

TASMANIA

YOUTH JUSTICE AMENDMENT BILL 2002

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YOUTH JUSTICE AMENDMENT BILL 2002

(Brought in by the Minister for Health and Human Services, the Honourable David Edward Llewellyn)

A BILL FOR

An Act to amend the *Youth Justice Act 1997*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

Short title

1. This Act may be cited as the *Youth Justice Amendment Act 2002*.

Commencement

2. This Act commences on the day on which this Act receives the Royal Assent.

Principal Act

3. In this Act, the *Youth Justice Act 1997** is referred to as the Principal Act.

*No. 81 of 1997

Section 3 amended (Interpretation)

4. Section 3(1) of the Principal Act is amended by omitting "*Prison Act 1977*" from the definition of "prison" and substituting "*Corrections Act 1997*".

Section 22 amended (Confidentiality)

5. Section 22(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (e) "officer" and substituting "officer, or a person or a member of an authority responsible for the enforcement of laws in this State,";
- (b) by inserting the following paragraph after paragraph (e):
 - (ea) a member of the Australian Federal Police, a member of the police force of another State or a Territory or a person or a member of any other authority responsible for the enforcement of laws of the Commonwealth, any other State or a Territory in the course of his or her official functions; and
- (c) by omitting from paragraph (h)(ii) "Police." and substituting "Police; and";
- (d) by inserting the following paragraph after paragraph (h):
 - (i) a prescribed person, a person in prescribed circumstances or a person for a prescribed purpose.

Section 25 amended (How youth is to be dealt with if not granted bail)

6. Section 25 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “if it is at all” and substituting “if, in the opinion of the Secretary, it is”;
- (b) by omitting from subsection (2)(b) “if” and substituting “if, in the opinion of the Secretary,”;
- (c) by inserting in subsection (4) “unless the Secretary determines that the youth is to be remanded to a detention centre” after “adult”.

Section 27A inserted

7. After section 27 of the Principal Act, the following section is inserted in Division 1:

Taking plea if joint charge

27A. (1) If a youth is jointly charged with an adult in respect of an offence, the youth is to enter his or her plea to the charge in the court in which the adult is to enter his or her plea.

(2) If a youth is jointly charged with an adult in respect of an offence, the court in which the youth’s plea is entered must, after taking that plea and if the proceedings are to be continued in the Court, make an order –

- (a) transferring the proceedings to the Court; and
- (b) committing the youth to custody or releasing the youth on bail, with or

without sureties, to be brought or to appear before the Court.

Section 31 amended (Restrictions on reporting proceedings)

8. Section 31 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “in any way a report of the proceedings of the Court if the report identifies, or contains any information, picture or film that” and substituting “any information in respect of any proceedings that are to be, are being or have been taken in the Court if the information identifies, or”;
- (b) by omitting from subsection (1)(a) “identity, information, picture or film” and substituting “identity or information”;
- (c) by omitting from subsection (1)(b) “identity, information, picture or film” and substituting “identity or information”;
- (d) by omitting from subsection (2) “identity, information, picture or film” and substituting “identity or information”;
- (e) by omitting from subsection (3) “a report” and substituting “any information in respect”;
- (f) by omitting from subsection (3) “any report of the proceedings” and substituting “the information”;
- (g) by inserting the following subsection after subsection (3):

(4) Subsections (1) and (3) do not apply to the provision of information to –

- (a) the youth or the legal practitioner acting for the youth; and
- (b) a guardian of the youth; and
- (c) a victim of the offence; and
- (d) a police officer, or a person or a member of an authority responsible for the enforcement of laws in this State, in the course of his or her official functions; and
- (e) a member of the Australian Federal Police, a member of the police force of another State or a Territory or a person or a member of any other authority responsible for the enforcement of laws of the Commonwealth, any other State or a Territory in the course of his or her official functions; and
- (f) a person employed or engaged in the administration of this Act in the course of his or her official functions; and
- (g) a person employed or engaged in the administration of the Act against which the offence was committed in the course of his or her official functions; and
- (h) a person undertaking research that does not involve the identification of the youth, the victim or any person involved in the proceedings (otherwise than in a professional capacity as a police officer or a person employed or

engaged in the administration of this Act) who has not consented, in writing, to the publication of the report if the research has been approved by the Commissioner of Police or the Secretary; and

- (i) a person undertaking research that involves the identification of the youth, the victim or any other person referred to in paragraph (h) if –
 - (i) all persons to be identified have consented, in writing, to their identity being provided to the researcher; and
 - (ii) the research has been approved by the Commissioner of Police or the Secretary; and
- (j) a prescribed person or a person in prescribed circumstances or for a prescribed purpose.

Section 45 amended (Confidentiality of community conference)

9. Section 45(2) of the Principal Act is amended as follows:

- (a) by omitting paragraph (a) and substituting the following paragraphs:
 - (a) the youth or the legal practitioner acting for the youth; and
 - (aa) a guardian of the youth; and

- (b) by inserting the following paragraph after paragraph (b):
 - (ba) a victim of the offence; and
- (c) by omitting from paragraph (c) “officer” and substituting “officer, or a person or a member of an authority responsible for the enforcement of laws in this State,”;
- (d) by inserting the following paragraph after paragraph (c):
 - (ca) a member of the Australian Federal Police, a member of the police force of another State or a Territory or a person or a member of any other authority responsible for the enforcement of laws of the Commonwealth, any other State or a Territory in the course of his or her official functions; and
- (e) by omitting paragraph (g) and substituting the following paragraph:
 - (g) a prescribed person, a person in prescribed circumstances or a person for a prescribed purpose.

Section 49A inserted

10. After section 49 of the Principal Act, the following section is inserted in Division 5:

Court may impose single, general or mixed sentence

49A. (1) If a youth has been convicted of more than one offence specified in one or more complaints, the Court may impose on the youth –

- (a) one sentence for all of those offences; or
- (b) a separate sentence for each of those offences; or
- (c) one sentence for a group of those offences determined by the Court and –
 - (i) one sentence for all of the remaining offences; or
 - (ii) a separate sentence for each of the remaining offences; or
 - (iii) a separate sentence for each other group of the offences remaining as the court determines and a separate sentence for each offence remaining, if any, as is not within any such group.

(2) In imposing a single sentence on a youth for more than one offence, the Court must not impose a penalty exceeding the sum of the maximum penalties that could otherwise have been imposed under this Part if each of those offences had been sentenced separately.

Section 57 amended (Amount of fine)

11. Section 57(1) of the Principal Act is amended by inserting “under another Act” after “adult” in the definition of “maximum fine”.

Section 64 amended (Proceedings under *Magistrates Court (Civil Division) Act 1992* to recover fine)

12. Section 64 of the Principal Act is amended by omitting “imposed under this Act”.

Section 90 amended (Suspended detention order)

13. Section 90(6)(d) of the Principal Act is amended by omitting “the Crown in right of”.

Sections 100A and 100B inserted

14. After section 100 of the Principal Act, the following sections are inserted in Division 15:

Correction of sentence or order

100A. (1) A sentence passed or an order made by the Court under this Part may be varied or revoked by the Court –

- (a) on its own motion initiated within the 3 month period after the sentence was passed or the order was made; or
- (b) on an application made within that period by the Secretary, a prescribed person or the affected youth.

(2) The Court must not vary or revoke a sentence or an order under this section unless it has determined that –

- (a) the sentence or order is contrary to the law; or

- (b) the Court failed to impose a sentence or make an order that was in conformity with the law; or
- (c) the sentence or order included an order that was based on, or contained, an error of fact; or
- (d) the youth's circumstances were wrongly stated or not accurately presented to the Court and it is in the interests of justice to vary or revoke the sentence or order.

(3) A sentence or an order is not to be varied or revoked under this section except –

- (a) by the Court constituted as it was when the sentence was passed or the order made; and
- (b) after the Court has given the parties an opportunity to be heard.

(4) Nothing in this section affects the operation of Chapter XLVI of Part IX of the *Criminal Code* or Part XI of the *Justices Act 1959*.

Sentencing by different magistrate

100B. (1) This section applies if, on the trial of an offence under this Act –

- (a) a verdict of guilty has been found or a plea of guilty has been received but no judgment, or sentence or order under this Part, has been given, passed or made on it; and
- (b) the magistrate who constituted the Court at the trial or when the plea was received goes out of office or it appears

probable that, because of incapacitating illness or other serious cause, he or she will be unable to give judgment or pass sentence or make an order under this Part within a reasonable time.

(2) If this section applies, any other magistrate may –

- (a) take all necessary steps preliminary to the giving of judgment, the passing of sentence or the making of an order under this Part; and
- (b) give judgment, pass sentence or make an order under this Part.

(3) In all cases where it is possible to do so, the magistrate referred to in subsection (1)(b) is to be consulted before judgment is given, sentence passed or an order made.

(4) Non-compliance with subsection (3) does not affect the validity of the judgment, sentence or order.

(5) The question whether it appears probable that a magistrate will be unable, for the reasons referred to in subsection (1)(b), to give judgment, pass sentence or make an order within a reasonable time is to be decided by the Chief Magistrate and that decision is final.

(6) If, on the trial of an offence –

- (a) a verdict of guilty has been found or a plea of guilty has been received; and
- (b) all steps preliminary to the giving of judgment or the passing of sentence or the making of an order under this Part

have been taken but no judgment, sentence or order has been given, passed or made –

the Court constituted by any other magistrate may give the judgment, pass the sentence or make the order under this Part determined by the magistrate who constituted the Court at the trial or when the plea was received.

(7) If, at any time before the commencement of the trial of an indictable offence, including one heard summarily, the youth pleads guilty before the Court constituted by a magistrate, any magistrate may take all necessary steps preliminary to the giving of judgment, the passing of sentence or the making of an order under this Part and may give judgment, pass sentence or make an order under this Part.

(8) A judgment given, sentence passed or order made under subsection (2), (6) or (7) has, for all purposes, the same effects and consequences as if it had been given, passed or made by the Court as constituted at the trial or when the plea was received.

Section 107 substituted

15. Section 107 of the Principal Act is repealed and the following sections are substituted:

Sanctions, &c., available to other courts

107. (1) In this section, “**summary court**” means a court of summary jurisdiction other than the Magistrates Court (Youth Justice Division).

(2) The Supreme Court, or a summary court, may exercise all the powers of the Magistrates Court

(Youth Justice Division) under this Part in addition to, or instead of, any other power it may exercise when sentencing for an offence, including a prescribed offence, a person who was 10 years old or more but less than 18 years old at the time when he or she committed the offence.

(3) If, under subsection (2), the Supreme Court or a summary court makes an order under section 47, the Supreme Court or summary court –

- (a) must specify in the order that it is made under this Part; and
- (b) may specify in the order whether the responsible Department in relation to this Act or the responsible Department in relation to the *Sentencing Act 1997* is to be responsible for all or any matters relating to the administration of the order.

(4) A failure to comply with subsection (3)(a) does not affect the validity of the order.

(5) If, in making an order referred to in subsection (3), the Supreme Court or summary court does not specify which Department is to be responsible for matters relating to the administration of the order, the responsible Department in relation to this Act is responsible for those matters.

Contravention of section 47 order made by other court

107A. (1) In this section –

“**offence**” includes prescribed offence;

“offender” means the person against whom the original order was made;

“original order” means an order under section 47 made by the Supreme Court, or a summary court, exercising powers under section 107;

“summary court” means a court of summary jurisdiction other than the Magistrates Court (Youth Justice Division).

(2) If proceedings under this Part are to be brought in respect of the contravention of an original order or the conditions to which an original order is subject, the proceedings are to be brought in the Supreme Court or summary court that made the original order.

(3) In proceedings referred to in subsection (2), the Supreme Court or summary court may –

- (a) exercise all the powers of the Magistrates Court (Youth Justice Division) under this Part; or
- (b) revoke the contravened order and impose any sentence under the *Sentencing Act 1997* or another law in respect of the original offence that it could have imposed if it had not made the original order.

Section 108A inserted

16. After section 108 of the Principal Act, the following section is inserted in Division 15:

Sentence, &c., not invalidated by non-compliance with procedural requirements

108A. (1) The failure of the Court –

- (a) to cause an order imposing a sentence to be promptly reduced to writing; or
- (b) to comply with any other procedural requirement of this Act –

does not invalidate the order or any sentence imposed.

(2) Subsection (1) does not prevent a court on an appeal against a sentence imposed or an order made under section 47 from reviewing a sentence imposed or an order made under section 47 by the Court in circumstances where there has been a failure that is referred to in that subsection.

Section 108B inserted

17. Before section 109 of the Principal Act, the following section is inserted in Part 5:

Application of Part 5

108B. This Part applies in respect of a youth serving a period of detention under a detention order whether that period of detention is being served in a detention centre or a prison.

Section 121 amended (Effect of suspension or cancellation of supervised release order after youth reaches 19 years)

18. Section 121 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “prison, within the meaning of the *Prison Act 1977*” and substituting “prison”;
- (b) by omitting from paragraph (e) “*Prison Act 1977*” and substituting “*Corrections Act 1997*”;
- (c) by omitting from paragraph (f) “*Prison Act 1977*” and substituting “*Corrections Act 1997*”.

Section 126 amended (Authority for admission to detention centre)

19. Section 126 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “person.” and substituting “person: or”;
- (b) by inserting the following paragraph after paragraph (c):
 - (d) if the person has been sentenced to a term of imprisonment under another Act and that sentence, or part of that sentence, is to be served in a detention centre, evidence of the agreement between the Secretary and the Director of Corrective Services providing for the person to serve that sentence in a detention centre.

Section 146 amended (Registration of birth of child of detainee)

20. Section 146(1) of the Principal Act is amended by omitting “*Registration of Births and Deaths Act 1895*” from

the definition of “birth record” and substituting “*Births, Deaths and Marriages Registration Act 1999*”.

Sections 146A and 146B inserted

21. After section 146 of the Principal Act, the following sections are inserted in Division 6:

Treatment of youth in prison and prisoner in detention centre

146A. (1) In this section –

“prescribed detention centre” means –

- (a) a detention centre that is not also a prison; and
- (b) a detention centre that is also a prison but whose primary use is as a detention centre for the purposes of detaining youths serving sentences of detention under the *Youth Justice Act 1997*;

“prescribed prison” means –

- (a) a prison that is not also a detention centre; and
- (b) a prison that is also a detention centre but whose primary use is as a prison for the purposes of incarcerating prisoners serving sentences of imprisonment;

“prison” has the same meaning as in the *Corrections Act 1997*;

“**prisoner**” has the same meaning as in the *Corrections Act 1997*.

(2) If a youth is serving a sentence of detention, or part of a sentence of detention, in a prescribed prison, section 83C(3) of the *Corrections Act 1997* applies.

(3) If a prisoner is serving a sentence of imprisonment, or part of a sentence of imprisonment, in a prescribed detention centre, this Part applies as if the prisoner were a detainee serving a sentence of detention unless, and except in so far as, the Secretary determines that the *Corrections Act 1997* is to apply to that prisoner.

Delegation by detention centre manager

146B. A detention centre manager may delegate to the Director of Corrective Services or a person nominated by the Director of Corrective Services any of his or her functions or powers under this Part, other than this power of delegation.

Section 161 amended (Jurisdiction of Court)

22. Section 161 of the Principal Act is amended as follows:

(a) by omitting subsection (2) and substituting the following subsections:

(2) If a youth who is 15 years old or more is charged before the Court with an indictable offence that is not a prescribed offence, the Court must ask the youth if he or she is willing to be tried by the Court instead of by jury.

(2A) If a youth referred to in subsection (2) stands mute when asked if he or she is willing to be tried by the Court instead of by jury, the youth is taken to be willing to be tried by the Court.

(2B) If a youth referred to in subsection (2) is willing to be tried by the Court and the youth's guardian, if present, does not object to the youth being so tried, the section creating the offence is taken to have created a simple offence and the Court must proceed to hear and determine the charge.

- (b) by omitting from subsection (3) "elects to have a charge heard and determined in the Supreme Court" and substituting "is not willing to be tried by the Court or the youth's guardian objects to the youth being tried by the Court";
- (c) by omitting subsection (4).

***Corrections Act 1997* amended**

23. (1) After section 83 of the *Corrections Act 1997*, the following Division is inserted in Part 8:

Division 3 – Miscellaneous

Part 8 does not apply to youth serving period of detention

83A. This Part does not apply in respect of a sentence of detention imposed under the *Youth Justice Act 1997* on a person who is serving that sentence, or part of that sentence, in a prison.

Application of Part 8 to prisoner in detention centre

83B. This Part applies in respect of a sentence of imprisonment which is being served, or part of which is being served, by a prisoner in a detention centre, within the meaning of the *Youth Justice Act 1997*.

(2) Before section 84 of the *Corrections Act 1997*, the following section is inserted in Part 9:

Treatment of prisoner in detention centre and youth in prison

83C. (1) In this section –

“**detention centre**” has the same meaning as in the *Youth Justice Act 1997*;

“**prescribed detention centre**” means –

- (a) a detention centre that is not also a prison; and
- (b) a detention centre that is also a prison but whose primary use is as a detention centre for the purposes of detaining youths serving sentences of detention under the *Youth Justice Act 1997*;

“**prescribed prison**” means –

- (a) a prison that is not also a detention centre; and
- (b) a prison that is also a detention centre but whose primary use is as a prison for the purposes of

incarcerating prisoners serving sentences of imprisonment.

(2) If a prisoner is serving a sentence of imprisonment, or part of a sentence of imprisonment, in a prescribed detention centre, section 146A(3) of the *Youth Justice Act 1997* applies.

(3) If a person is serving a sentence of detention, or part of a sentence of detention, imposed under the *Youth Justice Act 1997* in a prescribed prison, this Act other than Part 8 applies as if the person were a prisoner serving a sentence of imprisonment unless, and except in so far as, the Director determines that the *Youth Justice Act 1997* is to apply to that person.