

South Australia



**STATUTES AMENDMENT (YOUNG OFFENDERS) ACT 1998**

**No. 41 of 1998**

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No. 41 of 1998

**An Act to amend the Criminal Law (Sentencing) Act 1988, the Summary Procedure Act 1921 and the Young Offenders Act 1993.**

[Assented to 13 August 1998]

The Parliament of South Australia enacts as follows:

**PART 1  
PRELIMINARY**

**Short title**

1. This Act may be cited as the *Statutes Amendment (Young Offenders) Act 1998*.

**Commencement**

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

**Interpretation**

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

**PART 2  
AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988**

**Amendment of s. 31A—Application of Division to youths**

4. Section 31A of the principal Act is amended—

- (a) by inserting "or is sentenced to detention to be served in a prison or is otherwise transferred to or ordered to serve a period of detention in a prison" after "adult";
- (b) by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

(2) Section 32 applies in relation to a person who is serving concurrent sentences of imprisonment and detention in a prison as if the person were serving concurrent sentences of imprisonment.

**Amendment of s. 32—Duty of court to fix or extend non-parole periods**

5. Section 32 of the principal Act is amended by inserting in subsection (5)(b) "or the Youth Court" after "Magistrates Court".

**Amendment of s. 61AA—Community service in default of payment by a youth**

6. Section 61AA of the principal Act is amended by inserting after subsection (6) the following subsection:

(6a) If the court sentences a youth to detention under subsection (6)—

- (a) where the youth is already in custody in a prison, the youth will serve the detention 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,

and the *Correctional Services Act 1982* applies to and in relation to a youth serving detention in a prison under this subsection.

**Insertion of s. 71B**

7. The following section is inserted in Division 4 of Part 9 of the principal Act after section 71A:

**Detention in prison**

71B. If the court issues an order for detention of a youth or sentences a youth to detention under this Division—

- (a) where the youth is already in custody in a prison, the youth will serve the detention 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,

and the *Correctional Services Act 1982* applies to and in relation to a youth serving detention in a prison under this subsection.

**Transitional**

8. Section 31A of the principal Act, as amended by section 4 of this Act, and section 32 of the principal Act, as amended by section 5 of this Act, apply in relation to a youth detained in a prison, whether so detained before or after the commencement of those sections of this Act.

**PART 3  
AMENDMENT OF SUMMARY PROCEDURE ACT 1921**

**Insertion of ss. 183 and 184**

9. The following heading and sections are inserted in the principal Act after section 182:

*Remand or Transfer to Training Centre***Remand to training centre****183. If—**

- (a) the Court orders that a person charged with or convicted of an offence be remanded in custody; and
- (b) the person—
  - (i) is already in custody in a training centre; or
  - (ii) is alleged to have committed the offence while—
    - (A) on conditional release from a training centre; or
    - (B) serving a sentence of home detention in accordance with the *Young Offenders Act 1993*; or
    - (C) subject to an order under section 26 of that Act; and
- (c) the Court is satisfied that good reason exists for remanding the person to a training centre,

the Court may direct that the person be remanded to a training centre.

**Application may be made to Court for transfer to a training centre****184. (1) If—**

- (a) a person charged with or convicted of an offence has been, by order under this Act, remanded in custody in a prison; and
- (b) the person—
  - (i) would, but for that order, be in custody in a training centre; or
  - (ii) is alleged to have committed the offence while—
    - (A) on conditional release from a training centre; or
    - (B) serving a sentence of home detention in accordance with the *Young Offenders Act 1993*; or
    - (C) subject to an order under section 26 of that Act; and
- (c) the Court is, on the application of the person or the Chief Executive of the Department of Human Services, satisfied that good reason exists for remanding the person to a training centre,

the Court may order that the person be transferred to a training centre.

(2) If the Court has, on a previous occasion, considered the question of whether the person should be remanded to a prison or to a training centre, an application may only be made under this section if, since the Court considered the question—

- (a) there has been a material change in the circumstances of the person; or
- (b) the applicant has become aware of new facts or circumstances relevant to the question.

**PART 4**  
**AMENDMENT OF YOUNG OFFENDERS ACT 1993**

**Amendment of s. 15—How youth is to be dealt with if not granted bail**

**10.** Section 15 of the principal Act is amended—

- (a) by striking out from subsection (1) "subsection (2)" and substituting "this section";
- (b) by inserting after subsection (1) the following subsection:

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

- (c) by inserting in subsection (3) "in accordance with subsection (2)" after "lock-up" (first occurring).

**Amendment of s. 23—Limitation on power to impose custodial sentence**

**11.** Section 23 of the principal Act is amended—

- (a) by striking out from subsection (1) "The Court" and substituting "Subject to subsection (6), the Court";
- (b) by inserting after subsection (5) the following subsections:

(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).

**Amendment of s. 36—Detention of youth sentenced as an adult**

**12.** Section 36 of the principal Act is amended by striking out subsection (2a).

**Insertion of Division 1A**

**13.** The following Division is inserted after section 36 of the principal Act:

**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.

(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.

**Amendment of s. 63—Transfer of youths in detention to other training centre or prison**

**14.** Section 63 of the principal Act is amended—

- (a) by inserting in subsection (2) ", or remanded to," after "detained in";
- (b) by inserting in subsection (2) "or remand" after "detention";
- (c) by inserting in subsection (3) "or remand" after "detention";
- (d) by inserting in subsection (4) "remand or" after "period of" (second occurring);
- (e) by striking out from subsection (7) "youth" and substituting "person";
- (f) by striking out subsection (8).

**Insertion of ss. 63A and 63B**

**15.** The following sections are inserted in the principal Act after section 63:

**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.

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

E. J. NEAL Governor