

SOUTH AUSTRALIA

**YOUNG OFFENDERS ACT 1993**

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 October 1998.*

*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.*

## **SUMMARY OF PROVISIONS**

### **PART 1 PRELIMINARY**

1. Short title
2. Commencement
3. Objects and statutory policies
4. Interpretation
5. Age of criminal responsibility

### **PART 2 MINOR OFFENCES**

#### **DIVISION 1—GENERAL POWERS**

6. Informal cautions
7. More formal proceedings

#### **DIVISION 2—SANCTIONS THAT MAY BE IMPOSED BY POLICE OFFICER**

8. Powers of police officer

#### **DIVISION 3—FAMILY CONFERENCE**

9. Youth Justice Co-ordinators
10. Convening of family conference
11. Family conference, how constituted
12. Powers of family conference

#### **DIVISION 4—LIMITATION ON PUBLICITY**

13. Limitation on publicity

### **PART 3 ARREST AND CUSTODY OF SUSPECTED OFFENDERS**

14. Application of general law
15. How youth is to be dealt with if not granted bail

### **PART 4 COURT PROCEEDINGS AGAINST A YOUTH**

#### **DIVISION 1—THE CHARGE**

16. Charge to be laid before the Court
17. Proceedings on the charge

#### **DIVISION 2—PROCEDURE ON PRELIMINARY EXAMINATION AND TRIAL**

18. Procedure on trial of offences
19. Committal for trial
20. Change of plea
21. Recording of convictions

**Young Offenders Act 1993**

---

**DIVISION 3—SENTENCE**

- 22. Power to sentence
- 23. Limitation on power to impose custodial sentence
- 24. Limitation on power to impose fine
- 25. Limitation on power to require community service
- 26. Limitation on Court's power to require bond
- 27. Court may require undertaking from guardians
- 28. Power to disqualify from holding driver's licence

**DIVISION 4—SENTENCING OF YOUTH BY SUPREME  
OR DISTRICT COURT**

- 29. Sentencing youth as an adult

**DIVISION 5—MISCELLANEOUS**

- 30. Court to explain proceedings etc.
- 31. Prohibition of joint charges
- 32. Reports
- 33. Reports to be made available to parties
- 34. Attendance at court of guardian of youth charged with offence
- 35. Counsellors, etc., may make submissions to court

**PART 5  
CUSTODIAL SENTENCES**

**DIVISION 1—YOUTH SENTENCED AS ADULT**

- 36. Detention of youth sentenced as an adult

**DIVISION 1A—DETENTION OR IMPRISONMENT IN A PRISON**

- 36A. Transfer following imposition of concurrent prison sentence

**DIVISION 2—YOUTHS CONVICTED OF MURDER**

- 37. Release on licence of youths convicted of murder

**DIVISION 2A—HOME DETENTION**

- 37A. Conditions of home detention
- 37B. Home detention officers
- 37C. Variation or revocation of home detention order
- 37D. General provisions

**DIVISION 3—RELEASE FROM DETENTION**

- 38. The Training Centre Review Board
- 39. Review of detention by Board
- 40. Leave of absence
- 41. Conditional release from detention
- 42. Absolute release from detention by Court

**DIVISION 4—TRANSFER OF YOUTHS UNDER DETENTION**

- 43. Interpretation
- 44. Transfer of young offenders to other States
- 45. Transfer of young offenders to this State
- 46. Adaptation of correctional orders to different correctional systems
- 47. Custody during escort

**DIVISION 5—ESCAPE FROM CUSTODY**

48. Escape from custody

**PART 6**

**COMMUNITY SERVICE AND OTHER WORK RELATED ORDERS**

49. Community service and work orders cannot be imposed unless there is a placement for the youth
- 49A. Restrictions on performance of community service and other work orders
50. Insurance cover for youths performing community service or other work orders
51. Community service or other work orders may only involve certain kinds of work

**PART 7**

**THE JUVENILE JUSTICE ADVISORY COMMITTEE**

52. Establishment of the *Juvenile Justice Advisory Committee*
53. Allowances and expenses
54. Removal from and vacancies of office
55. Functions of the Advisory Committee
56. Reports

**PART 8**

**MISCELLANEOUS**

57. Determination of a person's age
58. Prior offences
59. Detention and search by officers of Department
- 59A. Power of arrest by officers of the Department
60. Hindering an officer of the Department
61. Issue of warrant
62. Detention of youths in emergencies
63. Transfer of youths in detention to other training centre or prison
- 63A. Effect of remand in prison
- 63B. Application of Correctional Services Act 1982 to youth with non-parole period
64. Name and address of youth to be given in certain circumstances
65. Regulations

**APPENDIX**

**LEGISLATIVE HISTORY**

# YOUNG OFFENDERS ACT 1993

being

Young Offenders Act 1993 No. 57 of 1993  
[Assented to 27 May 1993]<sup>1</sup>

as amended by

Statutes Amendment (Truth in Sentencing) Act 1994 No. 35 of 1994 [Assented to 2 June 1994]<sup>2</sup>

Statutes Amendment (Courts Administration Staff) Act 1995 No. 85 of 1995 [Assented to 30 November 1995]<sup>3</sup>

Statutes Amendment (Sentencing of Young Offenders) Act 1996 No. 68 of 1996 [Assented to 15 August 1996]<sup>4</sup>

**Statutes Amendment (Young Offenders) Act 1998 No. 41 of 1998 [Assented to 13 August 1998]<sup>5</sup>**

<sup>1</sup> Came into operation 1 January 1994: *Gaz.* 4 November 1993, p. 2178.

<sup>2</sup> Came into operation 1 August 1994: *Gaz.* 14 July 1994, p. 69.

<sup>3</sup> Came into operation 14 December 1995: *Gaz.* 14 December 1995, p. 1641.

<sup>4</sup> Came into operation 8 October 1996: *Gaz.* 29 August 1996, p. 810.

<sup>5</sup> **Part 4 (ss. 10-15) came into operation 1 October 1998: *Gaz.* 10 September 1998, p. 815.**

**NOTE:**

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

**An Act to reconstitute the juvenile justice system in this State; 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 *Young Offenders Act 1993*.

**Commencement**

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

**Objects and statutory policies**

3. (1) The object of this Act is to secure for youths who offend against the criminal law the care, correction and guidance necessary for their development into responsible and useful members of the community and the proper realisation of their potential.

(2) The powers conferred by this Act are to be directed towards that object with proper regard to the following statutory policies:

- (a) a youth should be made aware of his or her obligations under the law and of the consequences of breach of the law;

\* \* \* \* \*

- (c) the community, and individual members of it, must be adequately protected against violent or wrongful acts.

(2a) In imposing sanctions on a youth for illegal conduct—

- (a) regard should be had to the deterrent effect any proposed sanction may have on the youth; and
- (b) if the sanctions are imposed by a court on a youth who is being dealt with as an adult, regard should also be had to the deterrent effect any proposed sanction may have on other youths.

(3) Effect is to be given to the following statutory policies so far as the circumstances of the individual case allow:

- (a) compensation and restitution should be provided, where appropriate, for victims of offences committed by youths;
- (b) family relationships between a youth, the youth's parents and other members of the youth's family should be preserved and strengthened;
- (c) a youth should not be withdrawn unnecessarily from the youth's family environment;
- (d) there should be no unnecessary interruption of a youth's education or employment;
- (e) a youth's sense of racial, ethnic or cultural identity should not be impaired.

**Young Offenders Act 1993**

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**Interpretation**

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

"**Chief Executive**" means the Chief Executive of the Department;

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

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

"**DPP**" means the Director of Public Prosecutions;

"**family conference**"—*see Part 2 Division 3*;

"**guardian**", in relation to a youth, means a parent of the youth or a person (other than the Minister) who is the guardian of the youth or has the immediate custody and control of the youth;

"**home detention officer**" means an employee of the Department assigned to the position of a home detention officer or authorised by the Minister (individually or by class) to exercise the powers of a home detention officer under this Act;

"**homicide**" means murder or manslaughter;

"**Judge**" means a Judge of the Court;

"**Minister**" means the Minister to whom the administration of this Act is committed by the Governor or the Minister on whom, or to whom, the relevant Ministerial power or function is conferred or assigned under the *Administration of Acts Act 1910*;

"**minor offence**" means an offence to which this Act applies that should, in the opinion of the police officer in charge of the investigation of the offence, be dealt with as a minor offence because of—

- (a) the limited extent of the harm caused through the commission of the offence; and
- (b) the character and antecedents of the alleged offender; and
- (c) the improbability of the youth re-offending; and
- (d) where relevant—the attitude of the youth's parents or guardians;

"**offence to which this Act applies**" means any offence alleged to have been committed by a youth except an offence excluded by regulation;

"**police officer**" means any member of the police force;

"**Registrar**" means the Registrar of the Court;

"**training centre**" means a home or facility established by the Minister under the *Community Welfare Act 1972* for the reception, detention, correction and training of youths;

"**Training Centre Review Board**" means the Training Centre Review Board established under Part 5;

"**working day**" means a day other than a Saturday, Sunday or public holiday;

**"youth"** means a person of or above the age of 10 years but under the age of 18 years and, in relation to proceedings for an offence or detention in a training centre, includes a person who was under the age of 18 years on the date of the alleged offence;

**"Youth Justice Co-ordinator"**—*see Part 2 Division 3.*

**Age of criminal responsibility**

**5.** A person under the age of 10 years cannot commit an offence.

**Young Offenders Act 1993**

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**PART 2  
MINOR OFFENCES**

**DIVISION 1—GENERAL POWERS**

**Informal cautions**

6. (1) If a youth admits the commission of a minor offence, and a police officer is of the opinion that the matter does not warrant any formal action under this Act, the officer may informally caution the youth against further offending and proceed no further against the youth.

(2) If a youth is informally cautioned under this section, no further proceedings may be taken against the youth for the offence in relation to which the youth was cautioned.

(3) No official record is to be kept of an informal caution.

**More formal proceedings**

7. (1) If a youth admits the commission of a minor offence, a police officer may deal with the matter as follows:

- (a) the officer may deal with the matter under Division 2; or
- (b) the officer may notify a Youth Justice Co-ordinator of the admission so that a family conference may be convened to deal with the matter; or
- (c) the officer may lay a charge for the offence before the Court.

(2) Before the police officer proceeds to deal with an offence under Division 2, or notifies a Youth Justice Co-ordinator of the admission so that a family conference may be convened—

- (a) the officer should explain to the youth—
  - (i) the nature of the offence and of the circumstances out of which it is alleged to arise; and
  - (ii) that the youth is entitled to obtain legal advice; and
  - (iii) that the youth is entitled (irrespective of whether he or she exercises the right to obtain legal advice) to require that the matter be dealt with by the Court; and
- (b) if the youth does not require the matter to be dealt with by the Court, the officer should put the admission into written form and, if possible, get the youth to sign the admission.

(3) An explanation given to a youth or the signing of an admission by a youth under subsection (2) should take place, if practicable, in the presence of—

- (a) a guardian of the youth; or
- (b) if a guardian is not available—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.

(4) A charge may only be laid—

- (a) if the youth requires the matter to be dealt with by the Court; or

- (b) if, in the opinion of the police officer, the matter cannot be adequately dealt with by the officer or a family conference because of the youth's repeated offending or some other circumstance of aggravation.

**DIVISION 2—SANCTIONS THAT MAY BE IMPOSED BY  
POLICE OFFICER**

**Powers of police officer**

8. (1) If a police officer decides to deal with a minor offence under this Division, the officer may administer a formal caution against further offending and exercise any one or more of the following powers:

- (a) the officer may require the youth to enter into an undertaking to pay compensation to the victim of the offence;
- (b) the officer may require the youth to enter into an undertaking to carry out a specified period (not exceeding 75 hours) of community service;
- (c) the officer may require the youth to enter into an undertaking to apologise to the victim of the offence or to do anything else that may be appropriate in the circumstances of the case.

(2) If a formal caution is to be administered—

- (a) the police officer must explain to the youth the nature of the caution and the fact that evidence of the caution may, if the youth is subsequently dealt with for an offence, be treated as evidence of commission of the offence in respect of which the caution is administered; and
- (b) the caution must, if practicable, be administered in the presence of—
  - (i) a guardian of the youth; or
  - (ii) if a guardian is not available—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; and
- (c) the caution must be put in writing and acknowledged in writing by the youth.

(3) Before requiring a youth to enter an undertaking under this section, the police officer must take all reasonable steps to give the guardians of the youth an opportunity to make representations with respect to the matter.

(4) In exercising powers under this section, the police officer must—

- (a) have regard to sentences imposed for comparable offences by the Court; and
- (b) have regard to any guidelines on the subject issued by the Commissioner of Police.

(5) If a youth enters into an undertaking under this section to apologise to the victim of the offence, the apology must be made in the presence of an adult person approved by a police officer.

**Young Offenders Act 1993**

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(6) If a youth enters into an undertaking under this section—

- (a) the undertaking must be signed by the youth, a representative of the Commissioner of Police, and, if practicable, by the youth's parents or guardians; and
- (b) the undertaking will have a maximum duration of three months.

(7) If a youth does not comply with a requirement of a police officer under this section, or an undertaking under this section, the officer or some other police officer may—

- (a) refer the matter to a Youth Justice Co-ordinator so that a family conference may be convened to deal with the offence; or
- (b) if the youth requires the matter to be dealt with by the Court—lay a charge for the offence before the Court.

(8) If—

- (a) a youth is cautioned, and no further requirements are made of the youth, under this section; or
- (b) all requirements made of the youth under this section (including obligations arising under an undertaking) are complied with,

the youth is not liable to be prosecuted for the offence.

(9) If a police officer deals with an offence under this Division, the officer must—

- (a) ask the victim of the offence whether he or she wishes to be informed of the identity of the offender and how the offence has been dealt with; and
- (b) if the victim indicates that he or she does wish to have that information—give the victim that information.

**DIVISION 3—FAMILY CONFERENCE**

**Youth Justice Co-ordinators**

9. (1) The following are to be Youth Justice Co-ordinators:

- (a) the Magistrates who are members of the Youth Court's principal or ancillary judiciary; and
- (b) the persons who are appointed as Youth Justice Co-ordinators.

(1a) Youth Justice Co-ordinators (who are not Magistrates) will be appointed under the *Courts Administration Act 1993*.

(2) A person appointed as a Youth Justice Co-ordinator will be appointed for a term not exceeding three years specified in the instrument of appointment and is, on the expiration of a term of appointment, eligible for re-appointment.

(3) A person cannot be appointed as a Youth Justice Co-ordinator unless the Senior Judge of the Youth Court has been consulted in relation to the proposed appointment.

(4) A person appointed as a Youth Justice Co-ordinator is responsible to the Senior Judge of the Youth Court (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties.

**Convening of family conference**

**10.** (1) When a police officer notifies a Youth Justice Co-ordinator of an offence so that a family conference may be convened to deal with the matter, the officer must supply the Youth Justice Co-ordinator with the names and addresses of—

- (a) the guardians of the youth; and
- (b) any relatives of the youth who may, in the opinion of the officer, be able to participate usefully in the family conference; and
- (c) any other person who has had a close association with the youth and may, in the opinion of the authorised officer, be able to participate usefully in the family conference; and
- (d) the victim of the offence and, if the victim is a youth, the guardians of the victim.

(2) The Youth Justice Co-ordinator—

- (a) will fix a time and place for the family conference; and
- (b) will issue a notice requiring the youth to attend at that time and place; and
- (c) will invite the persons referred to in subsection (1) and, in the case of the victim of the offence, will invite the victim to bring along some person of the victim's choice to provide assistance and support; and
- (d) will invite other persons, whom the Youth Justice Co-ordinator, after consultation with the youth and members of the youth's family, thinks appropriate to attend the conference at that time and place.

**Family conference, how constituted**

**11.** (1) A family conference consists of—

- (a) a Youth Justice Co-ordinator (who will chair the conference); and
- (b) the youth; and
- (c) such of the persons invited to attend the conference as attend in response to that invitation; and
- (d) a representative of the Commissioner of Police.

(2) A family conference should act if possible by consensus of the youth and such of the persons invited to attend the conference as attend in response to that invitation.

(3) A decision by a family conference is not however to be regarded as validly made unless the youth and the representative of the Commissioner of Police concur in the decision.

(4) A youth is entitled to be advised by a legal practitioner at a family conference.

**Young Offenders Act 1993**

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(5) If a family conference fails to reach a decision, the Youth Justice Co-ordinator must refer the matter to the Court and the Court may decide any question, and exercise any power, that could have been decided or exercised by the family conference.

**Powers of family conference**

**12.** (1) A family conference has the following powers:

- (a) the conference may administer a formal caution against further offending;
- (b) the conference may require the youth to enter into an undertaking to pay compensation to the victim of the offence;
- (c) the conference may require the youth to enter into an undertaking to carry out a specified period (not exceeding 300 hours) of community service;
- (d) the conference may require the youth to enter into an undertaking to apologise to the victim of the offence or to do anything else that may be appropriate in the circumstances of the case.

(2) In exercising powers under this section, the family conference must have regard to sentences imposed for comparable offences by the Court.

(3) If a formal caution is administered, the caution must be put in writing and acknowledged in writing by the youth.

(4) An undertaking will have a maximum duration of 12 months.

(5) If a youth enters into an undertaking to pay compensation, a copy of the undertaking must be filed with the Registrar and payments of compensation must be made to the Registrar who will disburse the compensation to the victims named in the undertaking.

(6) If a youth enters into an undertaking to carry out community service, a copy of the undertaking must be filed with the Registrar.

(7) If a youth enters into an undertaking under this section to apologise to the victim of the offence, the apology must be made in the presence of an adult person approved by the family conference or a Youth Justice Co-ordinator.

(8) If a youth—

- (a) fails to attend at the time appointed for a family conference; or
- (b) does not comply with a requirement of the family conference; or
- (c) does not comply with an undertaking under this section,

a police officer may lay a charge before the Court for the offence in relation to which the conference was convened.

(9) A charge may be laid under subsection (8) even though a period of limitation relating to the commencement of proceeding for the relevant offence has expired, but the charge must be laid not more than 12 months after the expiration of that period of limitation.

(10) If—

- (a) a youth is cautioned, and no further requirements are made of the youth, under this section; or
- (b) all requirements made of the youth under this section (including obligations arising from an undertaking given by the youth) are complied with,

the youth is not liable to be prosecuted for the offence.

(11) If a family conference deals with an offence under this Division, the Youth Justice Co-ordinator must—

- (a) ask the victim of the offence whether he or she wishes to be informed of the identity of the offender and how the offence has been dealt with; and
- (b) if the victim indicates that he or she does wish to have that information—give the victim that information.

#### DIVISION 4—LIMITATION ON PUBLICITY

##### **Limitation on publicity**

**13.** (1) A person must not publish, by radio, television, newspaper or in any other way, a report of any action or proceeding taken against a youth by a police officer or family conference under this Part if the report—

- (a) identifies the youth or contains information tending to identify the youth; or
- (b) reveals the name, address or school, or includes any particulars, picture or film that may lead to the identification, of any youth who is in any way concerned in the action or proceeding; or
- (c) identifies the victim or any other person involved in the action or proceeding (other than a person involved in an official capacity) without the consent of that person.

(2) A person employed or engaged in the administration of this Act must not divulge information about a youth against whom any action or proceeding has been taken under this Part except in the course of his or her official functions.

(3) A person who contravenes this section is guilty of an offence.

Maximum penalty:       \$10 000.

(4) This section does not prevent the disclosure of information under any other provision of this Act.

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**PART 3**  
**ARREST AND CUSTODY OF SUSPECTED OFFENDERS**

**Application of general law**

**14.** (1) The law of the State relating to criminal investigation, arrest, bail, remand and custody before proceedings for an offence are finally determined applies, subject to this Act, to youths with necessary adaptations and any further adaptations and modifications that may be set out in the regulations.

(2) If a youth is arrested on suspicion of having committed an offence, and the youth is to be dealt with under this Act for the offence, the officer responsible for the arrest and custody of the youth must, as soon as practicable after the arrest—

- (a) explain to the youth the nature of the allegations against him or her; and
- (b) inform the youth of his or her right to seek legal representation; and
- (c) take all reasonable steps to inform—
  - (i) the guardian of the youth;
  - (ii) if a guardian is not available—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,

of the arrest and invite him or her to be present during any interrogation or investigation to which the youth is subjected while in custody.

**How youth is to be dealt with if not granted bail**

**15.** (1) Subject to this section, if a youth is not granted bail under the *Bail Act 1985*, the youth must be detained by the Chief Executive with a person (where practicable), or in a place (other than a prison), approved by the Minister.

(1a) Subsection (1) does not apply in relation to a youth who is already in custody in a prison.

(2) If a youth is arrested outside an area specified in the regulations and it is not reasonably practicable to detain the youth as provided by subsection (1), the youth may be detained—

- (a) in a police prison; or
- (b) in a police station, watch-house or lock-up approved by the Minister.

(3) If a youth is detained in a police prison, police station, watch-house or lock-up in accordance with subsection (2), the person for the time being in charge of the police prison, police station, watch-house or lock-up must take such steps as are reasonably practicable to keep the youth from coming into contact with any adult person detained in that place.

**PART 4**  
**COURT PROCEEDINGS AGAINST A YOUTH**

**DIVISION 1—THE CHARGE**

**Charge to be laid before the Court**

**16.** If a youth is to be charged with an offence to which this Act applies, the charge must be laid before the Court.

**Proceedings on the charge**

**17.** (1) Subject to this Act, the Court will deal with a charge in the same way as the Magistrates Court deals with a charge of a summary offence and, in doing so, has the powers of the Magistrates Court.

(2) The Court may, even though a charge has been laid, refer the subject matter of the charge (after the youth's guilt has been established either by admission or by the Court's findings) to be dealt with by a police officer or by a family conference.

(3) If—

- (a) the offence with which the youth is charged is a homicide, or an offence consisting of an attempt to commit, or assault with intent to commit homicide; or
- (b) the offence with which the youth is charged is an indictable offence and the youth, after obtaining independent legal advice, asks to be dealt with in the same way as an adult; or
- (c) the Court or the Supreme Court determines, on the application of the Director of Public Prosecutions or a police prosecutor, that the youth should be dealt with in the same way as an adult because of the gravity of the offence, or because the offence is part of a pattern of repeated offending,

the Court will conduct a preliminary examination of the charge, and may commit the youth for trial or sentence (as the case requires) to the Supreme Court or the District Court.

**DIVISION 2—PROCEDURE ON PRELIMINARY EXAMINATION AND TRIAL**

**Procedure on trial of offences**

**18.** The procedure to be followed by and the powers of the Court on the trial of an offence are, subject to this Act, to be the same as for the trial of a summary offence in the Magistrates Court.

**Committal for trial**

**19.** If a preliminary examination is to be conducted by the Court, the procedure to be followed is by and the powers of the Court are, subject to this Act, the same as for a preliminary examination in the Magistrates Court.

**Change of plea**

**20.** Even though a plea of guilty to a charge has been entered, the Court may direct at any stage of proceedings before their final determination that the plea be withdrawn and a plea of not guilty entered.

**Recording of convictions**

**21.** If the Court finds a youth guilty of a major indictable offence, the Court should record a conviction for the offence unless there are in the opinion of the Court special reasons for not doing so, and a formal record of those is made in the Court's reasons for judgment.

**Young Offenders Act 1993**

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**DIVISION 3—SENTENCE**

**Power to sentence**

**22.** (1) Subject to this Division, the Court has the same powers to sentence a youth for an offence—

- (a) if the offence is a summary offence—as the Magistrates Court; or
- (b) if the offence is an indictable offence—as the District Court.

(2) Any powers conferred on a Minister of the Crown by the *Criminal Law (Sentencing) Act 1988* are exercisable, in relation to a youth or a sentence imposed on a youth, by a Minister assigned by the Governor to exercise such powers in relation to youths.

**Limitation on power to impose custodial sentence**

**23.** (1) Subject to subsection (6), the Court cannot sentence a youth to imprisonment.

(2) If an offence of which a youth is convicted, or found guilty, is punishable by imprisonment where committed by an adult, the Court may sentence the youth to—

- (a) detention in a training centre for a period not exceeding three years; or
- (b) home detention for a period not exceeding six months, or for periods not exceeding 6 months in aggregate over one year or less; or
- (c) detention in a training centre for a period not exceeding two years to be followed by home detention for a period not exceeding six months or for periods not exceeding 6 months in aggregate over one year or less.

(3) If, however, the maximum term of imprisonment prescribed for the offence is less than three years, the period of detention to which the youth is sentenced cannot exceed that maximum.

(4) A sentence of detention must not be imposed for an offence unless the Court is satisfied that, because of the gravity or circumstances of the offence, or because the offence is part of a pattern of repeated offending, a sentence of a non-custodial nature would be inadequate.

(5) A sentence of home detention—

- (a) must not be imposed unless the Court is satisfied that the residence the Court proposes to specify in its order is suitable and available for the detention of the youth and that the youth will be properly maintained and cared for while detained in that place; and
- (b) should not be imposed if the Court is not satisfied that adequate resources exist for the proper monitoring of the youth while on home detention by a home detention officer.

(6) If the Court sentences a youth to detention in respect of an offence and does not suspend the sentence—

- (a) where the youth is already in custody in a prison, the youth will serve the detention, or such part of it as the Court may direct, in a prison; or
- (b) where the youth has previously served a sentence of imprisonment or detention in a prison, the Court may direct that the youth serve the detention in a prison.

(7) The *Correctional Services Act 1982* applies to and in relation to a youth serving detention in a prison under subsection (6).

**Limitation on power to impose fine**

24. The Court may not impose a fine exceeding \$2 500 for an offence.

**Limitation on power to require community service**

25. (1) The Court may not require a youth to carry out community service if the aggregate requirement to which a youth is subject at any one time exceeds 500 hours.

(2) The period, to be stipulated by the Court, over which community service is to be performed may not exceed 18 months.

**Limitation on Court's power to require bond**

26. (1) The Court may not, in the exercise of its power to sentence a youth for an offence, require the youth to enter into a bond.

(2) The Court may, however, by order of the Court, impose an obligation of the kind that might otherwise have been imposed under a bond.

(3) The obligations imposed under subsection (2) may, for example, include the following:

(a) an obligation to submit to supervision as ordered by the Court;

(b) an obligation to participate in a specified programme, or to attend a specified activity centre;

(ba) an obligation to carry out specified work (whether for the benefit of a victim of the offence or for any other person or body);

(c) an obligation to reside where directed by the Court.

(4) A person who fails to comply with an obligation imposed under this section is guilty of an offence.

Maximum penalty: \$2 500 or detention for 6 months (or both).

**Court may require undertaking from guardians**

27. The Court may release a youth on an undertaking on condition that the guardians of the youth enter into a supplementary undertaking with the Court—

(a) to guarantee the youth's compliance with the conditions of the youth's undertaking; and

(b) to take specified action to assist the youth's development and to guard against further offending by the youth; and

(c) to report at intervals stated in the supplementary undertaking on the youth's progress.

**Power to disqualify from holding driver's licence**

28. (1) If the Court is of the opinion that a youth who has been found guilty of an offence is not a fit and proper person to hold or obtain a licence to drive a motor vehicle, or that disqualification from holding such a licence is an appropriate penalty for the offence committed, the Court may make an order disqualifying the youth from holding or obtaining such a licence, except for such purposes (if any) as may be specified in the order, for a period of stated duration commencing from a specified time.

**Young Offenders Act 1993**

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(2) On application by the youth, a Judge or Magistrate of the Court may, if satisfied that it is just or expedient to do so, vary or revoke any order for disqualification made under subsection (1).

(3) A youth is not entitled to apply to the Magistrates Court for an order removing a disqualification pursuant to section 172 of the *Road Traffic Act 1961* until after attaining the age of 18 years.

**DIVISION 4—SENTENCING OF YOUTH BY SUPREME  
OR DISTRICT COURT**

**Sentencing youth as an adult**

**29.** (1) Subject to this Act, where a youth is committed to the Supreme Court or the District Court for trial, and is found guilty on trial in that court, or is committed to the Supreme Court or the District Court for sentence, that court, on sentencing the youth, may—

- (a) deal with the youth as an adult; or
- (b) make any order in relation to the youth that may be made by the Youth Court on sentencing a youth; or
- (c) remand the youth to the Youth Court for sentencing.

(2) If a youth is found guilty by the Supreme Court or the District Court of an offence that is a lesser offence than the one on which the youth was committed for trial, the court cannot deal with the youth for that offence as if he or she were an adult unless—

- (a) the offence is an indictable (but not minor indictable) offence; and
- (b) the court is satisfied that, because of the gravity of the offence or the youth's history of offending, the youth should be dealt with as if he or she were an adult.

(3) If a youth is committed for trial or sentence in the Supreme Court or the District Court at his or her own request, the court cannot deal with the youth for the offence as if he or she were an adult unless the court is satisfied that, because of the gravity of the offence or the youth's history of offending, the youth should be dealt with as if he or she were an adult.

(4) A youth who is found guilty of murder must be sentenced to imprisonment for life.

**DIVISION 5—MISCELLANEOUS**

**Court to explain proceedings etc.**

**30.** (1) A court before which criminal proceedings are brought against a youth must satisfy itself that the youth understands the nature of those proceedings.

- (2) If the youth is not represented by counsel or solicitor, the court—
  - (a) must explain to the youth in simple language the elements of the offence charged, the nature of the allegations against the youth and the legal implications of those allegations; and
  - (b) must provide the youth with a written statement in the prescribed form of the youth's rights in respect of legal representation and of the way to proceed in order to obtain legal advice, representation or assistance.

(3) If a youth is sentenced to a fine or ordered to make any other payment of money, the court must give the youth a notice stating in simple language the amount the youth must pay and the time and place at which payment is to be, or may be, made.

(4) Non-compliance with this section does not invalidate a judgment or order of the court.

### **Prohibition of joint charges**

**31.** A youth cannot be charged jointly with an adult unless the charge is to be heard and determined by the Supreme Court or the District Court.

### **Reports**

**32.** (1) The Chief Executive must, at the request of a court by which a youth is to be sentenced, have a report prepared on the social background and personal circumstances of the youth.

(2) Such a report may not contain any recommendation about sentence.

(3) Subject to subsection (5), no report relating to the social background or personal circumstances of a youth may be tendered to a court before the court has found an offence proved against the youth.

(4) If a youth is found not guilty by a court, any report relating to the social background or personal circumstances of the youth prepared for the purposes of the proceedings must be destroyed.

(5) This section does not prevent the court from receiving during the course of a hearing any psychiatric or medical evidence relating to the youth, insofar as that evidence is relevant to the guilt or innocence of the youth.

(6) The court in determining sentence must not take into account any matter given in evidence, or appearing in any report presented, to the court, if the matter is disputed by the youth, any guardian of the youth or the prosecutor, unless the court has decided that the matter has been proved beyond reasonable doubt.

### **Reports to be made available to parties**

**33.** (1) In criminal proceedings against a youth, a copy of every report received by the court must, subject to any contrary order of the court, be furnished to the youth, to any guardian of the youth who is present in court, and to the prosecutor.

(2) The court may order that a copy of a report, or part of a report, be not furnished to a particular person if of the opinion that its disclosure to that person may be prejudicial to the welfare of the youth.

### **Attendance at court of guardian of youth charged with offence**

**34.** (1) Where a youth is before a court in proceedings under this Part, the court may order a guardian or guardians to attend at the court until the proceedings are completed, unless sooner excused by the court.

(2) When the court makes an order under subsection (1), it may adjourn the hearing of the case and have the order served on the guardian named in the order.

(3) Any person who, having been served with an order under this section, fails to attend the court in compliance with the order is guilty of an offence.

Maximum penalty: \$750.

**Young Offenders Act 1993**

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**Counsellors, etc., may make submissions to court**

**35.** In proceedings for an offence against a youth, a court may, on the application of a person who has been counselling, advising or aiding the youth, or on the application of a guardian of the youth, hear submissions that the person or guardian wishes to make in relation to the youth.

**PART 5  
CUSTODIAL SENTENCES**

**DIVISION 1—YOUTH SENTENCED AS ADULT**

**Detention of youth sentenced as an adult**

**36.** (1) Subject to any direction of the sentencing court to the contrary, a youth who has been dealt with as an adult and sentenced to imprisonment will serve that sentence in a training centre.

(2) If a youth is serving a sentence of imprisonment in a training centre, the sentencing court must, before the youth reaches 18 years of age, review the detention and either direct that the imprisonment in a training centre continue or that the youth be transferred to a prison.

\* \* \* \* \*

(3) Subject to subsection (4), while a youth is serving a sentence of imprisonment in a training centre, this Act applies to the youth, to the exclusion of the *Correctional Services Act 1982*, as if the youth had been sentenced to detention in a training centre.

(4) The following provisions of the *Correctional Services Act 1982* apply to and in relation to a youth who is serving a sentence of imprisonment in a training centre:

\* \* \* \* \*

(b) Division 3 of Part 6 (release on parole) applies to a youth in respect of whom a non-parole period has been fixed, with the following modifications:

- (i) a reference to the Board will be taken to be a reference to the Training Centre Review Board;
- (ii) a reference to a prisoner will be taken to be a reference to a youth;
- (iii) a reference to a prison will be taken to be a reference to a training centre;
- (iv) a reference to a parole officer will be taken to be a reference to an officer of the Department.

(5) If a youth who is on parole attains the age of 18 years—

- (a) the preceding provisions of this section cease to apply in relation to the youth; and
- (b) any reference in the parole conditions to the Training Centre Review Board will be taken to be a reference to the Parole Board; and
- (c) any reference in the parole conditions to an officer of the Department will be taken to be a reference to a parole officer.

**DIVISION 1A—DETENTION OR IMPRISONMENT IN A PRISON**

**Transfer following imposition of concurrent prison sentence**

**36A.** (1) If a youth who is serving a sentence of detention or imprisonment in a training centre (the "**youth sentence**") is sentenced to imprisonment for an offence committed after turning 18 years of age and that sentence is to be served concurrently with the youth sentence, the youth must, unless the sentencing court directs otherwise, be transferred to, and will serve those sentences in, a prison.

**Young Offenders Act 1993**

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(2) The *Correctional Services Act 1982* applies to and in relation to a youth transferred to a prison under this section.

(3) For the purposes of this section, a sentence of detention includes an order for detention issued for the enforcement of a community service order.

**DIVISION 2—YOUTHS CONVICTED OF MURDER**

**Release on licence of youths convicted of murder**

**37.** (1) If a youth who has been sentenced to imprisonment for life is being detained in a training centre, the Supreme Court may, on the application of the youth, authorise the release of the youth from detention on licence.

(2) On the Supreme Court authorising the release of a youth under subsection (1), the Training Centre Review Board must order the release of the youth on licence on the day specified by the Court.

(3) The release of a youth on licence under this section will be subject to such conditions as the Training Centre Review Board thinks fit and specifies in the licence.

(4) If the Supreme Court refuses an application by a youth for release on licence, the youth may not apply again for release for a period of six months, or such lesser or greater period as the Court may have directed on refusing the application.

(5) The Training Centre Review Board may, on application by the DPP or the youth, vary or revoke any condition of a licence under this section.

(6) The Training Centre Review Board may, on application by the DPP or the Minister, cancel a release on licence under this section if satisfied that the youth has contravened a condition of the licence.

(7) If an application has been made for the cancellation of a youth's release on licence, a member of the Training Centre Review Board may—

- (a) summons the youth to appear before the Board; or
- (b) apply to a justice for a warrant for the apprehension and detention of the youth pending determination of the application.

(8) If a youth summonsed to appear before the Training Centre Review Board fails to attend in compliance with the summons, the Board may—

- (a) determine the application in the youth's absence; or
- (b) direct a member of the Board to apply to a justice for a warrant for the apprehension and detention of the youth for the purpose of bringing him or her before the Board.

(9) A member of the Training Centre Review Board may apply to a justice for a warrant for the apprehension and return to custody of a youth whose release on licence has been cancelled by the Board.

(10) If a youth who has been released on licence commits an offence while subject to that licence and is sentenced to imprisonment or detention for that offence, the release on licence is, by virtue of this subsection, cancelled.

(11) If a youth who is to be returned to custody on cancellation of his or her release on licence has attained the age of 18 years, he or she will be returned to custody in such prison as the Chief Executive of the Department for Correctional Services directs.

(12) A youth released on licence under this section will, unless the release is earlier cancelled, remain subject to that licence until the Supreme Court, on the application of the DPP or the youth, discharges the youth absolutely from the sentence of life imprisonment.

(13) Both the DPP and the youth are parties to any application under this section.

(14) A copy of an application under this section must be served on a guardian of the youth unless—

- (a) it is not practicable to do so; or
- (b) the whereabouts of all of the guardians of the youth have not, after reasonable inquiry, been ascertained.

(15) For the purposes of determining an application under this section, the Supreme Court—

- (a) may hear, or receive submissions from, any person it thinks fit; and
- (b) may direct the Training Centre Review Board or any other body or person to furnish the Court with such reports as the Court may require.

(16) An appeal lies to the Full Court against—

- (a) a decision of the Supreme Court on an application by a youth to be released on licence under this section; or
- (b) a decision of the Supreme Court on an application by a youth to be discharged from a sentence of life imprisonment.

(17) Subject to a contrary order of the Full Court, an appeal cannot be commenced after 10 days from the date of the decision against which the appeal lies.

(18) On an appeal, the Full Court may—

- (a) confirm, reverse or annul the decision subject to appeal; and
- (b) make any order that it considers should have been made in the first instance; and
- (c) make any consequential or ancillary orders.

(19) Subject to subsection (20), where—

- (a) the Supreme Court decides—
  - (i) to release a youth on licence under this section; or
  - (ii) to discharge a youth released on licence from a sentence of life imprisonment; and

**Young Offenders Act 1993**

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(b) the DPP gives immediate notice that an appeal against the decision will be commenced, the decision has no force or effect until the outcome of the appeal is known.

(20) If the DPP gives notice under subsection (19) of an appeal against a decision of the Supreme Court but subsequently files with the Supreme Court a notice that the DPP does not desire to proceed with the appeal, the decision will take effect.

**DIVISION 2A—HOME DETENTION**

**Conditions of home detention**

**37A.** (1) A sentence of home detention imposed on a youth by a court is subject to the following conditions:

- (a) the youth must remain at a residence specified by the court throughout the period of home detention and must not leave that residence at any time except for the following purposes:
  - (i) remunerated employment; or
  - (ii) urgent medical or dental treatment for the youth; or
  - (iii) attendance at a course of education, training or instruction or any other activity as required by the court or as approved or directed by the home detention officer to whom the youth is assigned; or
  - (iv) any other purpose approved or directed by the home detention officer;
- (b) the youth must be of good behaviour throughout the period;
- (c) the youth must obey the lawful directions of the home detention officer throughout the period;
- (d) such other conditions as the Court may specify.

(2) The Court may vary or revoke a condition imposed under subsection (1)(d).

(3) In this section "residence" includes, if the youth is an Aborigine who resides on tribal lands or an Aboriginal reserve, such area of land as the Court may specify.

**Home detention officers**

**37B.** (1) On receiving a copy of an order for home detention, the Chief Executive must assign the youth to a home detention officer and may from time to time re-assign the youth to another home detention officer.

(2) A home detention officer to whom a youth is assigned—

- (a) may give reasonable written directions to the youth—
  - (i) requiring the youth to take up, or not to give up, some particular course of education, training or instruction; or
  - (ii) requiring the youth to take up, or not to give up, some particular employment; or
  - (iii) requiring the youth to attend some particular counselling course; and

(b) may give the youth other written directions of a kind authorised by the Minister either generally or in relation to the particular youth.

(3) Any home detention officer may at any time—

(a) enter or telephone the residence of a youth serving a sentence of home detention; or

(b) telephone the youth's place of employment or any other place at which the youth is required or permitted to attend; or

(c) question any person at that residence or place,

for the purposes of ascertaining whether or not the youth is complying with the conditions to which his or her home detention is subject.

(4) A person must not—

(a) hinder a home detention officer in the exercise of powers under this section; or

(b) fail to answer truthfully a question put to the person by a home detention officer pursuant to those powers.

Maximum penalty: \$2 500.

#### **Variation or revocation of home detention order**

**37C.** (1) The Court may vary an order for home detention if satisfied that the residence specified in the order is no longer suitable for detention of the youth and that there is some other suitable residence available for his or her detention.

(2) If the Court is satisfied that—

(a) a youth serving a sentence of home detention has breached a condition to which the home detention was subject; or

(b) the residence specified in the order is no longer suitable for the youth and no other suitable residence is available for his or her detention,

the Court may revoke the order for home detention.

(3) A youth is not in breach of the condition requiring the youth to remain at his or her residence if he or she leaves the residence for the purpose of averting or minimising a serious threat of risk or injury (to the youth or some other person).

(4) If the Court revokes an order for home detention it may impose some other sentence on the youth and, in doing so, must take into account the period served by the youth under the order.

(5) If an order for home detention is revoked on the ground of breach of condition, the Court may sentence the youth to detention for a term not exceeding the balance of the period of home detention unexpired as at the date on which the breach occurred, but a sentence of detention may not be imposed in the case of revocation on any other ground.

(6) The Court may, if it thinks it is necessary to do so, issue a warrant for the apprehension and detention of a youth pending determination of proceedings under this section.

**Young Offenders Act 1993**

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**General provisions**

**37D.** (1) A youth is, on breaching the condition requiring the youth to remain at his or her residence, unlawfully at large.

(2) The Crown is not liable to maintain a youth who is serving a sentence of home detention.

**DIVISION 3—RELEASE FROM DETENTION**

**The Training Centre Review Board**

**38.** (1) The *Training Centre Review Board* is established.

(2) The Training Centre Review Board consists of the following members:

(a) the Judges of the Youth Court; and

(b) two persons with appropriate skills and experience in working with young people, appointed by the Governor on the recommendation of the Attorney-General; and

(c) two persons with appropriate skills and experience in working with young people, appointed by the Governor on the recommendation of the Minister; and

(d) two police officers with appropriate qualifications and experience appointed by the Governor on the recommendation of the Minister for Police; and

(e) two Aboriginal persons with appropriate skills and experience appointed by the Governor on the nomination of the Minister for Aboriginal Affairs.

(3) At least one of the persons appointed under subsection (2)(b), (c) and (e) must be a woman and at least one such person must be a man.

(4) An appointed member of the Training Centre Review Board holds office for such term, and on such conditions, as the Governor determines and specifies in the instrument of appointment and, on the expiration of a term of office, is eligible for reappointment.

(5) The Governor may appoint a suitable person to be a deputy of an appointed member of the Training Centre Review Board and such a person may act as a member of the Training Centre Review Board in the absence of that member.

(6) A member of the Training Centre Review Board is entitled to receive such allowances and expenses as the Governor may from time to time determine.

(6a) A member of the Training Centre Review Board incurs no personal liability for an act or omission of the member or the Board in good faith and in the exercise or discharge or purported exercise or discharge of the member's or the Board's powers or functions under this Act or any other Act.

(6b) A liability that would but for subsection (6a) attach to a member lies instead against the Crown.

(7) The Governor may remove an appointed member of the Training Centre Review Board from office on the grounds of—

- (a) mental or physical incapacity; or
- (b) dishonourable conduct; or
- (c) neglect of duty.

(8) The office of an appointed member of the Training Centre Review Board becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office; or
- (c) resigns by notice in writing given to the Attorney-General; or
- (d) is removed from office by the Governor under subsection (7).

(9) When sitting to review any matter under this Act, the Training Centre Review Board must be constituted of—

- (a) a Judge (who will preside at the sitting); and
- (b) four of the appointed members (at least one of whom must be a member appointed under subsection (2)(e) if an Aboriginal youth is the subject of the review).

(10) When sitting to review the progress and circumstances of a youth, the Training Centre Review Board must permit the legal representative, and a guardian, of the youth to make submissions to the Board.

#### **Review of detention by Board**

**39.** (1) If a youth has been sentenced to detention in a training centre, the Training Centre Review Board must review the progress and circumstances of the youth while in the training centre, at intervals of not more than six months, and at any other time on the request of the Chief Executive.

(2) If a period of detention is to extend past the youth's eighteenth birthday, the Training Centre Review Board must, at the last periodical review before that birthday, consider whether the youth should be transferred to complete the period of detention in a prison, and if the Board does so determine, the youth will be transferred to prison on or after his or her eighteenth birthday in accordance with the Board's determination.

#### **Leave of absence**

**40.** (1) The Chief Executive may, by written order, grant a youth detained in a training centre leave of absence from the training centre—

- (a) for the medical or psychiatric examination, assessment or treatment of the youth; or
- (b) for the attendance of the youth at an educational or training course, a personal development programme or a work programme, project or camp; or
- (c) for such compassionate purpose as the Chief Executive thinks fit; or
- (d) for any purpose related to criminal investigation; or
- (e) for the purpose of enabling the youth to perform community service.

**Young Offenders Act 1993**

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(2) Leave of absence under this section may be subject to such conditions as the Chief Executive thinks fit, including, if the Chief Executive thinks appropriate, a condition that the youth will be in the custody of and supervised by one or more officers of the Department authorised by the Minister for the purpose.

(3) A leave of absence under this section that allows a youth to leave the State may only be granted with the Minister's consent.

(4) The Chief Executive may, by written order, revoke any leave of absence granted under this section, or vary or revoke any of the conditions to which it is subject.

(5) A youth who is at large after the revocation or expiry of leave of absence is unlawfully at large and may be apprehended without warrant by a police officer or an officer of the Department authorised by the Minister for the purpose.

**Conditional release from detention**

**41.** (1) The Training Centre Review Board may authorise the Chief Executive to grant a youth, subject to conditions that the Board considers proper, periods of leave from a training centre during which the youth will not be subject to the supervision of the Chief Executive.

(2) If the Training Centre Review Board is satisfied that the behaviour of a youth during a period of detention in a training centre has been satisfactory and that there is no undue risk that the youth would, if released under this section, re-offend, the Board may, at any time after a youth has completed at least two-thirds of the period of detention in a training centre to which he or she has been sentenced, order the release of the youth, subject to the following conditions:

(a) a condition that the youth be under the supervision of an officer of the Department and that the youth obey the directions of that officer; and

(b) any other condition that the Board thinks fit.

(3) Subsection (2) does not apply—

(a) to a youth who has been dealt with as an adult and is serving a sentence or part of a sentence of imprisonment in a training centre; or

(b) to a youth who is serving a sentence of detention of less than 2 months.

(4) The Training Centre Review Board may, for any proper reason, vary or revoke a condition under subsection (2).

(5) Subject to subsection (5a), the conditions on which a youth is released from a training centre under this section are binding on the youth for the unexpired period of the detention order and, if the youth fails to observe any such condition, the youth will be regarded as being unlawfully at large.

(5a) The Training Centre Review Board may release a youth on condition that the youth remain at a residence specified by the Board for the remainder of the unexpired balance of the term of detention or such shorter period as the Board may specify and, if a youth is released on such a condition, the provisions of Division 2A (except for subsections (4), (5) and (6) of section 37C) apply as if—

(a) the order of the Board were a sentence of home detention imposed by the Court; and

(b) a reference to the Court were a reference to the Board.

(5b) The Training Centre Review Board—

- (a) must not release a youth on home detention unless it is satisfied that accommodation is available at the residence it proposes to specify; and
- (b) should not release a youth on home detention if it is not satisfied that adequate resources exist for the proper monitoring of the youth while on home detention by a home detention officer.

(6) If the Minister considers that a youth has failed to observe any condition imposed by the Training Centre Review Board under this section, the Minister may apply to the Board for an order that the youth be returned to a training centre.

(7) Subject to subsection (8), the Minister must cause a copy of an application under subsection (6) to be served on the youth and a guardian of the youth, and the application must be endorsed with a notice of the place, date and time for the hearing of the application.

(8) If the Minister believes on reasonable grounds that, if served with an application under subsection (7), the youth would be likely to abscond, the Minister may apply to a Judge—

- (a) to issue a warrant for the apprehension of the youth; and
- (b) to dispense with service of the application.

(9) A Judge will not grant an application under subsection (8) unless satisfied, by information given on oath, that there are reasonable grounds to believe that, if served with the application under subsection (7), the youth would be likely to abscond.

(10) Where—

- (a) a youth on whom an application is to be served cannot be found; or
- (b) a youth, having been served with the application, fails to attend before the Board on an application,

a member of the Board may apply to a justice for a warrant for the apprehension of the youth.

(11) A warrant issued under this section authorises the apprehension of the youth referred to in the warrant by a police officer or an officer of the Department authorised for the purpose.

(12) A youth who has been apprehended on a warrant issued under this section must be brought before the Board as soon as reasonably practicable, and may be detained by the Chief Executive in any place (other than a prison) approved by the Minister until brought before the Board.

(13) If the Board finds the allegation proved, it may order that the youth be returned to detention under the original order.

(14) If a youth is returned to detention under the original order—

- (a) he or she is liable to serve the balance of the sentence unexpired as at the date on which the breach of condition occurred; and
- (b) the youth will be taken to have been serving that balance of sentence during any period spent in custody pending determination of the proceedings for breach of condition.

**Young Offenders Act 1993**

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(15) However, instead of exercising its powers under subsection (13), the Board may impose a further condition on the youth's release requiring the youth to perform a specified number of hours of community service, if the Board is of the opinion that the breach of condition was not so serious as to warrant returning the youth to detention.

**Absolute release from detention by Court**

**42.** (1) Where a youth who was detained by order of the Youth Court has been released from custody, the Court may, on the application of the youth, a guardian of the youth, or the Chief Executive made on a recommendation of the Training Centre Review Board, order that the youth be discharged absolutely from the detention order.

(2) An application under this section cannot be made if a previous application in respect of the youth has been determined by the Court within the preceding period of three months.

(3) The Court may, for the purposes of determining an application under this section, hear, or receive submissions from, any person it thinks fit.

**DIVISION 4—TRANSFER OF YOUTHS UNDER DETENTION**

**Interpretation**

**43.** In this Division—

"**appropriate authority**" of another State means a person who is vested with authority under a corresponding law—

- (a) to authorise or arrange for the transfer of a young offender to this State; or
- (b) to authorise or arrange for the transfer of a young offender from this State to that State;

"**correctional order**" means an order under a law of this State or any other State for dealing with youths who commit offences, being an order—

- (a) for the detention (other than remand) of such a youth;
- (b) requiring such a youth to perform community service;
- (c) providing for the conditional release of such a youth;
- (d) placing such a youth on probation or parole or under any form of supervision;

"**correctional system**", in relation to a State, means the system of law, judicial and administrative authorities, correctional and other institutions under which youths who commit offences are dealt with in that State;

"**corresponding law**" means a law of another State declared by regulation to be a law corresponding to this Division;

"**escort**" means a person in whose custody a young offender is placed for the purpose of bringing the young offender into the State, or taking the young offender out of the State, in pursuance of arrangements made under this Division;

"**State**" includes the Australian Capital Territory and the Northern Territory;

"**young offender**" means a person—

- (a) who has been found guilty of an offence committed while under the age of 18 years; and
- (b) who is subject to a correctional order.

**Transfer of young offenders to other States**

**44.** (1) The Minister may make arrangements with the appropriate authority of another State for the transfer of a young offender to that other State.

(2) Before entering into arrangements under this section, the Minister must be satisfied—

- (a) that any rights of appeal against the correctional order have been exhausted or have expired; and
- (b) that the young offender will be dealt with in the correctional system of the other State in substantially the same way as if he or she had remained in the correctional system of this State; and
- (c) that the transfer is in the best interests of the young offender; and
- (d) that—
  - (i) the young offender consents to the transfer; or
  - (ii) there are special reasons justifying the transfer although the young offender does not consent.

(3) Before entering into arrangements under this section, the Minister must allow the guardians of the youth a reasonable opportunity to make representations on the question whether the transfer is in the best interests of the young offender.

(4) Before consenting to a transfer, a young offender must be allowed a reasonable opportunity to obtain independent legal advice on the question of whether the transfer is in his or her best interests.

(5) An arrangement under this section will not be carried into effect unless it has been ratified by the Court.

(6) Where a young offender is transferred to another State in pursuance of an arrangement under this section, the Minister will transmit to the appropriate authority of that other State—

- (a) a copy of the relevant correctional order; and
- (b) a statement of—
  - (i) any period of detention served by the young offender in pursuance of the order; and
  - (ii) any community service performed by the young offender in pursuance of the order; and
  - (iii) any period for which the young offender has been subject to conditional release; and

**Young Offenders Act 1993**

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- (iv) any period for which the young offender has been on probation or parole or under supervision; and
  - (v) any remissions of sentence to which the young offender has become entitled; and
- (c) a report on the young offender.

(7) Where the Minister arranges for the transfer to another State of a young offender who is in detention, the Minister will arrange for the young offender to be taken to the other State in the custody of a suitable escort and delivered into detention in that other State.

(8) Where a young offender goes or is transferred to another State and is accepted into the correctional system of that other State in pursuance of arrangements under this section, the relevant correctional order ceases to operate in this State.

**Transfer of young offenders to this State**

**45.** (1) The Minister may make arrangements with the appropriate authority of another State for the transfer of a young offender from that other State to this State.

(2) Before entering into arrangements under this section, the Minister must be satisfied—

- (a) that the young offender is over the age of 10 years;
- (b) that there is in force in this State a law that substantially corresponds to the law against which the young offender offended;
- (c) that the young offender is not liable to detention for an indeterminate period;
- (d) that the young offender will be dealt with in the correctional system of this State in substantially the same way as if he or she had remained in the correctional system of the other State.

(3) Before entering into arrangements under this section, the Minister must allow the guardians of the youth a reasonable opportunity to make representations on the question whether the transfer is in the best interests of the young offender.

(4) Where a young offender is transferred to this State in pursuance of arrangements under this section—

- (a) a copy of the correctional order must be filed in the Court; and
- (b) the young offender will be dealt with under the law of this State as if—
  - (i) the correctional order had been made under the law of the State;
  - (ii) any period of detention, community service, conditional release, probation, parole or supervision served by the young offender in pursuance of the order had been served in the State;
  - (iii) any entitlement to remission of sentence that had accrued prior to the transfer had accrued under the law of the State.

**Adaptation of correctional orders to different correctional systems**

**46.** (1) An arrangement made under this Division for the transfer of a young offender may provide that the correctional order will operate with such modifications as are necessary to ensure its effective operation in the correctional system of the State to which the young offender is to be transferred.

(2) Any such modifications relating to a correctional order made under the law of another State must be endorsed on the order on its filing under this Act.

**Custody during escort**

**47.** (1) An escort in whose custody a young offender has been placed for the purpose of bringing the young offender into, or taking the young offender out of, the State has, while in the State, lawful custody of the young offender.

(2) If a young offender escapes from the custody of an escort, the young offender may be arrested without warrant for the purpose of being returned to lawful custody.

**DIVISION 5—ESCAPE FROM CUSTODY**

**Escape from custody**

**48.** (1) A youth who is subject to detention—

(a) who escapes from a training centre or from any person who has the lawful custody of the youth; or

(b) who is otherwise unlawfully at large,

is guilty of an offence.

Maximum penalty: Detention for 6 months.

(2) A term of detention to which a youth is sentenced for an offence against this section must be served immediately and any other detention or imprisonment to which the youth is liable is suspended while that term is being served.

(3) If the youth is in prison at the time at which a sentence imposed under this section is due to commence, the sentence must be served in prison.

(4) A youth is not, while unlawfully at large, serving his or her sentence of detention.

(5) For the purposes of this section, a youth is subject to detention if the youth—

(a) is subject to detention in a training centre or other place (not being a prison) by order of a court; or

(b) is in the custody of an escort under Division 4.

(6) This section does not apply to a youth serving a sentence of home detention.

**PART 6**  
**COMMUNITY SERVICE AND OTHER WORK RELATED ORDERS**

**Community service and work orders cannot be imposed unless there is a placement for the youth**

**49.** (1) No order, direction or requirement can be made by virtue of which a youth will be required to perform community service or participate in a particular work project, programme or camp unless there is, or will be within a reasonable time, a suitable placement for the youth in a community service programme, or in that work project, programme or camp.

(2) When a court sentences a youth to community service, it must nominate an appropriate person who is, on the satisfactory completion by the youth of the community service, to certify that fact to the court.

**Restrictions on performance of community service and other work orders**

**49A.** If a youth is required to perform community service or to carry out work pursuant to an order or undertaking under this Act, the following provisions apply:

- (a) the youth cannot be required to attend at a place for the purpose of performing community service or work at a time that would—
  - (i) interfere with the youth's paid employment or with a course of training or instruction relating to, or likely to assist him or her in obtaining, paid employment; or
  - (ii) cause unreasonable disruption of the youth's commitments in caring for his or her dependants; or
  - (iii) cause the youth to offend against a rule of a religion that he or she practises; and
- (b) the youth cannot be required to perform community service or work—
  - (i) for less than 4 hours in a week; or
  - (ii) for more than 8 hours in any one day,except in circumstances approved by the Minister; and
- (c) if on any day a period of community service or work is to exceed four continuous hours, the next hour must be a meal break; and
- (d) the youth will not be paid for the performance of the community service or work.

**Insurance cover for youths performing community service or other work orders**

**50.** A youth who is required to perform community service or other work pursuant to an order or undertaking under this Act must be insured against death or bodily injury arising out of, or occurring in the course of, performance by the youth of that community service or work.

**Community service or other work orders may only involve certain kinds of work**

**51.** (1) The work selected for the performance of community service or other work pursuant to an order or undertaking under this Act must be for the benefit of—

- (a) the victim of the offence; or
- (b) persons who are disadvantaged through age, illness, incapacity or any other adversity; or

- (c) an organisation that does not seek to secure a pecuniary profit for its members; or
- (d) a Public Service administrative unit, an agency or instrumentality of the Crown or a local government authority.

(2) The attendance by a youth at an educational or training course approved by the Minister for the purposes of this section will be taken to be the performance of community service.

**Young Offenders Act 1993**

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**PART 7  
THE JUVENILE JUSTICE ADVISORY COMMITTEE**

**Establishment of the *Juvenile Justice Advisory Committee***

**52.** (1) The *Juvenile Justice Advisory Committee* is established.

(2) The Advisory Committee consists of six members appointed by the Governor, of whom—

- (a) one (who will be designated by the instrument of appointment as the presiding member of the Committee and is to preside at all meetings of the Committee at which he or she is present) will be a person with recognised expertise in the field of juvenile justice; and
- (b) one will be a Judge of the Supreme Court or of the District Court who is not a Judge of the Youth Court; and
- (c) one will be a person who, in the opinion of the Attorney-General, has wide knowledge of and experience in law enforcement, and who is nominated by the Attorney-General; and
- (d) one will be a person who, in the opinion of the Minister, has wide knowledge of and experience in youth affairs, and who is nominated by the Minister; and
- (e) one will be a person who is, in the opinion of the Minister, a suitable representative of the interests of the public; and
- (f) one will be an Aboriginal person who is, in the opinion of the Minister for Aboriginal Affairs, a suitable representative of the interests of the Aboriginal community, and who is nominated by the Minister for Aboriginal Affairs.

(3) At least one member of the Advisory Committee must be a man and at least one must be a woman.

(4) A member of the Advisory Committee holds office for such term, and on such conditions, as the Governor determines and specifies in the instrument of appointment.

(5) A member of the Advisory Committee is, on the expiration of a term of office, eligible for reappointment.

(6) The Governor may appoint a suitable person to be a deputy of a member of the Advisory Committee and such a person may act as a member of the Advisory Committee in the absence of that member.

**Allowances and expenses**

**53.** A member of the Advisory Committee is entitled to such allowances and expenses as the Governor may from time to time determine.

**Removal from and vacancies of office**

**54.** (1) The Governor may remove a member of the Advisory Committee from office on the ground of—

- (a) mental or physical incapacity; or
- (b) dishonourable conduct; or
- (c) neglect of duty.

(2) The office of a member of the Advisory Committee becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office; or
- (c) resigns by notice in writing given to the Attorney-General; or
- (d) is removed from office by the Governor under subsection (1).

(3) On the office of a member of the Advisory Committee becoming vacant, a person must be appointed to that office in accordance with this Act.

#### **Functions of the Advisory Committee**

**55.** (1) The functions of the Advisory Committee are to—

- (a) monitor and evaluate the administration and operation of this Act including the giving of formal cautions by police officers; and
- (b) cause such data and statistics in relation to the administration of juvenile justice as it thinks fit, or as the Attorney-General may direct, to be collected; and
- (c) perform any other functions assigned by this Act; and
- (d) advise the Minister on other issues relevant to the administration of juvenile justice; and
- (e) perform such other functions as may be assigned, by regulation, to the Advisory Committee.

(2) The Advisory Committee has full power to perform any act necessary or expedient for the performance of its functions.

#### **Reports**

**56.** (1) The Advisory Committee must, not later than 31 December in each year, report to the Attorney-General on the administration and operation of this Act during the previous financial year.

(2) The report to be presented under subsection (1) by 31 December 1996 must include a comprehensive report on the operation of this Act during the previous 3 years and such proposals as the Advisory Committee considers appropriate for its improvement.

(3) The Advisory Committee must investigate and report to the Attorney-General on any matter relevant to the administration of this Act that has been referred to the Advisory Committee by the Attorney-General for investigation and report.

(4) The Attorney-General must, within six sitting days after receiving a report submitted under this section, cause a copy of the report to be laid before each House of Parliament.

**PART 8  
MISCELLANEOUS**

**Determination of a person's age**

**57.** (1) A court, family conference, or police officer will, in determining the age of a person for the purpose of this Act, act on the best evidence or information that is reasonably available but, in the absence of any such evidence or information, may itself estimate the age of the person.

(2) If, in any proceedings before a court, it becomes apparent to the court that the person the subject of those proceedings should, by reason of age, be dealt with in some other court, the court may remand that person to appear in the appropriate court.

**Prior offences**

**58.** (1) If a person has been dealt with under this Act by a police officer or a family conference, and the question of prior offences subsequently arises in proceedings relating to offences committed by that person as an adult, the offences for which the person was dealt with by the police officer or family conference will be disregarded.

(2) Records of admissions of guilt on the basis of which a youth was dealt with by a police officer or family conference under this Act are admissible as evidence of prior offending in subsequent proceedings relating to offences committed before the youth reached 18 years of age but any offences so dealt with will be regarded as of minor significance.

**Detention and search by officers of Department**

**59.** An officer of the Department authorised by the Chief Executive for the purpose is entitled to the lawful custody of a youth against whom proceedings under this Act have been, or are about to be, brought, while that youth is being conveyed to or from a court, or while the youth is within the precincts of the court, and may, at any time, search the youth and remove any object that the officer considers may cause injury or damage to any person or property.

**Power of arrest by officers of the Department**

**59A.** (1) An officer of the Department may, without warrant, apprehend any youth who has escaped from custody or who the officer has reasonable grounds to believe is otherwise unlawfully at large.

(2) An officer of the Department may, in exercising powers under subsection (1), break into any premises where the officer reasonably suspects the youth to be.

(3) A youth apprehended under this section must be returned forthwith to a training centre.

(4) However, if the youth is arrested outside an area specified in the regulations, the youth may be detained—

(a) with a person or in a place (other than a prison) approved by the Minister; or

(b) if it is not reasonably practicable to detain the youth as provided by paragraph (a), in a police prison, or in a police station, watch-house or lock-up approved by the Minister,

but only until such time as it is reasonably practicable to transfer the youth to a training centre.

(5) The person for the time being in charge of a police prison, police station, watch-house or lock-up in which a youth is detained under this section must take such steps as are reasonably practicable to keep the youth from coming into contact with any adult person detained in that place.

**Hindering an officer of the Department**

**60.** A person who hinders an officer of the Department in the exercise of powers under this Act is guilty of an offence.

Maximum penalty: \$2 500.

**Issue of warrant**

**61.** No person may issue an order for the removal of a youth from any place, or a warrant for the arrest of a youth, unless that person is satisfied that the allegations made in respect of the youth by the person seeking the order or warrant have been substantiated on oath.

**Detention of youths in emergencies**

**62.** (1) Despite any other provision of this Act, if the Minister is of the opinion that an emergency has arisen (whether out of an industrial dispute or any other circumstance) by virtue of which it is impossible or impracticable to detain youths in training centres or other approved places as provided by this Act, a youth who is to be detained under this Act may be detained—

- (a) in a police prison; or
- (b) in a police station, watch-house or lock-up approved by the Minister,

until the emergency is, in the opinion of the Minister, over.

(2) The person for the time being in charge of the place in which a youth is being detained under this section must take such steps as are reasonably practicable to keep the youth from coming into contact with any adult person being detained in the same place.

**Transfer of youths in detention to other training centre or prison**

**63.** (1) If a youth has been detained in, or remanded to, a training centre pursuant to an order of a court, the Chief Executive may, in such circumstances as the Chief Executive thinks fit, direct that the youth be removed and placed in some other training centre.

(2) If a person who is of or above the age of 18 years is detained in, or remanded to, a training centre or any other place pursuant to an order of a court, the person or the Chief Executive on behalf of the person may apply to a Judge of the Youth Court for an order that the person be transferred to a prison for the remainder of the period of detention or remand.

(3) The Court will not make an order under subsection (2) unless satisfied that, in the circumstances, a prison would be an appropriate place for the person to be held for the remainder of the period of detention or remand.

(4) Where, on application made to a Judge of the Youth Court by the Chief Executive, the Court is satisfied that a person who is of or above the age of 16 years and has been remanded to, or is being detained in, a training centre or any other place pursuant to an order of a court—

- (a) cannot be properly controlled in that training centre or other place; or
- (b) has within the period of 14 days preceding the date of the application been found guilty of assaulting a person employed, or detained, in that training centre or other place; or
- (c) has persistently incited others in the training centre or other place to cause a disturbance;  
or

**Young Offenders Act 1993**

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(d) or has escaped or attempted to escape from the training centre,

the Court may, by order, direct that the person be transferred to a prison for the remainder of the period of remand or detention.

(5) If the Court is satisfied, on an application under subsection (4), that the person is likely to be a danger to others, the Court may order that the person be held in custody in a prison until the Court has determined the application.

(6) The Court may, on the application of the Chief Executive, the person or a guardian of the person, revoke an order made under subsection (4).

(7) If a person is held in custody in a prison by order under this section, the *Correctional Services Act 1982* applies to and in relation to that person.

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**Effect of remand in prison**

**63A.** (1) If a youth who is serving a sentence of detention or imprisonment in a training centre (a "**youth sentence**") is remanded to a prison in relation to an offence alleged to have been committed after turning 18 years of age (an "**adult offence**"), the youth must be transferred to a prison and will be taken to be serving the youth sentence during the period of the remand.

(2) If, at the end of a period of remand in prison for an adult offence—

(a) a youth sentence is still running; and

(b) no immediately servable sentence of imprisonment was imposed for the adult offence,

the youth must be transferred to a training centre.

(3) The *Correctional Services Act 1982* applies to and in relation to a youth transferred to a prison under subsection (1).

(4) For the purposes of this section, a sentence of detention includes an order for detention issued for the enforcement of a community service order.

**Application of Correctional Services Act 1982 to youth with non-parole period**

**63B.** If a youth who is transferred from a prison to a training centre under this Act is serving a non-parole period in the training centre, Division 3 of Part 6 (release on parole) of the *Correctional Services Act 1982* applies to and in relation to the youth as if the youth were a prisoner in a prison subject to the following modifications:

(a) a reference to the Parole Board will be taken to be a reference to the Training Centre Review Board;

(b) a reference to a parole officer will be taken to be a reference to an officer of the Department.

**Name and address of youth to be given in certain circumstances**

**64.** If a youth is proceeded against or dealt with under this Act for an alleged offence, a person who has suffered injury, loss or damage in consequence of the circumstances alleged to constitute the offence is entitled, on application in writing to the Commissioner of Police, to be informed of the name and address of that youth.

**Regulations**

**65.** (1) The Governor may make regulations for the purposes of this Act.

(2) The regulations may, for example—

- (a) regulate the administration and management of training centres; and
- (b) regulate the practice and procedure of the Training Centre Review Board; and
- (c) prescribe forms to be used under this Act; and
- (d) prescribe the procedures to be observed in relation to the detention of a youth prior to being dealt with by a court, or while a youth is being conveyed to or from any court, or while a youth is in attendance at any court; and
- (e) prescribe fines, not exceeding \$1 250 in each case, for breach of the regulations.

**Young Offenders Act 1993**

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**APPENDIX**

**LEGISLATIVE HISTORY**

**Transitional Provisions**

*(Transitional provisions from Statutes Repeal and Amendment (Children's Protection and Young Offenders) Act 1993, ss. 3 and 19)*

Interpretation

3. In this Act—

"commencement day" means the day on which this Act comes into operation;

"new legislation" means—

- (a) the *Young Offenders Act 1993*; and
- (b) the *Youth Court Act 1993*;

"former legislation" means the *Children's Protection and Young Offenders Act 1979*.

Transitional provisions—offences

19. (1) Proceedings in relation to an offence alleged to have been committed before the commencement day may be taken under the new legislation.

(2) Proceedings before the *Children's Court of South Australia* under the former legislation in relation to such an offence may be continued and completed before the *Youth Court of South Australia* under the new legislation.

(3) A person may not be subjected to a penalty under the new legislation for an offence committed before the commencement day unless—

- (a) the penalty is of the same nature as could have been imposed under the former legislation (and for this purpose an order under section 26 of the *Young Offenders Act 1993* is to be taken to be of the same nature as a bond); and
- (b) the penalty is no more severe than could have been properly imposed under the former legislation.

(4) A judge or magistrate who was a judicial officer of the *Children's Court of South Australia* may (even though not a judicial officer of the *Youth Court of South Australia*) sit as a member of the *Youth Court of South Australia* for the purpose of continuing and completing the hearing and determination of proceedings commenced or part heard before the commencement day.

(5) An order or bond in force under Part 7 of the former legislation immediately before the commencement day remains in force under, but subject to, the former legislation.

(6) The former legislation remains in force in relation to an order or bond to which subsection (5) applies, and any further order or bond imposed on breach of the order or bond or in relation to the same offence, as if references to the *Children's Court of South Australia* were references to the *Youth Court of South Australia*, and with any further modifications that may be prescribed by regulation.

*(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

*(entries in bold type indicate amendments incorporated since the last reprint)*

Section 3(2)(b):	repealed by 68, 1996, s. 30(a)
Section 3(2a):	inserted by 68, 1996, s. 30(b)
Section 4:	definition of "Chief Executive" inserted by 68, 1996, s. 31(a) definition of "Director-General" repealed by 68, 1996, s. 31(b) definition of "home detention officer" inserted by 68, 1996, s. 31(c)
Section 9(1):	amended by 85, 1995, s. 18(a)
Section 9(1a):	inserted by 85, 1995, s. 18(b)
Section 13(3):	amended by 68, 1996, s. 32
<b>Section 15(1):</b>	<b>amended by 68, 1996, s. 33; 41, 1998, s. 10(a)</b>
<b>Section 15(1a):</b>	<b>inserted by 41, 1998, s. 10(b)</b>
<b>Section 15(3):</b>	<b>amended by 41, 1998, s. 10(c)</b>
Section 17(1):	amended by 68, 1996, s. 34
Section 18:	amended by 68, 1996, s. 35
Section 19:	amended by 68, 1996, s. 36
<b>Section 23(1):</b>	<b>amended by 41, 1998, s. 11(a)</b>
Section 23(5):	substituted by 68, 1996, s. 37
<b>Section 23(6):</b>	<b>repealed by 68, 1996, s. 37; inserted by 41, 1998, s. 11(b)</b>
<b>Section 23(7):</b>	<b>inserted by 41, 1998, s. 11(b)</b>
Section 24:	amended by 68, 1996, s. 38
Section 25:	redesignated as s. 25(1) by 68, 1996, s. 39
Section 25(2):	inserted by 68, 1996, s. 39
Section 26(3):	amended by 68, 1996, s. 40(a)
Section 26(4):	amended by 68, 1996, s. 40(b)
Section 28(3):	amended by 68, 1996, s. 41
Section 30(1) - (3):	amended by 68, 1996, s. 42
Section 32(1):	amended by 68, 1996, s. 43
Section 34(3):	amended by 68, 1996, s. 44
<b>Section 36(2a):</b>	<b>inserted by 68, 1996, s. 45; repealed by 41, 1998, s. 12</b>
Section 36(4)(a):	repealed by 35, 1994, s. 19

**Division 1A of Part 5 comprising s. 36A and heading inserted by 41, 1998, s. 13**

Section 37(11): amended by 68, 1996, s. 46

Division 2A of Part 5 comprising ss. 37A - 37D and heading inserted by 68, 1996, s. 47

Section 38(2):	amended by 68, 1996, s. 48(a), (b)
Section 38(3):	amended by 68, 1996, s. 48(c)
Section 38(6a) and (6b):	inserted by 68, 1996, s. 48(d)
Section 38(9):	amended by 68, 1996, s. 48(e)
Section 39(1):	amended by 68, 1996, s. 49
Section 40(1):	amended by 68, 1996, s. 50(a), (b)
Section 40(2) and (4):	amended by 68, 1996, s. 50(a)
Section 41(1):	amended by 68, 1996, s. s. 51(a)
Section 41(3):	substituted by 68, 1996, s. 51(b)
Section 41(5):	amended by 68, 1996, s. 51(c)
Section 41(5a) and (5b):	inserted by 68, 1996, s. 51(d)
Section 41(12):	amended by 68, 1996, s. 51(a)
Section 41(14) and (15):	inserted by 68, 1996, s. 51(e)
Section 42(1):	amended by 68, 1996, s. 52
Section 48(1):	amended by 68, 1996, s. 53(a)
Section 48(6):	inserted by 68, 1996, s. 53(b)
Part 6 heading:	amended by 68, 1996, s. 54
Section 49(1):	substituted by 68, 1996, s. 55
Section 49A:	inserted by 68, 1996, s. 56

**Young Offenders Act 1993**

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Section 50:	amended by 68, 1996, s. 57
Section 51(1):	amended by 68, 1996, s. 58
Section 56(1) and (2):	amended by 68, 1996, s. 59
Section 59:	amended by 68, 1996, s. 60
Section 59A:	inserted by 68, 1996, s. 61
Section 60:	amended by 68, 1996, s. 62
Section 63(1):	amended by 68, 1996, s. 63
<b>Section 63(2):</b>	<b>amended by 68, 1996, s. 63; 41, 1998, s. 14(a), (b)</b>
<b>Section 63(3):</b>	<b>amended by 41, 1998, s. 14(c)</b>
<b>Section 63(4):</b>	<b>amended by 68, 1996, s. 63; 41, 1998, s. 14(d)</b>
Section 63(6):	amended by 68, 1996, s. 63
<b>Section 63(7):</b>	<b>amended by 41, 1998, s. 14(e)</b>
<b>Section 63(8):</b>	<b>repealed by 41, 1998, s. 14(f)</b>
<b>Sections 63A and 63B:</b>	<b>inserted by 41, 1998, s. 15</b>
Section 65(2):	amended by 68, 1996, s. 64