

## TASMANIA

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## YOUTH JUSTICE AMENDMENT BILL 2016

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# **YOUTH JUSTICE AMENDMENT BILL 2016**

*(Brought in by the Minister for Human Services, the  
Honourable Jacqueline Anne Petrusma)*

## **A BILL FOR**

### **An Act to amend the *Youth Justice Act 1997***

Be it enacted by Her 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:

#### **1. Short title**

This Act may be cited as the *Youth Justice Amendment Act 2016*.

#### **2. Commencement**

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

#### **3. Principal Act**

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

#### **4. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended as follows:

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- (a) by omitting “(excluding any period of detention during which the youth is released under a supervised release order)” from the definition of *earliest release date*;
- (b) by inserting the following definition after the definition of *legal representative*:

*next release date* means the day specified by the Court under section 117(12) as the next release date when making an order cancelling a supervised release order;

**5. Section 83 amended (Commencement of detention )**

Section 83(2) of the Principal Act is amended by inserting “or next release date” after “date”.

**6. Section 85 amended (Court may order detention period to be cumulative)**

Section 85(1) of the Principal Act is amended by inserting “or next release date” after “date”.

**7. Section 86 amended (Limitation on cumulative orders)**

Section 86(2) of the Principal Act is amended by inserting “or next release date” after “date”.

**8. Section 89 substituted**

Section 89 of the Principal Act is repealed and the following sections are substituted:

**89. Period of custody on remand to be treated as detention on sentence**

- (1) In this section, a reference to a period of custody includes a reference to part of a period of custody.
- (2) In making a detention order in relation to an offence or a group of offences (the *relevant detention order*), the Court must take into account any period during which the youth was held in custody on remand in relation to proceedings for, or arising from, that offence or group of offences unless that period has been taken into account by the Court, or another court, in relation to the making of another detention order or the imposition of a term of imprisonment under the *Sentencing Act 1997*.
- (3) If in making a relevant detention order the Court takes into account a period of custody referred to in subsection (2), the Court must order that the period of detention under the relevant detention order is to commence on a day earlier than the day on which it is imposed, being such day as the Court considers appropriate in the circumstances.

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**89A. Detention order to specify earliest release date**

In making a detention order, the Court must calculate, and specify in the detention order, the earliest release date.

**9. Section 109 amended (Right to be released)**

Section 109 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “date.” and substituting “date or, if under section 117 a supervised release order in relation to that detention has been cancelled and the Court has specified a next release date, on the next release date.”;
- (b) by omitting from subsection (2) “dates.” and substituting “dates and relevant next release dates.”.

**10. Sections 117 and 118 substituted**

Sections 117 and 118 of the Principal Act are repealed and the following section is substituted:

**117. Contravention of supervised release order other than by further offence punishable by detention or imprisonment**

- (1) In this section –

***detention offence*** means an offence in respect of which a court has imposed a sentence that includes a detention order or sentence of imprisonment;

***relevant contravention***, in relation to a supervised release order, means a contravention by the youth of a condition to which the supervised release order is subject, otherwise than by the commission of a detention offence.

- (2) If it appears to the Secretary that a youth has committed a relevant contravention of a supervised release order, the Secretary –
- (a) if the relevant contravention does not consist of the commission of an offence or a prescribed offence, may warn the youth, in writing, that a further contravention of the supervised release order may result in the Secretary applying to the Court for an order under subsection (9); or
  - (b) if the relevant contravention does consist of the commission of an offence or a prescribed offence, may issue such a warning to the youth or apply to the Court for an order under subsection (9).

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- (3) If the Secretary issues a warning to a youth under subsection (2), the Secretary is to provide a copy of the warning to a guardian of the youth unless one cannot be found after reasonable inquiry.
- (4) If it appears to the Secretary that a youth has committed a further relevant contravention of a supervised release order after being issued with a warning under subsection (2), the Secretary may apply to the Court for an order under subsection (9).
- (5) A copy of the application to the Court made under subsection (2)(b) or subsection (4) and notice of the time and place of the hearing of the application are to be served not less than 7 days before the hearing by the Secretary on –
  - (a) the youth; and
  - (b) a guardian of the youth unless one cannot be found after reasonable inquiry.
- (6) If the Court is satisfied that the youth is unlikely to appear at the hearing of the application –
  - (a) the Court may issue a warrant to arrest the youth; and
  - (b) if the Court does so, subsection (5)(a) does not apply in relation to the application.



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- (7) If the youth is before the Court in relation to another matter –
- (a) an application under subsection (2)(b) or subsection (4) may be made orally to the Court; and
  - (b) if the application is so made orally, subsection (5) does not apply.
- (8) The Court may issue a warrant to arrest the youth if –
- (a) the youth fails to appear at the hearing of an application made under subsection (2)(b) or subsection (4); or
  - (b) reasonable efforts have been made to serve the application on the youth but have been unsuccessful.
- (9) If the Court is satisfied that a youth has committed a relevant contravention of the supervised release order, the Court may do one or more of the following:
- (a) on the undertaking of the youth to comply with the order, continue the order as it is;
  - (b) amend the special conditions to which the order is subject;

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- (c) cancel the order.
- (10) In determining what order to make under subsection (9), the Court must consider –
  - (a) any report on the youth prepared by the Secretary; and
  - (b) the extent to which, and the manner in which, the youth has complied with the supervised release order.
- (11) The Court must not make an order under subsection (9) unless the youth is present before the Court.
- (12) If under subsection (9) the Court cancels a supervised release order relating to a youth, the Court must –
  - (a) specify, in the order, a day it considers appropriate as the next release date; or
  - (b) order that the youth be detained for the remainder of his or her sentence of detention.

**11. Section 120 amended (Effect of cancellation of supervised release order)**

Section 120 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “suspended or cancelled, the Secretary

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must issue a warrant to arrest the youth who is or was subject to the order” and substituting “cancelled, the Court must issue a warrant directing the Secretary, a police officer or another person to take into custody the youth who is or was subject to the order”;

- (b) by omitting from subsection (1)(a) “suspended or”;
- (c) by omitting from subsection (1)(b) “suspended or”;
- (d) by omitting from subsection (2) “while it is suspended or”;
- (e) by omitting subsection (5).

**12. Section 121 amended (Effect of cancellation of supervised release order after youth reaches 19 years)**

Section 121 of the Principal Act is amended by omitting “suspended or”.

**13. Section 135 amended (Refusal of ordinary visitor, &c.)**

Section 135 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

- (1) In this section –

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*visitor* does not include a prescribed officer within the meaning of section 135A.

- (1A) A detention centre manager may refuse to allow a visitor to enter the detention centre if –
- (a) in the manager’s opinion, the person’s presence in the detention centre would prejudice the security or good order of the detention centre; or
  - (b) the person does not, on request, give his or her name, address or proof of identity; or
  - (c) the person refuses to comply with a request made under subsection (3).

**14. Section 135A inserted**

After section 135 of the Principal Act, the following section is inserted:

**135A. Access to detainee by prescribed officer**

- (1) In this section –

*prescribed officer* means a person, or a person of a class of persons, prescribed by the regulations to be a prescribed officer for the purposes of this section.

- (2) Except as provided by this section, a prescribed officer is entitled to be allowed access, at any reasonable time, to –
- (a) any detention centre for the purpose of performing and exercising his or her functions and powers under a prescribed Act, in relation to the centre; and
  - (b) any detention centre and any detainee at the centre for the purpose of performing and exercising his or her functions and powers under a prescribed Act, in relation to the detainee.
- (3) A detention centre manager and each member of the staff at a detention centre –
- (a) must allow a prescribed officer to conduct an interview with a detainee out of the hearing of any other person; and
  - (b) must not without the approval of the detainee open, copy, remove or read any correspondence –
    - (i) from the detainee to a prescribed officer; or
    - (ii) from a prescribed officer to the detainee.

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- (4) A detention centre manager, and a member of staff at a detention centre, must not read any document brought to the centre by a prescribed officer without the permission of the prescribed officer.
- (5) A detention centre manager may –
  - (a) refuse to allow a prescribed officer to enter the detention centre, or require a prescribed officer to leave the detention centre immediately, if the prescribed officer fails to produce his or her identification and evidence that he or she is a prescribed officer when requested to do so by the detention centre manager; and
  - (b) direct a prescribed officer to leave the detention centre immediately if, in the manager's opinion, it is necessary for the security of the prescribed officer or the detention centre.
- (6) If a detention centre manager considers it necessary for the security of a prescribed officer or the detention centre, the manager or member of staff may give directions to the prescribed officer.
- (7) A prescribed officer is to comply with a direction given under this section.

**15. Section 140 amended (Dealing with detention offence)**

Section 140(3)(c) of the Principal Act is amended by inserting “or next release date” after “release date”.

**16. Section 141 amended (Court proceedings for detention offence)**

Section 141(2) of the Principal Act is amended by inserting “or next release date” after “release date”.

**17. Section 142 amended (Effect of change of earliest release date or next release date)**

Section 142 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “date,” and substituting “date or next release date,”;
- (b) by inserting in subsection (1) “or next release date” after “date, the earliest release date”;
- (c) by omitting from subsection (2) “date,” and substituting “date or next release date,”;
- (d) by omitting from subsection (2) “date.” and substituting “date or new next release date.”.

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**18. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.