

Western Australia

Sentence Administration Regulations 2003

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Sentence Administration Regulations 2003

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Sentence Administration Regulations 2003

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Sentence Administration Regulations 2003*.

2. Commencement

These regulations come into operation on the day on which the *Sentence Administration Act 2003* comes into operation.

3. Interpretation

- (1) In these regulations, unless the contrary intention appears —

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

“**community service**” means —

- (a) community work as defined in section 4 of the *Sentencing Act 1995*; or
- (b) community corrections activities;

“**supervisor**” means a supervisor of a centre under section 87 of the Act.

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

Part 1A — General matters

[Heading inserted in Gazette 29 Dec 2006 p. 5869.]

Division 1 — Prescribed terms and times

[Heading inserted in Gazette 29 Dec 2006 p. 5869.]

3A. Prescribed term (definition of “prisoner” s. 11A)

For the purposes of the definition of “prisoner” in section 11A(1) of the Act —

- (a) in relation to a prisoner sentenced before 31 August 2003 — a fixed term of 14 years is prescribed; and
- (b) in relation to a prisoner sentenced on or after 31 August 2003 — a fixed term of 9 years is prescribed.

[Regulation 3A inserted in Gazette 29 Dec 2006 p. 5869-70.]

3B. Prescribed time (s. 13)

For the purposes of section 13(2) of the Act, the prescribed time in the sentence of a prisoner is no later than 2 years before the day on which the first report about the prisoner under section 12A(2) of the Act is due.

[Regulation 3B inserted in Gazette 29 Dec 2006 p. 5870.]

3C. Prescribed time (s. 14)

For the purposes of section 14(2) of the Act, the prescribed time in the sentence of a prisoner is no earlier than 2 years before the day on which the prisoner is eligible for release (whether under a parole order or not).

[Regulation 3C inserted in Gazette 29 Dec 2006 p. 5870.]

Part 2 — Parole

4. Board to be notified about prisoner on parole term

- (1) If a prisoner is sentenced to a parole term, the CEO must, within 28 days after the date when the sentence was imposed, notify the secretary of the Board in writing —
 - (a) of the details of the prisoner and the sentence; and
 - (b) of the date on which it is expected that the prisoner will be eligible to be released on parole under the *Sentencing Act 1995*.
- (2) If, after notification has been given under subregulation (1), the date referred to in subregulation (1)(b) changes, the CEO must notify the secretary of the Board accordingly as soon as practicable in writing.
- (3) If practicable, notice under subregulation (2) must be given at least 6 weeks before the expected release date.

5. Prescribed hours of community corrections activities (s. 30)

- (1) For the purposes of section 30(h) of the Act the prescribed number of hours of community corrections activities is —
 - (a) in the case of an offender engaged full-time in gainful employment, vocational training or gratuitous work — 6 hours; and
 - (b) in the case of an offender not so engaged — 12 hours.
- (2) The CEO may determine any question in relation to the extent to which an offender is engaged full-time or otherwise.
- (3) A determination by the CEO under subregulation (2) is final.

Part 3 — Re-entry release orders

6. Prescribed hours of community corrections activities (s. 55)

- (1) For the purposes of section 55(b) of the Act the prescribed number of hours of community corrections activities is —
 - (a) in the case of an offender engaged full-time in gainful employment, vocational training or gratuitous work — 6 hours; and
 - (b) in the case of an offender not so engaged —
 - (i) for each of the first 2 periods of 7 days when the offender is subject to the order — 6 hours; and
 - (ii) for each subsequent period of 7 days when the offender is subject to the order — the number of hours, being at least 12 and not more than 18, determined by the CEO having regard to the extent to which the offender is engaged in part-time gainful employment, vocational training or gratuitous work.
- (2) The CEO may determine any question in relation to the extent to which an offender is engaged full-time or otherwise.
- (3) A determination by the CEO under subregulation (2) is final.

Part 4 — Community corrections orders and pre-sentence orders

[Heading inserted in Gazette 25 Feb 2005 p. 847.]

7. Prescribed obligations of offenders (s. 76)

- (1) For the purpose of section 76(4)(f) of the Act, the prescribed obligations are those in this regulation.
- (2) An offender doing community service or performing any requirement of a programme requirement —
 - (a) must conform to reasonable standards of dress (including footwear), cleanliness, and conduct, as required by a CCO;
 - (b) must wear safety clothing or equipment issued;
 - (c) must maintain in good order and condition clothing, tools, and equipment issued to the offender and must return such articles when required to do so by a CCO;
 - (d) must not wilfully damage —
 - (i) any article issued for the purposes of doing the community service or performing the requirement;
 - (ii) any property on, or in relation to which, the offender is required to perform community service unless it is necessary for the community service;
 - (e) must not make or receive a telephone call except with the permission of a CCO;
 - (f) must not receive a visitor except with the permission of a CCO;
 - (g) must not take an unauthorised break;
 - (h) must not leave the place where the offender is required to be before completing the duties that have been assigned to the offender at that place except with the permission of a CCO;

r. 8

- (i) must use any transport to or from a place where the offender is directed to be for the purposes of performing community service that is provided by the department;
- (j) if unable to attend —
 - (i) must immediately notify a CCO supervising the community service or the performance of the requirement; and
 - (ii) if the inability to attend is due to sickness, within 72 hours after the time when the offender was required to attend or as otherwise directed by a CCO — must supply a CCO with a certificate signed by a medical practitioner (as defined in the *Medical Act 1894*) certifying the inability to attend.

[Regulation 7 amended in Gazette 25 Feb 2005 p. 847.]

8. Authorised absences from community service etc.

If a CCO supervising an offender doing community service or performing any requirement of a programme requirement is satisfied that —

- (a) the offender has been injured or has become sick while doing community service or performing the requirement; or
- (b) there is good reason for doing so,

the CCO may authorise the offender to be absent from doing the community service or performing the requirement on any day or part of any day.

[Regulation 8 amended in Gazette 25 Feb 2005 p. 847.]

9. Offender may be directed to cease doing community service etc.

- (1) If a CCO supervising an offender doing community service or performing any requirement of a programme requirement is satisfied that the offender has contravened section 76 of the Act,

the CCO may direct the offender to immediately cease doing the community service or performing the requirement.

- (2) An offender given such a direction must not resume doing the community service or performing the requirement unless and until authorised to do so by a CCO.

[Regulation 9 amended in Gazette 25 Feb 2005 p. 847.]

10. Calculations of time

- (1) These periods count as periods of community service done by an offender —
- (a) the period of any break authorised by a CCO;
 - (b) the period of any absence authorised under regulation 8(a);
 - (c) if the offender attends to do community service in accordance with directions to do so and a CCO, or a person designated by a CCO to supervise the offender, does not attend within one hour of the time when the offender was directed to attend and no alternative arrangements are made — the period of community service that the offender was to have done on that day;
 - (d) any period of over one hour a day reasonably spent by an offender in travelling to or from a place where the offender is required to attend to do community service.
- (2) Any period not worked because of sickness, other than any period authorised under regulation 8(a), does not count as a period of community service done by an offender.
- (3) The period of any absence directed under regulation 9 does not count as a period of community service done by an offender unless a supervisor, having considered the reason for the direction, orders otherwise.

11. Samples of breath etc. from offenders

- (1) For the purposes of section 76(4)(b) of the Act the supervisor of a centre may direct an offender —
 - (a) to give a sample of the offender's breath, blood, saliva, urine or sweat;
 - (b) to attend at a specified place for the purpose of giving the sample; and
 - (c) to give the sample to a specified person.
- (2) A breath test must be conducted by means of an apparatus of a kind approved by the CEO.
- (3) The results of a breath test are admissible in any proceedings as prima facie evidence.
- (4) A sample of the sweat of an offender must be taken by a means approved by the CEO.
- (5) A sample of blood, saliva, urine or sweat must be labelled with —
 - (a) the name of the offender;
 - (b) the type of the sample;
 - (c) the name of the person who obtained the sample; and
 - (d) the date and time that the sample was obtained.
- (6) A sample of blood, saliva, urine or sweat must be analysed by a person specified by the supervisor, being a person who is approved by the CEO or who is an employee of a body approved by the CEO.
- (7) The person who analyses the sample must make a certificate of the results and forward it to the supervisor.
- (8) The certificate is admissible in any proceedings as prima facie evidence of the matters certified in it.

Part 5 — Community corrections centres

Division 1 — Searches and seizure

12. Application

This Division applies to searches and seizures under sections 90 and 91 of the Act.

13. Prescribed persons

For the purposes of sections 90 and 91 of the Act these persons are prescribed persons —

- (a) a supervisor;
- (b) a CCO;
- (c) a prison officer as defined in the *Prisons Act 1981*;
- (d) a person who is the holder of a security officer's licence under the *Security and Related Activities (Control) Act 1996*;
- (e) a contract worker as defined in the *Court Security and Custodial Services Act 1999*.

14. Obligations of a supervisor before a person is searched

- (1) Before ordering a person to be searched under section 90 of the Act, a supervisor must —
 - (a) inform the person of the provisions of section 90;
 - (b) ask the person whether there is anything in the person's possession or under the person's control that may jeopardise the security or good order of the centre or the safety of persons in it and to produce any such thing;
 - (c) give the person an opportunity to respond; and
 - (d) make a record of any response by the person.
- (2) The supervisor may arrange for a registered medical practitioner to be present during the search of a person.

15. Requirements for conduct of search of a person

- (1) Except as provided in regulation 19(1), a search of a person must be conducted by a searcher of the same sex as the person.
- (2) A searcher conducting a search of a person must inform the person of the person's right under regulation 16(1) and comply with the request made where that right is exercised.

16. Witnesses to a search

- (1) A person who is about to be searched may request that another person, other than a person who is known to have a criminal record, who is then at the centre be present during the search.
- (2) If the search of a person will involve the removal of the person's clothing, the searcher may arrange for another person of the same sex as the person to be searched to be present during the search.
- (3) Subregulation (2) does not apply to a search referred to in regulation 19.

17. Means of searching a person

- (1) A search of a person must be conducted by one or more of the following means —
 - (a) by using an electronic or other device that is designed to locate property that is a subject of the search;
 - (b) by visual inspection;
 - (c) by a quick search of the person by the rapid and methodical running of hands over the person's outer garments.
- (2) For the purpose of conducting a search under subregulation (1) the searcher may, if ordered to do so by the supervisor, require the person to remove —
 - (a) an outer garment, but only if other outer clothing is worn underneath; and

(b) gloves, headwear or footwear,

but otherwise the searcher must not remove, or require the person to remove, any clothing.

18. Conduct of a search

- (1) A search must be conducted expeditiously.
- (2) A search of a person —
 - (a) must not be conducted in the presence or sight of a person other than a person referred to in regulations 14(2), 16 and 19; and
 - (b) must otherwise be conducted with regard to the person's decency and self-respect.
- (3) A search of anything in a person's possession or under a person's control must be conducted in the presence of the person.

19. Search of a child apparently under the age of 10 years

- (1) A search of a child apparently under the age of 10 years must be conducted by a female.
- (2) A child apparently under the age of 10 years must not be searched unless an adult accompanying the child is present during the search.
- (3) If a child apparently under the age of 10 years is not accompanied at a centre by an adult, or such an adult refuses to be present during a search, the supervisor may order the child and any adult accompanying the child to leave the centre immediately.

20. Procedure where a thing is seized

If anything is seized under section 91 of the Act the supervisor of the centre must examine it and notify the CEO who must direct as to how the thing is to be dealt with.

21. Exception to offences under the *Firearms Act 1973* and *Misuse of Drugs Act 1981*

- (1) If under section 91 of the Act a person seizes —
- (a) a firearm, ammunition or a silencer or contrivance of a similar nature (within the meaning of the *Firearms Act 1973*); or
 - (b) a prohibited drug, prohibited plant or utensil (within the meaning of the *Misuse of Drugs Act 1981*),
- the person must, as soon as practicable, deliver it into the custody of a member of the Police Force or an employee of the Police Service to be dealt with according to law.
- (2) A person who complies with subregulation (1) does not commit an offence under the *Firearms Act 1973* or the *Misuse of Drugs Act 1981*, as the case requires, in relation to the article seized.

Division 2 — Miscellaneous

22. Disposal of abandoned property

- (1) Property left at a centre and uncollected, abandoned, or unclaimed for 6 months may by order of the CEO be —
- (a) sold at a public auction;
 - (b) given to an association incorporated under the *Associations Incorporation Act 1987*; or
 - (c) destroyed or otherwise disposed of.
- (2) The CEO must on at least one occasion before a public auction is conducted under subregulation (1) cause a notice to be published in the *Gazette* describing the property to be offered for sale and giving the time, date and place of the auction.
- (3) The net proceeds of an auction sale conducted under this regulation must be credited to the Consolidated Fund.

Part 6 — Staff

23. Officers etc. not to benefit from work

- (1) A person who is a member of the departmental staff must not, in performing a function under the Act, order, arrange or supervise the doing of anything by an offender which would benefit the person personally, other than generally as a member of the community or as a member of a group within the community.
- (2) A member of the departmental staff must declare to the supervisor of a centre any conflict of interest that may arise from the member supervising the doing of community service by an offender.
- (3) If a member of the departmental staff declares a conflict of interest to a supervisor, the supervisor may appoint another person to supervise the community service.

Part 7 — Miscellaneous

24. Form of warrant (s. 70, 116 and 117)

- (1) For the purpose of sections 70(2) and 117(1) of the Act a warrant to have a prisoner arrested is to be in the form of Form 1 in Schedule 1.
- (2) For the purpose of sections 116(1) and 117(1) of the Act a warrant to have an offender arrested is to be in the form of Form 2 in Schedule 1.

[Section 24 amended in Gazette 11 Jun 2004 p. 2002-3.]

25. Repeal

The *Sentence Administration Regulations 1996* are repealed.

Schedule 1 — Forms

[r. 24]

1. Warrant to have prisoner arrested under section 70(2) of the Act

WESTERN AUSTRALIA <i>Sentence Administration Act 2003, s. 70(2) and 117(1)</i> Arrest warrant		CWI Warrant No.
Command	To: All police officers. This warrant authorises and commands you to arrest this prisoner and to take the prisoner to the nearest prison in Western Australia. And to all persons authorised to exercise a power set out in clause 2 of Schedule 2 to the <i>Court Security and Custodial Services Act 1999</i>. This warrant authorises and commands you to take the prisoner to the nearest prison in Western Australia.	
Prisoner's details	Name: _____ Address: _____	Date of birth: _____
Reason for issue of warrant	<input type="checkbox"/> Parole order suspended <input type="checkbox"/> Parole order cancelled <input type="checkbox"/> Re-entry release order suspended <input type="checkbox"/> Re-entry release order cancelled	
Details of early release order	Date of order: _____	Date of release: _____
Warrant issued by	Signature(s): _____ Name(s): _____ Official title(s): _____ Date: _____	
Execution details	Prisoner arrested on / / at hours at: by: _____ of: _____ Signature: _____	
		Regimental No: police station/division Date: _____

2. Warrant to have offender arrested under section 116(1) of the Act

WESTERN AUSTRALIA <i>Sentence Administration Act 2003, s. 116(1) and 117(1)</i> Arrest warrant		CWI Warrant No.
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Schedule 1 Forms

Command	<p>To: All police officers. This warrant authorises and commands you to arrest this offender and to take the offender to the nearest prison in Western Australia. And to all persons authorised to exercise a power set out in clause 2 of Schedule 2 to the <i>Court Security and Custodial Services Act 1999</i>. This warrant authorises and commands you to take the offender to the nearest prison in Western Australia.</p>
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Offender's details	Name:	Date of birth:
	Address:	

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

Execution details	Offender arrested on / / at hours	
	at:	
	by:	Regimental No:
	of:	police station/division
	Signature:	Date:

[Schedule 1 amended in Gazette 11 Jun 2004 p. 2003.]

Notes

¹ This is a compilation of the *Sentence Administration Regulations 2003* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Citation	Gazettal	Commencement
<i>Sentence Administration Regulations 2003</i>	29 Aug 2003 p. 3842-50	31 Aug 2003 (see r. 2 and <i>Gazette</i> 29 Aug 2003 p. 3833)
<i>Sentence Administration Amendment Regulations 2004</i>	11 Jun 2004 p. 2002-3	11 Jun 2004
<i>Sentence Administration Amendment Regulations 2005</i>	25 Feb 2005 p. 847	31 May 2006 (see r. 2 and <i>Gazette</i> 30 May 2006 p. 1965)
<i>Sentence Administration Amendment Regulations 2006</i>	29 Dec 2006 p. 5869-72	Regulations other than r. 5: 28 Jan 2007 (see r. 2(1) and <i>Gazette</i> 29 Dec 2006 p. 5867)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Citation	Gazettal	Commencement
<i>Sentence Administration Amendment Regulations 2006</i> r. 5 ²	29 Dec 2006 p. 5869-72	Operative on commencement of the <i>Prisons and Sentencing Legislation Amendment Act 2006</i> (see r. 2(2))

² On the date as at which this compilation was prepared, the *Sentence Administration Amendment Regulations 2006* r. 5 had not come into operation. It reads as follows:

“

5. Part 1A Division 2 inserted

After Part 1A Division 1 the following Division is inserted —

“

Division 2 — Re-socialisation programmes

3D. Commencement of re-socialisation programme

The implementation of a re-socialisation programme approved under section 13 or 14 of the Act for a prisoner is not to commence until the period remaining to the day on which the prisoner is eligible for release (whether under a parole order or not) is equal to or less than the period determined in accordance with the formula —

$x + y$

where —

x = the duration of the re-socialisation programme; and

y = the period of —

- (i) in the case of a sentence described in column 1 of the Table to section 12A of the Act — 3 months; and
- (ii) in the case of a fixed term sentence — one month.

3E. Structure of a re-socialisation programme

- (1) A re-socialisation programme is to be structured so as to ensure a particular prisoner's successful re-integration into the community.
- (2) Without limiting subregulation (1), a re-socialisation programme is to address —
 - (a) the risks associated with the prisoner's re-integration into the community; and
 - (b) the needs of the prisoner in re-integrating into the community.

3F. Content of a re-socialisation programme

- (1) A re-socialisation programme is to comprise activities that contribute to the rehabilitation of a prisoner and the prisoner's successful re-integration into the community.
- (2) Without limiting subregulation (1), a re-socialisation programme is to include activities that —
 - (a) help the prisoner acquire knowledge and skills that will assist the prisoner to adopt a law abiding lifestyle on release; and
 - (b) establish, maintain and strengthen the prisoner's relationships with supportive family and any relevant cultural or community groups; and

- (c) help the prisoner make reparation for the prisoner's offence; and
 - (d) promote the prisoner's health and wellbeing.
- (3) Without limiting subregulation (1), an activity comprising a re-socialisation programme may —
- (a) involve absences from prison under the *Prisons Act 1981* section 83 intended to facilitate the rehabilitation and successful reintegration of prisoners into the community; and
 - (b) be subject to conditions regulating or preventing the prisoner's contact with the victim of the prisoner's offence; and
 - (c) where the prisoner is eligible for a re-entry release order, include participation in a re-entry release order.

3G. CEO to monitor and report on prisoner's progress

- (1) The CEO must monitor the progress of a prisoner participating in a re-socialisation programme and give a written report to the Board of that progress —
- (a) while the prisoner is participating in the programme — if the CEO has any concerns about the prisoner's ability to complete the programme or if the Board requests the written report; and
 - (b) when the prisoner completes the programme.
- (2) A report under subregulation (1)(b) is to address any considerations relating to the release of the prisoner under a parole order or otherwise.

3H. Suspension of a re-socialisation programme

- (1) The CEO or the Board may, at any time during a prisoner's participation in a re-socialisation programme and for any reason, suspend the programme in relation to the prisoner.
- (2) If the CEO suspends a programme under subregulation (1) the CEO must, within 3 working days after the suspension, give written notice of the suspension to the Board.

3I. Reinstatement of a suspended re-socialisation programme

The Board may reinstate a re-socialisation programme suspended under regulation 3H if the Board is satisfied that the CEO is able to facilitate the reinstatement.

3J. Cancellation of a re-socialisation programme

- (1) The Board may, at any time during a prisoner's participation in a re-socialisation programme and for any reason, cancel the programme in relation to the prisoner, irrespective of whether the programme was approved by the Board or the Governor.
- (2) The Board must, as soon as practicable after a cancellation under subregulation (1), give written notice of the cancellation to the Minister if the re-socialisation programme and the prisoner's participation in it were approved by the Governor under section 13 of the Act.

3K. Reviewable decisions (s. 115A)

For the purposes of section 115A(3) of the Act —

- (a) a decision by the CEO or the Board under regulation 3H to suspend a re-socialisation programme in relation to a prisoner; or
- (b) a decision by the Board under regulation 3J to cancel a re-socialisation programme in relation to a prisoner,

is a reviewable decision.

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