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ELIZABETHAE II REGINAE

A.D. 1990

No. 21 of 1990

An Act to amend the Children's Protection and Young Offenders Act, 1979.

[Assented to 26 April 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Children's Protection and Young Offenders Act Amendment Act, 1990*.

(2) The *Children's Protection and Young Offenders Act, 1979*, is referred to in this Act as "the principal Act".

Commencement

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

Interpretation

3. Section 4 of the principal Act is amended—

(a) by inserting "the same or" after "that bears" in paragraph (b) of the definition of "alternative offence";

and

(b) by striking out "surety" from paragraph (d) of the definition of "pecuniary sum" and substituting "guarantee".

Factors to be considered when dealing with a child

4. Section 7 of the principal Act is amended by inserting after paragraph (d) of subsection (1) the following paragraph:

(da) where the child is being dealt with as an adult for an offence, the deterrent effect that any sentence under consideration may have on the child or other persons;

Screening panel list

5. Section 26 of the principal Act is amended by inserting after paragraph (a) of subsection (2) the following paragraph:

(ab) special constables employed as Aboriginal police aides;

Constitution of screening panels

6. Section 27 of the principal Act is amended by striking out paragraphs (a) and (b) and substituting the following paragraphs:

(a) an officer of the Department;

and

(b) a member of the police force or a special constable employed as an Aboriginal police aide.

Children's aid panel list

7. Section 31 of the principal Act is amended by striking out paragraph (d) of subsection (2) and substituting the following paragraph:

(d) such other persons as are approved by the Minister.

Constitution of children's aid panels

8. Section 32 of the principal Act is amended—

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

(ab) where a drug offence is alleged, a member of the police force and a person approved by the Minister;

and

(b) by striking out paragraph (d) of subsection (1) and substituting the following paragraph:

(d) where truancy and a drug offence are alleged, a member of the police force, an officer of the Education Department and a person approved by the Minister;

Provisions relating to disclosure of appearance of child before a children's aid panel

9. Section 40 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) A person who suffers injury, loss or damage resulting from an offence alleged to have been committed by a child is entitled, upon request, to be informed of the fact that the child has appeared before a children's aid panel in respect of the alleged offence.

(3) A person who has appeared before a children's aid panel for an alleged offence may, without incurring any liability under any Act or law, refuse or fail (except in proceedings before a court exercising jurisdiction under this Act) to disclose that appearance to any other person or to furnish information from which it could reasonably be inferred that he or she has appeared before a children's aid panel for an alleged offence.

Insertion of s. 50a

10. The following section is inserted after section 50 of the principal Act:

Victim impact statements

50a. (1) This section applies in relation to an offence committed by a child as a result of which some other person ("the victim") suffers injury, loss or damage.

(2) Subject to subsection (3), the prosecutor must, for the purposes of assisting the court to discharge its obligation to bring a child found guilty of an offence to which

this section applies to an awareness of his or her responsibility to bear the consequences of breaking the law, furnish the court with particulars (that are reasonably ascertainable and are not already before the court in evidence or a pre-sentence report) of the impact of the offence on the victim.

(3) The prosecutor must not furnish particulars under subsection (2) if the victim so requests.

Sentencing powers of Children's Court

11. Section 51 of the principal Act is amended—

(a) by inserting after paragraph (a) in subsection (1) the following paragraph:

(ab) upon convicting the child—

(i) impose a sentence of a specified number of hours of community service to be performed by the child;

(ii) direct that the child be under the supervision of an officer of the Department for the duration of that sentence;

and

(iii) direct that the child obey the lawful directions of the community service officer and supervising officer to whom he or she is assigned;;

(b) by striking out from paragraph (b) of subsection (1) "sureties" and substituting "guarantees";

(c) by striking out from subparagraph (ii) of paragraph (c) "\$500" and substituting "\$1 000";

(d) by inserting after subparagraph (iii) of paragraph (b) of subsection (1) the following subparagraph:

(iiia) that the child attend or participate in such educational or recreational programmes as the Court specifies;;

and

(e) by inserting after paragraph (c) of subsection (1) the following paragraph:

(ca) upon convicting the child, or without convicting the child, direct the child to attend or participate in such educational or recreational programmes as the Court specifies in the order;

Sentencing child as an adult

12. Section 56 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) Where a child is found guilty by an adult court of an alternative offence to the offence for which the child was committed for trial, the court cannot deal with the child 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, by reason of the gravity of the circumstances of the offence or the fact that the child has previously been found guilty of more than one serious offence, the child should be dealt with as if he or she were an adult.

Sentence of life imprisonment for murder

13. Section 55 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) A non-parole period cannot be fixed in respect of a sentence of life imprisonment imposed under this section.

Detention of child sentenced as adult

14. Section 58 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) Subject to subsection (4), where an order is made under subsection (2) in respect of a child, this Act applies to the child, to the exclusion of the *Correctional Services Act, 1982*, while he or she is in a training centre as if the child 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 child who is being detained in a training centre pursuant to this section:

(a) Part VII (remission) applies to a child who is serving a sentence of imprisonment for a term exceeding three months, or a number of sentences under which the child is liable to imprisonment for more than three months, with the following modifications:

- (i) a reference to a prisoner will be taken to be a reference to a child;
- (ii) a reference to a prison will be taken to be a reference to a training centre;
- (iii) a reference to the Chief Executive Officer will be taken to be a reference to the Director-General;

(b) Division III of Part VI (release on parole) applies to a child 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 child;
- (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) Subsection (4) operates in relation to a child detained in a training centre pursuant to an order made before the commencement of the *Children's Protection and Young Offenders Act Amendment Act, 1990*, so that the child's entitlement to earn remission accrues only in respect of detention or imprisonment served after that commencement.

(6) Where a child who is on parole attains the age of 18 years—

(a) the preceding provisions of this section cease to apply to and in relation to the child;

(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.

Insertion of Division IVA

15. The following Division is inserted after section 58a of the principal Act:

DIVISION IVA—SPECIAL PROVISIONS RELATING TO COMMUNITY SERVICE**Community service cannot be imposed unless there is a placement for the child**

58b. A court cannot sentence a child to community service unless the court is satisfied, on the report of an officer of the Department, that there is, or will be within a reasonable time, a placement for the child at a community service centre reasonably accessible to the child.

Ancillary orders

58c. Where a court imposes a sentence of community service upon a child, the court must make an ancillary order (which will be taken to be a sentence imposed by the court) requiring the child—

(a) to report to a specified place not later than two working days after the date of the order unless, within that period, the child receives a notice from an officer of the Department to the contrary;

and

(b) to perform the community service for not less than four or more than 24 hours in each week in accordance with the directions of the community service officer to whom he or she is assigned.

Performance of community service

58d. Where a court imposes a sentence of community service upon a child the following provisions apply:

(a) the number of hours of community service specified by the court cannot exceed 90;

(b) the court cannot specify a number of hours of community service to be performed by a child who is already performing, or is liable to perform, community service, where the aggregate of that number and the number of hours previously specified would exceed 90;

(c) the period specified by the court within which the community service must be performed cannot exceed four months;

(d) the child cannot be required to perform the community service for a continuous period exceeding eight hours;

(e) one hour of any period of community service exceeding four hours is to be a meal break;

(f) the child cannot be required to perform community service at a time that would interfere with his or her remunerated employment, or with a course of training or instruction relating to, or likely to assist him or her in obtaining, such employment;

(g) the child cannot be required to perform community service at a time that would cause him or her to offend against a rule of a religion that he or she practises;

(h) the attendance of the child at any educational or recreational course of instruction approved by the Minister will be taken to be performance of community service;

and

(i) the child will not be remunerated for the performance of any community service pursuant to the order.

Insurance cover for children performing community service

58e. The Minister must, at the cost of the Crown, insure a child against death or bodily injury arising out of, or occurring in the course of, performance by the child of community service pursuant to a sentence.

Community service may only involve certain kinds of work

58f. The work selected for the performance of community service—

(a) must be for the benefit of—

(i) persons who are disadvantaged through age, illness, incapacity or any other adversity;

(ii) an organization that does not seek to secure a pecuniary profit for its members;

or

(iii) a Public Service administrative unit, an agency or instrumentality of the Crown or a local government authority;

and

(b) must not be work that would ordinarily be performed by a person for fee or reward and for which funds are available.

Insertion of s. 61a and headings

16. The following headings and section are inserted in Part IV of the principal Act after the heading to Division VI:

Subdivision 1—Escape from custody

61a. (1) A detained child—

(a) who escapes from a training centre or from any person who has the actual custody of the child pursuant to this Act;

or

(b) who is otherwise unlawfully at large,

is guilty of an offence.

Penalty: Six months detention in a training centre.

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

(3) If the child 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 detained child is not, while unlawfully at large, serving his or her sentence of detention.

(5) Section 51 does not apply in relation to an offence against this section.

(6) In this section—

“detained child” means a child—

(a) who is subject to detention in a training centre or other place (not being a prison) pursuant to an order of a court under this Part or Part IVA;

or

(b) who is in the custody of an escort pursuant to Division VIA of this Part.

Subdivision 2—Release.

Insertion of s. 63a

17. The following section is inserted after section 63 of the principal Act:

Leave of absence

63a. (1) The Director-General may, by written order, grant a child detained in a training centre leave of absence from the training centre—

- (a) for the medical or psychiatric examination, assessment or treatment of the child;
 - (b) for the attendance of the child at an educational or training course;
 - (c) for the participation of the child in any form of recreation, entertainment or community service;
 - (d) for such compassionate purpose as the Director-General thinks fit;
- or
- (e) for any purpose related to criminal investigation.

(2) Leave of absence under this section may be subject to such conditions as the Director-General thinks fit, including, where the Director-General thinks it is appropriate, a condition that the child will be in the custody of and supervised by one or more officers of the Department authorized by the Minister for the purpose.

(3) The Director-General 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.

(4) Where a child is still at large after the revocation or expiry of leave of absence, the child may be apprehended without warrant by a member of the police force or an officer of the Department authorized by the Minister for the purpose.

(5) A child who is still at large after the expiry of leave of absence will be taken to be unlawfully at large.

Conditional release from detention

18. Section 64 of the principal Act is amended—

(a) by striking out from subsection (2) “(other than a child serving a sentence of life imprisonment)”;

and

(b) by inserting after subsection (2) the following subsection:

(2a) Subsection (2) does not apply in relation to a child who is, pursuant to an order of an adult court made under section 58, serving part of a sentence of imprisonment in a training centre.

Power of court to order compensation or restitution

19. Section 73 of the principal Act is amended—

(a) by striking out from subsection (3) “two thousand dollars” and substituting “\$10 000”;

and

(b) by striking out from subsection (6) “the period of six months after the order is made” and substituting “such period as the court specifies in the order”.

Enforcement of non-pecuniary orders

20. Section 75/ of the principal Act is amended—

(a) by inserting “or the performance of community service” after “pecuniary sum”;

and

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

(2) Where a child refuses or neglects to comply with a sentence of community service imposed by the Children's Court, the Court may, on application by a clerk of the Court—

(a) sentence the child to a period of detention calculated at the rate of one day of detention (or, if some other number of days is prescribed, that number) for each eight hours of community service unperformed;

(b) issue a mandate against the child;

and

(c) if the Court thinks it is appropriate to do so, direct that the period of detention be accumulative upon any other sentence, or sentences, of detention or imprisonment being served, or to be served, by the child,

but, if the Court is satisfied that the failure to comply was trivial or that there are extenuating circumstances, the Court may refrain from imposing a sentence of detention and may caution the child.

Reconsideration by Judge of sentences imposed by certain other members of the Court

21. Section 80 of the principal Act is amended—

(a) by striking out from subsection (1) “is made by the Children's Court that a charge against a child is proved” and substituting “that a charge against a child is proved is made by the Children's Court as constituted by a magistrate, a special justice or two justices of the peace”;

(b) by striking out from subsection (1) “the Court” first occurring and substituting “a Judge of the Court”;

and

(c) by inserting in subsection (8) “a Judge of” after “made by”.

Persons who may be in court

22. Section 92 of the principal Act is amended—

(a) by inserting after paragraph (e) of subsection (1) the following paragraph:

(ea) an alleged victim of the offence before the court (that is to say, a person who suffered injury, loss or damage resulting from the offence);;

(b) by striking out from subsection (1) "subsection (2)" and substituting "this section";
and

(c) by inserting after subsection (1) the following subsections:

(1a) Subsection (1) does not apply in relation to a sitting of an adult court dealing with a child charged with homicide or dealing with a child pursuant to an order made under section 47.

(1b) Where an alleged victim of the offence before the court is a witness in the proceedings, the court may exclude him or her from the court at any time if the court thinks it necessary or desirable to do so for the purposes of the due administration of justice.

Restriction on reports of proceedings

23. Section 93 of the principal Act is amended—

(a) by striking out subsections (2) and (3) and substituting the following subsection:

(2) Unless otherwise ordered by the court, a report of proceedings under Part IV may be published in accordance with this section.;

and

(b) by striking out from subsection (4) "the result of proceedings referred to in subsection (2), or a summary under subsection (3)" and substituting "a report of proceedings under Part IV".

Special provisions relating to work projects or programmes

24. Section 99b of the principal Act is amended by striking out paragraph (d) and substituting the following paragraph:

(d) the project or programme must be for the benefit of—

(i) persons who are disadvantaged through age, illness, incapacity or any other adversity;

(ii) an organization that does not seek to secure a pecuniary profit for its members;

or

(iii) a Public Service administrative unit, an agency or instrumentality of the Crown or a local government authority.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor