

1995—No. 519

SENTENCING ACT 1989—REGULATION

(Sentencing (Children) Regulation 1995)

NEW SOUTH WALES



[Published in Gazette No. 105 of 1 September 1995]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Sentencing Act 1989, has been pleased to make the Regulation set forth hereunder.

J. W. Shaw
Attorney General.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Sentencing (Children) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. (1) In this Regulation:

“Director-General” means the Director-General of the Department of Juvenile Justice;

“offender” means a person detained in a detention centre and, in relation to a parole order, includes the person in respect of whom the order is made;

“parole order” means an order under the Act directing the release of an offender from a detention centre on parole;

“superintendent” means the superintendent or other officer for the time being in charge of a detention centre;

“Supervisor” means:

- (a) a person employed in the Department of Juvenile Justice as a supervisor for the purposes of this Regulation (whether or not the person has other duties to perform in the Department); or
- (b) a probation officer employed in the Department of Corrective Services;

“the Act” means the Sentencing Act 1989.

(2) In this Regulation, a reference to a Form is a reference to a form set out in Schedule 1.

Application of Regulation

4. This Regulation applies to matters arising under the Act in its application to the making of control orders, and to detainees, under Part 4 of the Act.

PART 2—PAROLE

Material in support of parole orders (sentences of more than 3 years): sec 17

5. (1) For the purposes of section 17 (1) of the Act, the Director-General is to arrange for the preparation of material to assist the Children’s Court in its consideration of whether an offender should be released on parole.

(2) The material must include:

- (a) a pre-discharge report which describes:
 - (i) the child’s overall behavioural response while in detention; and
 - (ii) his or her involvement in the various programs offered at the detention centre; and
 - (iii) any significant community support available to the child on discharge; and
 - (iv) the details of any proposed post-release supervision; and
 - (v) any additional information which the Children’s Court considers necessary in its consideration of parole; and
- (b) a psychological or psychiatric assessment; and
- (c) a copy of any current court orders; and
- (d) a copy of the court’s comments at the time of sentencing.

Parole order

6. (1) A parole order must be reduced to writing in a form approved by the Minister.

(2) The registrar or clerk of the court by which the order is made must send copies of the order to the following persons:

- (a) the superintendent of the detention centre in which the offender is or is to be kept; and
- (b) the Director-General.

(3) Copies of the order sent to the superintendent of the detention centre are, if practicable, to be sent so as to arrive at the detention centre at or before the time the offender arrives.

(4) As soon as practicable after receiving copies of the order, the superintendent must ensure that a copy is given to the offender.

(5) On the day of release of the offender from the detention centre under the order, the superintendent of the detention centre must ensure that:

- (a) the order is read to the offender; and
- (b) the effect of the order is explained to the offender in language that is capable of being understood by the offender; and
- (c) the offender indicates that the offender understands the terms and conditions on which the offender is to be released by signing a statement to that effect on a copy of the order; and
- (d) all copies of the order are endorsed with the offender's date of release; and
- (e) a copy of the order is sent to the Director-General; and
- (f) a copy of the order is given to the offender; and
- (g) the copy of the order containing the signed statement referred to in paragraph (c) is retained at the detention centre.

(6) If an offender is subject to more than one parole order, this clause does not require common provisions in the orders to be read to an offender more than once.

Review by the Children's Court of intention to refuse release on parole: sec 19

7. (1) A notice under section 19 (b) of the Act must be sent to the superintendent of the detention centre in which the offender is kept.

(2) As soon as practicable after receiving the notice, the superintendent must ensure that:

- (a) the notice is read to the offender; and
- (b) the effect of the notice is explained to the offender in language that is capable of being understood by the offender; and
- (c) the notice is handed to the offender.

(3) Notice of an offender's intention to make representations to the Children's Court concerning release on parole:

- (a) must be given by the offender to the superintendent of the detention centre in which the offender is kept; and
- (b) must be sent by the superintendent to the Registrar of the Bidura Children's Court.

(4) When the Children's Court reconsiders whether the offender should be released on parole, the offender is entitled to be represented by counsel or by a solicitor for the purpose of making representations in respect of which notification has been given to the Registrar of the Children's Court in accordance with section 20 of the Act.

Decision on review of parole refusal: sec 22

8. (1) A notice under section 22 (4) (b) of the Act must be sent to the superintendent of the detention centre in which the offender is kept.

(2) As soon as practicable after receiving the notice, the superintendent must ensure that:

- (a) the notice is read to the offender; and
- (b) the effect of the notice is explained to the offender; and
- (c) the offender's rights concerning the Children's Court's decision are explained to the offender in language that is capable of being understood by the offender; and
- (d) the notice is handed to the offender.

(3) The superintendent of the detention centre must keep a copy of the notice.

(4) The Registrar of the Bidura Children's Court must send a copy of the notice to the Director-General.

Terms and conditions: sec 27

9. (1) A parole order is subject to the following terms and conditions:

- 1. The offender is to be of good behaviour and must not, during the term of the order, commit any offence.
- 2. The order may be revoked if the offender contravenes any of the terms and conditions of the order.

(2) The terms and conditions of a parole order may require the offender to be subject to the supervision of a supervisor for any period specified in the order, not being a period which extends for more than 2 years after the date on which the offender is released in accordance with the order.

(3) A parole order that contains a requirement referred to in subclause (2) may state those terms and conditions as follows:

The offender must, for a period of or until the order ceases to have effect, submit to the supervision and guidance of the supervisor assigned for the supervision of the offender for the time being and obey all reasonable directions of that supervisor and, in particular, the offender:

- (a) is to report to the supervisor or another person nominated by the supervisor in the manner and at the times directed and be available for interview at such times and places as the supervisor or nominee may from time to time direct; and
- (b) is to reside at an address agreed on by the supervisor; and
- (c) is not to travel outside the boundaries of the State without the express approval of the officer-in-charge of the district office of the Department to which the supervisor is attached.

(4) A parole order that contains a requirement referred to in subclause (2) may, if the court thinks fit, provide that the terms and conditions of the order relating to supervision by the supervisor cease to have effect if the supervisor has notified the offender in writing, with the concurrence of:

- (a) the court that made the order (however constituted); or
- (b) the officer-in-charge of the district office of the Department to which the supervisor is attached,

that the offender is not required to be subject to supervision.

(5) Before a court makes a parole order containing terms or conditions relating to residence or treatment, the court:

- (a) must consider a report from a supervisor as to the offender's circumstances; and
- (b) must satisfy itself, having regard to the supervisor's report, that it is feasible to secure compliance with the terms or conditions.

(6) Before a court makes a parole order containing terms or conditions requiring the co-operation of a person other than the offender or a supervisor, it must obtain the consent of the person to the specification of those terms and conditions in so far as they require the person's co-operation.

Supervision: sec 27

10. (1) For the purposes of section 27 (4) (a) of the Act, the prescribed supervision is supervision by a supervisor of such kind or kinds as the court may determine.

(2) The Director-General:

- (a) must assign, or arrange for the assignment of, a supervisor to supervise an offender as soon as practicable after receiving a parole order that requires the offender to be supervised by a supervisor; and
- (b) may from time to time assign, or arrange for the assignment of, another supervisor to supervise the offender in place of the officer previously so assigned (and, in that event, must send notice to the offender accordingly).

Variation or termination of terms or conditions: sec 27

11. (1) The Registrar of the Children's Court must send written advice to the Director-General that a notice has been served under section 27 (5) of the Act on an offender who is a child.

(2) If the Children's Court varies the terms and conditions of a parole order under section 27 (6) of the Act so as to make the offender subject to supervision under the order, or so as to affect the supervision of the offender, the Registrar of the Children's Court must send notice of the variation to the Director-General.

Revocation of parole order before release: sec 28

12. (1) For the purposes of section 28 of the Act, in so far as that section applies to an offender, the following circumstances are prescribed as circumstances in which the Children's Court may revoke a parole order:

Circumstances in which the Children's Court, after the making of the order and before the release of the offender, decides that it has sufficient reason to believe that the offender, if released from custody, would not be able to adapt to normal lawful community life.

(2) The Registrar of the Children's Court must send copies of an order under section 28 of the Act to the superintendent of the detention centre in which the offender is kept.

(3) As soon as is practicable after receiving the order, the superintendent must ensure that:

- (a) the order is read to the offender; and

- (b) the effect of the order is explained to the offender in language that is capable of being understood by the offender; and
- (c) the offender's rights to a review of the revocation are explained to the offender; and
- (d) a copy of the order is handed to the offender.

(4) The Registrar of the Children's Court must send notice of the revocation of a parole order under section 28 of the Act to the Director-General.

Inquiry into suspected breach of a parole order: sec 32

13. (1) A notice referred to in section 32 (1) (a) of the Act must be served on an offender in the manner required by the Act at least 7 days before the date set for the inquiry referred to in the notice.

(2) The Registrar of the Children's Court must send a copy of every such notice to the Director-General.

Notice of revocation of parole order: sec 35

14. (1) If a court revokes a parole order applying to an offender under section 35 (1) of the Act, the registrar or clerk of the court must send written notice of that fact to the following persons:

- (a) the Director-General;
- (b) the court which made the order.

(2) The notice must be in a form approved by the Minister and must specify any direction given by the court as to the day on which the order is to be treated as having been revoked.

Arrest warrants: sec 36

15. A warrant for the arrest of a person under section 36 of the Act issued by the Children's Court must conform to Form 1.

Revocation of parole order and review of revocation: sec 38

16. (1) For the purposes of section 38 (2) (c) of the Act, the prescribed form of notice of revocation of a parole order that is to be served on an offender who is a child is Form 2.

(2) The notice must be sent to the superintendent of the detention centre in which the offender is kept.

(3) As soon as practicable after receiving the notice, the superintendent must ensure that:

- (a) the notice is read to the offender; and
- (b) the effect of the notice is explained to the offender in language that is capable of being understood by the offender; and
- (c) the notice is handed to the offender.

(4) Notice of an offender's intention to make representations to the Children's Court concerning the revocation of a parole order:

- (a) must be given by the offender to the superintendent of the detention centre in which the offender is kept; and
- (b) must be sent by the superintendent to the Registrar of the Bidura Children's Court.

Decision on review of revocation

17. (1) The Registrar of the Children's Court must send written notice of a decision of the Children's Court following a review under section 39 of the Act to the superintendent of the detention centre at which the offender is kept.

(2) The superintendent must ensure that:

- (a) the notice is read to the offender; and
- (b) the effect of the notice is explained to the offender in language that is capable of being understood by the offender; and
- (c) the offender's rights concerning the decision are explained to the offender.

(3) The Registrar of the Children's Court must send a copy of the notice to the Director-General.

PART 3—GENERAL

Information to be given to offenders

18. (1) When an offender is received into a detention centre under sentence, the superintendent of the detention centre must give to the offender information in writing concerning the nature and effect of the sentence.

(2) The information must, in every case, include that which the Minister has determined to be the minimum necessary information.

Delegation of functions

19. A function conferred or imposed by this Regulation on the Director-General or the superintendent of a detention centre may be delegated to any officer of the Department of Juvenile Justice.

Repeal

20. (1) The Sentencing (Children) Regulation 1989 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Sentencing (Children) Regulation 1989, had effect under that Regulation continues to have effect under this Regulation.

SCHEDULE—FORMS**Form 1**

(Cl. 15)

WARRANT FOR APPREHENSION AND DETENTION

(Sentencing Act 1989)

To the Commissioner of Police for the State of New South Wales, to all members of the Police Force and to all superintendents of detention centres in that State.

WHEREAS was sentenced to by (court) at on for the offence(s) of

AND by order of the Children's Court dated was released from a detention centre on parole on in accordance with the terms of the parole order, which order has been revoked, NOW the Children's Court issues this warrant authorising any member of the Police Force to apprehend

.....

- * and return him/her to a detention centre
- * to serve the portion of his/her term of detention unexpired on
- * and to remove him/her to
- * for the purpose of conducting, within 7 days, an inquiry as to whether the order should be revoked.
- * The Children's Court ordered the revocation of the Parole Order for breach of the following terms and conditions of the order, namely:

.....

This warrant is sufficient authority for the apprehension of and *his/her return to and detention in a detention centre.

Dated this day of 19

.....
(Children's Magistrate)

* Delete if inapplicable

Form 2

(Cl. 16)

NOTICE TO OFFENDER OF REVIEW BY THE CHILDREN'S COURT
(Sentencing Act 1989)

TO (Name of offender)

TAKE NOTICE that the Children's Court on made an order for revocation of your parole to date from The Bidura Children's Court will reconvene on at (time) in order to reconsider the revocation of your parole.

- * A copy of the order made which revoked your parole order is attached.
- * Copies are attached of reports and other documents intended to be used by the Children's Court in reaching its decision.
- * You may make submissions to the Children's Court with respect to *the revocation of your parole order/* the date of revocation of your parole order. If you wish to do so, you are required to notify the secretary to the Children's Court not later than

.....
Registrar of the Children's Court

* Delete if inapplicable

NOTES

TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Citation
2. Commencement
3. Definitions
4. Application of Regulation

PART 2—PAROLE

5. Material in support of parole orders (sentences of more than 3 years): sec 17
6. Parole order
7. Review by the Children's Court of intention to refuse release on parole: sec 19
8. Decision on review of parole refusal: sec 22
9. Terms and conditions: sec 27
10. Supervision: sec 27
11. Variation or termination of terms or conditions: sec 27
12. Revocation of parole order before release: sec 28
13. Inquiry into suspected breach of a parole order: sec 32
14. Notice of revocation of parole order: sec 35
15. Arrest warrants: sec 36
16. Revocation of parole order and review of revocation: sec 38
17. Decision on review of revocation

PART 3—GENERAL

18. Information to be given to offenders
19. Delegation of functions
20. Repeal

SCHEDULE 1—FORMS**EXPLANATORY NOTE**

The object of this Regulation is to repeal and replace the Sentencing (Children) Regulation 1989 with no change in matters of substance. The Regulation deals with the following matters:

- (a) the reports to be furnished to the Children's Court for consideration in relation to the making of a parole order for a serious offender (clause 5);
- (b) the forms for parole orders and the procedures to be followed after the making of a parole order (clause 6);
- (c) the procedures to be followed in relation to the review by the Children's Court of intention to refuse release on parole (clauses 7 and 8);
- (d) the terms and conditions of parole orders and the variation of such terms and conditions (clauses 9 and 11);
- (e) the supervision of offenders on parole (clause 10);
- (f) procedures to be followed in relation to the revocation and the review of revocation of a parole order (clauses 12, 14, 16 and 17);
- (g) the giving of notice of an inquiry into a suspected breach of a parole order (clause 13);
- (h) the form to be used for certain arrest warrants issued under the Sentencing Act 1989 (clause 15);
- (i) information to be given to an offender by the superintendent of a detention centre (clause 18);
- (j) the delegation of functions under the Regulation (clause 19);

(k) formal matters (Part 1 and clause 20).

This Regulation is made under the Sentencing Act 1989, including section 55 (the general regulation making power) and various other sections referred to in the Regulation.

This Regulation comprises or relates to matters of a machinery nature.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
