



Western Australia

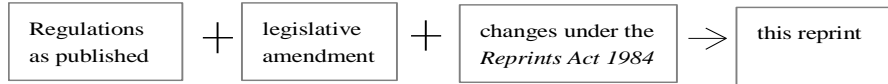
Young Offenders Act 1994

Young Offenders Regulations 1995

Reprint 1: The regulations as at 21 November 2003

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 - removed (because it was repealed or deleted from the law); or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.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the regulations have been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the regulations were published. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the regulations are reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

Young Offenders Regulations 1995

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Reprinted under the
Reprints Act 1984 as
at 21 November 2003

Western Australia

Young Offenders Act 1994

Young Offenders Regulations 1995

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Young Offenders Regulations 1995*¹.

2. Interpretation

In these regulations unless the contrary intention appears —

“**medical practitioner**” means a medical practitioner registered under the *Medical Act 1894*;

“**special detention centre**” means a detention centre referred to in regulation 34;

“**supervising officer**” means —

- (a) in relation to a youth community based order, an officer of the Department assigned to be the supervising officer under section 77 of the Act; or
- (b) in relation to a conditional release order, an officer of the Department assigned to be the supervising officer under section 108 of the Act;

“**the overseer**”, in relation to an offender, means the person assigned to oversee the offender under regulation 7.

**Part 2 — Form of written statement given to a young
person not represented by a legal practitioner**

**3. Form of written statement given to a young person not
represented by a legal practitioner**

The form of the written statement that the court is required to
give a young person under section 44(2)(b) of the Act is set out
in Schedule 1.

Part 3 — Youth community based orders and intensive youth supervision orders

Division 1 — Overseers

4. Interpretation

In this Division, “**community work conditions**” means community work conditions imposed by way of a youth community based order or an intensive youth supervision order.

5. Appointment of overseers

- (1) Under section 11 of the Act the Minister may appoint persons to be overseers for the purposes of overseeing offenders required to perform work under community work conditions.
- (2) The terms and conditions of an appointment made under this regulation are as determined by the Minister and stated in the instrument of appointment.
- (3) The Minister may at any time revoke the appointment of an overseer.

6. Compensation for injury

If a person is appointed as an overseer on an honorary basis —

- (a) the person is, while working for the purposes of the Act, 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 the *Workers’ Compensation and Rehabilitation Act 1981*, the person’s weekly earnings are to be taken to be the amount that the Minister considers is reasonable in the circumstances.

7. Assignment of overseer to offender

The chief executive officer, or a person authorised by the chief executive officer for the purpose, is to assign —

- (a) a person appointed to be an overseer in accordance with regulation 5(1); or
- (b) an officer of the Department,

to oversee an offender when performing work under community work conditions.

8. Overseer not to benefit from work performed under community work conditions

An overseer is not to oversee an offender when performing work under community service conditions if the overseer stands to benefit personally from the performance of the work otherwise than generally as a member of the community or as a member of a group within the community.

Division 2 — Taking of body samples

9. Taking of body samples

- (1) If a youth community based order or an intensive youth supervision order is made on the condition or undertaking that the offender submit to the taking of a body sample, and the chief executive officer requires the offender to submit to the taking of a body sample —
 - (a) if the body sample to be taken is breath, the breath test is to be conducted by means of an apparatus of an approved kind; or
 - (b) if the body sample to be taken is blood or urine, the blood or urine taken is to be labelled with —
 - (i) the name of the offender;
 - (ii) the type of the sample;
 - (iii) the name of the person who took the sample; and

- (iv) the date and time that the sample was taken.
- (2) A body sample that is to be taken in the form of blood is to be taken by a medical practitioner.
- (3) The chief executive officer is to direct, either generally or in respect of the particular case, whether a body sample is to be taken in the form of blood, breath or urine.
- (4) In subregulation (1)(a), **“approved”** means approved by the chief executive officer.

Division 3 — Attendance conditions

10. Proposed agenda

When a report that attendance conditions would be suitable for an offender is submitted to the court, the proposed agenda submitted to the court under section 75 of the Act is to specify —

- (a) proposals relating to the educational, rehabilitative or other course in which the offender is to participate;
- (b) details of the days and times when the course operates; and
- (c) proposals relating to the aggregate number of hours during which the offender is to participate in the course.

Division 4 — Community work conditions

11. Interpretation

In this Division —

“drug” means a prohibited drug, or prohibited plant, within the meaning of the *Misuse of Drugs Act 1981*;

“work” means work required to be performed in accordance with community work conditions imposed by way of a youth community based order under section 73(1)(b) of the Act.

12. Offender subject to community work conditions

An offender performing work —

- (a) is to comply with any reasonable direction given by the overseer; and
- (b) is to wear any safety clothing or equipment supplied to the offender for the purpose of performing the work.

13. Maximum number of hours to be worked in any day

Unless the supervising officer and offender both consent to the requirement, an offender performing work is not to be required to perform more than 6 hours of work in any day.

14. Safe working environment and safe manner of work

The supervising officer is to take any measures that are practicable to ensure that an offender performing work —

- (a) is not exposed to hazards at the place where the work is being performed; and
- (b) performs the work in a manner that does not expose the offender or any other person to hazards.

15. Authorised breaks counted as work

If an offender performing work takes a break authorised by the supervising officer or overseer, the period of the break is to be taken to be a period of work in computing the number of hours of work performed by the offender.

16. Certain breaks allowed and counted as work

- (1) An offender performing work is to be allowed during a normal working day —
 - (a) a break of 15 minutes in the morning;
 - (b) a break of 45 minutes for lunch; and
 - (c) a break of 15 minutes in the afternoon.

- (2) The period of a break taken by an offender under subregulation (1) is to be taken to be a period of work in computing the number of hours of work performed by the offender.

17. Offender not required to work if supervising officer or overseer fails to arrive unless alternative arrangements made

- (1) If —
- (a) an offender attends to perform work at a time and place specified in a direction given to the offender by the supervising officer; and
 - (b) neither the supervising officer nor overseer arrives at the specified place within one hour after the specified time,
- the offender is not required to perform work on that day unless other arrangements are made for an appropriate person to oversee the work to be performed by the offender at the specified place or another place.
- (2) If an offender does not perform work because of circumstances referred to in subregulation (1), the period that the offender would have worked if not for those circumstances is to be taken to be a period of work in computing the number of hours of work performed by the offender.

18. Certain substances prohibited

An offender is not to bring to, or possess at, the place where the offender is performing work any alcohol, drug, toluene or any other substance capable of influencing a person's fitness to perform work.

19. Offender under the influence of alcohol, etc.

- (1) If the overseer considers that an offender is unfit to perform work because the offender is under the influence of alcohol, a

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Division 4 Community work conditions

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drug, toluene or any other substance capable of influencing a person's fitness to perform work, the overseer —

- (a) is to direct the offender not to work; and
- (b) is to report the matter to the supervising officer.

- (2) Any period during which an offender is directed not to work under subregulation (1) is not to be taken to be a period of work in computing the number of hours of work performed by the offender.

20. Offender not to possess weapon, and confiscation

- (1) An offender is not to bring a weapon to, or possess a weapon at, the place where the offender is performing work.
- (2) During the period that the work is being performed, the supervising officer or overseer may take possession of a weapon that an offender brings to, or possesses at, the place where the offender is performing work.

21. Offender not to drive vehicle unless authorised

An offender is not to drive or ride in or on a vehicle at the place where the offender is performing work unless authorised to do so by the supervising officer or overseer.

22. Offender may be excused from work

- (1) The supervising officer or, with the approval of the supervising officer, the overseer may excuse an offender from performing work if the supervising officer or overseer, as the case requires, is satisfied that there are reasonable grounds for doing so.
- (2) Any period during which an offender is excused from work under subregulation (1) is not to be taken to be a period of work in computing the number of hours of work performed by the offender.

23. Offender ill or injured while performing work

- (1) If an offender becomes ill or is injured while performing work, the overseer —
 - (a) is immediately to notify the supervising officer of the illness or injury; and
 - (b) in the case of injury, is within 24 hours to provide to the supervising officer a written report of the circumstances in which the injury occurred.
- (2) The overseer may excuse an offender who becomes ill or is injured while performing work from working for any period during the remainder of the day.
- (3) Any period during which an offender is excused from performing work under subregulation (1) is to be taken to be a period of work in computing the number of hours of work performed by the offender.

24. Supervising officer to notify responsible adult

If an offender is excused from performing work under regulation 22 or 23, the supervising officer is to take reasonable steps to notify a responsible adult accordingly.

25. Offender unable to attend to perform work because of illness

- (1) If, because of illness, an offender is unable to attend to perform work at a time and place specified in a direction given to the offender by the supervising officer, the offender is to notify the supervising officer as soon as practicable within 48 hours after the specified time.
- (2) An offender —
 - (a) who notifies the supervising officer under subregulation (1); and
 - (b) who, within 3 days after the specified time, provides to the supervising officer a certificate signed by a medical

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Division 5 Supervision conditions

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practitioner certifying that, because of illness, the offender was unable to perform work for a period specified in the certificate that includes the specified time,

is to be taken to have been excused from attending to perform work as required by the direction referred to in subregulation (1).

- (3) Any period during which an offender is unable to attend to perform work because of illness is not to be taken to be a period of work in computing the number of hours of work performed by the offender.

Division 5 — Supervision conditions

26. Limits on the reporting requirements of supervision conditions

Supervision conditions imposed on an offender by way of an order made under section 73(1)(c) of the Act are not to require the offender to report more than once each week.

27. Requirement to report for offender who lives in remote area of the State

If —

- (a) the court is considering making an order under section 73(1)(c) that imposes supervision conditions on an offender who lives in a remote area of the State; and
- (b) the conditions being considered include a requirement for the offender to report,

the court is to take into account the fact that the offender lives in a remote area of the State in determining the appropriate requirement to report.

Division 6 — Intensive youth supervision orders without detention

28. Interpretation

In this Division, “**supervision order**” means an intensive youth supervision order made by a court without imposing a sentence of detention.

29. Application of Divisions 3, 4 and 5 to supervision orders

Without limiting section 100 of the Act and unless otherwise provided in this Division, Divisions 3, 4 and 5 apply, with necessary modifications, to conditions imposed by way of a supervision order as if it were a youth community based order.

30. Limits on the reporting requirements of supervision conditions

Supervision conditions imposed on an offender under section 73(1)(c) of the Act (as read with section 100 of the Act) by way of a supervision order are not to require the offender to report more than 3 times each week.

31. Offender to inform supervising officer of change in address within 48 hours

An offender who changes address while subject to a supervision order is to comply with section 78(c) of the Act (as read with section 100 of the Act) within 48 hours after the change in the offender’s address.

Division 7 — Conditional release orders

32. Application of Division 4 to offender released under conditional release order

Division 4 (other than regulation 25) applies, with necessary modifications, to an offender released under a conditional release order, within the meaning of section 101 of the Act, as if

a reference in the Division to the performance of work included a reference to the performance of work, or to complying with any other obligation, in accordance with conditions imposed on an offender by way of a conditional release order.

33. Offender unable to attend to perform work because of illness

- (1) If, because of illness, an offender is unable to attend to perform work at a time and place specified in a direction given to the offender by the supervising officer, the offender is to notify the supervising officer as soon as practicable within 24 hours after the specified time.
- (2) An offender —
 - (a) who notifies the supervising officer under subregulation (1);
 - (b) who, within 3 days after the specified time, provides to the supervising officer a certificate signed by a medical practitioner certifying that, because of illness, the offender was unable to perform work for a period specified in the certificate that includes the specified time; and
 - (c) who, if so required by the chief executive officer under subregulation (3), is examined by a medical practitioner who verifies that the offender was ill at the specified time,

is to be taken to have been excused from attending to perform work as required by the direction referred to in subregulation (1).

- (3) If an offender notifies the supervising officer under subregulation (1), the chief executive officer may require the offender to be examined by a medical practitioner, nominated by the chief executive officer, to verify that the offender was ill at the specified time.

- (4) Any period during which an offender is unable to attend to perform work because of illness is not to be taken to be a period of work in computing the number of hours of work performed by the offender.
- (5) In this regulation, “**work**” means work required to be performed, or any other obligation required to be complied with, in accordance with conditions imposed by way of a conditional release order.

Part 4 — Special detention centres

34. Detention centres established and operated as special detention centres

- (1) Detention centres to be known as special detention centres may be established and operated where detainees are required to undertake designated work and other developmental programmes in a structured and disciplined environment in order to attain predetermined goals.
- (2) In attaining predetermined goals, detainees in special detention centres are required to undertake activities that demonstrate progress in their self-discipline, work performance and capacity to participate in developmental programmes.

Part 5 — Prescribed offences under section 119 of the Act

35. Prescribed offences under section 119 of the Act

- (1) Any offence, other than an offence that is a prescribed offence for the purposes of section 119(2)(b) of the Act, is a prescribed offence for the purposes of section 119(1) of the Act.
- (2) An offence is a prescribed offence for the purposes of section 119(2)(b) of the Act if it is —
 - (a) a Schedule 1 offence within the meaning of the Act other than —
 - (i) an offence under the *Road Traffic Act 1974*; or
 - (ii) the offence of counselling or procuring the commission of an offence under the *Road Traffic Act 1974*;
 - or
 - (b) a Schedule 2 offence within the meaning of the Act.

Part 6 — Hearing and determination of detention offences

36. Interpretation

In this Part, “**superintendent or visiting justice**” means the superintendent or visiting justice hearing and determining a charge of a detention offence.

37. Charge of detention offence

- (1) If a charge of a detention offence is made under section 171 of the Act, the charge is to be made in writing and is to contain —
 - (a) the name of the detainee alleged to have committed the offence;
 - (b) the date, time and place of the alleged offence;
 - (c) the details of any person assaulted or any property broken, damaged or destroyed in the commission of the alleged offence;
 - (d) a description of any injury or damage resulting from the alleged offence; and
 - (e) a brief summary of the alleged circumstances of the offence.
- (2) A copy of the charge is to be made available to the detainee alleged to have committed the offence a reasonable time before the hearing of the charge.

38. Notification of hearing

- (1) If —
 - (a) a detainee is charged with a detention offence; and
 - (b) a date is set for the hearing of the charge,the superintendent is to take reasonable steps to notify a responsible adult of the date set for the hearing and of the right of the responsible adult to be present at the hearing.

- (2) It is sufficient compliance with subregulation (1) if the superintendent causes written notification of the hearing to be forwarded to the last address recorded at the detention centre for the responsible adult.

39. Representation of detainee

- (1) The superintendent or visiting justice is to permit a suitable person, other than a legal practitioner, nominated or agreed to by the detainee charged to assist and represent the detainee at the hearing of the charge.
- (2) It is for the superintendent or visiting justice to determine whether a person nominated or agreed to under subregulation (1) is a suitable person for the purposes of that subregulation.

40. Procedure

- (1) Subject to subregulation (2), the procedure that applies to the hearing and determination of a charge of a detention offence is —
 - (a) the prosecuting officer is to state the case against the detainee and call any witnesses in support of the charge;
 - (b) the superintendent or visiting justice may take evidence on oath, affirmation or otherwise at his or her discretion;
 - (c) the prosecuting officer is to conduct the examination in chief of each witness and the detainee or the detainee's representative may cross-examine each witness;
 - (d) the prosecuting officer may re-examine each witness on matters arising out of cross-examination;
 - (e) the prosecuting officer is then to close his or her case; and
 - (f) the detainee is then to give evidence on his or her own behalf and call any witnesses, and paragraphs (c), (d) and (e) are to apply with necessary modifications.

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- (2) The superintendent or visiting justice may at the request of the detainee or the detainee's representative adjourn the hearing of the charge to permit the detainee to consider the charge more properly and prepare a defence to it.
- (3) The superintendent or visiting justice —
 - (a) is to conduct proceedings expeditiously and without undue adjournment or delay;
 - (b) is to keep or cause to be kept an accurate record of proceedings;
 - (c) may question a witness called; and
 - (d) may direct that a particular witness be called or call and question a witness.
- (4) The prosecuting officer and the detainee or the detainee's representative may question a witness called and questioned under subregulation (3)(d).

Part 6A — Miscellaneous

[Heading inserted in Gazette 9 Jan 1996 p. 54.]

40A. Calculation of period of detention by reference to unpaid amount (s. 65C(2))

For the purposes of section 65C(2) of the Act, the period of detention in a detention order (expressed in days) is to be calculated by dividing the unpaid amount by \$150 and rounding the result up to the nearest whole number.

[Regulation 40A inserted in Gazette 9 Jan 1996 p. 54; amended in Gazette 25 Jul 2000 p. 3909.]

Part 7 — Gratuities

Division 1 — Special detention centres

41. Classification of activities undertaken by detainees in special detention centres

- (1) For the purpose of crediting gratuities to detainees in special detention centres, the activities undertaken by detainees are to be classified by the chief executive officer as —
 - (a) level 1 activities, in respect of activities that are at times undertaken without supervision and activities that are undertaken in the local community and require special aptitude and diligence;
 - (b) level 2 activities, in respect of activities that are at times undertaken under general supervision in the local community and activities that require above average aptitude and diligence; or
 - (c) level 3 activities, in respect of activities that are undertaken under direct supervision and activities that require average aptitude and diligence.
- (2) The level at which activities are classified is as the chief executive officer considers appropriate, having regard to the matters set out in subregulation (1)(a), (b) and (c).

42. Gratuities credited to a detainee in special detention centre

The gratuities that may be credited to a detainee in a special detention centre are —

- (a) for undertaking level 1 activities, \$35.00 each week;
- (b) for undertaking level 2 activities, \$25.00 each week; or
- (c) for undertaking level 3 activities, \$15.00 each week.

Division 2 — Detention centres other than special detention centres

43. Gratuities credited to a detainee in detention centre that is not a special detention centre

- (1) Subject to subregulations (2) and (3), the gratuities that may be credited to a detainee are —
 - (a) for a detainee in Rangeview Remand Centre, \$14.00 each week; or
 - (b) for a detainee in any other detention centre, \$15.00 each week.
- (2) The superintendent may direct that, because of the nature of the activities that a detainee is required to undertake, the gratuities credited to the detainee be increased, as the superintendent considers appropriate, for the period during which the detainee undertakes those activities.
- (3) Gratuities are not to be credited to a detainee who is detained for less than 3 days.
- (4) In this regulation, “**detainee**” means a detainee detained in a detention centre other than a special detention centre.

Division 3 — General

44. Superintendent may direct gratuities be withheld or reduced

- (1) If a detainee refuses to undertake activities as directed, the superintendent may direct that no gratuities be credited to the detainee for the period during which the detainee refuses to undertake those activities.
- (2) If the performance of activities undertaken by a detainee at a detention centre is, in the opinion of the superintendent, unsatisfactory, the superintendent may direct that the gratuities credited to the detainee be reduced, as the superintendent

considers appropriate, for the period during which the performance of those activities is unsatisfactory.

- (3) If the superintendent gives a direction under subregulation (1) or (2), the superintendent is to maintain a record of the reasons for giving the direction.

45. Superintendent may direct deductions from gratuities

If a detainee causes any property of the State in a detention centre to be lost, broken, damaged or destroyed, the superintendent may direct that an amount that the superintendent considers appropriate —

- (a) be deducted from the gratuities that are credited to the detainee; and
- (b) be paid towards the repair or replacement of the property.

46. Superintendent may direct when gratuities are to be credited

The superintendent may direct that gratuities be credited to detainees at times that the superintendent considers appropriate.

[Part 8 omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]

Schedule 1

[Regulation 3]

WRITTEN STATEMENT TO BE GIVEN BY THE COURT TO A YOUNG PERSON NOT REPRESENTED BY A LEGAL PRACTITIONER

WHAT TO DO IF YOU DON'T HAVE A LAWYER

1. It is your right to have a lawyer represent you in court.
2. There may be a free lawyer in the courthouse, known as the “duty lawyer” or “duty counsel”. You may seek their assistance if you wish.
3. If there is no lawyer for you at the court, you may ask to have your case put off (“adjourned”) to another day so that you can get legal advice.
4. The Legal Aid Commission and the Aboriginal Legal Service provide free legal services to young people. There may also be other free legal services in your area. To get their address and telephone number, ask the court staff for help.

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Notes

- ¹ This reprint is a compilation as at 21 November 2003 of the *Young Offenders Regulations 1995* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

| Citation | Gazettal | Commencement |
|---|---------------------------|--|
| <i>Young Offenders Regulations 1995</i> | 3 Mar 1995 p. 853-76 | 13 Mar 1995 (see <i>Gazette</i> 10 Mar 1995 p. 895) |
| <i>Young Offenders Amendment Regulations 1995</i> | 9 Jan 1996 p. 53-4 | 9 Jan 1996 |
| <i>Young Offenders Amendment Regulations 2000</i> | 25 Jul 2000 p. 3909-10 | 25 Jul 2000 |
| Reprint 1: The <i>Young Offenders Regulations 1995</i> as at 21 Nov 2003 (includes amendments listed above) | | |

Defined Terms

Defined Terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

| Defined Term | Provision(s) |
|--|---------------------|
| approved..... | 9(4) |
| community work conditions..... | 4 |
| detainee | 43(4) |
| drug | 11 |
| medical practitioner | 2 |
| special detention centre | 2 |
| superintendent or visiting justice | 36 |
| supervising officer | 2 |
| supervision order..... | 28 |
| the overseer | 2 |
| work | 11, 33(5) |