelled under section 52 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

78. CEO may suspend requirements in case of illness etc.

- (1) If the CEO is satisfied that an offender is ill or that there are other exceptional circumstances, the CEO —
 - (a) if the offender is subject to a community order — may permit the offender not to comply with all or any of the requirements of any primary requirement of the order for such period or periods as the CEO thinks fit; but they must not total more than 8 weeks;
 - (b) if the offender is subject to a community service requirement in a community order — may, in relation to the minimum hours requirement, permit the offender to do less than 12 hours community work in a 7 day period;

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- the actual number of hours to be decided by the CEO but it must be at least 6 hours;
- (c) if the offender is subject to an early release order — permit the offender not to comply with the minimum hours requirement for such period or periods as the CEO thinks fit;
- (d) if the offender is subject to a WDO — permit the offender not to comply with the minimum hours requirement for such period or periods as the CEO thinks fit; but they must not total more than 8 weeks.
- (2) The term of a community order, or the period of an early release order, is not affected by a decision under subsection (1).
- (3) An offender's duty under a community service requirement in a community order to do unpaid community work for a number of hours set by the court is not affected by a decision under subsection (1).
- (4) An offender's duty under section 50 (1) (a) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to do community corrections activities for the required hours is not affected by a decision under subsection (1).
- (5) In subsection (1) —
- “minimum hours requirement”**—
- (a) in relation to a community service requirement in a community order — means the requirement that the offender do at least 12 hours unpaid community work in any 7 day period;
- (b) in relation to a parole order or a WRO — means the requirement in section 51 (a) to do the prescribed number of hours of community corrections activities in each period of 7 days;
- (c) in relation to an HDO — means the requirement in section 61 (1) (b) to do the prescribed number of

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hours of community corrections activities in each period of 7 days;

- (d) in relation to a WDO — means the requirement in section 50 (1) (b) of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to do the prescribed number of the required hours of community corrections activities in each period of 7 days.

79. Community service requirement: offender may be directed to do activities

- (1) This section applies in the case of an offender who is subject to a community service requirement in a community order but not subject to a programme requirement.
- (2) The CEO may direct the offender to do community corrections activities for as many hours as the CEO directs; but the hours must not amount to more than a quarter of the hours of community work set by the court.
- (3) Hours of community corrections activities done in compliance with such a direction count as hours of community work done under the community service requirement.

80. Programme requirement: offender may be directed to do other programmes

- (1) This section applies in the case of an offender who is subject to a programme requirement in a community order.
- (2) If a CCO is satisfied that in respect of the offender there are personal factors which contributed to the offender's criminal behaviour that were not identified at the time the programme requirement was imposed, the CCO may give the offender such other directions as could be given under a programme requirement and as the CCO thinks fit, in addition to any specified by the court.

81. Compensation for injury

- (1) An offender, while doing community work or community corrections activities under a community corrections order is to be regarded for the purposes of the *Workers' Compensation and Rehabilitation Act 1981* as a worker employed by the Crown.
- (2) For the purposes of the *Workers' Compensation and Rehabilitation Act 1981* an offender's weekly earnings shall be taken to be the amount that the Minister considers reasonable in the circumstances.

82. Regulations

Regulations made for the purposes of this Part may —

- (a) prescribe obligations applicable to community corrections orders generally or to specific types of community corrections orders;
- (b) make provision for the authorization of absences from attendance at community work or community corrections activities;
- (c) regulate the consequences of injury and sickness with respect to community corrections orders;
- (d) authorize and regulate the taking of blood and urine samples from an offender where there is reasonable suspicion that the offender may have contravened section 76 (2) (c) (i);
- (e) prescribe forms.

Part 8 — Community corrections centres

Division 1 — Preliminary

83. Interpretation

In this Part —

“**centre**” means a community corrections centre;

“**community corrections order**” means a community order, an early release order or a WDO;

“**offender**” means an offender who is subject to a community corrections order.

84. Community corrections centres

- (1) The Governor may by order declare any place to be a community corrections centre.
- (2) The Governor, by order, may amend or cancel an order made under subsection (1).

85. Community corrections activities

- (1) The CEO may approve activities as community corrections activities.
- (2) Activities that may be approved as community corrections activities include, but are not restricted to, any of these —
 - (a) charitable, community or voluntary work;
 - (b) regimes for the treatment of people dependent on alcohol or drugs;
 - (c) counselling;
 - (d) social and life skills courses;
 - (e) educational, vocational and personal development courses.

Division 2 — Management

86. CEO may make rules

- (1) With the approval of the Minister, the CEO may make rules for the management, control and security of —
 - (a) centres generally or a specified centre; and
 - (b) offenders.
- (2) The rules are to complement regulations made under section 93 and if there is an inconsistency between a rule and a regulation, the rule, to the extent of the inconsistency, is to be read and has effect subject to the regulation.
- (3) The rules may confer a discretionary authority on any person or class of person.
- (4) Sections 41 and 42 of the *Interpretation Act 1984* do not apply to the rules.
- (5) The CEO must ensure that relevant rules are published in such a manner as to bring them to the attention of departmental staff, offenders, and people visiting centres.
- (6) The CEO must take reasonable steps to ensure that the rules are made known to every offender —
 - (a) who is illiterate;
 - (b) who does not understand English, in a language the offender does understand.

87. Supervisors of centres

- (1) The CCO in control of a centre is, while in control, the supervisor of the centre.
- (2) The supervisor is responsible to the CEO for the management, security and good order of the centre.

- (3) For the purposes of this Part, a supervisor may give reasonable orders or directions to any person in a centre, including any member of the departmental staff.
- (4) A supervisor may not direct that a search of a person or a place be made except as provided by section 90.
- (5) A supervisor must advise an offender of his or her obligations under the community corrections order, and this obligation is to be taken as having been performed if a written statement of those obligations is attached to the order given to the offender.
- (6) A supervisor must report as soon as possible to the CEO on any use of force by the supervisor or any other person to compel —
 - (a) an offender to obey an order or direction; or
 - (b) a person to obey an order to leave the centre.

88. Functions of CCOs at centres

- (1) A CCO —
 - (a) subject to subsection (5), must comply with the reasonable directions of the supervisor of the centre at which the CCO is working;
 - (b) must maintain the good order of the centre at which the CCO is working; and
 - (c) must report immediately to the supervisor anything which might reasonably be thought to jeopardize the management, security or good order of the centre.
- (2) A CCO may give such reasonable orders or directions to offenders and other persons as are necessary for the management, security or good order of a centre.
- (3) A CCO may use reasonable force to compel an offender to obey an order or direction given to that offender if the CCO believes on reasonable grounds that the use of force is necessary —
 - (a) to prevent the offender or another person being killed or seriously injured; or

- (b) to prevent serious damage to property.
- (4) A CCO may, if necessary, use reasonable force to compel a person to obey an order by a supervisor to leave a centre.
- (5) For the purpose of subsection (1) (a), a direction given by a supervisor is not reasonable if it is a direction —
 - (a) to use reasonable force to compel an offender to obey an order or direction given to that offender;
 - (b) to use reasonable force to compel a person to obey an order to leave a centre; or
 - (c) to search any person wishing to enter or remain in a centre or anything in the person's possession or under the person's control.

89. Access to centres

- (1) The supervisor of a centre may impose such conditions as he or she thinks fit on any person (including an offender) entering or remaining in the centre.
- (2) A person who is not an offender may be refused entry to a centre by the supervisor of it.
- (3) An offender may be refused entry to a centre by the supervisor of it if the offender —
 - (a) contravenes a condition imposed under subsection (1); or
 - (b) does anything which, in the supervisor's opinion, threatens the management, security or good order of the centre.
- (4) A person (including an offender) who is in a centre may be ordered by the supervisor to leave the centre immediately if the person, while in the centre —
 - (a) contravenes this Act or the regulations;
 - (b) contravenes a direction given by the supervisor;

- (c) contravenes a condition imposed under subsection (1);
or
 - (d) does anything which, in the supervisor's opinion,
threatens the management, security or good order of the
centre.
- (5) A person who disobeys an order to leave a centre given under
subsection (4) commits an offence.
Penalty: \$1 000.

90. Searches

- (1) If the supervisor of a centre believes that it is necessary for the
security or good order of a centre or the offenders in it, he or she
may at any time —
- (a) cause a prescribed person to search the centre or any part
of it or anything in it; or
 - (b) order a person wishing to enter or remain in a centre, or
anything in the person's possession or under the
person's control, to be searched by a prescribed person.
- (2) If a person refuses to submit to such a search, the supervisor
may order the person to leave the centre immediately.
- (3) A supervisor may at any time order a search to be stopped.
- (4) A person who disobeys a supervisor's order under
subsection (2) commits an offence.
Penalty: \$1 000.

91. Seizure

- (1) In carrying out a search under section 90, a prescribed person
may seize anything found in a centre, whether in a person's
possession or not, that the supervisor of the centre believes on
reasonable grounds jeopardizes or is likely to jeopardize the
security or good order of the centre or the safety of persons in it.

- (2) A drug prescribed for a person and in that person's possession must not be seized under subsection (1).
- (3) Anything seized by a prescribed person must be given to the supervisor of the centre immediately.
- (4) Anything seized must be dealt with by the supervisor under the regulations.

Division 3 — Miscellaneous

92. Department to report on centres

The annual report of the accountable officer of the department prepared for the purposes of the *Financial Administration and Audit Act 1985* is to include a report on the operations of centres and community corrections activities and other operations of the department under this Part.

93. Regulations

Regulations made for the purposes of this Part may —

- (a) prescribe powers of persons conducting anything being done under a community corrections order;
- (b) provide for the transport of offenders required to do anything under a community corrections order;
- (c) regulate the procedure for searches and seizures carried out under this Part;
- (d) prescribe forms.

Part 9 — Staff

Division 1 — Chief executive officer

94. Functions

- (1) Subject to the control of the Minister, the CEO's functions include —
 - (a) the proper administration of community orders, early release orders and WDOs; and
 - (b) the control and management of community corrections centres.
- (2) The CEO has the functions of a CCO.
- (3) Where this Act, the *Sentencing Act 1995*, the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, or the *Bail Act 1982* empowers or requires the CEO to do any thing, any exercise of that power must be done in writing and signed by the CEO or, if the power is exercised by a delegate, by the delegate.
- (4) The CEO may review and confirm, amend or cancel a decision made, or a direction or order given, by a member of the departmental staff.

95. Delegation

- (1) The CEO may, either generally or as provided by the instrument of delegation, delegate to any person —
 - (a) any function of the CEO under this Act or the *Sentencing Act 1995*;
 - (b) any function of the CEO under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*,other than this power of delegation.
- (2) Unless the contrary is proved, it is to be presumed that a document purporting to have been signed by a person as a

delegate of the CEO was signed by a person in the performance of a function that at the time was delegated to the person by the CEO.

96. CEO may confer functions of CCO on person

The CEO may confer some or all of the functions of a CCO on a member of the departmental staff who is neither a CCO nor an honorary CCO.

97. CEO to notify Board of certain breaches

Subject to any directions issued by the Board to the CEO, if a breach of a parole order or a WRO comes to the knowledge of the CEO he or she must forthwith report the matter to the Board and must provide such other information about the breach as the Board requires.

Division 2 — Other staff

98. Appointment

- (1) The staff, including CCOs, needed for the purposes of this Act, the *Sentencing Act 1995* and Part VIA of the *Bail Act 1982*—
 - (a) may be appointed or engaged under the *Public Sector Management Act 1994*; or
 - (b) may be appointed on an honorary basis.
- (2) A person who is a member of the Police Force is not to be appointed to be an honorary CCO.
- (2a) A member of the Police Force who holds a designated position (as defined in the *Witness Protection (Western Australia) Act 1996*) may be appointed to be an honorary CCO for the purposes of supervising an offender who is a participant in the State Witness Protection Program established under that Act.
- (3) The regulations may prescribe classes of staff and their functions.

[Section 98 amended by No. 11 of 1996 s.41; (as amended by No. 57 of 1997 s.133.)]

99. Volunteers

- (1) The CEO may authorize a person to work as an unpaid volunteer.
- (2) A volunteer is under the control of the CEO.
- (3) The CEO may at any time cancel the authorization of a volunteer.

Division 3 — Miscellaneous

100. Compensation for injury

If under Division 2 a person is appointed on an honorary basis or authorized to work as a volunteer —

- (a) the person is, while performing the functions of the position, to be regarded for the purposes of the *Workers' Compensation and Rehabilitation Act 1981* as a worker employed by the Crown; and
- (b) for the purposes of that Act, the person's weekly earnings are to be taken to be the amount that the Minister considers is reasonable in the circumstances.

101. Assistance by police officers

- (1) Subject to the directions of the Commissioner of Police, a member of the Police Force may, if so requested by the CEO or a CCO, assist in the exercise or performance of any function conferred or imposed by this Act.
- (2) A member of the Police Force acting under subsection (1) has the same functions and protection from liability as a CCO would have in the same situation.

- (3) The functions and protection conferred by subsection (2) are in addition to those conferred or imposed on a member of the Police Force by any other written law.

Part 10 — Parole board

102. Parole Board established

A board called the Parole Board is established.

103. Membership

- (1) There are to be 7 members on the Board —
 - (a) a judicial member nominated by the Attorney General and appointed by the Governor;
 - (b) 3 persons appointed by the Governor;
 - (c) the CEO;
 - (d) a departmental officer nominated by the CEO; and
 - (e) a police officer nominated by the Commissioner of Police.
- (2) A person must not be nominated as the judicial member unless he or she —
 - (a) is a judge of the Supreme Court or the District Court and the Chief Justice or the Chief Judge of the District Court (as the case may be) consents to the nomination; or
 - (b) is a retired judge of one of those courts.

[Section 103 amended by No. 57 of 1997 s.110.]

104. Secretary

Under Part 3 of the *Public Sector Management Act 1994* a person is to be appointed to be the secretary of the Board.

105. Schedule 1 applies

Schedule 1 has effect in relation to the Board.

106. Functions

- (1) The functions of the Board are set out in this Act.

- (2) The Board may do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions.

107. Board to have powers of Royal Commission

- (1) For the purpose of carrying out its functions, the Board and its chairperson and members have and may exercise the powers that a Royal Commission and its chairman and commissioners have under the *Royal Commissions Act 1968*.
- (2) The *Royal Commissions Act 1968*, with any necessary changes, has effect in relation to the Board, its chairperson and members.

108. Orders by the Board

- (1) An order giving effect to a decision of the Board is to be signed by 2 members of the Board.
- (2) A notice of a decision by the Board may be signed by its secretary.
- (3) Despite subsection (1) the secretary or a member of the Board, on behalf of and in the name of the Board, may exercise the powers of the Board to make a parole order in respect of a prisoner serving a parole term unless —
- (a) the parole term is a special term (as defined in section 19 (4)); or
 - (b) the prisoner is one in respect of whom the CEO has made a report under section 19 (1).
- (4) The Board may issue guidelines to be observed by its members and secretary when making parole orders under subsection (3).

109. Board may require prisoner to appear before Board

- (1) At any time while a prisoner is subject to a parole order or a WRO, the Board, by order, may require him or her to appear before the Board.

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- (2) For the purposes of subsection (1), the Board may issue a warrant to have the prisoner arrested and brought before the Board.
- (3) The powers in this section may be exercised whether or not the Board has amended, suspended, cancelled or otherwise made a decision in relation to the order concerned.

110. Issue of warrants by Board

- (1) If this Act empowers the Board to issue a warrant to have a person arrested, it is not necessary for the Board to meet before the warrant is issued.
- (2) A warrant issued by the Board to have a person arrested must be signed by —
 - (a) 2 members of the Board; or
 - (b) the judicial member of the Board if he or she is a judge of the Supreme Court or the District Court.

111. Judicial notice of appointment and signature

- (1) Judicial notice must be taken of —
 - (a) the fact that a person is or was a member or the secretary of the Board; and
 - (b) the official signature of such a person.
- (2) Evidence of a parole order, a WRO or a decision made by the Board may be given by producing a copy of the order or decision certified by the secretary of the Board as a true copy.

112. Annual report to Minister

Before 1 October in each year, the Board is to give a written report to the Minister on —

- (a) the performance of the Board's functions during the previous financial year;

- (b) the number of prisoners released on parole during the previous financial year; and
- (c) the operation of this Act and relevant parts of the *Sentencing Act 1995* so far as they relate to parole orders, to WROs and to the activities of CCOs in relation to those orders during the previous financial year.

113. Special reports to Minister

- (1) The Minister, in writing, may request the Board to report about any specified special matter relating to —
 - (a) the operation of this Act or the *Sentencing Act 1995* so far as it is relevant to the Board; or
 - (b) the performance of any function of the Board.
- (2) If so requested, the Board must provide a written report as soon as practicable.

Part 11 — Miscellaneous

114. Reasons for decision may be withheld

- (1) This section applies to those sections in this Act which refer to it.
- (2) If a person is required to give a prisoner reasons for a decision, then if the person decides that it would be in the interest of the prisoner or any other person, or the public, to withhold from the prisoner any or all of the reasons, the person may do so.

115. Exclusion of rules of natural justice

The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter or thing under Part 2, 3, 4, 5, 6 or 7 by —

- (a) the Governor;
- (b) the Minister;
- (c) the Board or its members or secretary; or
- (d) the CEO.

116. Issue and execution of warrants

- (1) If this Act or the *Sentencing Act 1995* empowers a person to issue a warrant to have a person arrested, the warrant must be in the prescribed form and such a warrant has effect according to its wording.
- (2) In the absence of evidence to the contrary, it is to be presumed that —
 - (a) the person who issued the warrant is empowered to do so; and
 - (b) the signature on the warrant is that of the person who issued it.

- (3) A person to whom the warrant is directed must give effect to the warrant as soon as practicable.
- (4) The warrant itself is sufficient authority to the person to whom it is directed to arrest the person concerned and to hold the person in custody for the purposes of taking him or her, as soon as practicable, to the place specified in the warrant.

117. Monitoring equipment

- (1) In this section “**monitoring equipment**” means any device or equipment installed under this Act or the *Sentencing Act 1995* or the *Bail Act 1982* at the place where a person lives or lived to keep the person under surveillance or to monitor the person.
- (2) The CEO may give the occupier of a place where monitoring equipment is installed a direction to deliver the equipment to the CEO within a set period.
- (3) A person who contravenes a direction given under subsection (2) commits an offence.
- (4) A CCO may, at any time, enter a place where monitoring equipment is installed to retrieve the equipment.
- (5) A person who hinders a CCO exercising the power in subsection (4) commits an offence.
- (6) A person who unlawfully interferes with the operation of any monitoring equipment commits an offence.
- (7) A person who wilfully and unlawfully destroys or damages any monitoring equipment commits an offence.
Penalty: \$6 000 or imprisonment for 12 months.

118. Secrecy

- (1) A person who is or has been in a position to which this section applies must not, whether directly or indirectly, record, disclose, or make use of any information obtained because of being in that position, except —

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- (a) for the purposes of and in the due exercise of functions under this Act;
- (b) when ordered by a court or a judge to do so; or
- (c) in circumstances approved from time to time by the Minister.

Penalty: \$2 500.

- (2) The positions to which this section applies are —
 - (a) a member, a deputy of a member, an acting member or the secretary of the Board;
 - (b) the CEO; and
 - (c) a member of the departmental staff.

119. Protection from liability for wrongdoing

- (1) In this section, a reference to the doing of anything includes a reference to the omission to do anything.
- (2) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or the *Sentencing Act 1995*.
- (3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act or the *Sentencing Act 1995* may have been capable of being done whether or not this Act or the *Sentencing Act 1995* had been enacted.
- (4) This section does not relieve the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.

120. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are

necessary or convenient to be prescribed for giving effect to the purposes of this Act.

- (2) If under section 19AZD (3) of the *Crimes Act 1914* of the Commonwealth Part 4 or 5 of this Act is prescribed so that the Part may apply to a federal offender, then, without limiting the generality of subsection (1), regulations may for the purposes of section 46 (e) or 59 (1) (a) prescribe federal offenders subject to a specified type of sentence under the *Crimes Act 1914* of the Commonwealth as offenders in respect of whom a WRO or an HDO (as the case may be) may be made.

Schedule 1

[Section 105]

PROVISIONS APPLICABLE TO THE PAROLE BOARD

1. Interpretation

In this Schedule —

“**member**” means a member of the Board.

2. Terms of office

- (1) A member appointed by the Governor is a member for the period (not more than 3 years) specified in the instrument of appointment; but is eligible for re-appointment.
- (2) A person who is a member by reason of being the CEO ceases to be a member when he or she ceases to be the CEO.
- (3) A person who is a member by reason of being a departmental officer ceases to be a member when he or she resigns as a member or ceases to be a departmental officer or when another such officer is nominated by the CEO.
- (4) A person who is a member by reason of being a police officer ceases to be a member when he or she resigns as a member or ceases to be a police officer or when another police officer is nominated by the Commissioner of Police.

3. Resignation

- (1) A member appointed by the Governor may resign by giving his or her written resignation to the Governor.
- (2) The member who is a member by reason of being a departmental officer may resign by giving his or her written resignation to the CEO.
- (3) The member who is a member by reason of being a police officer may resign by giving his or her written resignation to the Commissioner of Police.
- (4) A written resignation has effect when it is received by the relevant person or at such later date as it specifies.

4. Deputies of members

- (1) The Minister may appoint a person to be the deputy of a member appointed by the Governor, other than the judicial member.
- (2) The CEO may nominate a departmental officer to be his or her deputy.
- (3) The CEO may nominate a departmental officer to be the deputy of the member who is a departmental officer.
- (4) The member who is a police officer may nominate another police officer to be his or her deputy.
- (5) The deputy of a member may attend a meeting of the Board when the member is absent and may perform the member's functions.
- (6) This clause does not affect the operation of section 52 of the *Interpretation Act 1984*.

5. Meetings

- (1) The judicial member is the chairperson of the Board.
- (2) The chairperson is to decide when the Board meets.
- (3) At a meeting of the Board the chairperson is to preside, or in his or her absence, the longest serving member.
- (4) If in the absence of the judicial member more than one of the other members is eligible to preside, the other members are to appoint one of the eligible members to preside.
- (5) At a meeting of the Board —
 - (a) the presiding member and 2 other members constitute a quorum;
 - (b) questions arising are to be determined by a majority of the members present and voting;
 - (c) if there is a tie in voting, the presiding member has a second vote; and
 - (d) the chairperson alone decides any question of law.
- (6) The Board may, if it thinks fit, conduct a meeting at which all or some members participate by telephone or other similar means, but any

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member who speaks on a matter at the meeting must be able to be heard by the other members at the meeting.

- (7) Subject to this clause the Board is to determine the procedure for convening and conducting its meetings.

6. Remuneration and allowances

- (1) Members, deputies and acting members, other than a judicial member who is a judge, are entitled to the remuneration and allowances set by the Governor.
- (2) Any remuneration and allowances paid to a judicial member who is a retired judge does not affect his or her entitlements under the *Judges' Salaries and Pensions Act 1950*.

7. Leave of absence

The Minister may grant leave of absence to a member on such conditions as the Minister determines.

Notes

- ¹ This is a compilation of the *Sentence Administration Act 1995* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Sentence Administration Act 1995</i>	77 of 1995	16 Jan 1996	4 Nov 1996 see section 2 and <i>Gazette</i> 25 Oct 1996 p.5632)
<i>Witness Protection (Western Australia) Act 1996</i> section 41	11 of 1996 (as amended by No. 57 of 1997 s.133)	28 Jun 1996	7 Dec 1997 (see section 2 and <i>Gazette</i> 6 Dec 1996 p.6699)
<i>Mental Health (Consequential Provisions) Act 1996</i> Part 19 ²	69 of 1996	13 Nov 1996	13 Nov 1997 (see section 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> section 110	57 of 1997	15 Dec 1997	15 Dec 1997 (see section 2)
<i>Criminal Law Amendment Act (No. 2) 1998</i> Part 5	29 of 1998	6 Jul 1998	3 Aug 1998

- ^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and are not included in this compilation. For the text of the provisions see the endnote referred to after the short title.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Sentencing Legislation Amendment and Repeal Act 1999</i> Pt. 2, Div. 2, Div. 3 (s. 14, 16-25) Pt. 5 (s. 40) ³	57 of 1999	16 Dec 1999	To be proclaimed (see s. 2)

- ² Section 87 of the *Mental Health (Consequential Provisions) Act 1996* (Act No. 69 of 1996) reads as follows —

“

87. Transitional provisions

- (1) If immediately before the commencement of the *Mental Health Act 1996* a person —
- (a) is in custody under an order under section 653 or 693 (4) of *The Criminal Code*; and
 - (b) is not in an approved hospital because of an order made by the Governor under section 48 of the *Mental Health Act 1962*,

on that commencement the person is to be taken to be a mentally impaired defendant as defined in Part 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and that Part applies accordingly.

- (2) If immediately before the commencement of the *Mental Health Act 1996* a person is subject to a parole order made under section 16 (1) (b) of the *Sentence Administration Act 1995*, on that commencement that Act continues to operate in respect of the order but if under Part 6 of that Act the person is returned to custody because the order is suspended or cancelled, the person is to be taken to be a mentally impaired defendant as defined in Part 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and that Part applies accordingly.

”

³ On the date as at which this compilation was prepared, the *Sentencing Legislation Amendment and Repeal Act 1999* Pt. 2, Div. 2, Div. 3 (s. 14, 16-25) Pt. 5 (s. 40) had not come into operation. They read —

“

Part 2 — Provisions about parole and other early release orders and remission

Division 2 — *Sentence Administration Act 1995* repealed

13. Act repealed

The *Sentence Administration Act 1995* is repealed.

Division 3 — Transitional and consequential provisions

14. Interpretation

- (1) In this Division —
- “**commencement**” means the commencement of this Part;
 - “**new provisions**” means —

(a) the *Sentencing Act 1995* as amended by the sentencing amendments; and

(b) the *Sentence Administration Act 1999*;

“old provisions” means the *Sentencing Act 1995*, and the repealed Act, as they would have applied had the sentencing amendments not come into operation;

“repealed Act” means the *Sentence Administration Act 1999*;

“sentencing amendments” means the amendments and repeals made by this Part.

(2) In this Division, words and expressions have the same definitions as in the *Sentencing Act 1995* and in particular, in Part 13 of that Act.

16. Application of *Interpretation Act 1984*, s 36

Section 36 of the *Interpretation Act 1984* applies as if the *Sentence Administration Act 1995* had been repealed and re-enacted by the *Sentence Administration Act 1999*.

17. Community orders imposed before commencement

If immediately before commencement —

(a) a community based order, or an intensive supervision order, made under the *Sentencing Act 1995* is in force; or

(b) a WDO made under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* is in force,

then on and after commencement —

(c) the *Sentence Administration Act 1999* applies to and in respect of the order; and

(d) the reference in the order to section 76 of the *Sentence Administration Act 1995* is to be taken to be a reference to section 89 of the *Sentence Administration Act 1999*.

18. Sentences of imprisonment imposed before commencement

(1) If immediately before commencement a person is subject to a fixed term that is not a parole term and to which the old provisions apply, then on and after commencement the old provisions continue to apply to that term and to the release of the person in respect of that term.

(2) If immediately before commencement a person is subject to a parole term to which the old provisions apply, then on and after commencement —

(a) the old provisions apply for the purpose of calculating —

- (i) when the person is eligible to be released on parole;
 - (ii) the parole period for the person; and
 - (iii) when the person is discharged from the sentence and must be released;
 - (b) the new provisions apply for the purpose of determining whether the person is to be released on parole;
 - (c) if the person is to be released on parole, the release is to be by means of a parole order (supervised) made under Part 3 of the *Sentence Administration Act 1999* and for that purpose —
 - (i) the parole period in the order is to be the parole period calculated under the old provisions; and
 - (ii) the supervised period for the order is to be the same as the parole period;
- and
- (d) if the person is released on parole, the *Sentence Administration Act 1999* applies to and in respect of the person and the order except to the extent that paragraph (a) or (c) provides otherwise.
- (3) If immediately before commencement a person is in custody serving a life term to which the old provisions apply, then on and after commencement the new provisions apply to that term.
 - (4) If immediately before commencement a person is in custody serving indefinite imprisonment, then on and after commencement the new provisions apply in respect of that person.
 - (5) If immediately before commencement a person is detained in strict or safe custody during the Governor's pleasure under an order made under section 282 of *The Criminal Code*, then on and after commencement the new provisions apply in respect of that person.

19. Early release orders made before commencement

If immediately before commencement a person is subject to a parole order, a home detention order, or a work release order, made under the repealed Act, then on and after commencement the repealed Act continues to apply to and in respect of that order.

20. WROs

- (1) If immediately before commencement a person is subject to a sentence of imprisonment to which the old provisions apply, then on or after commencement—

- (a) subject to Part 4 of the repealed Act, a work release order may be made in respect of the person; and
 - (b) Parts 4, 6, 7 and 8 of the repealed Act continue to operate for those purposes and in respect of any such order, subject to subsection (2).
- (2) If on or after commencement—
- (a) a work release order is made under the repealed Act in respect of the person; and
 - (b) after the order is made it is cancelled under section 70 of the repealed Act by reason of the person having been sentenced to imprisonment for a crime tried on indictment,

the Board must not make another work release order under the repealed Act in respect of the person in relation to the sentence to which the cancelled order related unless satisfied there are exceptional reasons for making another order.

21. HDOs

If immediately before commencement a person is subject to a sentence of imprisonment to which the old provisions apply, then on or after commencement—

- (a) Part 5 of the repealed Act applies for the purpose of determining—
 - (i) whether the person is eligible to be released under a home detention order; and
 - (ii) the period of any such order;
- (b) if a home detention order is to be made in respect of the person, the order is to be made under Part 5 of the *Sentence Administration Act 1999* and for that purpose the period of the order is to be the period calculated under the repealed Act; and
- (c) if a home detention order is made in respect of the person, the *Sentence Administration Act 1999* applies to an in respect of the person and the order except to the extent that paragraph (a) or (b) provide otherwise.

22. Warrants in force at commencement

A warrant issued under the repealed Act and in force immediately before commencement remains in force despite the repeal of the repealed Act.

23. CEO's instructions for community corrections centres

- (1) If rules made under section 86 of the repealed Act are in force immediately before commencement, then on and after commencement the rules are to be taken to be written instructions issued under section 99 of the *Sentence Administration Act 1999* until written instructions are issued under that section.
- (2) When written instructions are issued under section 99 of the *Sentence Administration Act 1999* a reference in the repealed Act to rules made under section 86 of the repealed Act is to be taken to be a reference to those written instructions.

24. Parole Board's report

The Board's annual report made under section 125 of the *Sentence Administration Act 1999* must report on the operation of the repealed Act to the extent that it continues to operate by virtue of this Division and the *Interpretation Act 1984*.

25. Transitional regulations

- (1) If there is no sufficient provision in this Division or in the old provisions or in the new provisions to provide for matters in relation to —
 - (a) the application of the old provisions to a sentence of imprisonment imposed before commencement;
 - (b) the effect after commencement of a sentence of imprisonment imposed before commencement;
 - (c) the imposition after commencement of sentences of imprisonment on offenders who are subject to sentences of imprisonment imposed before commencement;
 - (d) the combined effect of a sentence of imprisonment imposed before commencement and of a sentence of imprisonment imposed after commencement;
 - (e) the application of the *Sentence Administration Act 1995* or the *Sentence Administration Act 1999* to orders made under the old provisions or under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*,

the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to those matters.

- (2) Regulations made under subsection (1) may provide that specific provisions of this Part, or of the old provisions, or of the new provisions —
 - (a) do not apply; or

- (b) apply with specific modifications,
to or in relation to any matter.
- (3) Regulations made under subsection (1) —
 - (a) must be made within 12 months after commencement;
and
 - (b) may be made so as to have effect on a day that is earlier
than the day on which they are published in the *Gazette*
but not earlier than commencement.

Part 5 — General

40. Review

- (1) The Minister administering the *Sentencing Act 1995* is to carry out a review of the operation and effectiveness of —
 - (a) the *Sentencing Act 1995* to the extent that it is affected by the amendments made to it by this Act; and
 - (b) Parts 3 and 7 of the *Sentence Administration Act 1999*,as soon as practicable after the expiration of 4 years from the day on which this Act receives the Royal Assent.
- (2) The Minister is to prepare a report based on the review and cause it to be laid before each House of Parliament within 5 years after the day on which this Act receives the Royal Assent.

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