



STATUTES REPEAL AND AMENDMENT (CHILDREN'S PROTECTION AND YOUNG OFFENDERS) ACT 1993

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 REPEAL OF CHILDREN'S PROTECTION AND YOUNG OFFENDERS ACT 1979

4. Repeal of Children's Protection and Young Offenders Act 1979

PART 3 AMENDMENT OF BAIL ACT 1985

5. Amendment of s. 13—Procedure on arrest

PART 4 AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988

6. Interpretation of Part
7. Amendment of s. 3—Interpretation
8. Substitution of s. 21
 21. Application
9. Substitution of heading to Part V

PART V BONDS AND UNDERTAKINGS

10. Insertion of s. 44A
 - 44A. Application of Part to youths
11. Insertion of s. 59AA
 - 59AA. Application of Division to youths
12. Amendment of s. 61—Imprisonment or detention in default of payment
13. Amendment of s. 61a—Driver's licence disqualification for default
14. Amendment of s. 67—Application to work off pecuniary sums by community service
15. Amendment of s. 69—Amount in default is reduced by imprisonment or detention served
16. Amendment of s. 71—Community service orders may be enforced by imprisonment or detention
17. Amendment of s. 71a—Other non-pecuniary orders may be enforced by imprisonment or detention

PART 5
TRANSITIONAL PROVISIONS

18. Transitional provisions—Youth Court
19. Transitional provisions—offences
20. Transitional Provisions—in need of care proceedings
21. Interpretation of Acts and instruments



ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1993

No. 94 of 1993

An Act to make certain repeals and amendments related to restructuring of the juvenile justice and children’s protection systems in this State; to enact transitional provisions; and for other purposes.

[Assented to 4 November 1993]

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Statutes Repeal and Amendment (Children’s Protection and Young Offenders) Act 1993*.

Commencement

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

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*.

**PART 2
REPEAL OF CHILDREN’S PROTECTION AND YOUNG OFFENDERS ACT 1979**

Repeal of Children’s Protection and Young Offenders Act 1979

4. The *Children’s Protection and Young Offenders Act 1979* is repealed.

**PART 3
AMENDMENT OF BAIL ACT 1985**

Amendment of s. 13—Procedure on arrest

5. Section 13 of the *Bail Act 1985* is amended—

- (a) by striking out “a justice” wherever it appears in subsections (2) and (3) and substituting, in each case, “the appropriate authority”;
- (b) by striking out from subsection (4) “A justice” and “the justice” and substituting, respectively, “The appropriate authority” and “the authority”;
- (c) by inserting after subsection (4) the following subsection:

(5) In this section—

“appropriate authority” means—

- (a) in relation to a child—the *Youth Court of South Australia*;
- (b) in any other case—a justice.

**PART 4
AMENDMENT OF CRIMINAL LAW (SENTENCING) ACT 1988**

Interpretation of Part

6. In this Part a reference to the principal Act is a reference to the *Criminal Law (Sentencing) Act 1988*.

Amendment of s. 3—Interpretation

7. Section 3 of the principal Act is amended—

- (a) by striking out the definition of “appropriate officer” from subsection (1) and substituting the following definition:

“appropriate officer” means—

- (a) the Sheriff; or
- (b) a registrar of the Magistrates Court; or
- (c) the Registrar of the Youth Court;;

- (b) by striking out from the definition of “court” in subsection (1) “(other than the Children’s Court);

(c) by inserting after the definition of "working day" in subsection (1) the following definitions:

"youth" has the same meaning as in the *Young Offenders Act 1993*;

"Youth Court" means the *Youth Court of South Australia*.

Substitution of s. 21

8. Section 21 of the principal Act is repealed and the following section is substituted:

Application

21. (1) Subject to subsection (2), this Division does not apply in relation to a youth.

(2) The Supreme Court may exercise its powers under section 23 in relation to a youth who is sentenced as an adult pursuant to the *Young Offenders Act 1993*.

Substitution of heading to Part V

9. The heading to Part V of the principal Act is repealed and the following heading is substituted:

**PART V
BONDS AND UNDERTAKINGS**

Insertion of s. 44A

10. The following section is inserted after section 44 of the principal Act:

Application of Part to youths

44A. This Part applies in relation to a youth found guilty of committing an offence subject to the following modifications:

- (a) references to imprisonment are to be read as references to detention;
- (b) references to a bond are to be read as references to an order under section 26 of the *Young Offenders Act 1993*;
- (c) references to the Director are to be read as references to the Chief Executive Officer of the Department of Family and Community Services;
- (d) references to community service are to be read as references to community service performed in accordance with the *Young Offenders Act 1993*;
- (e) references to the probative court are to be read as references to the Youth Court;
- (f) references to the probationer are to be read as references to the youth against whom the order is made.

Insertion of s. 59AA

11. The following section is inserted after section 59 of the principal Act:

Application of Division to youths

59AA. If an order is made against a youth under section 26 of the *Young Offenders Act 1993*, this Division applies subject to the following modifications:

- (a) references to the probationer are to be read as references to the youth against whom the order is made;
- (b) references to the probative court are to be read as references to the Youth Court;
- (c) references to imprisonment are to be read as references to detention;
- (d) references to a bond are to be read as references to an order under section 26 of the *Young Offenders Act 1993*.

Amendment of s. 61—Imprisonment or detention in default of payment

12. Section 61 of the principal Act is amended by inserting after subsection (5) the following subsection:

(6) This section applies to an order for payment of a pecuniary sum made against a youth by the Youth Court subject to the following modifications:

- (a) references to imprisonment are to be read as references to detention;
- (b) instead of issuing a warrant of commitment under subsection (3), the Court may issue a warrant to have the youth apprehended and brought before the Court to be dealt with under section 23(5) of the *Young Offenders Act 1993*;
- (c) this section is in other respects to be read subject to section 23(5) and (6) of the *Young Offenders Act 1993*.

Amendment of s. 61a—Driver's licence disqualification for default

13. Section 61a of the principal Act is amended—

- (a) by striking out from subsection (1) ", instead of issuing a warrant of commitment,";
- (b) by striking out from subsection (5) "issuing a warrant of commitment" and substituting "taking other proceedings";
- (c) by striking out from subsection (6) "(whether by payment or imprisonment)" and substituting "(whether by payment, imprisonment, detention or community service)".

Amendment of s. 67—Application to work off pecuniary sums by community service

14. Section 67 of the principal Act is amended by inserting after subsection (17) the following subsection:

(18) If a youth is ordered to pay a pecuniary sum under the *Young Offenders Act 1993*, this section applies subject to the following modifications:

- (a) references to the Director are to be read as references to the Chief Executive Officer of the Department of Family and Community Services;
- (b) references to community service are to be read as references to community service performed in accordance with the *Young Offenders Act 1993*;
- (c) the Chief Executive Officer of the Department of Family and Community Services may permit an applicant to enter into an undertaking (in a form and on terms approved by the Chief Executive Officer) to perform community service if there is, or will be within a reasonable time, a suitable placement for the youth in a community service program (and this power operates to the exclusion of the power contained in subsection (5)).

Amendment of s. 69—Amount in default is reduced by imprisonment or detention served

15. Section 69 of the principal Act is amended by inserting after subsection (6) the following subsection:

(7) This section applies to an order for detention for non-payment of a pecuniary sum made against a youth by the Youth Court subject to the following modifications:

- (a) references to imprisonment are to be read as references to detention;
- (b) references to a warrant for the imprisonment of a person are to be read as references to an order for detention under section 23(5) of the *Young Offenders Act 1993*;
- (c) references to the manager of the prison are to be read as references to the person in charge of the training centre at which the youth is detained;
- (d) this section is in other respects to be read subject to section 23(5) and (6) of the *Young Offenders Act 1993*.

Amendment of s. 71—Community service orders may be enforced by imprisonment or detention

16. Section 71 of the principal Act is amended by inserting after subsection (8) the following subsection:

(9) This section applies to an order for community service made against a youth by the Youth Court subject to the following modifications:

- (a) references to imprisonment are to be read as references to detention;
- (b) instead of issuing a warrant of commitment under subsection (5), the Court may issue a warrant for the youth's apprehension and detention for the appropriate term determined in accordance with subsection (2);

- (c) references to a warrant of commitment are to be read as references to a warrant issued under paragraph (b).

Amendment of s. 71a—Other non-pecuniary orders may be enforced by imprisonment or detention

17. Section 71a of the principal Act is amended by inserting after subsection (4) the following subsection:

(5) This section applies to an order requiring a youth to do some act (other than the performance of community service or the payment of a pecuniary sum) made against the youth by the Youth Court subject to the following modifications:

- (a) references to imprisonment are to be read as references to detention;
- (b) instead of issuing a warrant of commitment under subsection (3), the Court may issue a warrant for the youth's apprehension and detention.

**PART 5
TRANSITIONAL PROVISIONS**

Transitional provisions—Youth Court

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

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.

