

South Australia



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ELIZABETHAE II REGINAE
A.D. 2000

**STATUTES AMENDMENT AND REPEAL (SECURITY AND ORDER AT
COURTS AND OTHER PLACES) ACT 2000**

No. 49 of 2000

[Assented to 20 July 2000]

An Act to amend the Sheriff's Act 1978, the Courts Administration Act 1993 and the Ombudsman Act 1972, and to repeal the Law Courts (Maintenance of Order) Act 1928.

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The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Amendment and Repeal (Security and Order at Courts and Other Places) Act 2000*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

**PART 2
AMENDMENT OF SHERIFF'S ACT 1978**

Substitution of long title

4. The long title of the principal Act is repealed and the following long title is substituted:

An Act to provide for the appointment of the sheriff and other officers and for their duties and powers, including duties and powers relating to security and order at courts and other places; and for other purposes.

Insertion of Part 1 heading

5. The following heading is inserted before section 1 of the principal Act:

**PART 1
PRELIMINARY**

Amendment of s. 4—Interpretation

6. Section 4 of the principal Act is amended—

(a) by inserting before the definition of "court" the following definition:

"Administrator" means the person for the time being holding or acting in the office of the State Courts Administrator under the *Courts Administration Act 1993*;

(b) by inserting after paragraph (c) of the definition of "court" the following paragraph:

(d) the Youth Court of South Australia;;

(c) by inserting after the definition of "judge" the following definitions:

"participating body" means—

- (a) a participating court within the meaning of the *Courts Administration Act 1993*;
- (b) a person or body declared by regulation to be a participating body;

"premises of a participating body" means any premises or place occupied by a participating body in connection with its operations (whether on a permanent or temporary basis) and includes any premises or place at which the body is conducting a view or inspection for the purposes of proceedings;

"principal officer"—

- (a) in relation to a participating body that is a participating court within the meaning of the *Courts Administration Act 1993*—means the judicial head of the participating court;
- (b) in relation to any other participating body—means the officer designated by regulation as the principal officer of the body for the purposes of this Act;

"proceedings" includes any form of inquiry, examination or proceeding conducted by or before a participating body;

"restricted item" means—

- (a) an explosive, an explosive device or an incendiary device;
- (b) a dangerous article, firearm, offensive weapon or prohibited weapon, in each case within the meaning of section 15 of the *Summary Offences Act 1953*;
- (c) an item that a person is prohibited from using or possessing while on the premises (or a particular part of the premises) of a participating body by rules of the body or by direction of the body or a member of the body given generally or in a specific case;
- (d) any other item that is reasonably capable of being used to jeopardise the security of persons or property or the orderly conduct of proceedings;

"security officer" means—

- (a) the sheriff;
- (b) a deputy sheriff;
- (c) a sheriff's officer appointed by the sheriff to be a security officer;
- (d) a police officer authorised in accordance with an arrangement under section 9D to exercise the powers of a security officer;;

(d) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsection:

(2) For the purposes of this Act, a person is required by law to attend the premises of a participating body if, and only if—

- (a) the person is brought to the premises in lawful custody; or
- (b) the person attends the premises as required by the terms or conditions of a bail agreement; or
- (c) the person attends the premises in obedience to an order, summons, subpoena, or any other process having the same effect as a summons or subpoena, made or issued by the participating body or a member or officer of the participating body; or
- (d) the person attends the premises in obedience to a summons under the *Juries Act 1927*.

Insertion of Part 2 heading

7. The following heading is inserted before section 5 of the principal Act:

**PART 2
SHERIFF'S OFFICE**

Amendment of s. 6—Deputy sheriffs and sheriff's officers

8. Section 6 of the principal Act is amended by striking out from subsection (4) "is entitled to such fees as are prescribed" and substituting "is to be appointed on terms and conditions approved by the State Courts Administration Council".

Amendment of s. 9—Sheriff to attend at criminal sittings

9. Section 9 of the principal Act is amended by striking out from subsection (1) "any criminal sittings of the Supreme Court or a district criminal court" and substituting "any criminal session of a court".

Insertion of Part 3

10. The following Part is inserted after section 9 of the principal Act:

**PART 3
SECURITY AND ORDER AT COURTS AND OTHER PLACES**

DIVISION 1—ADMINISTRATION

Sheriff's responsibilities

9A. The sheriff is responsible to the principal officer of a participating body for providing assistance in the maintenance of security and orderly conduct at the premises of the body.

Security officers

9B. (1) The sheriff may appoint sheriff's officers as security officers.

(2) An appointment under subsection (1) may be made subject to conditions limiting the powers exercisable by the security officer.

(3) The sheriff may, by notice in writing to a security officer—

(a) vary or revoke a condition of the appointment or impose a condition; or

(b) revoke the appointment.

(4) If a person appointed as a security officer ceases to be a sheriff's officer, the person's appointment as a security officer is revoked.

Identification of security officers

9C. (1) A security officer appointed by the sheriff must be issued with an identity card in a form approved by the Administrator—

(a) containing a photograph of the person and the person's name or a unique identification code; and

(b) stating that the person is a security officer under this Act.

(2) If the powers of a security officer have been limited by condition, the identity card must contain a statement of those limitations.

(3) A security officer must, at the request of a person in relation to whom the officer intends to exercise any powers under this Act or any other Act, produce his or her identity card for inspection by the person.

(4) If a person in possession of an identity card issued to the person under this section ceases to be a security officer, the person must forthwith return the identity card to the sheriff.

Maximum penalty: \$1 250.

Arrangements under which police officers may exercise powers of security officers

9D. (1) The sheriff may enter into an arrangement with the Commissioner of Police under which police officers are authorised (without appointment) to exercise the powers of security officers on a temporary basis.

(2) In exercising powers pursuant to such an arrangement, a police officer is responsible to the sheriff.

(3) In any proceedings an apparently genuine document purporting to be a certificate of the sheriff certifying that a specified police officer was authorised for a specified period or at a specified time or in specified circumstances to exercise the powers of a security officer in accordance with an arrangement under subsection (1) constitutes proof, in the absence of proof to the contrary, of the matters so certified.

DIVISION 2—GENERAL POWERS

General powers

9E. (1) A security officer may, subject to the conditions of the officer's appointment, exercise the following powers:

- (a) the officer may give a person on or within the precincts of the premises of a participating body reasonable directions for the purposes of maintaining or restoring security or orderly conduct at the premises or for securing the safety of any person arriving at, attending or departing from the premises;
- (b) if a person refuses to comply with a direction given under paragraph (a) or a person on or within the precincts of the premises of a participating body is behaving in an unlawful manner, the officer may—
 - (i) refuse the person entry to or remove the person from the premises or part of the premises of the participating body using only such force as is reasonably necessary for the purpose; or
 - (ii) cause the person to be detained and handed over into the custody of a police officer as soon as reasonably practicable;
- (c) the officer may assist in bringing a person who is in lawful custody to the premises of a participating body, or in taking a person who is in lawful custody from the premises of a participating body to a place at which the person is being or is to be detained;
- (d) the officer may take into custody a person who is on the premises of a participating body and whose release on bail is revoked by the body;
- (e) the officer may keep in custody a person who is on the premises of a participating body and who is in lawful custody or surrenders himself or herself into the custody of the body;
- (f) the officer may, without warrant, arrest a person who—
 - (i) escapes from the custody of a security officer; or
 - (ii) appears to have escaped from lawful custody while on, or being brought to or taken from, the premises of a participating body;
- (g) the officer may, at the direction of a participating body or a member of a participating body—
 - (i) keep in custody any person who is to appear before the body and who is on the premises of the body;
 - (ii) restrain a person appearing before the body or take other action for the purposes of maintaining or restoring security or orderly conduct in proceedings before the body;

- (h) if specified persons are not entitled to attend proceedings before a participating body or the proceedings are not open to the public—
- (i) the officer may require any person on or about to enter a part of the premises of a participating body where the proceedings are being or are to be conducted to provide information reasonably required for the purposes of determining whether the person is entitled to attend the proceedings; and
 - (ii) if a person refuses to comply with a requirement under subparagraph (i) or the officer believes on reasonable grounds that a person is not entitled to attend the proceedings, the officer may refuse the person entry to or remove the person from the premises of the participating body, or the part of the premises where the proceedings are being or are to be conducted, using only such force as is reasonably necessary for the purpose.

(2) A person who refuses to comply with a direction of a security officer given under subsection (1)(a) is guilty of an offence.

Maximum penalty: \$2 500 or imprisonment for 6 months.

DIVISION 3—POWERS OF SEARCH

Conduct of search for restricted items

9F. (1) A security officer may, subject to the conditions of the officer's appointment, exercise the following powers in relation to a person who is on or about to enter the premises of a participating body:

- (a) the officer may require the person—
 - (i) to submit to a search of the person for the presence of restricted items by means of a scanning device;
 - (ii) to allow the person's possessions to be searched for the presence of restricted items by means of a scanning device or by a physical search;
 - (iii) to do anything reasonably necessary for the purposes of a search under this paragraph;
- (b) the officer may require the person to inform the officer whether or not the person is required by law to attend the premises;
- (c) if the person is required by law to attend the premises, the officer may require the person—
 - (i) to submit to a physical search of the person for the presence of restricted items;
 - (ii) to do anything reasonably necessary for the purposes of the search;

- (d) if there are reasonable grounds for suspecting that a restricted item is in the clothing or on the body of the person, the officer may require the person—
- (i) to produce the item for inspection;
 - (ii) to submit to a physical search of the person for the presence of restricted items;
 - (iii) to do anything reasonably necessary for the purposes of the search.

(2) The following provisions apply to a search of a person by means of a scanning device carried out under this section:

- (a) the search must be conducted by use of an electronic or mechanical scanning device designed to be used without coming into contact with the body of the person the subject of the search;
- (b) without limiting the requirements that may be made under subsection (1)(a)(iii), the person may be required—
 - (i) to remove all items from the pockets of the person's clothing; or
 - (ii) to adopt certain postures;
- (c) the person cannot be required to remove clothing or to open his or her mouth and nothing may be introduced into an orifice of the person's body;
- (d) the search must be carried out expeditiously and in a manner that avoids undue humiliation of the person.

(3) The following provisions apply to a search of possessions by means of a scanning device, or by a physical search, carried out under this section:

- (a) without limiting the requirements that may be made under subsection (1)(a)(iii), the person may be required—
 - (i) to hand over bags or possessions to the officer; or
 - (ii) to open bags or other possessions or to allow bags or other possessions to be opened;
- (b) the search must be carried out expeditiously.

(4) The following provisions apply to a physical search of a person carried out under this section:

- (a) without limiting the requirements that may be made under subsection (1)(c)(ii) or (d)(iii), the person may be required—
 - (i) to remove all items from the pockets of the person's clothing; or
 - (ii) to open his or her mouth; or

- (iii) to adopt certain postures; or
 - (iv) to remove outer clothing including footwear and headwear; or
 - (v) to submit to being frisked;
- (b) the person cannot be required to remove inner clothing or underwear and nothing may be introduced into an orifice (including the mouth) of the person's body;
- (c) except in circumstances where it is not practicable—
- (i) at least two persons (apart from the person being searched) must be present at all times during the search; and
 - (ii) the search of the person must be carried out by an officer of the same sex as the person;
- (d) the search must be carried out expeditiously and in a manner that avoids undue humiliation of the person and, as far as reasonably practicable, avoids offending cultural values or religious beliefs genuinely held by the person.
- (5) If a person does not comply with a requirement made under subsection (1), a security officer may—
- (a) in the case of a person who is required by law to attend the premises—
 - (i) refuse the person entry to or remove the person from the premises or part of the premises, using only such force as is reasonably necessary for the purpose; or
 - (ii) detain the person and apply reasonable force to secure compliance with the requirement or to remove an item required to be produced (but force cannot be applied to open the person's mouth, or to remove anything from the person's mouth, except by or under the supervision of a registered medical practitioner);
 - (b) in any other case—refuse the person entry to or remove the person from the premises or part of the premises, using only such force as is reasonably necessary for the purpose.
- (6) Failure of a person to comply with a requirement made under subsection (1)(a) does not of itself constitute grounds for suspecting that there is a restricted item in the clothing or on the body of the person.
- (7) If a person refuses to comply with a requirement made under subsection (1)(b), the person will be taken, for the purposes of this Part, to be required by law to attend the premises whether or not that is in fact the case.

DIVISION 4—MISCELLANEOUS

Dealing with restricted and other items

9G. If a security officer finds, in the possession of a person who is on or about to enter the premises of a participating body—

- (a) a restricted item; or
- (b) an item that the officer believes on reasonable grounds to be a restricted item; or
- (c) an item that the officer believes on reasonable grounds to be in the unlawful possession of the person,

the following provisions apply:

- (d) the officer may refuse the person entry to or remove the person from the premises or part of the premises, using only such force as is reasonably necessary for the purpose;
- (e) the officer may, where the person is in possession of an item referred to in paragraph (c), cause the person and the item to be detained and handed over into the custody of a police officer as soon as reasonably practicable;
- (f) the officer may require the person to surrender the item;
- (g) if a person who is required by law to attend the premises refuses to comply with a requirement made under paragraph (f), the officer may apply reasonable force to remove the item from the person's possession;
- (h) if an item is so surrendered or removed, the officer must—
 - (i) in the case of an item referred to in paragraph (a) or (b), cause it to be held in safe keeping while the person is on the premises;
 - (ii) in the case of an item referred to in paragraph (c), cause the item to be handed over into the custody of a police officer as soon as reasonably practicable, together with any relevant information the officer may have.

Security officer may act on reasonable belief that person required by law to attend premises

9H. If a security officer believes on reasonable grounds that a person is required by law to attend the premises of a participating body, nothing done by the officer in relation to the person in the exercise or purported exercise of powers under this Part is rendered unlawful by reason of the fact that the person is not required by law to attend those premises.

Refusal of entry to or removal from premises is no excuse for non-attendance

9I. The fact that a person is lawfully refused entry to, or removed from, premises or a part of premises under this Part is not, for the purposes of any Act or law, an excuse for non-compliance with a requirement or undertaking to attend the premises.

Insertion of Part 4 heading

11. The following heading is inserted before section 10 of the principal Act:

**PART 4
MISCELLANEOUS**

Substitution of s. 10

12. Section 10 of the principal Act is repealed and the following section is substituted:

Procedure on arrest

10. Subject to any other Act, a person arrested by the sheriff, a deputy sheriff or a sheriff's officer pursuant to a process issued by a participating body, a member or officer of a participating body or a justice must be brought before the body specified in the process as soon as reasonably practicable and may be detained until that happens.

Amendment of s. 11—Offences

13. Section 11 of the principal Act is amended—

(a) by striking out subsection (1) and substituting the following subsection:

(1) A person who hinders or obstructs the sheriff, a deputy sheriff, a sheriff's officer, or a person assisting the sheriff, a deputy sheriff or a sheriff's officer in the performance or exercise of functions or powers conferred by this or any other Act (including powers conferred on a person in the capacity of security officer) is guilty of an offence.

Maximum penalty: \$2 500 or 6 months imprisonment.;

(b) by striking out subsection (3) and substituting the following subsection:

(3) A person arrested under subsection (2) must be handed over into the custody of a police officer as soon as reasonably practicable and may be detained until that happens.;

(c) by striking out subsection (4);

(d) by striking out subsection (5) and substituting the following subsection:

(5) A person who falsely represents, by words or conduct, that he or she is the sheriff, a deputy sheriff, a sheriff's officer or a security officer, is guilty of an offence.

Maximum penalty: \$2 500 or 6 months imprisonment.

Insertion of s. 15A

14. The following section is inserted after section 15 of the principal Act:

Non-derogation

15A. Nothing in this Act derogates from the powers of the sheriff or a participating body under any other Act or law.

Amendment of s. 16—Regulations

15. Section 16 of the principal Act is amended—

(a) by striking out "The Governor may, by regulation" and substituting "Without limiting the generality of subsection (1), the regulations may";

(b) by inserting after paragraph (a) the following paragraphs:

(ab) regulate the performance of the duties of security officers or otherwise regulate matters relating to security or orderly conduct at the premises of participating bodies;

(ac) provide for the safe keeping of items surrendered or removed from a person's possession under this Act and for the disposal of any such items that remain unclaimed;;

(c) by inserting after paragraph (e) the following paragraph:

(f) impose fines, not exceeding \$2 500, for offences against the regulations.;

(d) by inserting before its present contents as amended by this section (now to be designated as subsection (4)) the following subsections:

(1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

(2) Subject to subsection (3), a regulation may only be made on the recommendation of the State Courts Administration Council.

(3) The recommendation of the State Courts Administration Council is not required for a regulation made under subsection (4)(b).

Statute law revision amendments

16. The principal Act is further amended in the manner indicated in the Schedule.

**PART 3
AMENDMENT OF COURTS ADMINISTRATION ACT 1993**

Amendment of s. 12—Delegation

17. Section 12 of the principal Act is amended by inserting in subsection (1) "or any other" after "this".

**PART 4
AMENDMENT OF OMBUDSMAN ACT 1972**

Amendment of s. 3—Interpretation

18. Section 3 of the principal Act is amended—

(a) by striking out from paragraph (a) of the definition of "administrative act" in subsection (1) "or related to the execution of judicial process";

(b) by inserting after paragraph (ba) of the definition of "authority" in subsection (1) the following paragraph:

(bb) the sheriff; or;

(c) by striking out subsection (2) and substituting the following subsection:

(2) For the purposes of this Act—

(a) a person engaged or employed in the administration of, or in the performance of functions in or on behalf of, an agency to which this Act applies will be taken to be engaged in the work of that agency; and

(b) deputy sheriffs and sheriff's officers will be taken to be engaged in the work of the sheriff and the sheriff will be regarded as an employer in relation to deputy sheriffs and sheriff's officers.

Amendment of s. 9—Delegation

19. Section 9 of the principal Act is amended by inserting in subsection (1) "or any other" before "Act".

Amendment of s. 19A—Ombudsman may issue direction in relation to administrative act

20. Section 19A of the principal Act is amended by inserting after subsection (7) the following subsection:

(8) This section does not apply in relation to the sheriff.

Amendment of s. 25—Proceedings on the completion of an investigation

21. Section 25 of the principal Act is amended by inserting in subsection (3) "and, in the case of a report or recommendation relating to the sheriff, to the State Courts Administration Council" after "Minister".

Amendment of s. 30—Immunity from liability

22. Section 30 of the principal Act is amended—

(a) by inserting in subsection (1) "or any other" before "Act";

(b) by inserting in subsection (2) "or any other" before "Act".

PART 5

REPEAL OF LAW COURTS (MAINTENANCE OF ORDER) ACT 1928

Repeal

23. The *Law Courts (Maintenance of Order) Act 1928* is repealed.

Transitional provision

24. (1) A person who was, immediately before the commencement of this section, employed as a court orderly subject to the *Public Sector Management Act 1995* continues in employment as a sheriff's officer and member of the staff of the State Courts Administration Council and will be taken to have been appointed by the sheriff as a security officer.

(2) A person who was, immediately before the commencement of this section, employed as a court orderly but not subject to the *Public Sector Management Act 1995* continues in employment as a sheriff's officer appointed under section 6(3) of the *Sheriff's Act 1978* on the same terms and conditions as applied to the person's employment as a court orderly immediately before that commencement and will be taken to have been appointed by the sheriff as a security officer.

(3) Nothing in this section—

- (a) affects an employee's remuneration; or
- (b) affects the existing or accrued entitlements of an employee; or
- (c) interrupts continuity of service; or
- (d) constitutes a retrenchment or redundancy.

SCHEDULE

Statute Law Revision Amendments of Sheriff's Act 1978

The *Sheriff's Act 1978* is further amended as follows:

| Provision Amended | How Amended |
|-------------------|--|
| section 2 | Repeal this section. |
| section 3 | Repeal this section. |
| section 7(1)(a) | Leave out "of his". |
| section 7(3) | Leave out "subsection (2) of this section" and insert "(2)". |
| section 8 | Leave out "his" and insert "the person's". |
| | Leave out "shall", first occurring, and insert "must". |
| section 9(1) | Leave out "him" and insert "the sheriff". |
| | Leave out "shall" second occurring. |
| | Leave out "shall" and insert "must". |
| section 9(2) | Leave out "his" and insert "the sheriff's". |
| | Leave out "shall" and insert "must". |
| section 11(2) | Leave out "his" and insert "the sheriff's". |
| | Leave out "of this section". |
| section 12(1) | Leave out "to him". |
| | Leave out "shall" and insert "will". |
| section 12(3) | Leave out "of this section". |
| section 13 | Repeal this section. |
| section 14 | Leave out "his" and insert "the sheriff's". |
| section 16(e) | Leave out "upon" and insert "on". |