

SOUTH AUSTRALIA

YOUTH COURT ACT 1993

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **14 December 1995**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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being

Youth Court Act 1993 No. 58 of 1993
[Assented to 27 May 1993]¹

as amended by

Statutes Amendment (Courts Administration Staff) Act 1995 No. 85 of 1995 [Assented to 30 November 1995]²

¹ Came into operation 1 January 1994: *Gaz.* 4 November 1993, p. 2177.

² Came into operation 14 December 1995: *Gaz.* 14 December 1995, p. 1641.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix 1. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.*

An Act to establish the Youth Court of South Australia; to define its jurisdiction and powers; to make a consequential amendment to the Courts Administration Act 1993; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Youth Court Act 1993*.

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears—

"**Court**" or "**Youth Court**" means the *Youth Court of South Australia*;

"**Department**" means the *Department of Family and Community Services*;

"**evidentiary material**" means any document, object or substance of evidentiary value in proceedings before the Court and includes any document, object or substance that should, in the opinion of the Court, be produced for the purpose of enabling the Court to determine whether or not it has evidentiary value;

"**judicial office**" means the office of Judge, magistrate, special justice or justice;

"**judgment**" includes a declaration or order;

"**Registrar**" means the Registrar of the Court.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

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**PART 2
YOUTH COURT OF SOUTH AUSTRALIA**

DIVISION 1—ESTABLISHMENT OF COURT

Establishment of Court

4. The *Youth Court of South Australia* is established.

Court of record

5. The Court is a court of record.

Seals

6. (1) The Court will have such seals as are necessary for the transaction of its business.

(2) A document apparently sealed with a seal of the Court will, in the absence of evidence to the contrary, be taken to have been duly issued under the authority of the Court.

DIVISION 2—JURISDICTION OF THE COURT

Jurisdiction

7. The Court—

- (a) has jurisdiction to hear and determine proceedings under the *Children's Protection Act 1993*; and
- (b) has the civil and criminal jurisdiction conferred by the *Young Offenders Act 1993*; and
- (c) has the same jurisdiction as the Magistrates Court to make a summary protection order under the *Summary Procedure Act 1921* where the person for or against whom protection is sought is a child or youth, and has power under that Act to vary or revoke such an order previously made by the Court; and
- (d) has the powers conferred on a court or justice by the *Bail Act 1985*; and
- (e) has any other civil or criminal jurisdiction conferred by statute.

DIVISION 3—COURT'S DUTY TO EXPLAIN PROCEEDINGS

Duty to explain proceedings

8. The Court has a duty to ensure, as far as practicable, that parties to proceedings before the Court understand the nature and the purpose of those proceedings.

**PART 3
COMPOSITION AND ADMINISTRATION OF THE COURT**

DIVISION 1—THE COURT’S JUDICIARY

The Court’s judiciary

9. (1) The Court’s judiciary consists of—

- (a) the Senior Judge of the Court; and
- (b) the Judges of the Court; and
- (c) the Magistrates of the Court; and
- (d) the justices and special justices of the Court.

(2) The Senior Judge is a District Court Judge designated by proclamation as the Senior Judge of the Court.

(3) The Judges of the Court are District Court Judges designated by proclamation as Judges of the Court.

(4) The Magistrates of the Court are Magistrates designated by proclamation as Magistrates of the Court.

(5) The justices and special justices of the Court are justices and special justices designated by proclamation as justices and special justices of the Court.

(6) The designation of a person as a member of the Court’s judiciary does not prevent the person from performing judicial functions unrelated to the Court.

(7) A proclamation designating a person as a member of the Court’s judiciary must classify the person either as a member of the Court’s principal judiciary (i.e. those members of its judiciary who are to be occupied predominantly in the Court) or as a member of the Court’s ancillary judiciary (i.e. those members of its judiciary who are not occupied predominantly in the Court).

(8) A proclamation designating a person as a member of the Court’s principal judiciary must, subject to subsection (9), state a term for which the person is to be a member of the Court’s principal judiciary.

(9) A person cannot be a member of the Court’s principal judiciary for a term exceeding five years, or a series of terms exceeding five years in aggregate, unless that person is one of the first members of the Court’s judiciary, in which case the proclamation designating that person as a member of the Court’s principal judiciary may provide for a term of up to 10 years.

(10) A proclamation under this section may, subject to this section, be varied or revoked by subsequent proclamation.

The Senior Judge

10. (1) The Senior Judge is the principal judicial officer of the Court.

(2) The Senior Judge is responsible for the administration of the Court.

(3) In the absence of the Senior Judge from official duties, responsibility for administration of the Court devolves on the most senior of the Judges of the Court who is available to assume that responsibility.

DIVISION 2—THE COURT’S ADMINISTRATIVE AND ANCILLARY STAFF

Administrative and ancillary staff

11. (1) The Court’s administrative and ancillary staff consists of—

- (a) the Registrar; and
- (b) any other persons appointed to the non-judicial staff of the Court.

(2) The Court’s administrative and ancillary staff will be appointed under the *Courts Administration Act 1993*.

The Registrar

12. (1) The Registrar is the Court’s principal administrative officer.

(2) A person cannot be appointed to the office of Registrar of the Court, nor can a person holding that office be dismissed or reduced in status, except on the recommendation, or with the concurrence, of the Senior Judge.

Responsibilities of staff

13. A member of the Court’s administrative or ancillary staff is responsible to the Senior Judge (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties.

DIVISION 3—SITTING AND DISTRIBUTION OF BUSINESS

The Court, how constituted

14. (1) Subject to this section, the Court, when sitting to adjudicate on any matter must be constituted of a Judge or a Magistrate.

(2) The Court, when sitting to hear and determine a charge of a major indictable offence, must be constituted of a Judge.

(3) The Court, when constituted of a Magistrate in criminal proceedings, may not impose a sentence of detention for more than 2 years.

(4) The Court may be constituted of two justices or a special justice if there is no Judge or Magistrate available to constitute the Court but the Court, when so constituted—

- (a) may not impose a sentence of detention in criminal proceedings; and
- (b) may not hear and determine proceedings in which an order for the protection or care of a child is sought.

(5) If the Court, when constituted of a Magistrate, two justices or a special justice in criminal proceedings, is of the opinion that the limitation on its powers imposed under this section prevents it from imposing an appropriate sentence, the Court may adjourn the question of sentence for hearing and determination by a Judge.

(6) The Court may, at any one time, be separately constituted in accordance with this section for the hearing and determination of any number of separate matters.

(7) A Registrar or Justice may—

- (a) issue summonses and warrants on behalf of the Court; or
- (b) adjourn proceedings; or
- (c) exercise any procedural or non-judicial powers assigned by the rules.

Time and place of sittings

- 15.** (1) The Court may sit at any time (including a Sunday).
- (2) The Court may sit at any place (either in or outside the State).
- (3) The Court will sit at such times and places as the Senior Judge directs.

Adjournment from time to time and place to place

- 16.** The Court may—
- (a) adjourn proceedings from time to time and from place to place; or
 - (b) adjourn proceedings to a time and place to be fixed; or
 - (c) order the transfer of proceedings from place to place.

Segregation of proceedings

- 17.** The Court should, as far as practicable, segregate civil and criminal proceedings.

**PART 4
EVIDENTIARY POWERS**

Power to require attendance of witnesses and production of evidentiary material

18. (1) The Court may, on the application of a party to proceedings or on its own initiative, issue a summons requiring a person to appear before the Court at a specified time and place to give evidence or to produce evidentiary material (or both).

(2) A summons to produce evidentiary material may, instead of providing for production of the material before the Court, provide for production of the material to an officer of the Court nominated in the summons.

(3) If—

- (a) a person fails to comply with a summons under subsection (1); or
- (b) there are grounds for believing that, if such a summons were issued, a person would not comply with it,

the Court may issue a warrant to have the person arrested and brought before the Court.

Power to compel the giving of evidence

19. (1) A person who is called to give evidence or to produce evidentiary material before the Court and—

- (a) refuses or fails to make an oath or affirmation when required to do so by the Court; or
- (b) refuses or fails to give evidence on a subject on which that person is compellable to give evidence; or
- (c) refuses or fails, without reasonable excuse, to produce evidentiary material that the person is required by the Court to produce,

commits a contempt of the Court.

(2) This section applies whether the person was summoned before the Court, brought before the Court on a warrant, or came to the Court of his or her own volition.

Entry and inspection of property

20. (1) The Court may enter any land or building and carry out an inspection that the Court considers relevant to a proceeding before the Court.

(2) The Court may authorise an officer of the Court to enter any land or building and carry out an inspection that the Court considers relevant to a proceeding before the Court.

(3) A person who obstructs the Court, or a person authorised by the Court, in the exercise of a power of entry or inspection under this section commits a contempt of the Court.

Production of persons held in custody

21. If the Court requires the attendance before it of any person who is held in custody in the State, the Court may—

- (a) issue a summons or a notice requiring the custodian to produce the person before the Court at a nominated time and place; or
- (b) issue a warrant authorising the sheriff, or a member of the police force, to take the person from the custodian and bring him or her before the Court.

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**PART 5
APPELLATE PROCEEDINGS**

Appeals

22. (1) A party to proceedings in the Court may appeal against any judgment given in the proceedings (including an acquittal on a charge of a summary or indictable offence) but an appeal does not lie against a judgment in a preliminary examination.

(2) The appeal lies—

- (a) in the case of an interlocutory judgment given by a Magistrate, two justices or a special justice—to the Senior Judge;
- (b) in the case of an interlocutory judgment given by a Judge—to the Supreme Court constituted of a single Judge;
- (c) in the case of any other judgment given by a Magistrate, two justices or a special justice—to the Supreme Court constituted of a single Judge;
- (d) in the case of any other judgment given by a Judge—to the Full Court of the Supreme Court.

(3) On the appeal, the appellate court may exercise any one or more of the following powers:

- (a) it may confirm, vary or quash the judgment subject to the appeal and, if the court thinks the interests of justice so require, it may vary or quash any other judgment given in the same or related proceedings;
- (b) it may remit the matter for hearing or further hearing;
- (c) it may make any other order (including an order for costs) that may be necessary or desirable in the circumstances.

Reservation of question of law

23. (1) The Court may reserve any question of law arising in proceedings (except a preliminary examination) for determination by the Supreme Court.

(2) The Supreme Court may determine the question reserved and give any consequential orders or directions that may be appropriate in the circumstances of the case.

PART 6
CONFIDENTIALITY OF PROCEEDINGS

Persons who may be present in Court

24. (1) Subject to this section, no person may be present at any sitting of the Court except—

- (a) officers of the Court;
- (b) officers of the Department of Family and Community Services;
- (c) parties to the proceedings and their legal representatives;
- (d) witnesses while giving evidence or permitted by the Court to remain in the Court;
- (e) a guardian of the child or youth to whom the proceedings relate;
- (f) if the proceedings relate to an offence or alleged offence—
 - (i) an alleged victim of the offence and a person chosen by the victim to provide support for the victim;
 - (ii) a genuine representative of the news media;
 - (iii) if a guardian of the youth who committed, or is alleged to have committed, the offence is not present—an adult person nominated by the youth who has had a close association with the youth or has been counselling, advising or aiding the youth;
- (g) any member of the *Juvenile Justice Advisory Committee*;
- (h) any other persons authorised by the Court to be present.

(2) The Court may, however, exclude any of those persons from the Court if the Court considers it necessary to do so in the interests of the proper administration of justice.

Restriction on reports of proceedings

25. (1) A person must not publish, by radio, television, newspaper or in any other way, a report of proceedings in which a child or youth is alleged to have committed an offence or is alleged to be in need or care or protection, if—

- (a) the Court prohibits publication of any report of the proceedings; or
- (b) the report—
 - (i) identifies the child or youth or contains information tending to identify the child or youth;
 - (ii) reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any child or youth who is concerned in those proceedings either as a party or witness.

(2) The Court may, on such conditions as it thinks fit, permit the publication of particulars, pictures or film that would be otherwise suppressed from publication under subsection (1)(b).

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(3) A person who contravenes this section, or a condition imposed under subsection (2), is guilty of an offence.

Penalty: Division 5 fine.

**PART 7
MISCELLANEOUS**

Immunities

26. A Judge, Magistrate or other person exercising the jurisdiction of the Court has the same privileges and immunities from civil liability as a Judge of the Supreme Court.

Contempt in the face of the Court

27. A person who—

- (a) interrupts the proceedings of the Court or misbehaves before the Court; or
- (b) insults a Judge, Magistrate, Registrar or other officer of the Court who is acting in the exercise of official functions; or
- (c) refuses, in the face of the Court, to obey a lawful direction of the Court,

is guilty of a contempt of the Court.

Punishment of contempt

28. The Court may punish a contempt as follows:

- (a) if the person guilty of the contempt is a child or youth—it may impose a fine not exceeding a Division 7 fine or commit the child or youth to a training centre for a period not exceeding Division 7 imprisonment;
- (b) if the person guilty of the contempt is an adult—it may impose a fine not exceeding a Division 5 fine or commit the person to prison for a period not exceeding Division 5 imprisonment.

Authority for imprisonment or detention

29. (1) If the Court makes an order for imprisonment or detention, a copy of the order under the Court's seal is a sufficient warrant to apprehend the person against whom the order was made, to take that person to the prison, training centre or other place contemplated by the order, and to imprison or detain that person in accordance with the order.

(2) The Court may, however, issue a warrant for the person's apprehension and imprisonment or detention if the Court considers it appropriate to do so.

Age

30. If the Court does not have available to it satisfactory evidence of the age of a person in relation to whom proceedings have been brought before the Court, the Court may make its own estimate of the age of that person and act on the basis of that estimate.

Legal process

31. (1) Any process of the Court may be issued, served or executed on a Sunday as well as any other day.

(2) The validity of process is not affected by the fact that the person who issued it dies or ceases to hold office.

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Rules of Court

32. (1) Rules of the Court may be made—

- (a) regulating the business of the Court and the duties of the various officers of the Court;
- (b) regulating the custody and use of the Court's seals;
- (c) regulating the practice and procedure of the Court;
- (d) regulating the form in which evidence is taken or received by the Court;
- (e) regulating costs;
- (f) dealing with any other matter necessary or expedient for the effective and efficient operation of the Court.

(2) The rules may be made by the Judges and Magistrates of the Court.

(3) Rules of the Court take effect from the date of publication in the *Gazette* or some later date specified in the rules.

Court fees

33. (1) The Governor may, by regulation, prescribe and provide for the payment of fees in relation to proceedings in the Court.

(2) The Court may remit or reduce a fee on account of the poverty of the party by whom the fee is payable or for any other proper reason.

SCHEDULE

Consequential Amendment

The *Courts Administration Act 1993* is amended by striking out paragraph (c) of the definition of "**participating courts**" in section 4 and substituting the following paragraph:

- (c) the Youth Court of South Australia;

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APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

Transitional provisions from Statutes Repeal and Amendment (Children's Protection and Young Offenders) Act 1993, ss. 18 and 21

Transitional provisions—Youth Court

18. On the commencement of the *Youth Court Act 1993* the non-judicial staff of the *Children's Court of South Australia* are transferred to corresponding positions on the staff of the *Youth Court of South Australia*.

Interpretation of Acts and instruments

21. The following provisions apply to the interpretation of Acts and instruments (whether of a legislative character or not):

- (a) a reference to the *Children's Court of South Australia* will be construed as a reference to the *Youth Court of South Australia*;
- (b) a reference to an officer of the *Children's Court of South Australia* will be construed as a reference to an officer with corresponding functions and responsibilities in relation to the *Youth Court of South Australia*.

(Transitional provision from Statutes Amendment (Courts Administration Staff) Act 1995, s. 20)

20. (1) An appointment to a non-judicial office or position made or purportedly made before the commencement of this Act in accordance with an Act that is amended by this Act will be taken to have been duly made under the statutory provisions that, as amended by this Act, provide for the making of such an appointment as if this Act had been enacted and in force at the relevant time.

Legislative History

Section 11(2):

amended by 85, 1995, s. 19

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of assent to this Act divisional penalties and expiation fees are, as provided by Section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.