



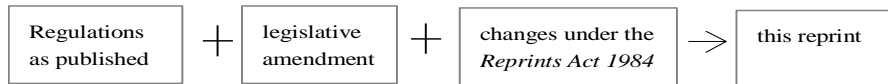
Western Australia

Sentencing Regulations 1996

Reprinted as at 3 September 2002

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations being reprinted were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Western Australia

Sentencing Regulations 1996

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Western Australia

Reprinted under the
Reprints Act 1984 as at
3 September 2002

Sentencing Act 1995

Sentencing Regulations 1996

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Sentencing Regulations 1996*¹.

2. Commencement

These regulations come into operation on the day on which the *Sentencing Act 1995* comes into operation¹.

3. Interpretation

- (1) In these regulations, unless the contrary intention appears —
- “**approved**”, in relation to a form, means approved by the CEO;
 - “**court officer**” means —
 - (a) in a superior court — a clerk of arraigns or the manager of the criminal registry;
 - (b) in a court of summary jurisdiction — a clerk of petty sessions;

r. 3

(c) in the Children's Court — a clerk of the court.

- (2) The abbreviations used in these regulations are the same as those used in the Act.

[Regulation 3 amended in Gazette 3 Mar 2000 p. 1015.]

Part 2 — Matters preliminary to sentencing

4. Mediation (s. 27-30)

- (1) No person is to be compelled to attend or participate in any mediation or attempted mediation.
- (2) When a mediator is mediating or attempting to mediate between an offender and a victim, the mediator must at all times act fairly and impartially.
- (3) It is not necessary for the purposes of mediating or attempting to mediate between an offender and a victim that both such people be present at the same place at the same time.

Part 3 — The sentencing process

5. Correction of sentence (s. 37)

- (1) An application under section 37(2) of the Act must be in an approved form and may be made at any time.
- (2) The application must be lodged with the court that imposed the sentence concerned.
- (3) On receiving an application, or in a case where a court intends to exercise the powers in section 37(1) of the Act on its own initiative, a court officer is to issue a summons (in an approved form) to all parties concerned to a hearing on a date and at a place fixed by the officer.
- (4) The summons must be served —
 - (a) if the court intends to exercise the powers in section 37(1) of the Act on its own initiative — by a court officer on the offender and the prosecutor;
 - (b) if the application is made by the offender — by a court officer on the prosecutor;
 - (c) if the application is made by the prosecutor — by the prosecutor on the offender.
- (5) If satisfied that all parties concerned have been served with a summons issued under this regulation, the court may, subject to section 14 of the Act, exercise the powers in section 37(1) of the Act.
- (6) The court hearing an application under section 37 of the Act by an offender or a prosecutor need not be constituted by the same judicial officer that constituted the court that imposed the sentence sought to be corrected.

5A. Re-sentencing of offender — courts of summary jurisdiction and Children’s Court (s. 37A)

- (1) This regulation applies to an application (a “**lower court application**”) under section 37A(2) of the Act in relation to a sentence imposed by a court of summary jurisdiction or the Children’s Court.
- (2) A lower court application must be in an approved form and may be made at any time.
- (3) A lower court application must be lodged with the court that imposed the sentence concerned.
- (4) On receiving a lower court application, a court officer is to issue a summons (in an approved form) to all parties concerned to a hearing on a date and at a place fixed by the officer.
- (5) The summons must be served by the prosecutor on the offender.
- (6) If satisfied that all parties concerned have been served with a summons issued under this regulation, the court may, subject to section 14 of the Act, exercise the powers in section 37A(1) of the Act.
- (7) The court hearing a lower court application need not be constituted by the same judicial officer that constituted the court that imposed the sentence.

[Regulation 5A inserted in Gazette 3 Mar 2000 p. 1014.]

5B. Re-sentencing of offender — superior courts (s. 37A)

- (1) This regulation applies to an application (a “**superior court application**”) under section 37A(2) of the Act in relation to a sentence imposed by a superior court.
- (2) A superior court application must be made in accordance with rules of court to the court that imposed the sentence concerned.
- (3) If satisfied that all relevant rules of court have been complied with in relation to the superior court application, the court may,

subject to section 14 of the Act, exercise the powers in section 37A(1) of the Act.

- (4) The court hearing a superior court application need not be constituted by the same judicial officer that constituted the court that imposed the sentence.

[Regulation 5B inserted in Gazette 3 Mar 2000 p. 1014-15.]

6. Imprisonment by justices: magistrate to review (s. 38)

- (1) Immediately after a justice or justices in a court of summary jurisdiction impose a sentence referred to in section 38(1) of the Act, the clerk of the court is to send a magistrate the approved form for the review of the decision together with —
- (a) the papers that were before the justice or justices including —
 - (i) the complaint;
 - (ii) the statement of facts by the prosecutor, or a transcript of it;
 - (iii) a copy of the offender's criminal record (if any) tendered to the court;
 - (iv) a pre-sentence report (if any);and
 - (b) the written reasons for imposing the sentence.
- (2) The form for the review of the decision may relate to more than one charge.
- (3) The decision of the magistrate under section 38 of the Act is to be communicated as soon as practicable —
- (a) to the court that imposed the sentence;
 - (b) if the offender is not in custody, to the offender; and
 - (c) if the offender is in custody, to the person in charge of the place where the offender is in custody.

- (4) If under section 38 of the Act a magistrate cancels the original sentence —
- (a) if the offender is not in custody — the magistrate may exercise the powers in section 14(5) of the Act in relation to the offender;
 - (b) if the offender is in custody — the person in charge of the place where the offender is in custody is to give effect to any order by the magistrate as to bail for, or the remand in custody of, the offender.

[Regulation 6 amended in Gazette 3 Mar 2000 p. 1015.]

**Part 3A — Cancellation of fine enforcement
(WDO) orders**

[Heading inserted in Gazette 25 Aug 2000 p. 4907.]

6A. Application for cancellation of order (s. 57B)

- (1) An application under section 57B(2) of the Act is to be made in an approved form.
- (2) On receiving an application a court officer is to issue a summons (in an approved form) to the offender to a hearing on a date and at a place fixed by the officer.
- (3) The summons must be served by a court officer on the offender.
- (4) If satisfied that the offender has been served with a summons, the court may deal with the application.

[Regulation 6A inserted in Gazette 25 Aug 2000 p. 4907.]

Part 4 — Orders forming part of a sentence

7. Application for return of passport (s. 108)

An application under section 108(5) of the Act for the return of an Australian passport must be made in an approved form to a court officer of the court that ordered the passport to be surrendered.

Part 5 — Reparation orders

8. Application for a reparation order (s. 111)

- (1) An application to a court for a reparation order under Part 16 of the Act must be made —
 - (a) orally during the relevant sentencing proceedings; or
 - (b) in writing (in an approved form) during the relevant sentencing proceedings or within 12 months after the date when the offender was sentenced.
- (2) On receiving a written application made after the date of sentencing a court officer is to issue a summons (in an approved form) to all parties concerned to a hearing on a date and at a place fixed by the officer.
- (3) The summons must be served —
 - (a) if the court intends to exercise the powers in Part 16 of the Act on its own initiative — by a court officer on the victim, the offender, a prosecutor and, if necessary, on any third party (as defined in section 120(1) of the Act);
 - (b) if the application is made by the victim — by a court officer on the offender, a prosecutor and, if necessary, on any third party (as defined in section 120(1) of the Act);
 - (c) if the application is made by the prosecutor — by a prosecutor on the victim, the offender and, if necessary, on any third party (as defined in section 120(1) of the Act).
- (4) If satisfied that all parties concerned have been served with a notice issued under this regulation, the court may proceed to deal with the application.

8A. Form of restitution order

A restitution order is to be made in the approved form.

[Regulation 8A inserted in Gazette 29 Dec 2000 p. 7920.]

8B. Recovery of enforcement costs

- (1) In this regulation —
“non-complying person” means a person who has failed to comply with a restitution order;
“Sheriff’s costs” means the reasonable costs incurred by the Sheriff in enforcing, or attempting to enforce, a restitution order.
- (2) If under section 120A of the Act the Sheriff seizes, or attempts to seize, property that is the subject of a restitution order, the Sheriff may demand from the non-complying person payment of the Sheriff’s costs.
- (3) If the non-complying person does not comply with a demand made under subregulation (2) the Sheriff may recover the Sheriff’s costs from that person in a court of competent jurisdiction as a debt due to the Sheriff.

[Regulation 8B inserted in Gazette 29 Dec 2000 p. 7920.]

9. Enforcing a restitution order (s. 121)

- (1) An application under section 121 of the Act to a court is to be made in an approved form.
- (2) On receiving an application a court officer is to issue a summons (in an approved form) to the person against whom the restitution order was made to a hearing on a date and at a place fixed by the officer.
- (3) The summons must be served by a court officer on the person against whom the restitution order was made.

Part 6 — Amending and enforcing conditional release orders and community orders

10. Application to amend or cancel (s. 126)

- (1) An application under section 126 of the Act is to be made in an approved form.
- (2) An application may only be made by a CCO with the prior approval of the CEO.
- (3) On receiving an application a court officer is to issue a summons (in an approved form) to all parties concerned to a hearing on a date and at a place fixed by the officer.
- (4) The hearing date fixed by the court officer is to be at least 7 days after the date of the application.
- (5) In the case of an application to amend or cancel a CRO, the summons must be served —
 - (a) in the case of an application by the offender — by a court officer on the prosecutor; or
 - (b) in the case of an application by a prosecutor — by the prosecutor on the offender.
- (6) In the case of an application to amend or cancel a community order, the summons must be served —
 - (a) in the case of an application by the offender — by a court officer on the CEO, and the prosecutor; or
 - (b) in the case of an application by a CCO — by a CCO on the offender.
- (7) If satisfied that all parties concerned have been served with a summons issued under this regulation, the court may, subject to section 14 of the Act, deal with the application under section 126 of the Act.

- (8) In this regulation —
“**prosecutor**” means the DPP or a police prosecutor, as the case requires.

11. CEO to be notified when court deals with offender on community order

If under section 127, 130, 132 or 133 of the Act a court deals with an offender in relation to a community order, a court officer is to notify the CEO of any orders made by the court.

Part 7 — Miscellaneous

12. Service

For the purposes of the Act and these regulations a summons may be served —

- (a) on an offender by serving it on the offender personally or by sending it by pre-paid post to the offender's last known address;
- (b) on a prosecutor by causing it to be delivered to the prosecutor's office;
- (c) on the CEO by causing it to be delivered to the CEO's office;
- (d) on any other person by serving it on the person personally or by sending it by pre-paid post to the person's last known address.

13. Forms

- (1) Subject to this regulation the prescribed forms for the purposes of the Act are those in the Table to this regulation.
- (2) The prescribed form for an arrest warrant for the purposes of sections 14, 50, 79 and 129 of the Act is Form 12 in the Schedule to the *Justices (Forms) Regulations 1982*.
- (3) The prescribed form for a remand warrant for the purposes of section 17 of the Act is Form 13 in the Schedule to the *Justices (Forms) Regulations 1982*.
- (4) The prescribed form for a warrant of committal to another court for the purposes of sections 78, 128 and 132 of the Act is Form 14 in the Schedule to the *Justices (Forms) Regulations 1982*.
- (5) It is sufficient compliance with the Act if a form substantially in compliance with a prescribed form is used.

Table

Section of the Act	Description of form	Form No in Schedule 1
36	Warrant of commitment	1
58	Warrant of commitment until fine is paid	2
59	Warrant of commitment for not paying a fine	3
119A	Warrant of commitment for breach of compensation order	3A
134	Certificate of breach of community order	4

[Regulation 13 amended in Gazette 29 Dec 2000 p. 7920.]

Schedule 1 — Forms

[reg 13]

1. Warrant of commitment

WESTERN AUSTRALIA <i>Sentencing Act 1995, s 36</i> WARRANT OF COMMITMENT	<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court <input type="checkbox"/> Court of Summary Jurisdiction <input type="checkbox"/> Children’s Court At:				
To	All police officers and to all persons authorised to exercise a power set out in clause 2 or 3, as the case requires, of Schedule 2 to the <i>Court Security and Custodial Services Act 1999</i> Chief executive officer under the <i>Prisons Act 1981</i> .				
Offender	Name:	Date of birth:			
Reason for issue of warrant	The offender has been sentenced to be imprisoned. This warrant authorises and commands you to imprison the offender for the term stated below, subject to the <i>Sentencing Act 1995</i> and the <i>Sentence Administration Act 1995</i> .				
Command					
Offences and sentences	Charge Indict No	Date of offence	Description of offence	Term imposed	Cumulative Concurrent
Date of sentence		Date when term is to be taken to have begun			
Total term		Eligible for parole	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Other orders	Young adult detention direction <input type="checkbox"/> Yes <input type="checkbox"/> No If life term imposed, minimum period: Indefinite imprisonment <input type="checkbox"/> Yes <input type="checkbox"/> No				
Sentence imposed by	Name of Judicial Officer:			Date:	
Warrant issued by	Signature: Judicial Officer/Clerk of Arraigns				

2. Warrant of commitment until fine is paid

WESTERN AUSTRALIA <i>Sentencing Act 1995, s 58</i> WARRANT OF COMMITMENT UNTIL FINE IS PAID	<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court <input type="checkbox"/> Court of Summary Jurisdiction <input type="checkbox"/> Children's Court At:
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To	All police officers and to all persons authorised to exercise a power set out in clause 2 or 3, as the case requires, of Schedule 2 to the <i>Court Security and Custodial Services Act 1999</i> Chief executive officer under the <i>Prisons Act 1981</i> .
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Offender	Name:	Date of birth:
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Reason for issue of warrant	The offender has been convicted of the offence(s) below and has been fined the amount(s), and ordered to pay the costs, set out below. In addition, under section 58 of the <i>Sentencing Act 1995</i> , this court ordered that the offender be imprisoned until the total of those amounts is paid, but in any event for not longer than the maximum period stated below.
Command	This warrant authorises and commands you to take the offender into custody and to imprison the offender in accordance with the above order, unless the amount outstanding is sooner paid.

Offences	Charge/ Indict No	Date of offence	Description of offence	Fine	Costs	Period of Imp'ment
Sub-totals						

Date of sentence		Maximum period of imprisonment	
		<input type="checkbox"/> Cumulative <input type="checkbox"/> Concurrent	

Amount outstanding	Total amount to be paid (fines + costs)	\$
	Less any amount paid	- \$
	Amount outstanding	=\$
Revenue: \$		Trust: \$

Warrant issued by	Signature: Judicial Officer/Clerk of Arraignment	Date:
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Note: The offender must either pay the amount outstanding in full or serve the maximum period of imprisonment in full. Reductions of the maximum period due to part payment are not permitted.

3. Warrant of commitment for not paying a fine

WESTERN AUSTRALIA <i>Sentencing Act 1995, s 59</i> WARRANT OF COMMITMENT FOR NOT PAYING A FINE	<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court At: _____ CWI Warrant No. _____
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To	All police officers Chief executive officer under the <i>Prisons Act 1981</i> .
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Offender	Name: _____	Date of birth: _____
	Address: _____	

Reason for issue of warrant	The offender has been convicted of the offence(s) below and has been fined the amount(s) set out below. In addition, under section 59 of the <i>Sentencing Act 1995</i> , this court ordered that if the offender did not pay the fine by the date set for payment stated below the offender was to be imprisoned. The offender has not paid the fine as ordered.
Command	This warrant authorises and commands you to arrest the offender and to imprison the offender in accordance with the above order and section 59 of the <i>Sentencing Act 1995</i> .

Offences	Charge Indict No	Date of offence	Description of offence	Fine	Period of imprisonment

Amount outstanding*	Total fines	\$ _____
	Less any amount paid	-\$ _____
	Amount outstanding	=\$ _____
	Revenue: \$ _____	Trust: \$ _____

Date of sentence	_____	Date set for payment	_____
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Period of imprisonment †	<input type="checkbox"/> Set by this court <input type="checkbox"/> Determined under s 59(3)	_____ days
	<input type="checkbox"/> Cumulative <input type="checkbox"/> Concurrent	

Warrant issued by	Signature: _____ Name: _____ Official title: _____	Date: _____
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3A. Warrant of commitment for breach of compensation order

WESTERN AUSTRALIA <i>Sentencing Act 1995, s. 119A</i> WARRANT OF COMMITMENT FOR BREACH OF COMPENSATION ORDER	<input type="checkbox"/> Supreme Court <input type="checkbox"/> District Court <input type="checkbox"/> Children's Court <input type="checkbox"/> Court of summary jurisdiction At: <hr/> CWI Warrant No.
---	--

To	All police officers Chief executive officer under the <i>Prisons Act 1981</i>.
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Offender	Name:	Date of birth:
	Address:	

Reason for issue of warrant	<p>The offender has been ordered to pay compensation in accordance with a compensation order issued under Part 16 Division 2 of the <i>Sentencing Act 1995</i>.</p> <p>In addition, under section 119A of the <i>Sentencing Act 1995</i>, this court ordered that if the offender did not pay the compensation by the date set for payment stated below the offender was to be imprisoned.</p> <p>The offender has not paid the compensation as ordered.</p>
Command	<p>This warrant authorises and commands you to arrest and imprison the offender in accordance with the above order and section 119A of the <i>Sentencing Act 1995</i>.</p>

Amount outstanding	Total compensation ordered	\$
	Less any amount paid	- \$
	Amount outstanding	= \$

Date of order		Date set for payment	
----------------------	--	-----------------------------	--

Period of imprisonment	Until compensation is paid with maximum period —		
	<input type="checkbox"/> set by this court at _____ days; or <input type="checkbox"/> determined under s. 119A(3) to be _____ days		
	<input type="checkbox"/> Cumulative <input type="checkbox"/> Concurrent		

Warrant issued by	Signature:	Date:
	Name:	
	Official title:	

4. Certificate of breach of community order

WESTERN AUSTRALIA <i>Sentencing Act 1995, s 134</i> CERTIFICATE OF BREACH OF COMMUNITY ORDER													
Offender	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 2px;">Name:</td> <td style="padding: 2px;">Date of birth:</td> </tr> <tr> <td style="padding: 2px;">Address:</td> <td style="padding: 2px;"></td> </tr> </table>	Name:	Date of birth:	Address:									
Name:	Date of birth:												
Address:													
Community order details	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Kind of order:</td> <td style="padding: 2px;"><input type="checkbox"/> CBO</td> <td style="padding: 2px;"><input type="checkbox"/> ISO</td> </tr> <tr> <td style="padding: 2px;">Date community order imposed</td> <td colspan="2" style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">Term of order</td> <td colspan="2" style="padding: 2px;"></td> </tr> <tr> <td style="padding: 2px;">Order imposed by:</td> <td colspan="2" style="padding: 2px;">court at:</td> </tr> </table>	Kind of order:	<input type="checkbox"/> CBO	<input type="checkbox"/> ISO	Date community order imposed			Term of order			Order imposed by:	court at:	
Kind of order:	<input type="checkbox"/> CBO	<input type="checkbox"/> ISO											
Date community order imposed													
Term of order													
Order imposed by:	court at:												
Particulars of alleged breach of order													
Certificate	I certify that the contents of this certificate are true. Signed: Official position:												

[Schedule 1 amended in Gazette 3 Mar 2000 p. 1015; 28 Jul 2000 p. 4012; 29 Dec 2000 p. 7920-1.]



Notes

- ¹ This reprint is a compilation as at 3 September 2002 of the *Sentencing Regulations 1996* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Sentencing Regulations 1996</i>	4 Oct 1996 p. 5281-96	4 Nov 1996 (see r. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Sentencing Amendment Regulations 2000 Pt. 2</i>	3 Mar 2000 p. 1013-15	3 Mar 2000
<i>Sentencing Amendment Regulations (No. 4) 2000</i>	28 Jul 2000 p. 4012	28 Jul 2000
<i>Sentencing Amendment Regulations (No. 3) 2000</i>	25 Aug 2000 p. 4906-7	25 Aug 2000 (see r. 2 and <i>Gazette</i> 25 Aug 2000 p. 4903)
<i>Sentencing Amendment Regulations (No. 2) 2000</i>	29 Dec 2000 p. 7919-21	8 Jan 2001 (see r. 2 and <i>Gazette</i> 29 Dec 2000 p. 7903)