

Legislative Council—No 88

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South Australia

Statutes Amendment (Young Offenders) Bill 2007

A BILL FOR

An Act to amend various Acts to make provision for serious repeat offending by young people.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Young Offenders) Act 2007*.

2—Commencement

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

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

10 4—Amendment of section 5AA—Aggravated offences

- (1) Section 5AA(1)(h)—after "persons" insert:
 - (including persons who are children)

(2) Section 5AA(1)—after paragraph (i) insert:

- (ia) in the case of an offence constituted under Part 7B where the principal offence is an aggravated offence—the principal offender was, to the knowledge of the offender under that Part, a child;

Part 3—Amendment of *Criminal Law (Sentencing) Act 1988*

5—Amendment of section 10—Matters to be considered by sentencing court

Section 10(1)—after paragraph (ec) insert:

- (ed) if the offence was committed by an adult in circumstances where the offending conduct was seen or heard by a child (other than the victim (if any) of the offence or another offender)—those circumstances;

Part 4—Amendment of *Young Offenders Act 1993*

6—Amendment of section 3—Objects and statutory policies

Section 3(2a)(b)—delete paragraph (b) and substitute:

- (b) if the sanctions are imposed by a court on a youth who is being dealt with as an adult (whether because the youth's conduct is part of a pattern of repeated illegal conduct or for some other reason), regard should be had—
 - (i) to the deterrent effect any proposed sanction may have on other youths; and
 - (ii) the balance to be achieved between—
 - (A) the protection of the community; and
 - (B) the need to rehabilitate the youth.

7—Insertion of Part 4 Division A1

Part 4—before Division 1 insert:

Division A1—Interpretation

15A—Interpretation

For the purposes of this Part, the following matters must be taken into consideration by the DPP or the Magistrates Court (as the case requires) in deciding whether a youth poses an appreciable risk to the safety of the community:

- (a) the gravity of the offence with which the youth is to be charged;
- (b) if the offence to be charged is part of a pattern of repeated offending by the youth—that fact and the circumstances surrounding the alleged offence;
- (c) the degree to which the youth has previously complied—

- (i) with any undertaking entered into by, or requirement or obligation imposed on, the youth under this Act; or
 - (ii) with any bail agreement under the *Bail Act 1985*;
- 5 (d) if the youth has previously been detained under this Act—
- (i) the behaviour of the youth while so detained; and
 - (ii) any rehabilitation of the youth while so detained;
- 10 (e) if the youth has previously been released on licence under this Act—the degree to which the youth complied with any condition specified in the licence;
- (f) any other matter that the DPP or the Magistrates Court (as the case may be) thinks fit in the circumstances.

8—Amendment of section 16—Where charge is to be laid

- (1) Section 16—delete "If" and substitute:

15 Subject to this section, if

- (2) Section 16—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

- 20 (2) The DPP may, instead of laying a charge of an offence against a youth before the Court, lay the charge before the Magistrates Court if—

- (a) the youth is charged with a major indictable offence; and

Note—

See also section 102 of the *Summary Procedure Act 1921*.

- 25 (b) the DPP is of the opinion that the youth poses an appreciable risk to the safety of the community and should, therefore, be dealt with in the same way as an adult.

9—Amendment of section 17—Proceedings on charge laid before Youth Court

- (1) Section 17(1)—after "charge" first occurring insert:

laid before the Court

- 30 (2) Section 17(3)(c)—delete "Director of Public Prosecutions" and substitute:

DPP

10—Insertion of section 17A

After section 17 insert:

17A—Proceedings on charge laid before Magistrates Court

- 35 (1) Subject to this section, Part 5 of the *Summary Procedure Act 1921* applies to the procedure to be followed in relation to a charge of an offence that has, under this Division, been laid against a youth before the Magistrates Court.

- (2) At the conclusion of the preliminary examination, the Magistrates Court may—
- (a) if of the opinion that the youth poses an appreciable risk to the safety of the community—commit the youth for trial or sentence (as the case requires) to the Supreme Court or the District Court;
 - (b) in any other case—commit the youth for trial or sentence (as the case requires) to the Court.

11—Amendment of heading to Part 4 Division 2

Heading to Part 4, Division 2—after "**trial**" insert:

in Youth Court