

# Sentencing Legislation Amendment and Repeal Bill 1998

---

## CONTENTS

---

### Part 1 — Preliminary

1 .	Short title	2
2 .	Commencement	2
3 .	Act amended	2

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

#### Division 1 — *Sentencing Act 1995* amended

4 .	Section 4 amended	3
5 .	Section 85 amended	3
6 .	Section 88 amended	5
7 .	Section 89 replaced	5
8 .	Section 89A inserted	7
9 .	Section 92 repealed	7
10 .	Section 93 replaced	8
11 .	Section 94 replaced	8
12 .	Section 95 replaced	11

<b>Division 2 — <i>Sentence Administration Act 1995</i> repealed</b>		
13 .	Act repealed	11
<b>Division 3 — Transitional and consequential provisions</b>		
14 .	Interpretation	11
15 .	Sentencing courts to take into account this Part's effect	12
16 .	Application of <i>Interpretation Act 1984</i> , s 36	13
17 .	Community orders imposed before commencement	13
18 .	Sentences of imprisonment imposed before commencement	14
19 .	Early release orders made before commencement	15
20 .	HDOs and WROs	15
21 .	CEO's instructions for community corrections centres	15
22 .	Parole Board's report	16
23 .	Transitional regulations	16
24 .	Consequential amendments	17
<b>Part 3 — Amendments about appropriate and consistent sentencing</b>		
<b>Division 1 — <i>Sentencing Act 1995</i> amended</b>		
25 .	Part 14A inserted	18
<b>Division 2 — <i>Young Offenders Act 1994</i> amended</b>		
26 .	The Act amended by this Division	34
27 .	Section 46A amended	35
28 .	Section 55 amended	35
29 .	Schedule 2 amended	35
<b>Part 4 — Amendments about reparation</b>		
30 .	Section 112 amended	36

31 .	Section 115 amended	36
32 .	Section 119 amended	36
33 .	Section 119A inserted	36

**Part 5 — Miscellaneous amendments**

34 .	Section 4 amended	38
35 .	Section 34 amended	38
36 .	Section 80 amended	39
37 .	Section 105 amended	39
38 .	Section 137 replaced	40
39 .	Section 143A inserted	40

**Part 6 — General**

40 .	Review	42
------	--------	----

**Schedule 1 — Consequential amendments**

<i>Bail Act 1982</i>	43
<i>Constitution Acts Amendment Act 1899</i>	43
<i>Criminal Law (Mentally Impaired Defendants) Act 1996</i>	44
<i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>	44
<i>Juries Act 1957</i>	44
<i>Parole Orders (Transfer) Act 1984</i>	45
<i>Prisoners (Release for Deportation) Act 1989</i>	45
<i>Prisons Act 1981</i>	45
<i>Sentencing Act 1995</i>	46
<i>Spent Convictions Act 1988</i>	47
<i>Young Offenders Act 1994</i>	47



Western Australia

LEGISLATIVE ASSEMBLY

*(As amended in Committee)*

# **Sentencing Legislation Amendment and Repeal Bill 1998**

**A Bill for**

**An Act —**

- **to amend the *Sentencing Act 1995* and *Young Offenders Act 1994*;**
  - **to repeal the *Sentence Administration Act 1995*; and**
- for related purposes.**

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Sentencing Legislation Amendment and Repeal Act 1998*.

5 **2. Commencement**

This Act comes into operation on such day as is, or days as are respectively, fixed by proclamation.

**3. Act amended**

10 The amendments in this Act are to the *Sentencing Act 1995*\* unless otherwise indicated.

[\* *Act No. 76 of 1995.*

*For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 211-12, and Acts Nos. 23, 29 and 38 of 1998.]*

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

### **Division 1 — *Sentencing Act 1995* amended**

#### **4. Section 4 amended**

- 5 (1) Section 4(1) is amended by deleting the definition of “parole order”.
- (2) After section 4(2) the following subsection is inserted —
- “
- 10 (3) Examples in this Act are provided to assist understanding and do not form part of the Act.
- ”.

#### **5. Section 85 amended**

- (1) Section 85(1) is amended by deleting the definition of “early release order”.
- 15 (2) Section 85(1) is amended by inserting after the definition of “parole eligibility order” the following definition —
- “
- 20 **“parole order”** means an order, made under Part 3 of the *Sentence Administration Act 1998*, that a prisoner be released on parole;
- ”.
- (3) Section 85(1) is amended in the definition of “prescribed term” by deleting paragraph (a).

**Sentencing Legislation Amendment and Repeal Bill 1998**

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

Division 1 Sentencing Act 1995 amended

**s. 5**

---

(4) Section 85(2) is repealed and the following subsection is inserted instead —

“

(2) For the purposes of this Part and Part 11 and of the *Sentence Administration Act 1998*, the aggregate of 2 or more fixed terms is the total effective period of imprisonment imposed on the offender having regard to whether the fixed terms are to be served concurrently or partly concurrently or cumulatively.

”.

(5) Section 85(3) is repealed and the following subsection is inserted instead —

“

(3) For the purposes of this Part and of the *Sentence Administration Act 1998* to calculate the length in days of one half of a fixed term —

(a) determine the dates on which the term as imposed by the court will begin and end and then express the term as a number of days (“**T**”); and

(b) then divide T by 2 and disregard any remainder.

”.

(6) Section 85(4) is repealed and the following subsection is inserted instead —

“

(4) In this Part and in the *Sentence Administration Act 1998*, a fixed term ends when the term as imposed by the court ends, and it does not matter if the prisoner is or may be released (under a parole order or otherwise) before then.

”.



**6. Section 88 amended**

- (1) Section 88(3)(d) is deleted and the following paragraph is inserted instead —

“

5

- (d) the fixed term is to be served partly  
concurrently with the other fixed term.

”.

- (2) Section 88(4) is repealed and the following subsection is inserted instead —

“

10

- (4) If under subsection (3)(d) a court orders that a term is to be served partly concurrently with another fixed term, the court must specify the period of the other fixed term that is to be served before the partly concurrent term is to begin; but that period must not extend beyond the earliest date on which the offender could be released (whether on parole or not) in relation to the other fixed term.

15

”.

- 20 (3) Section 88(6) is repealed.

**7. Section 89 replaced**

Section 89 is repealed and the following section is inserted instead —

“

25

**89. Offender may be made eligible for parole**

- (1) A court sentencing an offender to a fixed term may order that the offender be eligible for parole in respect of that term by making a parole eligibility order.

**Sentencing Legislation Amendment and Repeal Bill 1998**

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

Division 1 Sentencing Act 1995 amended

**s. 7**

---

- 5
- (2) A court may decide not to make a parole eligibility order in respect of a fixed term imposed on an offender if the court considers that the offender should not be eligible for parole because of at least 2 of the following 4 factors:
- 10
- (a) the offence is serious;
  - (b) the offender has a significant criminal record;
  - (c) the offender, when released from custody under a release order made previously, did not comply with the order;
  - (d) any other reason the court considers relevant.
- 15
- (3) If a court decides that an offender is to be eligible for parole in respect of 2 or more of the fixed terms it imposes, it is to make a single parole eligibility order in respect of those terms.
- (4) The effect of a parole eligibility order made in respect of 2 or more fixed terms is subject to section 94.
- (5) A parole eligibility order must not be made in respect of a prescribed term.
- 20
- (6) In subsection (2) —
- 25
- “release order”** means an order made (in this State or elsewhere in Australia) in respect of an offender who is subject to a sentence of imprisonment that releases the offender on conditions before the end of the sentence, and includes a parole order, a home detention order or a work release order made under a written law prior to the commencement of this section.

”.

**8. Section 89A inserted**

After section 89 the following section is inserted —

“

**89A. Programme assessment order for short fixed term  
that is not parole term**

(1) If a court sentences an offender to a fixed term, or to an aggregate of fixed terms, of less than 24 months and the court does not make a parole eligibility order in respect of the term or terms, the court may make a programme assessment order.

(2) A programme assessment order is an order that the CEO —

(a) must assess the offender prior to being released in respect of the term or terms; and

(b) must make a release programme order under Part 4 of the *Sentence Administration Act 1998* in respect of the offender unless the CEO considers that such an order is not warranted for the offender.

(3) A programme assessment order is in addition to and not part of the sentence imposed on an offender.

”.

**9. Section 92 repealed**

Section 92 is repealed.

**Sentencing Legislation Amendment and Repeal Bill 1998**

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

Division 1 Sentencing Act 1995 amended

**s. 10**

---

**10. Section 93 replaced**

Section 93 is repealed and the following section is inserted instead —

“

5 **93. Release from parole term**

(1) Subject to section 94, a prisoner serving a parole term is eligible to be released on parole when he or she has served one half of the term.

10 (2) Any order for the release on parole of a prisoner to whom subsection (1) applies must be made in accordance with Part 3 of the *Sentence Administration Act 1998*.

15 (3) If a prisoner serving a parole term has not been released on parole before he or she has served the whole of the term, then the prisoner is discharged from that sentence when he or she has served the whole of the term and, subject to Division 2 of Part 2 of the *Sentence Administration Act 1998*, must be released then.

20

”.

**11. Section 94 replaced**

Section 94 is repealed and the following section is inserted instead —

“

25 **94. Aggregation of parole terms for certain purposes**

(1) In the case of a prisoner serving 2 or more parole terms —

(a) the time when he or she is eligible to be released on parole; and

- 
- (b) the parole period for such a prisoner,  
are to be calculated by reference to the aggregate of  
those terms, but only if under subsection (3) or (4)  
those terms are to be aggregated.
- 5 (2) If under this section the matters referred to in  
subsection (1) are not to be calculated by reference to  
the aggregate of 2 or more parole terms, the matters are  
to be calculated in respect of each of the 2 or more  
parole terms separately.
- 10 (3) A parole term imposed at the same time as another  
parole term is to be aggregated with that other term for  
the purposes of subsection (1) unless it is to be served  
partly concurrently with that other term.
- 15 (4) A parole term imposed at a different time to another  
parole term is to be aggregated with that other term for  
the purposes of subsection (1) unless —
- 20 (a) it is to be served concurrently with that other  
term or partly concurrently with it; or
- (b) the other term was imposed before the  
commencement of Part 2 of the *Sentencing  
Legislation Amendment and Repeal Act 1998*.
- 25 (5) Subject to this section, a parole term, or an aggregate  
of parole terms, may be aggregated with the aggregate  
of 2 or more other parole terms, but a parole term, or  
an aggregate of parole terms, imposed before the  
commencement of Part 2 of the *Sentencing Legislation  
Amendment and Repeal Act 1998* is not to be  
aggregated with a parole term, or aggregate of parole  
terms, imposed after that commencement.

**Sentencing Legislation Amendment and Repeal Bill 1998**

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

Division 1 Sentencing Act 1995 amended

**s. 11**

---

5

- (6) For the purposes of applying this section a reference in this Part or in the *Sentence Administration Act 1998* to a prisoner serving a parole term is, where necessary, to be taken as including a reference to a prisoner serving more than one parole term and in such a case, if under this section the terms can be aggregated, the reference to the term is to be taken as being a reference to the aggregate of the terms.

Table showing some examples of the operation of this section and sections 88 and 93 and section 7 of the <i>Sentence Administration Act 1998</i>			
Parole term 1	Parole term 2	Whether concurrent etc.	Effect
4 years	6 years	Concurrent	Aggregation of terms permitted for parole calculations. Aggregate = 6 yrs. Non-parole period = 3 yrs (Calculated on aggregate). If not paroled, serve 6 yrs.
4 years	6 years	Cumulative	Aggregation of terms permitted for parole calculations. Aggregate = 10 yrs. Non-parole period = 5 yrs (Calculated on aggregate). If not paroled, serve 10 yrs.
4 years	6 years	Partly concurrent: 1 year of term 1 to be served before term 2 begins. (See s 88(4))	Aggregation of terms not permitted for parole calculations. Serve 1 year of term 1. Then begin serving term 2 concurrently with rest of term 1. Non-parole period on term 2 = 3 years. Result: serve 4 years before eligible for parole. If not paroled, serve 7 yrs.

”

**12. Section 95 replaced**

Section 95 is repealed and the following section is inserted  
instead —

“

5       **95. Release from fixed term that is not parole term**

A prisoner serving a fixed term that is not a parole term  
is discharged from that sentence at the end of the term  
and, subject to Division 2 of Part 2 of the *Sentence  
Administration Act 1998*, must be released then.

10

”.

**Division 2 — *Sentence Administration Act 1995* repealed**

**13. Act repealed**

The *Sentence Administration Act 1995* is repealed.

**Division 3 — Transitional and consequential provisions**

15       **14. Interpretation**

(1) In this Division —

“**commencement**” means the commencement of this Part;

“**new provisions**” means —

20

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

(b) the *Sentence Administration Act 1998*;

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

25

“**repealed Act**” means the *Sentence Administration Act 1995*;

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

**Sentencing Legislation Amendment and Repeal Bill 1998**

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

Division 3 Transitional and consequential provisions

**s. 15**

---

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

**15. Sentencing courts to take into account this Part's effect**

- 5 (1) If a court sentencing an offender to imprisonment proposes to impose a fixed term (with or without a parole eligibility order), it must consider whether the sentence it proposes would, by reason only of the new provisions, result in the offender  
10 spending more time in custody than he or she would have spent had the old provisions been in operation at the time of sentencing.
- (2) For the purposes of subsection (1) the court must assume —
- 15 (a) that the offender would have been released at the earliest opportunity under the old provisions; and
- (b) that the offender, if sentenced to the proposed sentence, would be released at the earliest opportunity under the new provisions.
- (3) If the court considers that its proposed sentence would have the  
20 result referred to in subsection (1) the court must adjust the sentence so that the offender does not, by reason only of the new provisions, spend more time in custody than he or she would have spent had the old provisions been in operation at the time of sentencing.
- (4) A court does not have to apply this section if, in sentencing an  
25 offender, the court follows the practice of the court as established in accordance with the new provisions and this section.



(5) This section does not apply if —

- (a) the statutory penalty for the offence for which the offender is being sentenced has been amended since the new provisions commenced;
- 5 (b) the offence for which the offender is being sentenced is an offence for which the court has to determine a relevant sentence under section 101L of the *Sentencing Act 1995*;
- 10 (c) a guideline judgment given under section 143 of the *Sentencing Act 1995* since the new provisions commenced applies to the offender or the offence for which the offender is being sentenced; or
- 15 (d) the application of this section would be inconsistent with or contrary to any other judgment given since the new provisions commenced that binds the sentencing court.

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

Section 36 of the *Interpretation Act 1984* applies as if the *Sentence Administration Act 1995* had been repealed and re-enacted by the *Sentence Administration Act 1998*.

20 **17. Community orders imposed before commencement**

If immediately before commencement —

- (a) a community based order, or an intensive supervision order, made under the *Sentencing Act 1995* is in force; or
- 25 (b) a WDO made under Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* is in force,

then on and after commencement —

- (c) the *Sentencing Administration Act 1998* applies to and in respect of the order; and

**Sentencing Legislation Amendment and Repeal Bill 1998**

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

Division 3 Transitional and consequential provisions

**s. 18**

---

- (d) the reference in the order to section 76 of the *Sentence Administration Act 1995* is to be taken to be a reference to section 60 of the *Sentence Administration Act 1998*.

**18. Sentences of imprisonment imposed before commencement**

- 5 (1) If immediately before commencement a person is subject to a fixed term that is not a parole term and to which the old provisions apply, then on and after commencement the old provisions continue to apply to that term and to the release of the person in respect of that term.
- 10 (2) If immediately before commencement a person is subject to a parole term to which the old provisions apply, then on and after commencement —
  - (a) the old provisions apply for the purpose of calculating —
    - 15 (i) when the person is eligible to be released on parole;
    - (ii) the parole period for the person; and
    - (iii) when the person is discharged from the sentence and must be released;
  - 20 (b) the new provisions apply for the purpose of determining whether the person is to be released on parole;
  - (c) if the person is to be released on parole, the release is to be by means of a parole order (supervised) made under Part 3 of the *Sentence Administration Act 1998* and for that purpose —
    - 25 (i) the parole period in the order is to be the parole period calculated under the old provisions; and
    - (ii) the supervised period for the order is to be the same as the parole period;
  - 30 and

(d) if the person is released on parole, the *Sentence Administration Act 1998* applies to and in respect of the person and the order except to the extent that paragraph (a) provides otherwise.

5 (3) If immediately before commencement a person is in custody serving a life term to which the old provisions apply, then on and after commencement the new provisions apply to that term.

(4) If immediately before commencement a person is in custody serving indefinite imprisonment, then on and after commencement  
10 the new provisions apply in respect of that person.

(5) If immediately before commencement a person is detained in strict or safe custody during the Governor's pleasure under an order made under section 282 of *The Criminal Code*, then on and after commencement the new provisions apply in respect of  
15 that person.

**19. Early release orders made before commencement**

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

**20. HDOs and WROs**

If immediately before commencement a person is subject to a sentence of imprisonment to which the old provisions apply, then nothing in sections 16 to 19 prevents the release on or after  
25 commencement of the person in respect of that sentence under Part 4 or 5 of the *Sentence Administration Act 1995*.

**21. CEO's instructions for community corrections centres**

(1) If rules made under section 86 of the repealed Act are in force immediately before commencement, then on and after

**Sentencing Legislation Amendment and Repeal Bill 1998**

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

Division 3 Transitional and consequential provisions

**s. 22**

---

commencement the rules are to be taken to be written instructions issued under section 70 of the *Sentence Administration Act 1998* until written instructions are issued under that section.

- 5 (2) When written instructions are issued under section 70 of the *Sentence Administration Act 1998* a reference in the repealed Act to rules made under section 86 of the repealed Act is to be taken to be a reference to those written instructions.

**22. Parole Board's report**

10 The Board's annual report made under section 96 of the *Sentence Administration Act 1998* must report on the operation of the repealed Act to the extent that it continues to operate by virtue of this Division and the *Interpretation Act 1984*.

**23. Transitional regulations**

- 15 (1) If there is no sufficient provision in this Division or in the old provisions or in the new provisions to provide for matters in relation to —
- 20 (a) the application of the old provisions to a sentence of imprisonment imposed before commencement;
  - (b) the effect after commencement of a sentence of imprisonment imposed before commencement;
  - (c) the imposition after commencement of sentences of imprisonment on offenders who are subject to sentences of imprisonment imposed before commencement;
  - 25 (d) the combined effect of a sentence of imprisonment imposed before commencement and of a sentence of imprisonment imposed after commencement;

**Sentencing Legislation Amendment and Repeal Bill 1998**

Provisions about parole and other early release orders and  
remission

Part 2

Transitional and consequential provisions

Division 3

**s. 24**

---

- (e) the application of the *Sentence Administration Act 1995* or the *Sentence Administration Act 1998* to orders made under the old provisions or under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*,
- 5 the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed in relation to those matters.
- (2) Regulations made under subsection (1) may provide that
- 10 the new provisions —
- (a) do not apply; or
- (b) apply with specific modifications,
- to or in relation to any matter.
- (3) Regulations made under subsection (1) —
- 15 (a) must be made within 12 months after commencement; and
- (b) may be made so as to have effect on a day that is earlier than the day on which they are published in the *Gazette* but not earlier than commencement.

20 **24. Consequential amendments**

Each Act referred to in Schedule 1 is amended as set out in that Schedule immediately below the short title of that Act.

## **Part 3 — Amendments about appropriate and consistent sentencing**

### **Division 1 — *Sentencing Act 1995* amended**

#### **25. Part 14A inserted**

5 After section 101 of the *Sentencing Act 1995* the following Part is inserted —

“

### **Part 14A — Sentence reporting and formulation**

#### **Division 1 — Reporting of sentences**

##### **10 101A. Application of this Division**

- (1) This Division applies if —
- (a) an offence is prescribed in relation to a court by regulations under section 101B; and
  - (b) that court is sentencing an offender for that offence.
- (2) However, if Division 2 or 3 applies when a court is sentencing an offender for an offence, this Division does not apply.

##### **15 101B. Reporting offences may be prescribed**

20 Regulations may prescribe an offence (a “**reporting offence**”) in relation to a prescribed court for the purposes of this Division.

**101C. Sentencing reports for reporting offences**

- (1) A court sentencing an offender for a reporting offence must prepare a sentencing report and deliver it in accordance with the regulations.
- 5           (2) Regulations may provide for the use of computer programmes approved under the regulations to prepare sentencing reports.

**101D. Contents of sentencing reports for reporting offences**

- 10           The sentencing report for a reporting offence must —
- (a) set out each mitigating, aggravating or other factor that was taken into account in arriving at the sentence;
- (b) indicate the degree to which —
- 15                   (i) each of those factors;
- (ii) the maximum penalty for the offence; and
- (iii) the minimum penalty (if any) for the offence,
- 20                   affected the sentence; and
- (c) provide any other information required by the regulations.

**Division 2 — Reporting of variations from  
indicative sentences**

**101E. Application of this Division**

- 5
- (1) This Division applies if —
- (a) a sentencing method for an offence is prescribed in relation to a court by regulations under section 101F; and
- (b) that court is sentencing an offender for that offence.
- 10
- (2) However, if Division 3 applies when a court is sentencing an offender for an offence, this Division does not apply.

**101F. Indicative sentencing method may be prescribed**

- 15
- (1) Regulations may prescribe a method to be applied by a prescribed court to arrive at an indication of the appropriate sentence (the “**indicative sentence**”) for a prescribed offence (a “**regulated offence**”).
- (2) In prescribing a sentencing method for a regulated offence the regulations —
- 20
- (a) may provide for the indicative sentence to be determined in accordance with a prescribed formula or in such other manner as is prescribed; and
- 25
- (b) may provide that the making of a spent conviction order in relation to the offence would not be appropriate.



**101G. Sentencing procedures for regulated offences**

- (1) A court sentencing an offender for a regulated offence must —
- (a) determine the indicative sentence;
  - 5 (b) impose a sentence for the offence (the “**actual sentence**”); and
  - (c) prepare a sentencing report and deliver it in accordance with the regulations.
- (2) Regulations may provide for the use of computer programmes approved under the regulations to —
- 10 (a) determine indicative sentences; and
  - (b) prepare sentencing reports.

**101H. Contents of sentencing reports for regulated offences**

15 The sentencing report for a regulated offence must —

- (a) set out the indicative sentence;
- (b) set out each mitigating, aggravating or other factor that was taken into account in arriving at the indicative sentence and the actual sentence;
- 20 (c) set out the degree to which —
  - (i) each of the factors set out under paragraph (b);
  - (ii) the maximum penalty for the offence; and
  - 25 (iii) the minimum penalty (if any) for the offence,

affected the indicative sentence and the actual sentence;

- 5
- (d) if the actual sentence is not the same as the indicative sentence, explain, in the prescribed manner, the reasons for the difference between the actual sentence and the indicative sentence; and
  - (e) provide any other information required by the regulations.

**Division 3 — Sentencing according to a prescribed method**

10 **101I. Application of this Division**

This Division applies if —

- 15
- (a) a sentencing method for an offence is prescribed in relation to a court by regulations under section 101J that have come into operation under section 101K; and
  - (b) that court is sentencing an offender for that offence.

**101J. Sentencing method may be prescribed**

- 20
- (1) Regulations may prescribe a method to be applied by a court to arrive at the appropriate sentence (the “**relevant sentence**”) for an offence (a “**controlled offence**”).
  - (2) In prescribing a sentencing method for a controlled offence the regulations —

25

    - (a) may provide for the relevant sentence to be determined in accordance with a prescribed formula or in such other manner as is prescribed;



- 5
- (7) If sentencing regulations are approved by each House of Parliament under subsection (4), they come into operation —
- (a) on the 7th day after the publication of the notice under subsection (5); or
- (b) where a later day is specified or provided for in the regulations, on that day,
- and have effect as if enacted in this Act.
- 10
- (8) If a resolution to approve of sentencing regulations is defeated in either House of Parliament, the defeat of the resolution repeals the regulations.
- 15
- (9) Regulations may abolish a sentencing method prescribed under section 101J and this section does not apply to those regulations unless they prescribe another sentencing method to replace the method that is abolished.

**101L. Sentencing requirements for controlled offences**

- 20
- (1) A court sentencing an offender to imprisonment for a controlled offence must —
- (a) determine the relevant sentence;
- (b) impose a sentence for the offence (the “**actual sentence**”) being —
- (i) the relevant sentence; or
- (ii) a sentence imposed under
- 25
- subsection (2);
- and
- (c) prepare a sentencing report and deliver it in accordance with the regulations.

- 5
- (2) If the court considers that the relevant sentence would be so unreasonable that it would be unjust to impose that sentence, it may elect to impose another sentence.
- (3) For the purposes of subsection (2), the relevant sentence cannot be considered as being unreasonable to the extent to which it was arrived at by —
- 10
- (a) taking into account or ignoring a factor; or
- (b) taking a factor into account to a particular degree,
- as required by the sentencing method.
- (4) This section has effect despite any provision of this Act (other than section 87) or any other law but nothing in this section authorizes the court to impose a sentence that is greater than the maximum penalty for the offence or less than the minimum penalty (if any) for the offence.
- 15
- (5) This section does not prevent the court from making an order under Part 14 and the making of such an order is not to be taken into account for the purposes of Division 4.
- 20
- (6) Regulations may provide for the use of computer programmes approved under the regulations to —
- (a) determine relevant sentences; and
- (b) prepare sentencing reports.

25

**101M. Contents of sentencing reports for controlled offences**

The sentencing report for a controlled offence must —

- (a) set out the relevant sentence;

**Sentencing Legislation Amendment and Repeal Bill 1998**

Part 3 Amendments about appropriate and consistent sentencing

Division 1 Sentencing Act 1995 amended

**s. 25**

---

- 5
- (b) set out each mitigating, aggravating or other factor that was taken into account in arriving at the relevant sentence;
- (c) indicate the degree to which —
- (i) each of those factors;
- (ii) the maximum penalty for the offence; and
- (iii) the minimum penalty (if any) for the offence,
- 10 affected the relevant sentence;
- (d) if the actual sentence is imposed under section 101L(2), explain, in the prescribed manner, why the court considered that imposition of the relevant sentence would be unjust and the reasons for the difference between the actual sentence and the relevant sentence; and
- 15
- (e) provide any other information required by the regulations.

20 **101N. Procedure on appeal**

- (1) If the actual sentence is more severe than the relevant sentence as determined by the sentencing court and the offender appeals against the actual sentence, the onus is on the prosecution to show cause before the appeal court why the actual sentence should not be quashed and a less severe sentence imposed.
- 25
- (2) If the actual sentence is less severe than the relevant sentence as determined by the sentencing court and the prosecution appeals against the actual sentence, the onus is on the offender to show cause before the appeal
- 30

court why the actual sentence should not be quashed  
and a more severe sentence imposed.

- (3) The relevant sentence is not a sentence fixed by law for  
the purposes of section 688(1b)(b) of *The Criminal*  
*Code*.

5

#### **Division 4 — Comparison of actual sentences with indicative or relevant sentences**

##### **101O. Purpose of this Division**

The provisions of this Division have effect for the  
purpose of determining under Division 2 or 3 whether  
the actual sentence is the same as, more severe than or  
less severe than the indicative sentence or the relevant  
sentence.

10

##### **101P. Meaning of terms used in this Division**

15

- (1) In this Division —

“**actual sentence**” has the meaning given by  
section 101G or 101L, whichever is applicable;

“**indicative sentence**” has the meaning given by  
section 101F;

20

“**punishment option**” means a sentencing option listed  
in section 39(2) or a combination of 2 or more of  
those sentencing options;

“**recommended sentence**” means the indicative  
sentence or the relevant sentence, whichever is  
applicable;

25

“**relevant sentence**” has the meaning given by  
section 101J;

“**sentencing method**” means the sentencing method prescribed under section 101F or 101J, whichever is applicable.

- 5 (2) For the purposes of this Division, a punishment option is higher than any other punishment option that is listed before it in section 39(2).
- (3) In the case of a punishment option that is a combination of options, its position in section 39(2) is determined by reference to the highest of those options.

10 **101Q. One sentencing option provided**

- (1) This section applies if the sentencing method provides for the recommended sentence to involve the use of a particular punishment option (the “**prescribed option**”).
- 15 (2) If the actual sentence only involves the use of the prescribed option, the actual sentence is to be regarded as more severe than the recommended sentence if it is greater than the recommended sentence.
- 20 (3) If the actual sentence involves the use of another sentencing option, or other sentencing options, in addition to the prescribed option, the actual sentence is to be regarded as more severe than the recommended sentence if —
- 25 (a) that other option, or one or more of those other options, is higher than the prescribed option; or
- (b) the portion of the sentence imposed using the prescribed option is not less than the recommended sentence.



- 5
- (4) If the actual sentence does not involve the use of the prescribed option, the actual sentence is to be regarded as more severe than the recommended sentence if a sentencing option used is higher than the prescribed option.
- (5) Unless —
- 10 (a) the actual sentence only involves the use of the prescribed option and is the same as the recommended sentence; or
- (b) subsection (2), (3) or (4) provides otherwise, the actual sentence is to be regarded as less severe than the recommended sentence.
- 15 (6) If the sentencing method provides for the recommended sentence to be within a range of sentences involving the use of the prescribed option then —
- (a) for the purposes of subsection (5)(a), the actual sentence is the same as the recommended sentence if it is within that range;
- 20 (b) for the purposes of subsection (2), the actual sentence is greater than the recommended sentence if it is greater than the most severe sentence in that range; and
- 25 (c) for the purposes of subsection (3)(b), the actual sentence is not less than the recommended sentence if it is not less than the most severe sentence in that range.

**101R. Two or more sentencing options provided**

- 5
- (1) This section applies if the sentencing method provides for the recommended sentence to involve the use of any of 2 or more punishment options (the **“prescribed options”**).
- 10
- (2) If the actual sentence only involves the use of one of the prescribed options, the actual sentence is to be regarded as being the same as the recommended sentence if it is the same as the recommended sentence determined using that option.
- 15
- (3) If the actual sentence only involves the use of the highest of the prescribed options, the actual sentence is to be regarded as more severe than the recommended sentence if it is greater than the recommended sentence determined using that option.
- 20
- (4) If the actual sentence involves the use of another sentencing option, or other sentencing options, in addition to the highest of the prescribed options, the actual sentence is to be regarded as more severe than the recommended sentence if —
- 25
- (a) that other option, or one or more of those other options, is higher than the highest of the prescribed options; or
- (b) the portion of the sentence imposed using the highest prescribed option is not less than the recommended sentence determined using that option.
- (5) In subsection (4) —  
**“sentencing option”** includes a prescribed option.

- 5
- (6) If the actual sentence involves the use of another sentencing option, or other sentencing options in addition to a prescribed option (other than the highest of the prescribed options), the actual sentence is to be regarded as more severe than the recommended sentence if that other option, or one of those other options, is higher than the highest of the prescribed options.
- 10
- (7) If no prescribed option is used in the actual sentence, the actual sentence is to be regarded as more severe than the recommended sentence if a sentencing option used is higher than the highest of the prescribed options.
- 15
- (8) Unless subsection (2), (3), (4), (6) or (7) provides otherwise, the actual sentence is to be regarded as less severe than the recommended sentence.
- 20
- (9) If the sentencing method provides for the recommended sentence determined under a prescribed option to be within a range of sentences involving the use of that option then —
- 25
- (a) for the purposes of subsection (2), the actual sentence is the same as the recommended sentence determined using that option if it is within that range;
- (b) for the purposes of subsection (3), the actual sentence is greater than the recommended sentence determined using that option if it is greater than the most severe sentence in that range; and

**Sentencing Legislation Amendment and Repeal Bill 1998**

Part 3 Amendments about appropriate and consistent sentencing

Division 1 Sentencing Act 1995 amended

**s. 25**

---

- (c) for the purposes of subsection (4)(b), the actual sentence is not less than the recommended sentence determined using that option if it is not less than the most severe sentence in that range.

5

Table showing some examples of the operation of Division 4

Recommended sentence (“RS”)	Actual sentence imposed (“AS”)	Comparison of AS with RS
\$10 000 fine	\$5 000 fine and 12 months CRO	AS less severe
	\$10 000 fine and 6 months CRO	AS more severe
	\$5 000 fine and 12 months CBO	AS more severe
	6 months CBO	AS more severe
\$10 000 to \$20 000 fine OR 12 to 24 months CBO	\$15 000 fine	AS same as RS
	\$25 000 fine	AS less severe
	\$25 000 fine and 15 months CRO	AS less severe
	\$20 000 fine and 20 months CBO	AS less severe
	\$2 000 fine and 24 months CBO	AS more severe
	\$2 000 fine and 6 months imprisonment	AS more severe
\$10 000 to \$20 000 fine OR 12 to 24 months CBO OR 6 to 9 months imprisonment	\$20 000 fine	AS same as RS
	24 months CBO	AS same as RS
	\$20 000 fine and 24 months CBO	AS less severe
	\$20 000 fine and 8 months imprisonment	AS less severe
	\$20 000 fine and 9 months imprisonment	AS more severe

**Division 5 — Application of this Part to the sentencing  
of young persons**

**101S. Meaning of terms used in this Division**

In this Division —

5           “**Schedule 1 offence**”, “**Schedule 2 offence**” and  
          “**young person**” have the same meanings as they  
          have in the *Young Offenders Act 1994*.

**101T. Prescribing offences in relation to the Children’s  
Court**

- 10           (1) Regulations may be made under section 101B, 101F  
          or 101J to apply provisions of this Part to sentencing  
          by the Children’s Court but only in relation to a  
          Schedule 1 offence or a Schedule 2 offence.
- 15           (2) Regulations referred to in subsection (1) may be made  
          in a way that makes the operation of provisions of this  
          Part depend on, or differ according to, the age of an  
          offender at the time of —
- (a) committing;
- (b) being charged with;
- 20           (c) being convicted of; or
- (d) being sentenced for,
- the offence.

**101U. Sentencing of young persons by other courts**

25           If regulations referred to in section 101T(1) are made,  
          provisions of this Part that apply to the Children’s  
          Court also apply in the same way to any other court  
          sentencing a young person for the offence in question.

**Sentencing Legislation Amendment and Repeal Bill 1998**

Part 3 Amendments about appropriate and consistent sentencing

Division 2 Young Offenders Act 1994 amended

**s. 26**

---

**101V. Modified operation of certain provisions of this Part**

(1) If regulations referred to in section 101T(1) are made under section 101J, section 101L(5) applies as if it were amended by inserting after “Part 14” the following —

“

, or under Part 7, Division 9 of the *Young Offenders Act 1994*

”.

(2) If regulations referred to in section 101T(1) are made under section 101F or 101J then, unless section 50B of the *Young Offenders Act 1994* applies, references in Division 4 to section 39(2) are to be read as references to the Table to this subsection.

**Table**

1.	The imposition of a fine under section 71.
2.	The making of a youth community based order under section 73.
3.	The making of an intensive youth supervision order under section 98.
4.	The imposition of a custodial sentence under section 118.

”.

**Division 2 — *Young Offenders Act 1994* amended**

**26. The Act amended by this Division**

The amendments in this Division are to the *Young Offenders Act 1994*\*.

[\* Reprinted as at 26 March 1996.

*For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 259, and Act No. 29 of 1998.]*



**Part 4 — Amendments about reparation**

**30. Section 112 amended**

Section 112(3) and (4) are repealed.

**31. Section 115 amended**

5 (1) Section 115(2) is amended by inserting after “body or person”  
the following —

“ , other than a person referred to in subsection (2a), ”.

(2) After section 115(2) the following subsection is inserted —

“

10 (2a) A person assessing compensation under the *Criminal  
Injuries Compensation Act 1985* for the injury resulting  
from an offence is to make the assessment without  
regard to the compensation set under a compensation  
order made in respect of the offence.

15

”.

**32. Section 119 amended**

Section 119(2) is repealed.

**33. Section 119A inserted**

After section 119 the following section is inserted —

20

“

**119A. Sentencing court may order imprisonment until  
compensation is paid**

25

(1) This section applies if a court that makes a  
compensation order is of the opinion that the offender  
concerned has, or ought to have, the means to pay the  
compensation.



- 5
- (2) If this section applies the court may in addition to making the compensation order, order that if the offender does not pay the compensation before a date set by the court the offender is to be imprisoned until the compensation is paid, but in any event for not longer than the period determined under subsection (3) or a shorter period set by the court.
- 10
- (3) Unless the court sets a shorter period, the period of imprisonment (in days) is the period determined by dividing the amount of compensation by \$50 (or such greater amount as is prescribed) and rounding the result up to the nearest whole number of days.
- 15
- (4) Service of the period of imprisonment does not discharge the offender's liability to pay the compensation.
- 20
- (5) Any period of imprisonment that an offender has to serve as a result of an order made under subsection (2) is to be served cumulatively on any term of imprisonment that the offender is serving or has to serve unless the court orders otherwise.
- (6) This section does not limit the operation of section 119.
- ”.

**s. 34**

---

**Part 5 — Miscellaneous amendments**

**34. Section 4 amended**

Section 4(1) is amended by inserting in the appropriate alphabetical position the following definition —

5

“

“**spent conviction order**” has the meaning given by section 45(2);

”.

**35. Section 34 amended**

10

(1) Section 34 is amended by inserting before the first word the subsection designation “(1)”.

(2) Section 34 is amended by inserting the following subsections —

“

15

(2) If a court sentencing an offender imposes a fixed term (as defined in section 85), the court is to state in open court the minimum period that the offender, as a result of the sentence and the operation of this Act, will serve in custody in respect of the term or, if more than one term is imposed, in respect of the aggregate of the terms.

20

(3) In complying with subsection (2) a court need not take account of any other sentence of imprisonment imposed previously on the offender which the offender is serving or has yet to serve.

25

”.

**36. Section 80 amended**

Section 80(5) and (6) are repealed and the following subsection is inserted instead —

“

- 5 (5) If under subsection (1)(a) or (b) a court orders a person to serve a term, or part of a term, of imprisonment that was suspended —
- (a) section 88 applies in respect of the term to be served; and
- 10 (b) the court may make a parole eligibility order under section 89,

as if the term to be served were a term of imprisonment being imposed by the court.

”.

15 **37. Section 105 amended**

Section 105(5) is amended in the definition of “motor vehicle offence” as follows:

- (a) by inserting after paragraph (c) the following paragraph —

20 “

- (ca) an offence where —
- (i) a motor vehicle is used in the commission of the offence;
- (ii) the commission of the offence is aided or facilitated by the use of a motor
- 25 vehicle;

”;

- (b) by deleting paragraph (d)(i) and (d)(ii).

**s. 38**

---

**38. Section 137 replaced**

Section 137 is repealed and the following section is inserted instead —

“

5       **137. Royal Prerogative of Mercy not affected**

Neither this Act nor the *Sentence Administration Act 1998* affects the Royal Prerogative of Mercy or limits any exercise of it.

”

10      **39. Section 143A inserted**

After section 143 the following section is inserted —

“

**143A. Sentencing guidelines for courts of summary jurisdiction**

- 15           (1) For the purpose of reducing any disparity in sentences imposed by courts of summary jurisdiction, the chief stipendiary magistrate may from time to time publish guidelines for the sentencing of offenders in such courts.
- 20           (2) The guidelines are not binding on courts of summary jurisdiction.
- (3) Without limiting the matters that may be included in the guidelines, they may include —
- 25               (a) guidance about —
- (i) assessing the seriousness of offences;
- (ii) the sentencing process;
- (iii) when it is appropriate to impose particular sentencing options;

- (b) suggestions as to the appropriate sentence to be imposed for a particular offence or class of offence.

”.

## **Part 6 — General**

### **40.        Review**

- (1)        The Minister administering the *Sentencing Act 1995* is to carry out a review of the operation and effectiveness of —
- 5            (a)        the *Sentencing Act 1995* to the extent that it is affected by the amendments made to it by this Act; and
- (b)        Parts 3 and 4 of the *Sentence Administration Act 1998*, as soon as practicable after the expiration of 4 years from the day on which this Act receives the Royal Assent.
- 10        (2)        The Minister is to prepare a report based on the review and cause it to be laid before each House of Parliament within 5 years after the day on which this Act receives the Royal Assent.

## Schedule 1 — Consequential amendments

[s. 24]

***Bail Act 1982***

s. 3(1)	In the definitions of “CEO (Justice)” and “community corrections officer” delete “ <i>Sentence Administration Act 1995</i> ” and insert instead —  <i>Sentence Administration Act 1998</i>
s. 3(1)	Delete the definition of “early release order” and insert instead — <b>“early release order”</b> means — (a) a parole order, home detention order or work release order made under the <i>Sentence Administration Act 1995</i> ; or (b) a parole order made under the <i>Sentence Administration Act 1998</i> ;
s. 50K	Delete “section 117 of the <i>Sentence Administration Act 1995</i> ” and insert instead —  section 101 of the <i>Sentence Administration Act 1998</i>

***Constitution Acts Amendment Act 1899***

Schedule V, Part 3	In the item dealing with the Parole Board delete “ <i>Sentence Administration Act 1995</i> ” and insert instead —  <i>Sentence Administration Act 1998</i>
-----------------------	--

## **Sentencing Legislation Amendment and Repeal Bill 1998**

### Schedule 1 Consequential amendments

---

#### ***Criminal Law (Mentally Impaired Defendants) Act 1996***

s. 42(1)(a)	Delete “section 103(1)(a) of the <i>Sentence Administration Act 1995</i> ” and insert instead — section 87(1)(a) of the <i>Sentence Administration Act 1998</i>
s. 42(1)(b)	Delete “section 103(1)(b) of the <i>Sentence Administration Act 1995</i> ” and insert instead — section 87(1)(b) of the <i>Sentence Administration Act 1998</i>
s. 42(6)	Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
s. 43	Delete “section 104 of the <i>Sentence Administration Act 1995</i> ” and insert instead — section 88 of the <i>Sentence Administration Act 1998</i>

#### ***Fines, Penalties and Infringement Notices Enforcement Act 1994***

s. 28(1)	In the definitions of “community corrections activities”, “community corrections centre” and “community corrections officer” delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
s. 49(a)	Delete the paragraph and “and” after it and insert instead — (a) section 60 of the <i>Sentence Administration Act 1998</i> ; and
s. 50(3)(c)	Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>

#### ***Juries Act 1957***

Second Schedule, Part I	In clause 2(m) delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
-------------------------	---



***Parole Orders (Transfer) Act 1984***

s. 3	In the definitions of “Parole Board” and “parole order” delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
s. 9(8)(a)	Delete “section 37 of the <i>Sentence Administration Act 1995</i> ” and insert instead — section 42 of the <i>Sentence Administration Act 1998</i>
s. 9(8)(b)	Delete “section 70 of the <i>Sentence Administration Act 1995</i> ” and insert instead — section 45 of the <i>Sentence Administration Act 1998</i>

***Prisoners (Release for Deportation) Act 1989***

s. 3(1)	In the definition of “the Parole Board” delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
s. 4(2)	Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
s. 4(6)	Delete “section 21 of the <i>Sentence Administration Act 1995</i> , ” and insert instead — sections 20 and 22 of the <i>Sentence Administration Act 1998</i> ,

***Prisons Act 1981***

s. 77(1)	Delete paragraph (c).
s. 78(1)	Delete paragraph (d).
s. 92(6)(b)	Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>

## Sentencing Legislation Amendment and Repeal Bill 1998

### Schedule 1 Consequential amendments

---

#### *Sentencing Act 1995*

s. 4(1)	In the definitions of “community corrections centre” and “community corrections officer” delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
s. 23(3)	Repeal the subsection.
s. 63(d)	Delete “section 76 of the <i>Sentence Administration Act 1995</i> ” and insert instead — section 60 of the <i>Sentence Administration Act 1998</i>
s. 67(2)(c)	Delete “Part 7 of the <i>Sentence Administration Act 1995</i> ” and insert instead — Part 5 of the <i>Sentence Administration Act 1998</i>
s. 70(d)	Delete “section 76 of the <i>Sentence Administration Act 1995</i> ” and insert instead — section 60 of the <i>Sentence Administration Act 1998</i>
s. 74(2)(c)	Delete “Part 7 of the <i>Sentence Administration Act 1995</i> ” and insert instead — Part 5 of the <i>Sentence Administration Act 1998</i>
s. 96(4)	Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
Part 13	Repeal Division 4.
s. 101	Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
s. 141	Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>

***Spent Convictions Act 1988***

s. 30(a)	Delete the paragraph and “or” after it and insert instead — (a) section 45 of the <i>Sentence Administration Act 1998</i> ; (ab) section 70 of the <i>Sentence Administration Act 1995</i> ; or
Schedule 3 clause 1	In the Table, in item 1, delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>

***Young Offenders Act 1994***

s. 50A(6)	Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
s. 50B(2)	Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>
s. 118(5)	Delete “ <i>Sentence Administration Act 1995</i> ” and insert instead — <i>Sentence Administration Act 1998</i>

