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WESTERN AUSTRALIA

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# YOUNG OFFENDERS ACT 1994

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## **YOUNG OFFENDERS ACT 1994**

**AN ACT relating to young persons who commit offences  
against the law, to amend certain Acts, and for  
related purposes.**

**PART 1 — PRELIMINARY**

**Short title**

1. This Act may be cited as the *Young Offenders Act 1994*<sup>1, 1a, 1b, 1c</sup>.

**Commencement**

2. This Act comes into operation on such day as is fixed by proclamation<sup>1</sup>.

**Definitions**

3. In this Act, unless the contrary intention appears —

“**attendance conditions**” means conditions referred to in section 73 (1) (a);

“**body sample**” means a sample of a person’s blood, breath, or urine;

“**chief executive officer**” means the chief executive officer of the Department;

“**clerk of the court**”, in relation to the Children’s Court, means the clerk of the Children’s Court at the place where the relevant matter was heard;

“**community work conditions**” means conditions referred to in section 73 (1) (b);

“**conditional release order**” has the meaning given by section 101;

“**court**” means the Children’s Court or other court dealing with a young person for an offence;

**“Department”** means the department of the Public Service principally assisting the Minister in the administration of this Act;

**“detainee”** means a person who is detained in a detention centre;

**“detention”**, when referring to a sentence of detention, means detention in a detention centre;

**“detention centre”** means a place declared to be a detention centre under section 13;

**“earliest release day”**, in relation to a sentence of detention, means the earliest day on which the offender can, in accordance with section 121, be released under a supervised release order from custody under the sentence;

**“exempt responsible adult”**, in relation to a young person, means a responsible adult whose responsibility for the young person arises from being —

- (a) a person having the custody, care or control of the young person for a period that the court considers to be limited or temporary;
- (b) a person who, under the *Child Welfare Act 1947*, is responsible for the young person as a ward or as a child under the control of the department of the Public Service principally assisting in the administration of that Act;
- (c) an officer or other person employed in the Department, or the department of the Public Service principally assisting in the administration of the *Child Welfare Act 1947*; or

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- (d) in any other capacity prescribed for the purposes of this paragraph by the regulations;

**“general principles of juvenile justice”** means the principles described in section 7;

**“imprisonment”** means imprisonment in a prison under the *Prisons Act 1981*;

**“independent young person”** means a young person who —

- (a) has reached the age of 17 years; and
- (b) has sufficient maturity to live independently without the guidance or control of a responsible adult, and is doing so;

**“intensive youth supervision order”** means an order made under section 98;

**“notice to attend court”** means a notice to attend court issued to a young person in accordance with section 43;

**“responsible adult”**, in relation to a young person, means a parent, guardian, or other person having responsibility for the day to day care of the young person but does not include a person who the regulations may provide is not a responsible adult;

**“Schedule 1 offence”** means —

- (a) an offence that is committed against an enactment referred to in column 1 of Schedule 1 and is —
- (i) described in column 2 of Schedule 1 opposite the reference; or

(ii) committed in the circumstances set out in column 2 of Schedule 1 opposite the reference;

or

(b) the offence of counselling or procuring the commission of an offence mentioned in paragraph (a);

**“Schedule 2 offence”** means —

(a) an offence that is committed against an enactment referred to in column 1 of Schedule 2 and is —

(i) described in column 2 of Schedule 2 opposite the reference; or

(ii) committed in the circumstances set out in column 2 of Schedule 2 opposite the reference;

or

(b) the offence of counselling or procuring the commission of an offence mentioned in paragraph (a);

**“special order”** means an order made under section 126;

**“superintendent”** means the person in charge of a detention centre;

**“supervised release order”** means an order made under section 132 for a person who is serving a sentence of detention to be released from custody subject to conditions;

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**“supervision conditions”** means conditions referred to in section 73 (1) (c);

**“work”** includes any form of work, service or activity;

**“young person”** means —

(a) a person who has not reached the age of 18 years; or

(b) a person to whom this Act applies because of section 4;

**“youth community based order”** means an order made under section 73.

#### **Young offenders reaching 18**

4. If a person commits or allegedly commits an offence before reaching the age of 18 years, this Act applies to the person as a young person for purposes connected with that offence or any order that was made in dealing with the person for that offence.

#### ***Justices Act 1902* overridden**

5. To the extent that this Act is inconsistent with the *Justices Act 1902* this Act prevails.

**PART 2 — OBJECTIVES AND PRINCIPLES**

**Objectives**

6. The main objectives of this Act are —
- (a) to provide for the administration of juvenile justice;
  - (b) to set out provisions, embodying the general principles of juvenile justice, for dealing with young persons who have, or are alleged to have, committed offences;
  - (c) to ensure that the legal rights of young persons involved with the criminal justice system are observed;
  - (d) to enhance and reinforce the roles of responsible adults, families, and communities in —
    - (i) minimizing the incidence of juvenile crime;
    - (ii) punishing and managing young persons who have committed offences; and
    - (iii) rehabilitating young persons who have committed offences towards the goal of their becoming responsible citizens;
  - (e) to integrate young persons who have committed offences into the community; and
  - (f) to ensure that young persons are dealt with in a manner that is culturally appropriate and which recognises and enhances their cultural identity.

**General principles of juvenile justice**

7. The general principles that are to be observed in performing functions under this Act are that —

- (a) there should be special provision to ensure the fair treatment of young persons who have, or are alleged to have, committed offences;
- (b) a young person who commits an offence is to be dealt with, either formally or informally, in a way that encourages the young person to accept responsibility for his or her conduct;
- (c) a young person who commits an offence is not to be treated more severely because of the offence than the person would have been treated if an adult;
- (d) the community must be protected from illegal behaviour;
- (e) victims of offences committed by young persons should be given the opportunity to participate in the process of dealing with the offenders to the extent that the law provides for them to do so;
- (f) responsible adults should be encouraged to fulfil their responsibility for the care and supervision of young persons, and supported in their efforts to do so;
- (g) consideration should be given, when dealing with a young person for an offence, to the possibility of taking measures other than judicial proceedings for the offence if the circumstances of the case and the background of the alleged offender make it appropriate to dispose of the matter in that way and it would not jeopardize the protection of the community to do so;

- (h) detaining a young person in custody for an offence, whether before or after the person is found to have committed the offence, should only be used as a last resort and, if required, is only to be for as short a time as is necessary;
- (i) detention of a young person in custody, if required, is to be in a facility that is suitable for a young person and at which the young person is not exposed to contact with any adult detained at the facility, although —
  - (i) a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner; and
  - (ii) a young person who is the subject of a direction under section 119 (1) may be held in a detention centre of a kind referred to in that section with adults subject to a direction under Part 12 of the *Sentencing Act 1995*;
- (j) punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways;
- (k) a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time;
- (l) in dealing with a young person for an offence, the age, maturity, and cultural background of the offender are to be considered; and

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- (m) a young person who commits an offence is to be dealt with in a way that —
  - (i) strengthens the family and family group of the young person;
  - (ii) fosters the ability of families and family groups to develop their own means of dealing with offending by their young persons; and
  - (iii) recognises the right of the young person to belong to a family.

*[Section 7 amended by No. 82 of 1994 s.20; No. 78 of 1995 s.145.]*

**Role of responsible adult**

8. While observing the general principles of juvenile justice as required by section 7, a person performing functions under this Act is also to have regard to the principles that —

- (a) responsible adults have an important responsibility for the behaviour of young persons under their care;
- (b) responsible adults should be involved in the disposition, by a court or otherwise, of allegations of offences by the young persons under their care and in their punishment or management as a result of having offended;
- (c) a responsible adult should be notified as soon as practicable after a young person is taken into custody or otherwise dealt with under this Act and, if the young person is in custody, should be kept informed as to the whereabouts of the young person; and
- (d) in determining the degree of responsibility expected of a responsible adult the age, intellectual and emotional

maturity of the young person and the fact that the young person is in employment or is living independently shall be taken into account.

**PART 3 — ADMINISTRATION**

**Functions of chief executive officer**

9. It is the duty of the chief executive officer, under the direction of the Minister, to carry into operation the provisions of this Act so far as the duty is not expressly committed to any other person.

**Chief executive officer may delegate**

10. The chief executive officer may, by a signed instrument of delegation, delegate to an officer of the Department, either generally or as otherwise provided in the instrument, any power or duty under this Act, other than this power of delegation.

**Other officers and employees**

11. (1) For the purposes of this Act the Minister may appoint officers and employees of such classes as are prescribed by the regulations.

(2) Those officers and employees are to have such functions as are given to them under the regulations.

(3) Appointments may be on a paid or honorary basis.

**Declared facilities**

12. (1) The Governor may, by order, declare a facility to be a Departmental facility or a subsidized facility.

(2) The Governor may, by order, vary or revoke an order under subsection (1).

(3) An order under this section does not have effect until it is published in the *Gazette*, and may be expressed to have effect from a time that is after its publication in the *Gazette*.

(4) The chief executive officer may, with the approval of the Minister, make rules for the management and control of Departmental facilities and subsidized facilities generally, or any such facility specified, and for the management and control of young persons in them and the management of officers of the Department.

(5) Rules made under subsection (4) may —

- (a) confer a discretionary authority on any person or class of persons;
- (b) confer authority to require a young person at a facility to submit for the purpose of having a body sample taken.

(6) Section 181 (3), (4), and (5) apply with the necessary modifications to rules made under subsection (4).

### **Detention centres**

13. (1) The Minister may, by order, declare a place to be a detention centre.

(2) The Minister may, by order, vary or revoke an order under subsection (1).

(3) An order under this section does not have effect until after it is published in the *Gazette* and the date of effect shall not be earlier than the date of publication and such order shall be a regulation for the purposes of section 42 of the *Interpretation Act 1984*.

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**Records**

14. (1) The chief executive officer is to keep records of every young person who is detained or who is dealt with under this Act for an offence.

(2) The records are to include —

- (a) such information as is required to identify the young person;
- (b) details of any detention or any way in which the young person has been dealt with for an offence;
- (c) records of every finding by the court that a young person is guilty of an offence and every conviction of a young person of an offence;
- (d) details as to the way in which —
  - (i) terms specified by a juvenile justice team in dealing with an alleged offender are being, or have been, complied with;
  - (ii) effect is being, or has been, given to an order that has been made under this Act by the court dealing with a person for an offence;

and

- (e) such other information, if any, as is required by the regulations to be kept.

(3) Despite subsections (1) and (2), the regulations may provide for the destruction or disposal of records on the basis of their age or such other criteria as are prescribed.

**Access to certain information**

15. (1) Records of every finding by the court that a young person is guilty of an offence are to be made available by the chief executive officer to any court and to any person requiring the information for the purposes of performing a function under this Act.

(2) The court may order that the chief executive officer make available to any person applying to the court for them, records of every conviction of a young person of an offence if the court considers it appropriate to make them available.

(3) Upon being requested to do so by a person whom the chief executive officer considers to have a proper interest in the matter, the chief executive officer is to —

- (a) inform the person whether a particular young person is detained under this Act, giving particulars of any order under which the young person is detained; and
- (b) provide the person with other information, where applicable, as to the way in which —
  - (i) an alleged offender is being, or has been, dealt with by a juvenile justice team;
  - (ii) terms specified by a juvenile justice team in dealing with an alleged offender are being, or have been, complied with; or
  - (iii) effect is being, or has been, given to an order that has been made under this Act by the court dealing with a person for an offence.

**Obtaining information from other agencies**

16. (1) The chief executive officer may, in writing, request the production of any information held in any government

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Department, or any instrumentality or agency of the Crown, that may assist the chief executive officer in the administration of this Act.

(2) The production of any information to the chief executive officer in compliance with the request is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by any law.

**Confidentiality**

**17.** (1) Except as provided in this section, a person who directly or indirectly divulges any personal information obtained by reason of any function that person has, or at any time had, in the administration of this Act or any provision repealed by this Act commits an offence.

Penalty: \$6 000 and imprisonment for 2 years.

(2) Subsection (1) does not apply to the divulging of information —

- (a) in the course of performing a function under this Act that requires the information to be divulged;
- (b) under this Act or another law;
- (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;
- (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information relates; or
- (e) with the consent of the person to whom the information relates, or each of them if there be more than one.

**PART 4 — YOUNG PERSONS IN CUSTODY BEFORE  
BEING DEALT WITH FOR AN OFFENCE**

**Apprehension on suspicion of intoxication**

18. Where practicable, a member of the Police Force who apprehends a young person under section 53A of the *Police Act 1892* is to attempt —

- (a) to take the young person to his or her place of residence and to release the young person into the care of a responsible person who the member of the Police Force reasonably believes is capable of taking care of the young person; or
- (b) to release the young person into the care of a person under section 53G of the *Police Act 1892*,

before taking the young person to a police station or lock-up to be detained.

**Detention of young offenders apprehended by police**

19. (1) The Commissioner of Police is to make rules, orders, or regulations under section 9 of the *Police Act 1892* in respect of the apprehension of young persons for offences and their detention in custody and a member of the Police Force is to have regard to any such rules, orders, or regulations.

(2) A young person in custody who is not released on bail, whether or not bail has been refused under the *Bail Act 1982*, is, subject to subsection (3) and section 49, to be taken to and placed in a detention centre as soon as practicable after the person's apprehension.

(3) A young person may be held in the custody of the police until arrangements can be made for the person to be taken to and placed in a detention centre in accordance with subsection (2).

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**Requirement to notify responsible adult**

20. (1) Before a member of the Police Force asks a young person who has been apprehended for the commission of an offence questions about —

- (a) that offence; or
- (b) any other offence that has been, or is suspected to have been committed,

the member of the Police Force is to ensure that a responsible adult has received notice of the intention to question the young person.

(2) Subsection (1) does not apply to questions that the member of the Police Force is expressly authorized to ask by any other written law.

(3) When a member of the Police Force charges a young person who has been apprehended for the commission of an offence with the commission of that or any other offence, if a responsible adult has not already been given notice of the intention to lay the charge the member of the Police Force is to ensure that a responsible adult is given notice of the charge as soon as is reasonably practicable.

(4) The notice is to be given orally (either personally or by telephone) or in writing (either personally or by mail sent to the address of the responsible adult), and is to include particulars as to —

- (a) the whereabouts of the young person;
- (b) the nature of any offence for which the young person was apprehended, about which the young person is to be questioned, or with which the young person is to be charged; and

- (c) where applicable, the process by which the matter is to be brought to court and when and where the court will sit.
- (5) The notice is not required to be given if —
  - (a) after reasonable enquiry, neither the whereabouts nor the address of a responsible adult can be ascertained; or
  - (b) in the circumstances it would be inappropriate to give a responsible adult notice,

but in either case the chief executive officer is to be advised in writing that the notice was not given and why it was not given.

**Young person in custody awaiting trial**

21. (1) Subject to the *Bail Act 1982*, a young person may be detained in a detention centre during the period for which the person has been remanded by a court, or during the period of the person's detention on committal for trial in the Supreme Court or the District Court.

(2) If a young person reaches the age of 18 years while detained in a detention centre as described in subsection (1), the court, upon the application of the chief executive officer, may direct that the person be transferred to a prison under the *Prisons Act 1981* and treated as an adult prisoner on remand.

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**PART 5 — DEALING WITH YOUNG OFFENDERS  
WITHOUT TAKING COURT PROCEEDINGS**

***Division 1 — Cautioning***

**Purpose of this division**

**22A.** The purpose of this Division is to set up a way of diverting a child who commits an offence from the courts' criminal justice system by allowing a police officer to administer a caution to the young person instead of starting a proceeding for the offence.

**Police officer to consider alternatives to court proceedings**

**22B.** A police officer, before starting a proceeding against a young person for an offence, must first consider whether in all the circumstances it would be more appropriate —

- (a) to take no action; or
- (b) administer a caution to the young person.

**Cautions may be given except for certain offences**

**22.** (1) Where circumstances arise in which a member of the Police Force could charge a young person with the commission of an offence, the member of the Police Force may, having regard to the circumstances, caution the person instead of laying a charge.

(2) The caution may be given orally or in writing.

(3) Subsection (1) does not allow a member of the Police Force to caution a person instead of laying a charge if the offence is a Schedule 1 offence or a Schedule 2 offence.

(4) If a caution is given any admission made by the person cautioned at or about the time the caution is given is not admissible in civil or other proceedings as evidence of any matter to which the caution refers.

**Cautioning to be preferred in certain cases**

**23.** (1) A member of the Police Force is to use the power to caution in preference to laying a charge against a young person unless because of the number of previous offences with which the person has been charged or for which the person has been dealt with under this Part it would be inappropriate only to give a caution.

(2) In deciding whether the number of previous offences would make it inappropriate only to give a caution for an offence, the seriousness of the offence and of previous offences is to be taken into account.

**Caution certificate to be given**

**23A.** (1) If a caution is administered to a young person for an offence, the police officer who administered the caution must give the young person a certificate in a form approved by the Commissioner.

(2) The certificate must state —

- (a) that a caution was administered to the young person; and
- (b) the young person's name; and
- (c) the substance of the offence; and
- (d) the police officer's name and rank; and
- (e) the place where the caution was issued; and

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- (f) the names of all persons present when the caution was issued; and
- (g) the nature and effect of a caution.

(3) In a proceeding, a document purporting to be a certificate or copy of a certificate is evidence that the young person was administered a caution for the offence in the circumstances stated in the certificate.

***Division 2 — Referral to juvenile justice team***

**Principles**

**24.** In applying this Division, while observing the general principles of juvenile justice as required by section 7, particular regard is to be had to the principles that —

- (a) the treatment of a young person who commits an offence that is not part of a well-established pattern of offending should seek to —
  - (i) avoid exposing the offender to associations or situations likely to influence the person to further offend; and
  - (ii) encourage and help the family or other group in which the person normally lives to influence the person to refrain from further offending;
- (b) the treatment of a young person who commits an offence should be fair, should be in proportion to the seriousness of the offence, and should be consistent with the treatment of other young persons who commit offences;

- (c) a young person who is dealt with for an offence should be dealt with in a time frame that is appropriate to the young person's sense of time; and
- (d) it is to be made clear to a young person who is dealt with for an offence —
  - (i) what act or omission constituted the offence; and
  - (ii) what it is that the person is required to do.

**Only certain matters may be referred to teams**

25. (1) A matter cannot be referred to a juvenile justice team if the offence is a Schedule 1 offence or a Schedule 2 offence.

(2) If an offence is one for which an infringement notice can be given, the giving of an infringement notice for the offence is to be preferred to referring the matter to a juvenile justice team unless there are circumstances that make the giving of an infringement notice inappropriate.

(3) In subsection (2), “**infringement notice**” means a notice issued to a person under a written law in respect of an offence that is alleged to have been committed offering the alleged offender an opportunity, by paying an amount as specified in the notice, to have the matter dealt with out of court.

(4) A matter can only be referred to a juvenile justice team if the alleged offender accepts responsibility for the act or omission constituting the offence, and agrees to having the matter dealt with by a juvenile justice team rather than by a court, but if the juvenile justice team cannot agree on how to deal with the young offender or for some reason refers the young offender to the court then such acceptance is not to be construed as an admission that the offence was committed or otherwise used in evidence against the offender.

**Release of young person under arrest**

**26.** (1) If a young person has been arrested for an offence and the matter is referred for consideration by a juvenile justice team, the young person is to be released as soon as is practicable.

(2) A young person who has been arrested for an offence is not to be held in custody by reason only of the need to decide whether or not to refer the matter for consideration by a juvenile justice team but the powers in regard to admission to bail may be exercised from time to time until the decision is made.

**Referral to team by prosecutor**

**27.** Where there is sufficient evidence to justify charging a young person with the commission of an offence, a person who could lay the charge may, having regard to the circumstances, refer the matter for consideration by a juvenile justice team instead of laying a charge.

**Referral to team by court**

**28.** Instead of itself dealing with a young person who has been charged with an offence, the court may, whether or not the person has pleaded to the charge and whether or not the person has been found guilty of an offence, refer the matter for consideration by a juvenile justice team.

**First offenders**

**29.** The discretion given by section 27 or 28 is to be exercised in favour of referring the matter to a juvenile justice team if the young person has not previously offended against the law.

**Role of responsible adult**

30. (1) Before it deals with a young person for an offence, a juvenile justice team is to give to a responsible adult notice that it proposes to deal with the young person for the offence, and it can only proceed if a responsible adult is present and has indicated agreement with the proposal and a willingness to participate in the proceedings as the team sees fit.

(2) If a responsible adult is present at the proceedings, a matter can only be disposed of by the team in a way to which the responsible adult agrees.

(3) If the team considers the young person to be an independent young person, it may dispense with the requirements of subsection (1).

(4) If the team is satisfied that —

- (a) after reasonable enquiry, neither the whereabouts nor the address of a responsible adult can be ascertained;  
or
- (b) in the circumstances it would be inappropriate to give a responsible adult notice,

the team may appoint a person satisfying the requirements of subsection (5) to act in place of a responsible adult and the person is to be regarded as a responsible adult for the purposes of the proceedings.

(5) A person appointed under subsection (4) is required to be an adult who, although not a responsible adult, is the young person's parent, relative, or employer, or any other person who appears to be in a position to both influence the conduct of the young person and provide the young person with support and direction.

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**Role of victim**

**31.** (1) Unless it is impracticable to do so, the juvenile justice team dealing with a young person for an offence is to give any person it considers to have primarily suffered as a consequence of the offence the opportunity to make submissions or otherwise participate in the proceedings as it sees fit.

(2) If a person referred to in subsection (1) is present at the proceedings, a matter can only be disposed of by the team if that person agrees to —

- (a) the matter being disposed of by the team; and
- (b) the way in which the team disposes of the matter.

**Powers of juvenile justice team**

**32.** (1) A juvenile justice team dealing with a young person for an offence may determine the way in which it considers the matter should be disposed of and invite the young person to comply with terms to be specified by the team.

(2) If the young person is not present at the proceedings or a party withdraws his or her agreement to having the matter dealt with by a juvenile justice team or will not agree to terms specified by the team, the team may send the matter back —

- (a) if the matter was referred by a person, to that person;  
or
- (b) if the matter was referred by the court, to the court,

with a report to that effect.

(3) In subsection (2) “**party**” means the young person, a responsible adult who was given notice of the matter under section 30, or the person referred to in section 31.

(4) If a young person agrees to comply with terms specified by a juvenile justice team but the team is not satisfied that the person has complied or is complying with those terms, the team may —

- (a) invite the young person to comply with such further terms as it sees fit to specify; or
- (b) send the matter back —
  - (i) if the matter was referred by a person, to that person; or
  - (ii) if the matter was referred by the court, to the court,

with a report to that effect.

(5) A juvenile justice team cannot make an order for restitution or compensation but is to make a record of, and may have regard to, an undertaking or agreement as to any such matter.

(6) If a juvenile justice team to which a matter is referred, other than by the court, considers that —

- (a) the matter should be dealt with by giving a caution; or
- (b) for any reason, the matter should be dealt with in court,

it may send the matter back to the person who referred the matter with a report to that effect.

(7) The powers of a person sitting as a member of a juvenile justice team derive solely from this Part.

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**Effect on liability to be dealt with by court**

33. (1) Referral of a matter to a juvenile justice team instead of laying a charge does not prevent a charge from being subsequently laid, and referral of a matter to a juvenile justice team by the court instead of the court itself dealing with the matter does not prevent the court from subsequently dealing with the matter itself.

(2) If a young person has complied with the terms specified by a juvenile justice team dealing with the person for an offence, a court before which a complaint of the offence is made, upon being satisfied that the person has complied with the terms, is to dismiss the complaint.

(3) If a young person has not complied with the terms specified by a juvenile justice team dealing with the person for an offence, a court subsequently dealing with the person for the offence, upon being satisfied that the person has taken steps towards complying with the terms, is to have regard to that, and the extent to which the person did comply, in dealing with the person for the offence.

**Civil liability not affected**

34. Nothing in this Division affects any civil liability incurred in respect of an act or omission that constitutes an offence.

***Division 3 — Juvenile justice teams***

**Definition**

35. In this Division, unless the contrary intention appears —

“**Coordinator**” means a person appointed under section 36 to be a Juvenile Justice Team Coordinator.

**Juvenile Justice Team Coordinator**

36. The chief executive officer may appoint an officer of the Department to be a Juvenile Justice Team Coordinator and may revoke any such appointment.

**Establishing juvenile justice teams**

37. (1) When a matter is referred for consideration by a juvenile justice team, it may be dealt with by a juvenile justice team that includes a Coordinator and a member of the Police Force appointed by the Coordinator on the nomination of the Commissioner of Police.

(2) If it is practicable, the team is also to include —

(a) a person appointed by the Coordinator who has been nominated by or on behalf of the Minister responsible for administering the *Education Act 1928*; and

(b) where the person to be dealt with by the team is a member of an ethnic or other minority group, a person appointed by the Coordinator who has been nominated by members of the minority group.

(3) The team may also include such other persons as the Coordinator appoints.

**Decisions to be unanimous**

38. (1) The members of the juvenile justice team dealing with a matter are to decide anything arising in that matter by a unanimous decision of all members.

(2) If a unanimous decision cannot be reached, the Coordinator is to send the matter back —

(a) if the matter was referred by a person, to that person;  
or

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(b) if the matter was referred by the court, to the court, with a report to that effect.

**Records to be kept**

39. A Coordinator is to keep such records relating to juvenile justice teams as the chief executive officer may direct.

**No report of proceedings to be published**

40. (1) A person is not to publish in any newspaper or other printed medium, or broadcast or televise, any report of the proceedings of a juvenile justice team or any information likely to identify any young person as a person dealt with by a juvenile justice team.

(2) A person who contravenes subsection (1) commits an offence punishable —

(a) by the Supreme Court as for a contempt; or

(b) after summary conviction, by a fine of \$10 000 or imprisonment for 12 months.

(3) Proceedings for a contravention of subsection (1) may be taken by or on behalf of the Attorney General.

**PART 6 — COURT PROCEEDINGS**

**Preliminary considerations for police before prosecuting**

**41.** In dealing with a young person who is reasonably believed to have committed or to have been about to commit an offence, a member of the Police Force is to consider whether, in the circumstances, it is appropriate —

- (a) to give the person a caution for the offence in accordance with section 22;
- (b) under section 27, to refer the matter for consideration by a juvenile justice team;
- (c) to charge the person without taking the person into custody;
- (d) to apprehend, charge and —
  - (i) subject to the *Bail Act 1982* and section 19 (2), detain the person in custody pending the person's appearance in court; or
  - (ii) release the person pending the consideration of the matter by a juvenile justice team.

**Notice to attend court usually preferable to summons**

**42.** (1) A person who could lay a charge against a young person and —

- (a) cause the person to be issued with a summons to attend court to be dealt with for the offence charged;  
or

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- (b) detain the person in custody pending the person's appearance in court to be dealt with for the offence charged,

may instead issue to the young person a notice to attend court.

(2) Unless the issue of a notice to attend court would be inappropriate, it is to be preferred to proceeding by way of —

- (a) charging the young person and causing the person to be issued with a summons to attend court to be dealt with for the offence; or
- (b) detaining the person in custody pending the person's appearance in court to be dealt with for the offence.

(3) In addition to other requirements for a notice to attend court, a notice to attend court issued under this section is to —

- (a) describe shortly the offence alleged to have been committed; and
- (b) set out particulars of the alleged offence, including particulars of —
  - (i) the time and place of its alleged commission;
  - (ii) any person alleged to be aggrieved; and
  - (iii) any property alleged to be involved.

(4) The production in court of a copy of a notice to attend court issued to a person under this section is to be regarded as the laying against the person of a complaint of the alleged offence.

**Provisions about notices to attend court, generally**

43. (1) A notice to attend court issued under any provision of this Act is to —

- (a) be in a form approved by the chief executive officer;
- (b) be signed by the person issuing it;
- (c) name the young person to whom it is directed;
- (d) if the identity of a responsible adult is known, name that responsible adult;
- (e) tell the young person to appear at a specified time and at a specified place before the court; and
- (f) state that failure to so appear may result in the arrest of the young person.

(2) A notice to attend court may be issued in respect of more than one allegation.

(3) A notice to attend court is to be served personally on the young person, and the person who serves the notice is to explain orally to the young person, in simple language, the effect of the notice and in particular the consequences of failing to appear as required by the notice.

(4) Failure to give the explanation required by subsection (3) does not invalidate the service of the notice to attend court unless the court believes that the failure to give the explanation may have contributed to the failure of the person to attend court.

(5) A copy of a notice to attend court issued to a young person is to be served personally on or sent by post to the address of a person who is a responsible adult unless, after reasonable enquiry, neither the whereabouts nor the address of such a person can be ascertained.

**s. 44**

(6) If a person certifies in writing that —

- (a) at a specified time and place, the person served on a young person a notice to attend court;
- (b) at a specified time and place, the person personally served on a person who is a responsible adult a copy of a notice to attend court;
- (c) the person sent by post to the address of a person who is a responsible adult a copy of a notice to attend court; or
- (d) after the person has made reasonable enquiry, neither the whereabouts nor the address of a responsible adult could be ascertained,

the certificate is sufficient proof, in the absence of evidence to the contrary, of the matters certified.

(7) If —

- (a) a young person who the court is satisfied has been served personally with a notice to attend court fails to appear before the court in accordance with the notice; or
- (b) the court is satisfied that despite all reasonable efforts having been made to serve a notice to attend court on a young person it has not been possible to do so,

the court may issue a warrant to apprehend the person and bring the person before the court.

**Certain obligations of court**

44. (1) The court before which proceedings are brought against a young person for an offence is to satisfy itself that the person understands the nature of the proceedings.

(2) If the young person is not represented by a legal practitioner, the court is required to —

(a) explain, or cause to be explained, to the person in language likely to be readily understood by the person —

(i) the nature of the allegations against or concerning the person and the legal implications of those allegations; and

(ii) the elements of the offence;

and

(b) give the person a written statement, in the prescribed form, describing the person's rights in respect of legal representation and how legal advice, representation, or assistance may be obtained.

(3) If a young person is sentenced to a fine or ordered to make any other payment of money, the court must give the young person a notice stating in simple language the amount the young person must pay and the time and place at which payment is to be, or may be, made.

(4) A judgment or order of the court is not defective on the ground of failure to comply with this section if the court has substantially complied with this section.

#### **Court may require attendance of responsible adult**

**45.** (1) In proceedings against a young person for an offence, the court is to enquire into the reason if a responsible adult is not present and, unless the court considers that —

(a) there is a valid reason to excuse attendance of a responsible adult; or

s. 45

- (b) it is not reasonable to delay proceedings for the attendance of a responsible adult,

the court, by order served personally on or sent by post to the address of a person who is a responsible adult, or any one or more of such persons, is to require the person to attend during all stages of the proceedings, whether or not from time to time adjourned, unless subsequently excused from further attendance by the court.

(2) An order is not to be made under subsection (1) requiring an exempt responsible adult to attend court.

(3) If a person who the court is satisfied has been served in accordance with subsection (1) with an order requiring the person to attend court fails to appear before the court in accordance with the order, the court may issue a warrant to apprehend the person and bring the person before the court.

(4) The court may, if it considers it expedient and just to do so, proceed with the hearing and determination of the matter despite the absence of a responsible adult.

(5) If the court proceeds with the hearing and determination of the matter in the absence of a responsible adult, the court is to do what it reasonably can to ensure that a responsible adult is given notice in writing —

- (a) of the charge, or each charge, laid alleging the commission of an offence;
- (b) of any finding, order or decision made by the court in the proceedings; and
- (c) of any other information that the court considers appropriate.

**PART 7 — SENTENCING AND RELATED MATTERS**

***Division 1 — General***

**How court to deal with young offenders**

**46.** (1) When dealing with a young person who has been found guilty of an offence, the court, in disposing of the matter, is to apply —

- (a) the principles applying generally for disposing of charges of offences, except as those principles are modified by this Act; and
- (b) the general principles of juvenile justice.

(2) The court is to consider any information about the offender or the offence that may assist the court to decide how to dispose of the matter, and in particular —

- (a) the nature and seriousness of the offence;
- (b) any history of offences previously committed by the offender;
- (c) the cultural background of the offender;
- (d) any order previously made by a court when disposing of a charge of an offence that still applies to the offender, and any further order that is liable to be imposed if the offender does not comply with the terms of any such order; and
- (e) the extent, if any, to which any person was affected as a victim of the offence.

(3) The court is to dispose of the matter in a way that is in proportion to the seriousness of the offence and is consistent with the treatment of other young persons who commit offences.

**s. 46A**

(4) In deciding how to dispose of the matter, which includes deciding the appropriate degree of severity to be used, the court is to consider how young the offender is as a mitigating factor.

(5) The court is to have regard to the fact that the rehabilitation of an offender is facilitated by —

- (a) the participation of the offender's family; and
- (b) giving the offender opportunities to engage in educational programmes and in employment,

but the absence of such participation or opportunities is not to result in the offender being dealt with more severely for the offence.

(5a) Subject to section 106 of the *Road Traffic Act 1974* but despite any other enactment, where a written law provides that a mandatory penalty or that a minimum penalty shall be imposed in relation to an offence, the court dealing with a young person for the offence is not obliged to impose such a penalty.

(6) The operation of this section is affected by section 125.

[Section 46 amended by No. 78 of 1995 s.145.]

**Application of *Sentencing Act 1995***

**46A.** (1) The *Sentencing Act 1995* applies to and in respect of the sentencing of a young person —

- (a) in a case to which section 50B applies;
- (b) to the extent that section 50A or 118 provides for it to apply; or
- (c) subject to subsection (2), to the extent that this Act does not provide for a matter that is provided for in the *Sentencing Act 1995*.

(2) Part 5 of the *Sentencing Act 1995* does not apply to and in respect of the sentencing of a young person except —

- (a) for the purposes of deciding whether a community order can be imposed under section 50A; or
- (b) in a case to which section 50B applies.

*[Section 46A inserted by No. 78 of 1995 s.140.]*

#### **Court may request information**

47. (1) The court dealing with a young person who has committed an offence may request the provision to it of any information that it requires in order to decide how to dispose of the matter.

(2) The court may request the chief executive officer to cause to be prepared and submitted to it such reports concerning the young person as it considers relevant.

(3) The chief executive officer is to cause the requested reports to be prepared and submitted to the court.

#### **Certain reports required**

48. (1) Before making an order dealing with a young person whom it has found guilty of an offence, the court is required to obtain from the chief executive officer a report about any matters on which, under this Part, it has to be satisfied before making the order.

(2) Before exercising powers given to it by section 83 or 114 in respect of a failure to comply with a condition or undertaking upon which a youth community based order or a conditional release order was made, the court is required to obtain from the chief executive officer a report about matters relevant to the manner in which it should exercise those powers.

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(3) The court is to consider the report and, if the court thinks necessary, hear an officer of the Department on the matter.

**Remand for observation**

**49.** If a young person charged with an offence appears before the court and the court has reason to believe that —

- (a) the young person may be suffering from any mental or nervous disorder or handicap; and
- (b) should be remanded for observation, assessment and recommendation as to his future treatment,

then, despite any other Act, the court may, after giving a responsible adult, if present, an opportunity of being heard, remand the young person to be placed in some suitable place, for a period not exceeding 21 days, for observation, assessment and the making of a report on the person's condition and a recommendation as to person's future treatment.

**Offender aged under 17 at time of sentence: options**

**50.** (1) This section applies to and in respect of a young person found guilty of an offence who at the time of being sentenced is under 17 years old ("**the offender**").

(2) The court dealing with the offender must dispose of the matter in one of the ways provided for in this Part.

(3) If the court dealing with the offender is the Children's Court, subsection (2) is subject to section 21 of the *Children's Court of Western Australia Act 1988*.

[Section 50 inserted by No. 78 of 1995 s.142.]

**Offender aged 17 or over but under 18 at time of sentence:  
options**

**50A.** (1) This section applies to and in respect of a young person found guilty of an offence who at the time of being sentenced is at least 17 years old but under 18 years old (“**the offender**”).

(2) The court dealing with the offender —

- (a) may dispose of the matter in one of the ways provided for in this Part; or
- (b) may impose a community order under the *Sentencing Act 1995* on the offender, but only if under Part 5 of that Act it would be lawful to impose a community order in respect of the offence were the offender not a young person.

(3) If the court dealing with the offender is the Children’s Court, subsection (2) is subject to section 21 of the *Children’s Court of Western Australia Act 1988*.

(4) The court must not impose a community order under the *Sentencing Act 1995* on the offender unless under that Act the court has received a pre-sentence report under that Act about the offender.

(5) If the court imposes a community order on the offender under the *Sentencing Act 1995* it is not prevented from making any order under this Division.

(6) If the court imposes a community order on the offender under the *Sentencing Act 1995*, that Act and the *Sentence Administration Act 1995* apply to and in respect of the order imposed.

[Section 50A inserted by No. 78 of 1995 s.142.]

**s. 50B**

**Offender aged 18 or over at time of sentence: options**

**50B.** (1) This section applies to and in respect of a young person found guilty of an offence who at the time of being sentenced is 18 years old or older (“**the offender**”).

(2) Subject to the *Sentencing Act 1995* the court dealing with the offender must dispose of the matter by sentencing the offender under that Act, and that Act and the *Sentence Administration Act 1995* apply to and in respect of the sentence imposed.

(3) In sentencing the offender under the *Sentencing Act 1995*, the court must make a spent conviction order under that Act if, under section 55 of this Act, it would be required to not record a conviction were it disposing of the matter under this Act.

(4) If the court dealing with the offender is the Children’s Court, subsection (2) is subject to section 21 of the *Children’s Court of Western Australia Act 1988*.

(5) Despite subsection (2), section 46 applies to the court dealing with an offender.

[*Section 50B inserted by No. 78 of 1995 s.142.*]

**Responsible adult to be present for certain orders**

**51.** (1) The court cannot make a youth community based order or an intensive youth supervision order or impose a custodial sentence unless there is a responsible adult present before the court or it considers that there is sufficient reason for it to make the order even though a responsible adult is not present.

(2) An order is not invalid by reason only that, contrary to subsection (1), it was made without a responsible adult being present.

**Explanation of proposed order requiring consent**

**52.** (1) Before making an order that can only be made with the consent of a person, the court is required to explain, or cause to be explained, to the person in language likely to be readily understood by the person —

- (a) the purpose and effect of the order;
- (b) the consequences that may follow failure to comply with the order or with any requirement under this Act that may apply as a result of the order being made; and
- (c) any right that the person may have to seek the review of the order or appeal against it.

(2) If requested to do so, the person in respect of whom the order is made and any responsible adult who is present when the order is made are required to sign a written acknowledgement, endorsed on a copy of the order, to the effect that the order was made with the required consent and its purpose and effect are understood, but the fact that in a particular case such an acknowledgement may not have been signed does not postpone or otherwise alter the effect of the order.

[53. *Repealed by No. 78 of 1995 s.145.*]

**Condition or undertaking that body sample to be provided**

**54.** An order that the court may, in disposing of a matter, make upon any condition or undertaking may include a condition or undertaking that the offender submit to the taking of a body sample if required by the chief executive officer to do so.

**Recording of conviction**

55. (1) If the court —
- (a) finds a young person guilty of a Schedule 1 offence or a Schedule 2 offence; or
  - (b) finds a young person guilty of any offence and imposes a custodial sentence,

the court is required to record a conviction unless it is prevented from doing so by subsection (5) or it is satisfied that there are exceptional reasons for not doing so.

(2) If the court finds a young person guilty of an offence other than a Schedule 1 offence or a Schedule 2 offence and does not impose a custodial sentence, the court is not to record a conviction unless it is satisfied that there are exceptional reasons for doing so.

(3) Whenever, for exceptional reasons, the court departs from the requirements of subsection (1) or (2), it is to record its reasons for doing so.

(4) Although a conviction is not recorded, the offender is deemed to have been convicted for the purpose of the making, under this Act or any other written law, of any order that may be, or is required to be, made upon convicting a person of such an offence or for the purpose of the operation of any provision of the *Road Traffic Act 1974* relating to the cancellation of, or disqualification from holding or obtaining, a driver's licence under that Act (but not for any other purpose).

(5) If a young person is found guilty of an offence and, under section 66 or 67, the court refrains from imposing any punishment, the court is not to record a conviction.

**Orders for restitution and compensation**

56. (1) On finding a young person guilty of an offence the court may, subject to this section, on the application of the prosecutor made at the hearing, order that compensation be paid, or restitution be made, in respect of any damage or loss occasioned by the offence to any person who has suffered that damage or loss.

(2) The order may direct the payment of such sum as the court thinks reasonable, either as one payment or by instalments, and in determining the amount to be paid, the court is to have regard to the means of the person against whom the order is made and the person's ability to pay the amount ordered.

(3) Where the court has made an order for the payment of any money under this section, the payment is to be made to the clerk of the court for transmission to the person in whose favour the order was made.

(4) A person to whom payment is to be made under this section may recover any amount in arrear by obtaining from the clerk of the court a certificate given by the clerk as to the amount due under the order to the person and not paid, and upon the filing of the certificate in the office of a Clerk of a Local Court, the certificate is deemed to be a judgment that requires payment of money duly made by a Local Court and payment may be enforced accordingly.

(5) An order under this section is not a bar to any other proceedings by or on behalf of the person who suffered the damage or loss, but a person is not entitled to recover, in respect of such damage or loss, a total amount that is greater than the amount of the damage or loss that the person suffered.

(6) The powers of the court under this section may be exercised whether or not a conviction is recorded.

**Costs**

57. (1) On finding a young person guilty of an offence, whether or not any punishment is imposed or a conviction is recorded, the court may make an order as to the payment of costs incurred at or in relation to the proceedings.

(2) The order may direct the payment of such sum as the court thinks reasonable, either as one payment or by instalments, and in determining the amount to be paid, the court is to have regard to the means of the person against whom the order is made and the person's ability to pay the amount ordered.

**Responsible adult may be made liable**

58. (1) In this section "**responsible adult**" does not include an exempt responsible adult.

(2) If a young person is found guilty of an offence and a fine is imposed or the payment of compensation, restitution, or costs is ordered, the court, having regard to the financial circumstances of the young person and any person who is a responsible adult, may order that payment of the fine or other amount be made by the young person, by any person who is a responsible adult, or by any of them in such proportions as the court may determine.

(3) An order for any payment by the young person may be accompanied by an order that, in default of payment by the young person, the payment be made by a person specified in the order who is a responsible adult.

(4) In an order for payment of any sum, the court may direct that such sum be paid by periodical payments.

(5) In any case where a young person is charged with an offence, the court may order a responsible adult to give security for the good behaviour of the young person and such order may

be made in addition to any order made in disposing of the matter.

(6) An order under subsection (2) or (5) may be made against more than one responsible adult.

(7) Obligations to pay imposed on 2 or more persons by an order under this section or by a security given as ordered under this section are joint and several.

(8) An order under this section may be made against a responsible adult who, having been required to attend, has failed to do so, but, except in that case, such an order is not to be made without first giving the responsible adult an opportunity of being heard.

(9) The amount of a fine or costs all or any of which has, under this section, been ordered to be paid by a responsible adult may be recovered in the same manner as if the order had been made on the conviction of the responsible adult of the offence with which the young person was charged.

#### **Order to be provided in writing**

**59.** (1) The court is to cause an order that it makes after finding a young person guilty of an offence to be reduced to writing and, as soon as practicable after the order is made, is to cause a copy of it to be given —

- (a) to the person in respect of whom the order is made;
- (b) if the clerk of the court knows or can by reasonable enquiry ascertain the whereabouts or address of such a person, to a person who is a responsible adult; and
- (c) to the chief executive officer.

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(2) Subsection (1) extends to any order made by the court that relates to the obligations imposed by, or otherwise affects, an order referred to in that subsection.

(3) If the court imposes a fine on a young person or makes any other order requiring a young person to pay money, it is to cause the person to be given a notice stating in language likely to be readily understood by the person the amount that the person has to pay and the time and place at which payment may be, or is required to be, made.

(4) An order of the court is not defective on the ground of failure to comply with this section.

[60, 61. *Repealed by No. 92 of 1994 s.44.*]

**Workers' compensation**

**62.** If a person who is required by an order made under this Act, or by terms specified by a juvenile justice team, to perform any work is lawfully engaged in remunerative employment, for the purposes of the *Workers' Compensation and Rehabilitation Act 1981* the person is, in respect of the work performed, to be regarded as a worker employed by the Crown and where, for the purposes of calculating the compensation payable under that Act, reference must be made to weekly earnings, the weekly earnings are to be regarded as being equal to the weekly earnings of the person in the person's lawful employment at the relevant time.

**Interpretation in sections 64 to 65C**

**63.** In this section and in sections 64 to 65C —

“**community work order**” has the meaning given by section 65B;

“**detention order**” has the meaning given by section 65C;

“**fine**” has the same definition as in Part 4 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

[Section 63 inserted by No. 92 of 1994 s.45.]

**Enforcing payment by young person who has reached 18**

**64.** If a young person has reached the age of 18 years when —

- (a) he or she is fined for committing an offence;
- (b) a bail undertaking entered into by him or her under the *Bail Act 1982* is forfeited; or
- (c) a recognizance, entered into by him or her under this Act or any other written law in proceedings for an offence is forfeited,

payment of the amount concerned is to be made and may be enforced under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

[Section 64 inserted by No. 92 of 1994 s.45.]

**Enforcing payment of fine by young person who has not reached 18**

**65.** (1) This section applies if a young person has not reached the age of 18 years when —

- (a) he or she is fined for committing an offence;
- (b) a bail undertaking entered into by him or her under the *Bail Act 1982* is forfeited; or

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- (c) a recognizance, entered into by him or her under this Act or any other written law in proceedings for an offence is forfeited.
- (2) When fining or forfeiting the undertaking or recognizance of the young person, the court is to either —
- (a) specify the time within which the amount concerned is to be paid; or
  - (b) make an order that the amount concerned is to be paid in instalments.
- (3) If the young person defaults in the payment of the amount concerned or of any instalment of the amount concerned, the court —
- (a) if the young person has reached the age of 18 years, must register the fine or the amount of the forfeited undertaking or recognizance under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, unless a community work order or a detention order has been made under section 65A in respect of the default or unless sufficient cause to the contrary is shown; or
  - (b) if the young person has not reached the age of 18 years, must issue the young person with a notice to attend court requiring him or her to appear before the court because of the default, unless sufficient cause to the contrary is shown.
- (4) If, after a fine or the amount of a forfeited undertaking or recognizance is registered under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, the amount concerned or any part of it is paid, the court is to notify the Registry immediately.
- (5) After a fine or the amount of a forfeited undertaking or recognizance is registered under the *Fines, Penalties and*

*Infringement Notices Enforcement Act 1994*, the court cannot make any further order in respect of the payment and the enforcement of the payment of the fine or the forfeited undertaking or recognizance.

[Section 65 inserted by No. 92 of 1994 s.45.]

### **Court's powers to deal with defaulter**

**65A.** (1) If a notice to attend court is issued under section 65 (3) to a young person ("**the defaulter**") and the defaulter appears before the court, the court may invite the defaulter to consent to the making of a community work order in respect of the unpaid amount concerned.

(2) If the defaulter consents to the making of a community work order the court may make one.

(3) If the defaulter does not consent to the making of a community work order, the court, unless sufficient cause to the contrary is shown, is required to make a detention order —

(a) to have effect immediately; or

(b) to have effect if the defaulter is still in default at a specified later date.

(4) The chief executive officer or another officer of the Department may be present at, and is entitled to be heard in, the proceedings to show cause why a detention order should not be made.

(5) If under subsection (3) the court declines to make a detention order the defaulter ceases to be liable to be imprisoned in respect of the failure to pay the amount concerned and neither the fine nor the amount of the forfeited undertaking or recognizance can be registered under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

[Section 65A inserted by No. 92 of 1994 s.45.]

**s. 65B**

**Community work order**

**65B.** (1) A community work order is an order having the same effect as a youth community based order imposing community work conditions.

(2) The provisions of this Act with the modifications set out in Schedule 3, apply to a community work order.

(3) If the defaulter fully complies with an order under subsection (1) or if the court discharges such an order, the obligation to pay the amount concerned is satisfied.

*[Section 65B inserted by No. 92 of 1994 s.45.]*

**Detention order**

**65C.** (1) A detention order is an order that the defaulter be detained in a detention centre for failing to pay the amount concerned.

(2) The period of detention is to be calculated under the regulations by reference to the unpaid amount of the amount concerned.

(3) If the court makes a detention order it is required to issue a warrant of commitment accordingly.

(4) The period of detention under such a warrant of commitment is to be served concurrently with any other term or period of detention or imprisonment that the defaulter is serving or has to serve.

(5) Service of the period of detention under such a warrant of commitment discharges the defaulter from the liability to pay the amount concerned.

*[Section 65C inserted by No. 92 of 1994 s.45.]*

***Division 2 — No punishment and no conditions***

**Court may refrain from punishing in some cases**

**66.** (1) Subject to subsection (2), the court may refrain from imposing any punishment.

(2) The court cannot exercise the power given by subsection (1) with respect to more than 2 offences but, for the purpose of this subsection, multiple offences arising from the one incident are to be treated as one offence.

***Division 3 — No punishment but conditions***

**Undertakings and informal punishment**

**67.** (1) The court may refrain from imposing any punishment upon being satisfied that —

- (a) such undertakings as the court may approve have been or will be given by the offender or a responsible adult; or
- (b) such punishment as the court may approve has been, or on the undertaking of a responsible adult will be, inflicted on the offender.

(2) The power given by subsection (1) is independent of the power given by section 66 (1).

**Adjournment**

**68.** Instead of forthwith deciding whether it will refrain from itself imposing any punishment, the court may adjourn the proceedings until the punishment is carried out or the undertakings have been given or are fulfilled, as the case requires.

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***Division 4 — No punishment but security or recognizance***

**Offender's own recognizance**

**69.** The court may refrain from imposing any punishment upon the offender entering into a recognizance, with or without sureties, in such amount as the court thinks fit, to keep the peace and be of good behaviour for a term not exceeding one year.

**Security given by responsible adult**

**70.** The court may refrain from imposing any punishment upon being satisfied that a responsible adult has given security that the offender keep the peace and be of good behaviour for a term not exceeding one year.

***Division 5 — Fine***

**Fine instead of imprisonment**

**71.** If the offence is punishable by imprisonment, the court may, instead of sentencing the offender to imprisonment, impose a fine not exceeding \$2 000.

**Offender must be able to pay**

**72.** (1) A fine is not to be imposed under this Division or any other written law on a young person unless the court is satisfied, after making reasonable enquiry, that the person who is ordered to pay the fine, or any of it, has the means to pay either on demand or by instalments related to such means.

(2) The court is to have regard to any order for the payment of compensation or restitution when considering the means of a person to pay a fine.

***Division 6 — Youth community based order***

**Youth community based orders may be made**

**73.** (1) The court may make an order to be known as a youth community based order imposing on the offender —

- (a) attendance conditions in accordance with Subdivision 1;
- (b) community work conditions in accordance with Subdivision 2;
- (c) supervision conditions in accordance with Subdivision 3,

or any number of such conditions.

(2) The order is required to have attached an agenda specifying the conditions that it imposes.

(3) The agenda attached to the order is to be considered to be a part of the order.

**Offender must be suitable and consent**

**74.** A youth community based order can only be made if the offender consents to it and the court is satisfied that it would be suitable for the offender in all the circumstances.

**Proposed agenda required for suitable person**

**75.** The chief executive officer is to cause a proposed agenda to be submitted to the court whenever submitting to the court a report that attendance conditions, community work conditions, or supervision conditions would be suitable for a person.

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**Duration of order**

- 76.** (1) A youth community based order is satisfied when —
- (a) every attendance condition or community work condition, if any, imposed by it is fulfilled; and
  - (b) the period for which it imposes supervision conditions, if any, has elapsed.
- (2) The order remains in force until it is satisfied unless it is sooner discharged or cancelled by the court.

**Supervising officer**

**77.** The chief executive officer is to assign an officer of the Department to be the supervising officer in respect of the order and may from time to time assign another officer of the Department in place of the officer previously assigned.

**Certain conditions implied in order**

- 78.** Every youth community based order is to be taken to include the conditions that, while the order is in force —
- (a) the offender is not to commit another offence and is to be of good behaviour;
  - (b) the offender is to comply with —
    - (i) any regulations that regulate the conduct of persons in respect of whom youth community based orders are made; and
    - (ii) any reasonable direction given by the supervising officer;

and

- (c) the offender is to inform the supervising officer of any change in the offender's address.

**Temporary suspension of obligations under order**

**79.** (1) If the chief executive officer is satisfied that it would be appropriate in the circumstances to do so, the chief executive officer may give the offender notice in writing that the offender's obligations under the order are suspended as specified in the notice.

(2) Subsection (1) does not apply to an obligation under a condition referred to in section 78.

**Construction of power to amend order**

**80.** (1) A power given to the court to amend a youth community based order includes power to —

- (a) fully discharge the order, or cancel it and substitute another youth community based order;
- (b) fully discharge any of its conditions, or cancel them and substitute other conditions; or
- (c) amend any of its conditions by cancelling any of their requirements or by inserting any requirement in them, either by way of addition or substitution.

(2) The power to amend a youth community based order is subject to the same qualifications as would apply to the making of an order in the terms of the order as amended.

**Amendment of order other than for breach**

81. (1) Subject to subsection (2), the court may at any time, upon the application of the chief executive officer or the offender, by order amend the youth community based order.

(2) Except so far as it diminishes or removes an obligation of the offender, an amendment can only be made under this section with the consent of the offender.

**Attendance at court for breach of order**

82. (1) If any condition of a youth community based order is not observed, the chief executive officer may issue to the offender a notice to attend court to be dealt with for the failure.

(2) The notice to attend court is to describe the alleged failure and give such particulars as are necessary to identify the nature of the allegation.

**Powers of court upon breach**

83. (1) This section applies if —

- (a) in proceedings for an offence, the court finds that a person who is subject to a youth community based order committed that offence while the order was in force; or
- (b) in proceedings resulting from a notice to attend court given under section 82, the court finds that a person who is subject to a youth community based order has failed to comply with any condition of the order.

(2) If this section applies, the court may —

- (a) order that no further action be taken because of the failure to comply with a condition upon which the youth community based order was made;

- (b) if it decides that the offender should be further subject to a youth community based order, amend the youth community based order previously made; or
- (c) cancel the order and deal with the offender for the offence that resulted in the order being made (in this section called "**the original offence**") in any manner in which it could have done when it found the offender guilty of that offence.

(3) The discretion given by subsection (2) (a) to order that no further action be taken can only be used if the court is satisfied that the failure is of such a trivial nature that no further action is appropriate, and the court making such an order is to record in writing the reasons why it considers that no further action is appropriate.

(4) The court, when considering how to dispose of the matter under subsection (2) or when dealing with the offender for the original offence under that subsection, is to take into account —

- (a) that the youth community based order was made;
- (b) the time for which the person has been complying with supervision conditions under the order; and
- (c) anything that was done, or that was not done but should have been done, under the order,

and may take into account, either as an aggravating or a mitigating factor, the behaviour of the offender in doing anything under the order.

#### **One order for more than one offence**

**84.** If the offender breaches a youth community based order by committing another offence, the court may, in an appropriate case, cancel the order and make one youth community based order for both the offence for which the breached order was made and the other offence.

**Effect of discharging or satisfying order**

**85.** (1) If the order is discharged by the court or satisfied in accordance with section 76, the offender ceases to be liable to be further dealt with for the offence for which the order was made.

(2) Upon the offender fulfilling every attendance condition or community work condition, if any, imposed by the order, the supervising officer is to give to the court notice in writing that no attendance condition or community work condition remains to be fulfilled and a copy of the notice is to be given to the person in respect of whom the order was made and a responsible adult.

**Proof of identity**

**86.** (1) A person bringing proceedings for a failure to comply with a youth community based order may aver that the person against whom the proceedings are brought is the person in respect of whom the youth community based order was made.

(2) In proceedings in which an averment is made under subsection (1) the person against whom the proceedings are brought may be asked by the court whether the person was found guilty of the offence in respect of which the youth community based order was made and, if the person admits that fact, no further proof of it is required.

**Notice of court applications**

**87.** (1) Where an application to the court is made under this Division by or on behalf of the chief executive officer, the chief executive officer is to issue a notice to attend court that describes the nature of the application and requires the person affected by the application to appear before the court on the hearing of the application.

(2) Where an application to the court is made under this Division by the offender, the court is to cause notice of the application and of the time and place fixed for the hearing to be given to the chief executive officer.

***Subdivision 1 — Attendance conditions***

**Requirement to attend**

88. (1) Attendance conditions require the offender to attend, as specified in the order, for the purpose of participating in an educational, rehabilitative, or other course.

(2) The court cannot impose attendance conditions requiring the offender —

- (a) to attend over a period that is more than 6 months;
- (b) to attend at a place that is more than 30 kilometres from the offender's residential address; or
- (c) to attend for any continuous period that is more than 7 days.

***Subdivision 2 — Community work conditions***

**Requirement to perform unpaid work**

89. Community work conditions require the offender to perform unpaid work, in accordance with this Subdivision and the regulations, for such number of hours as may be specified in the order.

**When community work conditions can be imposed**

90. The court can impose community work conditions on an offender only if the offender has reached the age of 12 years.

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**Total number of hours of community work**

**91.** The court cannot make an order imposing community work conditions such that, after it is made, the aggregate number of hours of work required to be performed under it, or under it and any other youth community based order, would be —

- (a) less than the number prescribed for the purposes of this paragraph, or if no number is so prescribed, 10; or
- (b) more than the number prescribed for the purposes of this paragraph, or if no number is so prescribed, 100.

**Initial attendance**

**92.** The conditions are to require the offender to attend before an officer of the Department, at a place specified in the conditions, at or within such time (if any) as is so specified.

**Performing the work**

**93.** (1) All of the work is required to be performed within the period of 3 months commencing from the date when the conditions are imposed or within such extension of that period as the court may allow.

(2) A person giving directions to the offender under the order is, so far as practicable, to —

- (a) avoid conflict with the offender's religious beliefs; and
- (b) avoid interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

**Regulations relating to community work conditions**

**94.** Without limiting the generality of section 196, regulations relating to community work conditions may —

- (a) provide for persons to be designated as overseers to oversee persons when performing work under community work conditions;
- (b) regulate the conduct of overseers and persons in respect of whom community work conditions are made, and provide for their health and safety;
- (c) prescribe for the purposes of paragraphs (a) and (b), respectively, of section 91, minimum and maximum numbers of hours in lieu of those set out in those paragraphs;
- (d) prescribe the maximum number of hours of work that a person may be required to perform under community work conditions on any one day;
- (e) provide for travelling and transport arrangements to be made for persons performing work under community work conditions;
- (f) prescribe the effect of injury and sickness in relation to community work conditions;
- (g) prescribe periods to be taken into account in computing the number of hours of work performed by a person under community work conditions.

***Subdivision 3 — Supervision conditions***

**Requirements of supervision**

95. (1) Supervision conditions require the offender, during such period as is specified in the order, to report, submit to supervision and other contact, and comply with such other requirements, as specified in the order.

(2) The regulations are to prescribe limits on the extent of the requirements that the supervision conditions of the order may impose.

**Duration of supervision**

96. The court cannot impose supervision conditions for a period exceeding 6 months unless it is constituted so as to consist of or include a judge, in which case the conditions may be imposed for a period not exceeding 2 years.

**Changing duration of supervision**

97. (1) The court cannot amend supervision conditions by varying the period for which they are imposed but a power to amend them includes a power to cancel them and substitute for them new supervision conditions.

(2) Supervision conditions substituted for supervision conditions that are cancelled cannot run beyond the latest time that could have been specified, when the cancelled conditions were imposed, as the time when the period of the cancelled conditions would end.

(3) In applying subsection (2) to the case of an order that is for more than one offence, the time beyond which supervision conditions cannot run is the latest time that could be, or could have been, specified upon making a youth community based order for any of those offences.

***Division 7 — Intensive youth supervision order***

**Intensive youth supervision orders may be made**

98. The court may make an order to be known as an intensive youth supervision order imposing on the offender such conditions as it could impose by way of a youth community based order, except that the supervision conditions that may be imposed are not subject to the limits placed by the regulations on supervision conditions when imposed by a youth community based order.

**Order may be made with or without detention in default**

99. (1) An intensive youth supervision order may be made with or without imposing on the offender a sentence of detention.

(2) The order cannot be made with a sentence of detention for a term of more than 12 months.

**Order without detention**

100. If the court makes an intensive youth supervision order without imposing a sentence of detention, the provisions of this Act apply as if it were a youth community based order unless it is otherwise provided.

**Order with detention**

101. (1) If an intensive youth supervision order is made and a sentence of detention is imposed, the intensive youth supervision order is referred to in this Act as a conditional release order.

(2) If the court makes a conditional release order, the offender is to be released from detention under the sentence as soon as the sentence would have commenced if there were no conditional release order.

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(3) Time during which the offender is released under the order does not count as time for which the offender is serving the term of detention.

(4) The offender only becomes liable to serve the term of detention, or a portion of it, if the order is cancelled.

**Order to include agenda**

**102.** (1) A conditional release order is required to have attached an agenda specifying the conditions that it imposes.

(2) The agenda attached to the order is to be considered a part of the order.

**Offender must be suitable and consent**

**103.** A conditional release order can only be made if the offender consents to it and the court is satisfied that release under the order would be suitable for the offender in all the circumstances.

**Agenda proposal required for suitable person**

**104.** The chief executive officer is to cause a proposed agenda to be submitted to the court whenever submitting to the court a report that release under a conditional release order would be suitable for a person.

**Duration of conditional release order**

**105.** A conditional release order runs until the end of the term for which the offender would be liable to be detained if there were no conditional release order and cannot impose any obligation that binds the offender after the end of that term.

**One conditional release order for several sentences**

**106.** (1) A conditional release order may relate to more than one sentence of detention, in which case the order runs for as long as the offender would be liable to be detained under either of the sentences if there were no conditional release order.

(2) The sentences may include a sentence of detention previously imposed by the court that has not been discharged and, if the person is released from that detention under a previous conditional release order, the previous order is to be cancelled when the later conditional release order is made.

**Conditional release not to exceed 12 months**

**107.** A conditional release order cannot be made so as to result in a person being able to be released under that or any other conditional release order for a continuous period of more than 12 months.

**Supervising officer**

**108.** The chief executive officer is to assign an officer of the Department to be the supervising officer in respect of the order and may from time to time assign another officer of the Department in place of the officer previously assigned.

**Certain conditions implied in order**

**109.** Every conditional release order is to be taken to include the conditions that, while the order is in force —

- (a) the offender is not to commit another offence and is to be of good behaviour;

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- (b) the offender is to comply with —
  - (i) any regulations that regulate the conduct of persons in respect of whom conditional release orders are made; and
  - (ii) any reasonable direction given by the supervising officer;

and

- (c) the offender is not to move to a different residential address without the approval of the supervising officer.

**Temporary suspension of obligations under order**

**110.** (1) If the chief executive officer is satisfied that it would be appropriate in the circumstances to do so, the chief executive officer may give the offender notice in writing that the offender's obligations under the order are suspended as specified in the notice.

(2) Subsection (1) does not apply to an obligation under a condition referred to in section 109.

**Construction of power to amend order**

**111.** (1) A power given to the court to amend a conditional release order includes power to —

- (a) cancel the order and substitute another conditional release order;
- (b) cancel any of its conditions and substitute other conditions; or

- (c) amend any of its conditions by cancelling any of their requirements or by inserting any requirement in them, either by way of addition or substitution.

(2) The power to amend a conditional release order is subject to the same qualifications as would apply to the making of an order in the terms of the order as amended.

#### **Amendment of order other than for breach**

**112.** (1) Subject to subsection (2), the court may at any time, upon the application of the chief executive officer or the offender, by order cancel the conditional release order or amend it.

(2) A conditional release order can only be cancelled under this section with the consent of the offender and, except so far as it diminishes or removes an obligation of the offender, an amendment can only be made under this section with the consent of the offender.

#### **Attendance at court for breach of order**

**113.** (1) If any condition or undertaking upon which the order was made is not observed, the chief executive officer may issue to the offender a notice to attend court to be dealt with for the failure.

(2) The notice to attend court is to describe the alleged failure and give such particulars as are necessary to identify the nature of the allegation.

#### **Powers of court upon breach**

**114.** (1) This section applies if —

- (a) in proceedings for an offence, the court finds that a person who is subject to a conditional release order

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committed that offence while released under the order;  
or

- (b) in proceedings resulting from a notice to attend court given under section 113, the court finds that a person who is subject to a conditional release order has failed to comply with any condition or undertaking upon which the order was made.

(2) If this section applies the court may —

- (a) order that no further action be taken because of the failure to comply with a condition or undertaking upon which the conditional release order was made; or
- (b) amend or cancel the conditional release order.

(3) The discretion given by subsection (2) (a) to order that no further action be taken can only be used if the court is satisfied that the failure is of such a trivial nature that no further action is appropriate, and the court making such an order is to record in writing the reasons why it considers that no further action is appropriate.

(4) The court, when considering how to dispose of the matter under subsection (2), is to take into account —

- (a) the time for which the person has been complying with supervision conditions under the order; and
- (b) anything that was done, or that was not done but should have been done, under the order,

and may take into account, either as an aggravating or a mitigating factor, the behaviour of the offender in doing anything under the order.

**Effect of satisfying order**

115. If the conditional release order runs its term without being cancelled, the offender ceases to be liable to serve the sentence of detention to which the order relates.

**Effect of cancelling order**

116. (1) When the court cancels a conditional release order without substituting for it another conditional release order, it is to direct that the offender serve so much of the term of detention as it considers appropriate having regard to the matters set out in subsection (2).

(2) The period of detention is to be reduced in proportion to the extent to which the court considers that the offender complied with the conditional release order.

(3) If the order related to more than one sentence of detention, the reduction may be made to each or any of those sentences, as the court considers just in the circumstances.

(4) Cancellation of a conditional release order does not prevent a supervised release order from being subsequently made.

(5) If the offender has reached the age of 18 years when the order is cancelled, the balance of the term of detention is to be served in a prison, and while in a prison the *Prisons Act 1981* applies to and in respect of the offender.

[Section 116 amended by No. 78 of 1995 s.145.]

**Notice of court applications**

117. (1) Where an application to the court is made under this Division by or on behalf of the chief executive officer, the chief executive officer is to issue a notice to attend court that describes

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the nature of the application and requires the person affected by the application to appear before the court on the hearing of the application.

(2) Where an application to the court is made under this Division by the offender, the court is to cause notice of the application and of the time and place fixed for the hearing to be given to the chief executive officer.

***Division 8 — Custodial sentence***

**Offences punishable by imprisonment: options**

**118.** (1) If the statutory penalty for an offence is or includes imprisonment and the court dealing with the offender decides to impose a custodial sentence, the court may —

- (a) impose a term of imprisonment under Part 13 of the *Sentencing Act 1995* but may not impose suspended imprisonment under Part 11 or make a direction for the detention of the offender under Part 12 of that Act; or
- (b) sentence the offender to a term of detention that is not longer than the term of imprisonment to which the offender would have been liable if the offender were not a young person.

(2) Despite section 86 of the *Sentencing Act 1995* the court sentencing a young person to a term of detention may impose a term of 3 months or less.

(3) If the court sentences an offender to imprisonment it may, subject to Part 14 of the *Sentencing Act 1995*, also sentence the offender to indefinite imprisonment.

(4) If the court sentences an offender to imprisonment it may, if the offender is at least 16 and under 18 years old and

having regard to the matters in section 178 (4) (a), direct that the offender serve the sentence in a prison under the *Prisons Act 1981*.

(5) If the court sentences the offender to a term of imprisonment, the *Sentencing Act 1995* and the *Sentence Administration Act 1995*, with any necessary changes, apply to and in respect of the sentence imposed.

[Section 118 inserted by No. 78 of 1995 s.143.]

**Where sentence of imprisonment to be served**

**118A.** (1) If —

- (a) as a result of a sentence imposed by a court a young person is to be imprisoned; and
- (b) the young person is under 18 years old at the time when under that sentence he or she is to be imprisoned,

then, unless a direction has been made under section 118 (4), the young person is to serve that sentence in a detention centre and not in a prison until a direction is made under section 178.

(2) If —

- (a) as a result of a sentence imposed by a court a young person is to be imprisoned; and
- (b) the young person has reached the age of 18 years at the time when under that sentence he or she is to be imprisoned,

then the young person is to serve that sentence in a prison.

(3) If it is not practicable to immediately transport a young person to a detention centre in accordance with subsection (1),

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the offender may be held in a prison or a police lock-up until transport to a detention centre is practicable.

*[Section 118A inserted by No. 78 of 1995 s.143.]*

**Order for a particular kind of detention**

**119.** (1) If —

- (a) the regulations provide for the establishment and operation of detention centres where detainees are required to undertake particular forms of activity; and
- (b) a detention centre of that kind has been declared under section 13,

the court, on sentencing the offender to a term of detention of not less than 9 months for a prescribed offence, may direct that the offender be detained in a detention centre of that kind for a period of 4 months.

(2) A direction under subsection (1) can only be made if the offender consents to it and cannot be made if —

- (a) the offender has not reached the age of 16 years when the sentence is imposed;
- (b) the offender —
  - (i) has been previously convicted of an offence prescribed for the purposes of this paragraph by the regulations; or
  - (ii) has previously served all or any of a sentence of imprisonment or detention.

(3) The court may, upon the application of the chief executive officer, cancel a direction under subsection (1) and, if it thinks fit, adjust the minimum period, as specified in section 121 (5), for which the offender is to remain in custody

before the offender can be released under a supervised release order.

**Report necessary for custodial sentence**

**120.** (1) The court cannot impose any custodial sentence unless it is satisfied that there is no other appropriate way for it to dispose of the matter.

(2) A court that imposes on a young person a custodial sentence is to record in writing the reasons why it considers that there is no other appropriate way for it to dispose of the matter.

**Minimum period before release**

**121.** (1) If a court sentences a young person to detention for 12 months or less, the offender is to remain in custody for 50% of the term to which the offender was sentenced before the offender can be released under a supervised release order.

(2) When sentencing an offender to detention for more than 12 months, the court may set a minimum period for which the offender is to remain in custody before the offender can be released under a supervised release order.

(3) The minimum period set by the court cannot be less than the period determined as follows —

$$P = 6 + \frac{T - 12}{3}$$

where “P” is the period to be determined (in months);

“T” is the term of custody (in months) to which the offender was sentenced.

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(4) If the court does not set a different minimum period, the offender is to remain in custody for 50% of the term to which the offender was sentenced before the offender can be released under a supervised release order.

(5) If a direction is made under section 119 (1), subsections (1) to (4) do not apply and the minimum period for which the offender is to remain in custody before the offender can be released under a supervised release order ends at the end of the period of 4 months mentioned in that direction.

(6) This section does not apply in respect of a sentence imposed by a special order.

**One earliest release day for several offences in some cases**

**122.** (1) When, on the same occasion, a court imposes 2 or more sentences of detention that the offender is required to commence serving at different times, the sentences are to be regarded, for the purposes of section 121, as one sentence for a term commencing when the offender is first required to commence serving one of the sentences and ending upon the expiry of the sentence that is last to expire.

(2) Subsection (1) does not apply in respect of a sentence imposed by a special order.

**Order in which time in custody counts towards serving certain cumulative sentences**

**123.** (1) This section applies if a sentence of detention imposed on a person ("**the second sentence**") is to be served cumulatively upon another sentence of detention ("**the first sentence**") and section 122 does not provide for one earliest release day for both sentences.

(2) In determining whether a person has been in custody under a sentence for the minimum period required before the

offender can be released, time served in custody after the second sentence is imposed counts —

- (a) if the earliest release day for the first sentence has not been reached, as service under that sentence until the earliest release day for that sentence is reached;
- (b) after the earliest release day for the first sentence has been or is reached, as service under the second sentence until the earliest release day for the second sentence is reached.

(3) Once the earliest release day has been reached for each sentence for which there is an earliest release day, time served in custody counts as service under the first sentence until that sentence has been served, so far as it is required to be, and after that, as service under the second sentence until that sentence has been served, so far as it is required to be.

***Division 9 — Dealing with young person who repeatedly commits serious offences***

**When this Division applies**

**124.** (1) This Division applies to the sentencing of the offender for a serious offence (“**the current offence**”) if —

- (a) the offender is a person who has committed and been found guilty of an offence for which a custodial sentence (“**sentence 1**”) was imposed; and
- (b) after being released from custody having served a portion or the whole of sentence 1, the offender committed and was found guilty of another offence for which another custodial sentence (“**sentence 2**”) was imposed; and

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- (c) after being released from custody having served a portion or the whole of sentence 2, the offender committed the current offence; and
- (d) the court, after taking into account the offender's history of re-offending after release from custody, is satisfied that there is a high probability that the offender would commit further offences of a kind for which custodial sentences could be imposed.

(2) Where the sequence referred to in subsection (1) (b) of release, re-offending and imposition of another custodial sentence has occurred more than once, the reference to sentence 2 in subsection (1) (c) is a reference to the custodial sentence most recently imposed.

(3) In subsection (1) "**serious offence**" means —

- (a) a Schedule 2 offence; or
- (b) an offence under section 401 of *The Criminal Code*, or the offence of counselling or procuring the commission of an offence under that section, for which the offender was convicted on indictment.

### **Protection of the community paramount**

**125.** If this Division applies to the offender the court, in disposing of the matter, is to give primary consideration to the protection of the community ahead of all the other principles and matters referred to in section 46.

### **Circumstances in which a special order can be made**

**126.** (1) If this Division applies to the offender and the court imposes a custodial sentence on the offender, the court, when disposing of the matter, may also make a special order in accordance with this Division.

(2) In deciding whether to make a special order the court is to have regard to the periods that have elapsed before the offender has re-offended after being released from previous custodial sentences.

(3) A special order can only be made if the Director of Public Prosecutions, after giving the offender notice that such a submission is proposed, submits to the court that a special order should be made.

(4) If the court makes a special order and the custodial sentence referred to in subsection (1) is a term of imprisonment, the court cannot make a parole eligibility order under Part 13 of the *Sentencing Act 1995* in respect of that term.

(5) Without limiting section 21 of the *Children's Court of Western Australia Act 1988*, the court cannot make a special order if it is constituted by or so as to include a magistrate.

[Section 126 amended by No. 78 of 1995 s.145.]

#### **When the special order takes effect**

**127.** (1) In this section “**relevant day**” means —

- (a) in relation to a custodial sentence being served in a prison, the earliest day on which the offender can be released from prison whether on parole or otherwise;
- (b) in relation to a custodial sentence being served in a detention centre, the earliest release day for that sentence.

(2) If there are different relevant days in respect of 2 or more custodial sentences, subsections (3) and (4) refer to the later or last of those days.

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(3) Subject to subsection (4), the special order begins to run on the relevant day for any other custodial sentence that the offender is liable to undergo.

(4) If, on the relevant day, the unserved portion of any other custodial sentence or sentences that the offender is liable to undergo is more than 18 months, the special order does not begin to run until that unserved portion is 18 months.

**How the special order operates**

**128.** (1) When the special order begins to run the offender is to remain in custody in prison or a detention centre, as the case may be, and is liable to serve a sentence of 18 months imprisonment or detention under the special order.

(2) After serving 12 months' imprisonment or detention under the special order the offender may be released under a supervised release order.

(3) This section applies despite anything in this Act or any other written law.

(4) Where the offender is released from prison under subsection (2), the completion of the term of the supervised release order has the same effect in relation to the sentence under the special order as it would have under Part 8 if the offender had been released from detention in a detention centre.

**Application to discharge the special order**

**129.** (1) In this section "**the sentencing court**" means the court that imposed the special order.

(2) On the application of the offender or the chief executive officer, the sentencing court is to review the special order to decide whether it should be discharged.

(3) An application cannot be made under this section —

- (a) less than 6 months after the special order was imposed; or
- (b) earlier than 3 months before the special order begins to run; or
- (c) less than 3 months after the special order was most recently reviewed under this section.

(4) An application can only be made under this section if the Attorney General consents to the making of it.

(5) In making a review under this section the sentencing court may —

- (a) consult or take advice from any person; and
- (b) inform itself in such manner as it thinks fit,

and is to give the offender an opportunity to be heard, either personally or through a legal representative, and to present any evidence or material that the court considers to be relevant.

(6) The chief executive officer is to ensure that the sentencing court is provided with such information and assistance as it requires for the purpose of making reviews under this section.

(7) To the extent that it is not prescribed by this Act or rules of court the procedure on review proceedings under this section is to be determined by the sentencing court.

(8) After making a review under this section the sentencing court may, if it thinks fit, discharge the special order.

(9) Nothing in this section affects any right to appeal against the imposition of the special order.

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**Effect of expiry of the special order**

**130.** If the special order runs its term the offender is taken to have served any other custodial sentence that was imposed when or before the special order was made.

**PART 8 — SUPERVISED RELEASE ORDERS**

***Division 1 — Definitions***

**Definitions for this Part**

131. In this Part, unless the contrary intention appears —

“**Board**” means the Supervised Release Review Board established under section 151;

“**Secretary**” means the secretary of the Board.

***Division 2 — The order***

**Order for release from detention on conditions**

132. (1) If an offender is serving a sentence of detention the Board may order the release of the offender from custody subject to conditions, in accordance with this Division.

(2) The order is required to have attached an agenda specifying the conditions that it imposes.

(3) The conditions are to be in accordance with a release plan approved by the Board.

(4) The agenda attached to the order is to be considered a part of the order.

(5) If the term of the sentence that was imposed does not exceed 3 months, the order may be made —

(a) by the Board; or

(b) by the Secretary in accordance with criteria fixed by the Board.

**When a supervised release order can be made**

- 133.** (1) A supervised release order can only be made if —
- (a) the offender consents to the making of the order;
  - (b) the earliest release day has been reached;
  - (c) there is a responsible adult present or the Board considers that there is sufficient reason for it to make the order even though a responsible adult is not present; and
  - (d) the offender is not in custody under any other order or serving any other custodial sentence, or the requirements for releasing the offender from custody under that other order or sentence are satisfied.
- (2) If the offender unreasonably fails or refuses to make available information that is requested for the purpose of satisfactorily determining the conditions to be specified in the order, the making of the order may be delayed beyond the time when the order could otherwise be made.

**Duration of supervised release order**

**134.** A supervised release order runs until the end of the term for which the offender would be liable to be detained if there were no supervised release order and cannot impose any obligation that binds the offender after the end of that term.

**One supervised release order for several sentences**

**135.** (1) A supervised release order may relate to more than one sentence, in which case the order runs for as long as the offender would be liable to be detained if there were no supervised release order.

(2) The order can only be made if the earliest release day for each sentence to which the order relates has been reached.

**Certain conditions implied in order**

**136.** The order is to be taken to include the conditions that, while the order is in force —

- (a) the offender is to be under the supervision of an officer of the Department;
  - (b) the offender is not to commit another offence and is to be of good behaviour;
  - (c) the offender is to comply with —
    - (i) any regulations that regulate the conduct of persons released under supervised release orders; and
    - (ii) any reasonable direction given by the supervising officer;
- and
- (d) the offender is not to move to a different residential address without the approval of the supervising officer.

**Effect of proposed order to be explained**

**137.** (1) Before making a supervised release order in respect of a person, the Board is required to explain, or cause to be explained, to the person in language likely to be readily understood by the person —

- (a) the purpose and effect of the order;

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- (b) the consequences that may follow failure to comply with the order or with any of the prescribed requirements; and
- (c) the right of the person to seek the reconsideration of the order.

(2) If requested to do so, the person in respect of whom the order is made and any responsible adult who is present when the order is made are required to sign a written acknowledgement, endorsed on a copy of the order, to the effect that the order was made with the required consent and its purpose and effect are understood, but the fact that in a particular case such an acknowledgement may not have been signed does not postpone or otherwise alter the effect of the order.

**Order to be provided in writing**

**138.** (1) The Secretary is to cause the order to be reduced to writing and, as soon as practicable after it is made, is to cause a copy of it to be given —

- (a) to the offender;
- (b) if the Secretary knows or can by reasonable enquiry ascertain the whereabouts or address of such a person, to a person who is a responsible adult; and
- (c) to the chief executive officer.

(2) Subsection (1) extends to any order amending or cancelling the order.

**Supervising officer**

**139.** The chief executive officer is to assign an officer of the Department to be the supervising officer in respect of the order

and may from time to time assign another officer of the Department in place of the officer previously assigned.

**Temporary suspension of obligations under order**

**140.** (1) If the Secretary is satisfied that the offender would be unable, because of circumstances beyond the offender's control, to comply with obligations under the order for a limited time, the Secretary may give the offender notice in writing that the obligations are suspended for a time specified in the notice.

(2) Subsection (1) does not apply to an obligation under a condition referred to in section 136.

(3) The Secretary is to advise the Board in writing of any notice given by the Secretary under subsection (1).

**Construction of power to amend order**

**141.** (1) A power given to the Board to amend a supervised release order includes power to —

- (a) cancel the order and substitute another supervised release order;
- (b) cancel any of its conditions and substitute other conditions; or
- (c) amend any of its conditions by cancelling any of their requirements or by inserting any requirement in them, either by way of addition or substitution.

(2) The power to amend a supervised release order is subject to the same qualifications as would apply to the making of an order in the terms of the order as amended.

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**Amendment of order other than for breach**

**142.** (1) Subject to subsection (2), the Board may at any time, upon the application of the chief executive officer, by order cancel the supervised release order or amend it.

(2) A supervised release order can only be cancelled under this section with the consent of the offender and, except so far as it diminishes or removes an obligation of the offender, an amendment can only be made under this section with the consent of the offender.

**Cancellation of obligations after 6 months' release**

**143.** (1) If the offender has been the subject of a supervised release order for at least 6 months and the Board is satisfied that it would be appropriate to do so, it may amend the order by cancelling all or any of the offender's obligations under the supervised release order (other than the obligation to refrain from committing another offence) for the balance of the term of the order.

(2) Cancellation under subsection (1) of all or any of the offender's obligations does not prevent the Board, acting under section 147, from inserting in the order conditions that again impose obligations on the offender.

**Breach of order other than by further offending**

**144.** (1) If, other than through the offender committing another offence, the offender fails to comply with a supervised release order or with any prescribed requirement, the supervising officer is to make to the chief executive officer a report in writing of the failure.

(2) Upon receiving the report the chief executive officer may —

- (a) order that no further action be taken because of the failure;

- (b) postpone the decision as to what action, if any, is to be taken because of the failure; or
- (c) refer the matter to the Board with or without suspending the supervised release order.

**Courts to notify Board and chief executive officer on finding further offences committed**

**145.** (1) A court finding a person in respect of whom a supervised release order is made guilty of an offence is to give the Board and the chief executive officer notice of the finding and of the way in which the matter is disposed of by the court.

(2) If the court imposes a custodial sentence, the imposition of the sentence cancels the supervised release order.

(3) If the court does not impose a custodial sentence, the chief executive officer is to refer the matter to the Board with or without suspending the supervised release order.

**Report to be provided when referring matter to Board**

**146.** The chief executive officer is required, when referring a matter to the Board under section 144 or 145, to provide the Board with a report giving details of —

- (a) how the offender failed to comply with the supervised release order;
- (b) why the matter is referred to the Board;
- (c) where applicable, why the supervised release order was suspended; and
- (d) recommendations as to how to dispose of the matter.

**How Board may deal with breach**

147. (1) The Board may consider the matter of a failure to comply with a supervised release order or with any prescribed requirement that is referred to it by the chief executive officer and —

- (a) order that no further action be taken because of the failure;
- (b) postpone the decision as to what action, if any, is to be taken because of the failure;
- (c) if the supervised release order has been suspended, confirm, vary, or remove the suspension;
- (d) if the supervised release order has not been suspended, suspend it; or
- (e) amend or cancel the supervised release order.

(2) The Secretary is to cause the Board's decision to be reduced to writing and, as soon as practicable after the decision is made, is to cause a copy of it to be given —

- (a) to the person in respect of whom it is made;
- (b) if the Secretary knows or can by reasonable enquiry ascertain the whereabouts or address of such a person, to a person who is a responsible adult; and
- (c) to the chief executive officer.

**Effect of satisfying order**

148. If the supervised release order runs its term without being cancelled, the offender is to be taken to have served the sentence to which the order relates.

**Effect of suspending or cancelling order**

149. (1) If the chief executive officer suspends the supervised release order or if it is cancelled by the operation of section 145 (2) because a custodial sentence is imposed for a further offence, the chief executive officer is to issue a warrant for the offender to be apprehended and returned to the custody from which the offender was released under the order.

(2) If the Board suspends or cancels the supervised release order, the Secretary is to issue a warrant for the offender to be apprehended and returned to the custody from which the offender was released under the order.

(3) The supervised release order has no effect while it is suspended or after it is cancelled.

(4) Subject to subsection (5) the time during which the offender was released under the order before being returned to custody is to be taken to be time that the offender served in custody under any sentence that the offender would have been serving if not released.

(5) If the offender is found guilty of another offence and the supervised release order is cancelled by operation of section 145 (2), the time between the commission of that offence and the return of the offender to custody does not count for the purposes of subsection (4).

(6) If, after the order has been suspended, the Board removes the suspension, the offender is again to be released from custody subject to the conditions of the order.

(7) Cancellation of a supervised release order does not prevent another supervised release order from being subsequently made.

**Cancellation of order after offender reaches 18**

**150.** If the offender has reached the age of 18 years when the order is suspended or cancelled, the custody into which the offender is to be placed upon the suspension or cancellation of the order is to be a prison, and while in a prison the *Prisons Act 1981* applies to and in respect of the offender.

*[Section 150 inserted by No. 78 of 1995 s.145.]*

***Division 3 — The Supervised Release Review Board***

**Establishment of Board**

**151.** (1) A board called the Supervised Release Review Board is to be established.

(2) The Board is to have a seal.

(3) The chief executive officer is to provide an officer of the Department to be the secretary of the Board.

**Members of Board**

**152.** (1) The Governor may appoint a person to be the Chairman of the Board and 3 other persons to be the other appointed members of the Board.

(2) The chief executive officer is a member of the Board because of holding that office.

(3) The membership of the Board is to include —

- (a) at least one person who has an aboriginal background and is appointed from a panel of persons nominated by aboriginal community organizations that have been invited by the Minister to submit nominations;

- (b) at least one person appointed from a panel of persons nominated by community organizations that have been invited by the Minister to submit nominations; and
  - (c) one person who is a member of the Police Force nominated by the Commissioner of Police for appointment.
- (4) The membership of the Board is to include at least one male and one female.
- (5) The Chairman is to be —
- (a) a person who is or has been a judge of the Supreme Court or the District Court; or
  - (b) a person who is, and has for at least 8 years been, a practitioner as defined in the *Legal Practitioners Act 1893*.
- (6) The members appointed under subsection (3) (a) and (b) are to have such skills and experience with young persons as the Minister considers appropriate.

**Term of office**

**153.** (1) Subject to this section, a person appointed to be a member of the Board holds office for such term, not longer than 3 years, as is specified in the instrument of appointment and, upon the expiration of the term, is eligible for reappointment.

- (2) The Governor may remove an appointed member from office on the grounds of —
- (a) mental or physical incapacity to carry out the duties of a member in a satisfactory manner;
  - (b) neglect of duty;

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(c) misconduct; or

(d) the person ceasing to meet the requirements on the basis of which the person was appointed as a member.

(3) An appointed member may at any time resign from office by notice in writing delivered to the Minister.

(4) Where, before an appointed member's term of office expires, the member is removed from office or resigns the office becomes vacant.

(5) This section does not exclude the application of section 52 of the *Interpretation Act 1984*, other than subsection (1) (a) of that section.

**Alternate members**

**154.** (1) The chief executive officer may nominate a person who is an officer of the Department to act in the chief executive officer's place as a member of the Board, and while so acting according to the tenor of the appointment the nominated officer is to be taken to be the member.

(2) The chief executive officer may, at any time, cancel a nomination made under subsection (1).

(3) In the case of an appointed member of the Board, other than the Chairman, the Minister may nominate another person to act in the member's place as a member of the Board, and while so acting according to the tenor of the appointment the nominated person is to be taken to be the member.

(4) A person can only be nominated under subsection (3) to act in a member's place if the person would be eligible to be appointed to the office of that member were it to be vacated.

(5) The Minister may, at any time, cancel a nomination made under subsection (3).

### **Remuneration and allowances**

**155.** (1) Members of the Board, other than a person who is a judge of the Supreme Court or the District Court, are entitled to such remuneration and allowances in respect of the performance of their functions under this Act as the Minister from time to time determines.

(2) The payment under subsection (1) of any remuneration or allowances to a member who is a retired judge of the Supreme Court or District Court does not affect any entitlement of that person under the *Judges Salaries and Pensions Act 1950*.

### **Meetings**

**156.** Meetings of the Board are to be convened at such times and places as the Chairman determines, but at least once a month.

### **Quorum**

**157.** (1) At a meeting of the Board 3 members are required to be present to constitute a quorum.

(2) For the purpose of dealing with a matter that involves a person who has an aboriginal background, the quorum is to include a member who has such a background.

(3) When dealing with a matter that involves a male person, the quorum is to include at least one male and when dealing with a matter that involves a female person, the quorum is to include at least one female.

**Presiding at meetings**

**158.** (1) At a meeting of the Board the Chairman is to preside if present and otherwise the longest-serving appointed member of the Board who is present is to preside.

(2) If more than one member is eligible to preside in the absence of the Chairman, the members present at the meeting are to appoint one of the eligible members to preside.

**Reports may be requested**

**159.** (1) The Board may request the chief executive officer to cause to be prepared and submitted to it such reports for the purpose of assisting it to carry out its functions as it considers relevant.

(2) The chief executive officer is to cause the requested reports to be prepared and submitted to the Board.

**Determination of questions**

**160.** (1) At a meeting of the Board the person presiding is to determine any question as to the admissibility of evidence and any question of law or procedure.

(2) If the Chairman is not presiding, a question referred to in subsection (1) is not to be determined unless one of the members present is a legal practitioner.

(3) Subject to subsections (1) and (2), a question arising at a meeting is decided by the votes of a majority of the members present and voting except that, if the votes are equal, the question may be decided by a casting vote exercised by the person presiding.

**Procedure**

**161.** (1) The Board may, when dealing with a matter, require the person involved in the matter or a responsible adult to attend before it but may proceed without requiring such attendance or in the absence of any person who has been required to attend.

(2) The Board may inform itself on any matter in such manner as it thinks fit.

(3) The Board may, subject to this Act, determine its own procedure.

**Reconsideration of decision**

**162.** (1) The person in respect of whom the Board makes a decision or a responsible adult may make submissions to the Board seeking the reconsideration of the decision.

(2) If the Board considers it appropriate to do so, it may reconsider its decision.

(3) If the Board is satisfied, upon reconsideration, that there is a better way in which it could have decided the matter, it may make such order as it sees fit to give effect to that decision.

**Exclusion of rules of natural justice**

**163.** The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to the doing or omission of any act, matter, or thing under this Act by the Board or the Secretary.

**Judicial notice**

**164.** (1) Judicial notice is to be taken of the signature of every person who is or was a member of the Board or the

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Secretary when it is on a document purporting to be signed in the capacity of member, and until the contrary is proved, the document is to be presumed to have been properly signed.

(2) A certificate signed by the Secretary purporting to record a decision of the Board is evidence of the making of that decision by the Board.

**Annual report**

**165.** Before 1 October in each year, the Board is to make a written report to the Minister as to —

- (a) the operations of the Board under this Act up to the last preceding 30 June;
- (b) the number of persons released under supervised release orders during the year ending on the last preceding 30 June, and the number returned to custody upon cancellations of such orders during that year; and
- (c) the operation of this Act so far as it relates to the release of offenders under supervised release orders and the activities under this Part of officers generally during that year.

**PART 9 — DETENTION CENTRES**

**Appointment of detention centre visitors and visiting justices**

**166.** (1) The Governor may appoint for every detention centre —

- (a) visitors to be known as detention centre visitors; and
- (b) visitors to be known as visiting justices.

(2) A detention centre visitor cannot carry out the duties of a visiting justice.

(3) A visiting justice cannot carry out the duties of a detention centre visitor.

(4) Visiting justices are to be appointed from persons who are magistrates or members of the Children's Court.

(5) Appointments under this section are to be for a term of 2 years, but a detention centre visitor or a visiting justice may resign at any time by notice in writing delivered to the Governor.

**Functions of detention centre visitors**

**167.** (1) A detention centre visitor is to —

- (a) visit and inspect the detention centre for which the visitor is appointed as soon as practicable after being appointed and thereafter at intervals of not more than 3 months;
- (b) furnish a report in writing to the chief executive officer after each visit and inspection made under paragraph (a); and

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- (c) make a record of any complaint made to the visitor by or on behalf of a detainee and report that complaint to the chief executive officer or to the Minister.

(2) A detention centre visitor may, after a visit and inspection made under subsection (1) (a) —

- (a) immediately communicate directly with the chief executive officer if it seems desirable to make a personal report to the chief executive officer about the visit; or
- (b) furnish a report in writing directly to the Minister if it seems desirable because of the seriousness of the matter to do so.

(3) A detention centre visitor is not to interfere with the management or discipline of the detention centre nor give or purport to give any instructions to a person employed at the centre.

**Duties of visiting justice**

**168.** (1) A visiting justice is to attend the detention centre for which the visiting justice is appointed as soon as practicable after a charge of a detention offence is referred to the visiting justice by the superintendent, and exercise such of the powers given by this Part in respect of the offence as the visiting justice considers appropriate.

(2) A visiting justice is to endeavour to complete the performance of the duties imposed by this section within 7 days of being given notice in a particular case that a charge of a detention offence has been laid.

(3) Where a charge of a detention offence is laid against a detainee but before the hearing of that charge begins the detainee is removed to another detention centre, a visiting justice for that other detention centre has the powers and duties in

relation to that detainee and that charge as if the charge had been laid at that other detention centre.

**Right of certain persons to enter detention centre**

**169.** A person who is —

- (a) a detention centre visitor;
- (b) a judge or magistrate of the Children's Court; or
- (c) a member of the Children's Court authorized by a judge or magistrate of the Children's Court,

may, upon providing satisfactory proof of the person's identity to the superintendent, enter and examine a detention centre at any time.

**Detention offences**

**170.** A detainee who —

- (a) disobeys a rule of the detention centre or an order of a person having authority to give the order;
- (b) uses insulting or threatening language or behaves in an insulting or threatening manner;
- (c) prefers a false or frivolous complaint;
- (d) does any act or omission of insubordination or misconduct subversive of the order and good government of the detention centre;
- (e) breaches a condition or restriction of any leave of absence from a detention centre;
- (f) assaults a person;

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- (g) escapes or prepares or attempts to escape from lawful custody;
- (h) is in possession of or under the influence of drugs not lawfully issued to the detainee or not taken as prescribed;
- (i) is, without the permission of the superintendent, in possession of glue containing toluene or another intoxicant;
- (j) does not submit for the purpose of having a body sample taken when required under this Act to do so;
- (k) is in possession of a weapon or a facsimile of a weapon;
- (l) wilfully breaks, damages or destroys property; or
- (m) behaves in a disorderly or riotous manner,

commits a detention offence.

**Charge of detention offence**

**171.** (1) A charge of a detention offence alleged to have been committed by a detainee may be made by any officer and is to be brought immediately to the attention of the superintendent.

(2) The superintendent is to confer, where practicable, with the detainee, a responsible adult and any other person whose participation is likely to be of benefit in considering how to deal with the allegation.

(3) After conferring, where practicable, in accordance with subsection (2), the superintendent, having regard to the nature of the alleged offence and to the alleged circumstances, is to —

- (a) suspend further action with respect to the charge on the detainee's undertaking to be of good behaviour for a stated period not exceeding 2 months, at the end of

which period the charge is to be withdrawn if the undertaking has been observed;

- (b) direct that the charge be withdrawn or that a further or different charge be laid;
- (c) hear and determine the charge; or
- (d) refer the charge to a visiting justice for hearing and determination.

**Visiting justice may hear and determine charges referred**

**172.** (1) A visiting justice may hear and determine any charge of a detention offence that is referred to the visiting justice by the superintendent.

(2) Without limiting the power of the superintendent to refer matters to a visiting justice, the superintendent is to so refer a matter if the detainee elects to have the matter dealt with by a visiting justice.

**How detention offences may be dealt with**

**173.** (1) When hearing and determining a charge that a detainee has committed a detention offence, the superintendent or a visiting justice may, if the detainee admits the charge or the charge is found to be proved, deal with the matter in any of the ways provided for in subsection (2).

(2) The ways in which a detention offence may be dealt with are —

- (a) by giving the detainee a caution;
- (b) by reprimanding the detainee;

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- (c) by ordering that the earliest release day for the sentence that the detainee is serving or, if the person is serving more than one sentence, the earliest release day for any of those sentences, is altered within the limits imposed by subsection (3);
  - (d) by ordering that the detainee's gratuities are cancelled —
    - (i) for a period not exceeding 3 days if the order is made by the superintendent; or
    - (ii) for a period not exceeding 7 days if the order is made by a visiting justice;
  - (e) by ordering that the detainee be confined to the detainee's sleeping quarters —
    - (i) for a period not exceeding 24 hours if the order is made by the superintendent; or
    - (ii) for a period not exceeding 48 hours if the order is made by a visiting justice;
- or
- (f) by making orders under more than one of paragraphs (c), (d) and (e).

(3) The earliest release day for a sentence cannot be altered under subsection (2) (c) so as to make it later than it would otherwise have been by more than —

- (a) 3 days if the order is made by the superintendent; or
- (b) 14 days if the order is made by a visiting justice,

but this subsection does not prevent the earliest release day as altered from being again altered upon a charge of another detention offence.

(4) The superintendent or a visiting justice may suspend an order made by that superintendent or visiting justice under subsection (2) on the detainee's undertaking to be of good behaviour for a stated period not exceeding 2 months, at the end of which period the order is to be of no further effect if the undertaking has been observed.

### **Hearing of charges**

174. (1) The hearing and determination of a charge of a detention offence under this Part is to be in the presence of the detainee charged and in accordance with the procedure prescribed in the regulations.

(2) The person hearing the charge is not bound by the rules of evidence but may admit any evidence considered to be relevant to the charge and may decline to admit repetitious material.

(3) A detainee is not to be represented by a legal practitioner in the proceedings.

### **Visiting justice may direct prosecution for detention offence**

175. If a charge of a detention offence is referred to a visiting justice and the visiting justice thinks it appropriate having regard to the nature and particulars of the alleged offence and the extent of the powers given by section 173, the visiting justice may decline to deal with the matter and direct the superintendent that a complaint of the offence be laid before a court.

### **Early discharge from detention**

176. The superintendent in charge of the detention centre in which a person is serving a sentence of detention may authorize the discharge of the person from detention at any time during the

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period of 3 days immediately before the day when the person would be due to be released upon the expiry of the sentence.

[177. *Repealed by No. 78 of 1995 s.145.*]

**Transfer of offender from detention centre to prison**

**178.** (1) If an offender is in a detention centre serving a sentence of detention or a sentence of imprisonment, the chief executive officer may apply to the Children's Court, constituted so as to consist of or include a judge, for a direction under subsection (3).

(2) An application under subsection (1) cannot be made in respect of an offender who is under 16 years old.

(3) On an application under subsection (1), the Court may direct that the offender be transferred to a prison under the *Prisons Act 1981* to serve the unserved portion of the sentence in a prison.

(4) A direction under subsection (3) can only be made —

- (a) in the case of an offender who is under 18 years old, if the Court is satisfied that the offender should be transferred to a prison because —
  - (i) the offender's behaviour in the detention centre (including when serving a previous sentence) is or has been a significant risk to the safety or welfare of other people in custody in, or of the staff of, the centre;
  - (ii) of the offender's antecedents; or
  - (iii) of any other reason the Court thinks is relevant;

- (b) in the case of an offender who has reached the age of 18 years and is serving a sentence of detention —
  - (i) if the offender has a substantial period of the sentence of detention to serve; or
  - (ii) if the court is satisfied that the offender should be transferred to a prison because of any of the factors referred to in paragraph (a);

or

- (c) in the case of an offender who has reached the age of 18 years and is serving a sentence of imprisonment, if the court thinks fit.

(5) If a direction is made under subsection (3) in respect of an offender serving a sentence of detention —

- (a) the *Prisons Act 1981* applies to and in respect of the offender while in prison; and
- (b) Part 8 and Division 8 of Part 7 continue to apply to the sentence of detention.

[Section 178 inserted by No. 78 of 1995 s.144.]

#### **Absence from detention centre for treatment**

**179.** (1) In this section —

**“hospital”** includes an approved hospital under the *Mental Health Act 1962*;

**“medical officer”** means an officer of the Department who is a medical practitioner registered under the *Medical Act 1894*;

“**medical treatment**” includes treatment of a kind that is given in an approved hospital under the *Mental Health Act 1962*.

(2) If the superintendent of a detention centre is advised by a medical officer, or is for any other reason of the opinion, that a detainee at the detention centre requires medical treatment that cannot, by reason of impracticality or urgency, be administered within the detention centre, the superintendent is to order that the detainee be removed from the detention centre for the purpose of receiving the treatment and, unless the detainee has ceased to be in lawful custody, returned to the detention centre after treatment.

(3) If a detainee is to be removed to a hospital under the authority of the order —

- (a) before making the order the superintendent is to ensure that the person in charge of the hospital agrees to the removal of the detainee to the hospital; and
- (b) upon making the order the superintendent is to inform the person in charge of the hospital of the date when the detainee is entitled to be discharged from lawful custody.

(4) When the detainee is fit to be discharged from hospital, the person in charge of the hospital is to give the superintendent notice accordingly and, unless the detainee has ceased to be in lawful custody, the superintendent is to arrange for the return of the detainee to the detention centre.

(5) The superintendent may appoint an officer under the superintendent’s control to take charge of the detainee while absent from the detention centre under an order made under subsection (2) and is required to do so —

- (a) if the superintendent considers that the security of the hospital or other place of treatment might otherwise

be jeopardized or the detainee might otherwise escape;  
or

- (b) unless the chief executive officer, with the consent of the Minister, otherwise orders, if the detainee is a person referred to in subsection (6).

(6) If the detainee is a person who is —

- (a) ordered to be detained or kept in strict custody until the Governor's pleasure is known;
- (b) in safe custody at the direction of the Governor; or
- (c) undergoing a sentence of imprisonment for life or strict security life imprisonment,

the superintendent is to give the chief executive officer notice when the detainee is removed from or returned to a detention centre under an order made under this section.

(7) While a person is absent from a detention centre under an order made under subsection (2) the person is to be regarded as being detained in custody at the detention centre, and —

- (a) if the person escapes or attempts to escape from the place where the order authorizes the person to be it is to be regarded as escaping or attempting to escape from custody at a detention centre, as the case requires; and
- (b) the person in charge of the place where the detainee is for the time being does not have the authority to release the detainee from custody.

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**Inquest on death of detainee**

180. (1) The superintendent is to give the chief executive officer notice of the death of a detainee and the chief executive officer is to cause notice of the death to be given to a coroner.

(2) If a coroner is informed under subsection (1) of the death of a detainee the coroner is to enquire into the manner and cause of the death.

**Chief executive officer may make rules**

181. (1) The chief executive officer may, with the approval of the Minister, make rules for the management, control, and security of detention centres generally or a specified detention centre and for the management, control, and security of detainees and the management of officers of the Department.

(2) Rules made under this section may —

- (a) confer a discretionary authority on any person or class of persons;
- (b) confer authority to require a detainee to submit for the purpose of having a body sample taken;
- (c) confer on persons who are prison officers under the *Prisons Act 1981*, or such of those persons as are specified in the rules, such functions under this Act as are specified in the rules;
- (d) specify and regulate the privileges which may be extended to detainees and may provide for the withdrawal of such privileges.

(3) The chief executive officer is to publish rules made under this section in such manner as is appropriate to bring relevant rules to the attention of persons affected by them.

(4) The chief executive officer is to take reasonable steps to have rules made under this section, so far as they affect detainees, made known —

- (a) to every detainee who is illiterate; and
- (b) in a language that the detainee understands, to every detainee who does not understand English.

(5) If there is any inconsistency between a rule made under this section and a regulation, the rule has effect, to the extent of the inconsistency, subject to the regulation.

**PART 10 — MISCELLANEOUS**

**Protection from liability for wrongdoing**

182. (1) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

(2) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act.

(3) The protection given by this section applies even though the thing done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.

(4) This section does not relieve the Crown of any liability that it might have for the doing of anything by a person against whom this section provides that an action does not lie.

(5) For the purposes of this section, anything that a person who has any function under this Act does in good faith and for reasonable or probable cause in promoting the effective rehabilitation of a young person is to be regarded as having been done in the performance of a function under this Act.

(6) A person who on reasonable grounds and in good faith for the purposes of facilitating the enforcement of the provisions of this Act makes a report with respect to the circumstances of a person is not liable to any action for damage or any other legal proceeding in respect of that report.

**Order to be a defence to actions**

183. In an action for anything done in obedience to an order it is sufficient for the defendant to justify under the order only, without setting forth the previous proceedings, and the

production of the order or a duplicate or certified copy of it is sufficient evidence that the order was made.

**Power to sign documents**

184. (1) In any case where the consent of a responsible adult is required or is customarily sought, the chief executive officer may, in writing signed by the chief executive officer, give that consent in relation to any detainee.

(2) Without limiting the generality of the power conferred by subsection (1), the chief executive officer may sign consents to surgical operations or anaesthesia.

**Minister may make certain payments**

185. The Minister may make payments towards the cost of administering any order that has been made under this Act in dealing with an offence committed by a young person.

**Officer of Department may conduct cases**

186. (1) All cases under this Act heard on complaint or on a notice to attend court or an application by or on behalf of the chief executive officer or any other officer of the Department may be conducted by any person appointed by the Minister in that behalf.

(2) The production of an appointment, in writing, signed by the Minister, is sufficient evidence that the person therein named was authorized to lay the complaint, issue the notice, or make the application, as the case requires and has been duly appointed to conduct the case.

**Certificate of superintendent to be evidence**

187. A certificate endorsed upon or annexed to an order for the detention of a person and signed by the superintendent of a detention centre stating that the person named in the order was received at the detention centre and, at the time the certificate was signed —

- (a) was detained in the detention centre; or
- (b) had been otherwise dealt with under this Act,

is, in any proceedings, sufficient proof, in the absence of evidence to the contrary, of the facts stated in the certificate and of the identity of the person who was detained or had been otherwise dealt with.

**Person having charge of detainee has legal custody**

188. (1) In this section, “**detainee**” means a person detained, in a detention centre or otherwise, under this Act or section 666 of *The Criminal Code*, whether on remand or otherwise.

(2) If a person has charge for the time being of a detainee as authorized by this Act, by a court, or by an officer of the Department —

- (a) the person has, while engaged in any duty to which this Act relates, all such powers, authorities, protection, and privileges for the purpose of the execution of the duty as a police officer has by common law or statute; and
- (b) the detainee is to be regarded as being in legal custody.

(3) Without prejudice to the generality of subsection (2), a detainee is to be regarded as being in legal custody —

- (a) whilst attending, or travelling to or from a court;

- (b) whilst attending or travelling, to or from a medical or dental practitioner or a hospital;
- (c) in the case of a detainee sentenced to be detained in a detention centre, whilst participating outside the detention centre in a programme approved by the Minister for detainees;
- (d) whilst attending, or travelling directly to or from, any activity organized or supervised by officers of the Department employed at a detention centre at which the detainee is detained; or
- (e) whilst absent from a detention centre pursuant to a written authorization of the chief executive officer given in accordance with subsection (4).

(4) The chief executive officer may, in writing, authorize a detainee to be absent from a detention centre for a period not exceeding 72 hours, and the written authorization is to specify the time, the period, and the purpose, of the authorized absence.

**Certain offenders to be regarded as not convicted**

**189.** (1) This section does not apply to, or in relation to, a person convicted of committing or attempting to commit an offence of wilful murder, murder, manslaughter or infanticide.

(2) If a young person is convicted of an offence and a period of 2 years has expired since —

- (a) the discharge of any sentence imposed as a result of the conviction, or every sentence if more than one sentence was imposed; or
- (b) the date of conviction, if no sentence that required to be discharged was imposed as result of the conviction,

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the conviction is not to be regarded as a conviction for any purpose, except as provided in this section.

(3) On the application of the person concerned the court, if it thinks that special circumstances exist, may declare that subsection (2) applies in relation to a conviction of a young person even though the period of 2 years mentioned in that subsection has not expired.

(4) In subsection (2), the reference to a sentence imposed as a result of a conviction includes a reference to an order made as a result of the conviction, and when the order has been fully complied with the sentence is to be regarded as having been discharged.

(5) If a young person is convicted of an offence and a youth community based order is made as a result of the conviction, unless the person has been subsequently dealt with for that offence the conviction is not to be regarded as a conviction for any purpose, except as provided in this section.

(6) The reference in subsection (5) to a youth community based order includes a reference to a probation order or community service order made under the *Child Welfare Act 1947* before the commencement of section 198.

(7) This section does not prevent —

- (a) a person in respect of whom a youth community based order has been made upon the person's conviction of an offence from being subsequently dealt with for the offence as a person so convicted if a condition of the order is not observed;
- (b) any subsequent proceedings that may be taken against the offender under this Act or on indictment in relation to the offence to which this section applies or for a subsequent offence; or

- (c) the making of a record of anything that paragraph (a) or (b) allows.

(8) This section does not affect —

- (a) the right of a person to appeal against a conviction or to rely on a conviction in bar of any subsequent proceedings for the same offence;
- (b) the revesting or restoration of any property in consequence of the conviction;
- (c) the right of a court to disqualify a person from holding or obtaining a driver's licence issued under the *Road Traffic Act 1974*; or
- (d) any cancellation or disqualification that occurs by operation of any written law.

(9) Part 3 of the *Spent Convictions Act 1988* has effect in relation to a conviction that, under this section, is not to be regarded as a conviction as if it were a spent conviction under that Act.

### **Disclosure of certain convictions**

**190.** (1) If section 189 provides that a conviction of an offence is not to be regarded as a conviction, evidence of that conviction is not admissible in any proceedings, other than proceedings under this Act or on indictment for the offence or for a subsequent offence.

(2) A person, not being the person convicted, who discloses the fact of a conviction that, under section 189, is not to be regarded as a conviction commits an offence except if the disclosure is for the purposes of this Act or of any court of law.

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**Offence of communicating with detainee**

**191.** A person who holds or attempts to hold any communication with a detainee when not authorized by the chief executive officer or the person in charge of the detention centre to do so commits an offence.

**Offence of failing to depart**

**192.** A person who enters a detention centre or Departmental facility and does not depart when required to do so by a person having authority to require such departure commits an offence.

**Offences of permitting or assisting escape**

**193.** (1) A person who has responsibility for the custody of a detainee and negligently or knowingly permits the detainee to escape from custody commits an offence.

(2) A person who assists a detainee to escape from custody commits an offence.

Penalty: \$5 000 or imprisonment for 12 months, or both.

**Offence of personating officer**

**194.** A person, not being an officer of the Department, who takes the name, designation, or description of an officer of the Department or otherwise pretends to be an officer of the Department commits an offence.

**General penalty**

**195.** A person found guilty of an offence against this Act is liable, except as otherwise expressly provided, to a fine of \$3 000 or imprisonment for 9 months.

**Regulations**

**196.** (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) Without limiting subsection (1), regulations may be made —

- (a) amending Schedule 1 or Schedule 2;
- (b) prescribing the gratuities that may be credited to detainees and the conditions upon which they may be credited.

**PART 11 — AMENDMENT OF CERTAIN OTHER ACTS  
AND TRANSITIONAL PROVISIONS**

*Division 1 — Child Welfare Act 1947*

**Principal Act**

**197.** In this Division, the *Child Welfare Act 1947*\* is referred to as the principal Act.

[\* *Reprinted as at 23 May 1990.*

*For subsequent amendments see 1993 Index to Legislation of Western Australia, Table 1, p. 31 and Act No. 9 of 1994.]*

**Long title amended**

**198.** The long title to the principal Act is amended by deleting “, for the control and treatment of children offending against the law,”.

**Section 4 amended**

**199.** Section 4 of the principal Act is amended —

- (a) by deleting the definitions of “CEO (Justice)”, “community service order”, “conditional release order”, “Department”, “detainee”, “detention centre”, “overseer”, “prescribed requirement”, “relevant officer”, “the regulations”, “the supervising court”, and “work”; and

- (b) by inserting after the definition of “court” the following definition —

“

“**Department**” means the department of the Public Service principally assisting the Minister in the administration of this Act;

”.

**Sections 5 and 5A repealed**

200. Sections 5 and 5A of the principal Act are repealed.

**Section 6 amended**

201. (1) Section 6 (1) of the principal Act is amended by deleting “so far as their administration is vested in the Minister to whom the administration of the *Community Services Act 1972* is for the time being committed by the Governor and”.

(2) Section 6 (2), (3), and (4) of the principal Act are repealed.

**Section 9A amended**

202. Section 9A (1) of the principal Act is amended by deleting “, to a person appointed under section 6 (2)”.

**Section 11A repealed**

203. Section 11A of the principal Act is repealed.

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**Section 12 amended**

**204.** Section 12 of the principal Act is amended by deleting “each of the departments of the Public Service principally assisting in the administration of this Act” and substituting the following —

“ the Department ”.

**Sections 13A to 13K repealed**

**205.** Sections 13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, and 13K of the principal Act are repealed.

**Section 18 amended**

**206.** Section 18 of the principal Act is amended by deleting “a detention centre or”.

**Section 28 amended**

**207.** Section 28 (2) of the principal Act is amended by deleting “charged with an offence or”.

**Section 31A amended**

**208.** Section 31A of the principal Act is amended —

- (a) in subsection (1), by deleting “encouraged or contributed to the commission of any offence by any child or of any act by a child under the age of 14 years which act, if it were committed by a child over 14 years of age, would be an offence, or ”; and
- (b) by repealing subsections (3), (4), and (5).

**Sections 33 to 40 repealed**

**209.** Sections 33, 33A, 33B, 34, 34B, 34C, 34CA, 34E, 35, 36, 37, 38, 39, 39A, 39B, 39C, 39D, 39E, 39F, 39G, 39H, 39J, 39K, 39L, 39M, 39N, 39P, 39Q, 39R, and 40 of the principal Act are repealed.

**Section 45 amended**

**210.** Section 45 of the principal Act is amended by deleting “detention centre or”.

**Section 46 amended**

**211.** Section 46 of the principal Act is amended by deleting “detention centre,”.

**Part V repealed**

**212.** Part V of the principal Act is repealed.

**Section 126A repealed**

**213.** Section 126A of the principal Act is repealed.

**Section 127 amended**

**214.** Section 127 of the principal Act is amended —

- (a) in paragraph (a) —
    - (i) by deleting “, the CEO (Justice),”; and
    - (ii) by deleting “as the case may be,”;
- and

**s. 215**

- (b) in each of paragraphs (a) and (b), by deleting “detention centre or”.

**Section 128 amended**

**215.** Section 128 of the principal Act is amended —

- (a) by deleting “a detention centre or”; and
- (b) by deleting “centre or”.

**Section 129 repealed**

**216.** Section 129 of the principal Act is repealed.

**Section 138B amended**

**217.** Section 138B of the principal Act is amended by repealing subsections (1a) and (1b).

**Section 141 repealed**

**218.** Section 141 of the principal Act is repealed.

**Section 146B amended**

**219.** Section 146B of the principal Act is amended by deleting “a Department assisting in the administration of any provision of this Act” and substituting the following —

“ the Department ”.

**Section 146C amended**

**220.** Section 146C (1) of the principal Act is amended —

- (a) by deleting “CEO (Justice),”; and
- (b) by deleting “a Department assisting in the administration of any provision of this Act” and substituting the following —

“ the Department ”.

**Section 149 amended**

**221.** Section 149 of the principal Act is amended —

- (a) in paragraph (a), by deleting “visiting justices,”;
- (b) in each of paragraphs (b), (d), and (h) —
  - (i) by deleting “detention centres,”; and
  - (ii) by deleting “centres and”;and
- (c) by deleting paragraphs (ca), (cb), and (i).

**Fourth Schedule deleted**

**222.** The Fourth Schedule to the principal Act is deleted.

***Division 2 — Children's Court of Western  
Australia Act 1988***

**Principal Act**

**223.** In this Division, the *Children's Court of Western Australia Act 1988*\* is referred to as the principal Act.

[\* *Act No. 69 of 1988.*

*For subsequent amendments see 1993 Index to  
Legislation of Western Australia, Table 1, p. 31.]*

**Section 19 amended**

**224.** Section 19 (1) and (2) of the principal Act are repealed and the following subsections are substituted —

“

(1) Subject to Division 2 of Part 5 of the *Young Offenders Act 1994*, to section 17 of the *Offenders Community Corrections Act 1963*, and to this Part, the Court has exclusive jurisdiction to hear and determine a complaint of an offence alleged to have been committed by a child.

(2) Notwithstanding that a person has attained the age of 18 years, the jurisdiction of the Court extends, and the provisions of this Act apply, to proceedings in respect of an offence committed, or allegedly committed, by the person before attaining the age of 18 years.

(2a) In subsection (2), the reference to proceedings in respect of an offence includes proceedings relating to an order that the Court made when it dealt with the offender upon finding the offender guilty of the offence.

”

**Section 23 amended**

**225.** Section 23 of the principal Act is amended by inserting before subsection (1) the following subsection —

“

(1a) This section applies to proceedings other than those to which section 45 of the *Young Offenders Act 1994* applies.

”.

**Sections 24, 25, and 26 repealed**

**226.** Sections 24, 25, and 26 of the principal Act are repealed.

**Section 28 amended**

**227.** Section 28 of the principal Act is amended by repealing subsection (1) and substituting the following subsection —

“

(1) Subject to this section, the Court may order that any original proceedings in which an order (not being an order made following conviction on indictment) was made against a child under the *Young Offenders Act 1994* or the *Child Welfare Act 1947* are to be reheard.

”.

**Section 34 amended**

**228.** Section 34 of the principal Act is amended by repealing subsection (2).

s. 229

**Section 41 amended**

**229.** Section 41 (2) of the principal Act is amended by deleting paragraphs (f) and (g) and substituting the following paragraph —

“

- (f) a decision to make an order under Part 7 of the *Young Offenders Act 1994* dealing with a person for an offence (whether or not the person may thereafter be further dealt with for the offence);

”.

**Section 43 amended**

**230.** (1) Section 43 (3) of the principal Act is amended by deleting paragraph (c) and substituting the following paragraph —

“

- (c) an order of the Court under section 178 of the *Young Offenders Act 1994*,

”.

(2) Section 43 (3b) of the principal Act is amended by deleting “section 13J of the *Child Welfare Act 1947*” and substituting the following —

“ section 178 of the *Young Offenders Act 1994* ”.

***Division 3 — Transitional provisions***

***Interpretation Act 1984 applies***

**231.** (1) This Division does not limit the operation of the *Interpretation Act 1984*.

(2) Unless the context otherwise requires, a reference in a written law to an enactment repealed by this Act includes a reference to the corresponding provision, if any, of this Act.

(3) A reference in a written law to a facility under the *Child Welfare Act 1947* may, where the context so requires, be read as including or being a reference to a facility of a corresponding kind, if any, under this Act.

### **Orders for past matters**

**232.** (1) An order can be made under this Act by the court in dealing with an offence even though —

- (a) the offence for which the person is before the court may have been committed;
- (b) the default in payment may have occurred; or
- (c) the sentence to which the order relates may have been imposed,

as the case requires, before the commencement of the provision of this Act under which the order is made.

### **Orders under former provisions**

**233.** This Act applies to an order made under a provision repealed by this Act that is still in force when that provision is repealed as if the order were made under the provision of this Act that most nearly corresponds to the repealed provision.

### **Detention centres under *Child Welfare Act 1947***

**234.** (1) In this section —

“**former provisions**” means the provisions of the *Child Welfare Act 1947* as in force immediately before the commencement of section 13.

**s. 235**

(2) The declaration of a detention centre under the former provisions is to be taken to have been made under this Act.

(3) The appointment of a person as a visiting justice for a detention centre under the former provisions is taken to have been an appointment under this Act.

**Proceedings pending before children's panels**

**235.** (1) In this section —

“**former provisions**” means the provisions of the *Child Welfare Act 1947* as in force immediately before the commencement of section 32.

(2) If proceedings for a matter are pending before a children's panel under the former provisions when section 32 commences, the matter is to be taken to have been referred under this Act to a juvenile justice team.

***Division 4 — Miscellaneous***

**Miscellaneous amendments**

**236.** The Acts referred to in Schedule 4 are amended as set out in that Schedule.

**Review of Act**

**237.** (1) As soon as is practicable after the expiration of the period of 5 years following the coming into operation of this Act the Minister responsible for its administration shall cause an investigation and review to be conducted, and a report to be prepared as to the operation of this Act.

(2) The Minister shall cause a copy of the report prepared for the purposes of subsection (1) to be laid before each House of Parliament as soon as is practicable after it is completed.

SCHEDULE 1

[sections 3, 22, 25 and 55]

Offences —

- . for which a caution cannot be given, and
- . which cannot be referred to a juvenile justice team, and
- . for which a conviction will normally be recorded

*Enactment*

*Description of offence*

1. *The Criminal Code*

s. 125	Perjury — if the offender commits the crime in order to procure the conviction of another person for a crime punishable with strict security life imprisonment, or with imprisonment for life
s. 134	Conspiracy to bring false accusation — if the offence is such that a person convicted of it is liable to be sentenced to strict security life imprisonment or to imprisonment for life
s. 144	Forcibly rescuing offenders sentenced or liable to strict security life imprisonment
s. 186	Occupier or owner allowing certain persons to be on premises for unlawful carnal knowledge — if the person is under the age of 13 years
s. 281A (as read with section 287A)	Infanticide
s. 288	Aiding suicide
s. 290	Killing unborn child
s. 293	Stupefying in order to commit indictable offence
s. 295	Preventing escape from wreck
s. 300	Maliciously administering poison with intent to harm

Sch. 1

<i>Enactment</i>	<i>Description of offence</i>
s. 305	Setting mantraps — if injury to any person is actually caused
s. 306	Unlawful acts causing bodily harm
s. 317A (c)	Assault with intent to resist or prevent arrest or detention
s. 320 (2)	Sexually penetrating a child under 13
s. 320 (3)	Procuring etc. a child under 13 to engage in sexual behaviour
s. 321 (2)	Sexually penetrating a child of or over 13 and under 16, where the child is under the care, supervision, or authority of the offender
s. 321 (3)	Procuring etc. a child of or over 13 and under 16 to engage in sexual behaviour, where the child is under the care, supervision, or authority of the offender
s. 329 (2)	Sexually penetrating a child relative or a <i>de facto</i> child, where the child is under 16
s. 329 (3)	Procuring etc. a child relative or a <i>de facto</i> child to engage in sexual behaviour, where the child is under 16
s. 330 (2)	Sexually penetrating an incapable person, where the incapable person is under the care, supervision, or authority of the offender
s. 330 (3)	Procuring etc. an incapable person to engage in sexual behaviour, where the incapable person is under the care, supervision, or authority of the offender
s. 343	Child stealing
s. 390B	Unauthorized use of aircraft — if the offender is liable to imprisonment for 20 years
s. 398	Attempts at extortion by threats — if the offender is liable to imprisonment for 20 years

<i>Enactment</i>	<i>Description of offence</i>
s. 449	Casting away ships
s. 451	Obstructing and injuring railways
s. 451A	Endangering the safe use of an aircraft
s. 454	Causing explosion likely to do serious injury to property
s. 511	Personation of owner of shares

**2. *Misuse of Drugs Act 1981***

s. 6 (1) (a)	Having in possession drug with intent to sell or supply it to another
s. 6 (1) (c)	Selling or supplying, or offering to sell or supply, drug to another
s. 7 (1) (a)	Having in possession or cultivating prohibited plant with intent to sell or supply it, or drug obtainable therefrom, to another
s. 7 (1) (b)	Selling or supplying, or offering to sell or supply, prohibited plant to another
s. 33 (1)	Attempting, or inciting another, to commit, or becoming an accessory after the fact to, an offence under section 6 or 7 referred to above
s. 33 (2)	Conspiring with another to commit an offence under section 6 or 7 referred to above

**3. *Road Traffic Act 1974***

s. 60	Reckless driving
s. 63	Driving under the influence of alcohol, drugs, or alcohol and drugs
s. 64	Driving with 0.08% blood alcohol content
s. 64AA	Driving with 0.05% blood alcohol content
s. 64A	Driving with 0.02% blood alcohol content

*[Schedule 1 amended by No. 82 of 1994 s.13 (6).]*

SCHEDULE 2

[sections 3, 22, 25, 55 and 124]

Offences —

- . for which a caution cannot be given, and
- . which cannot be referred to a juvenile justice team, and
- . for which a conviction will normally be recorded, and
- . which may lead to the application of the provisions relating to offenders who repeatedly commit offences resulting in detention

*Enactment*

*Description of offence*

1. *The Criminal Code*

s. 278 (as read with s. 282)	Wilful murder
s. 279 (as read with s. 282)	Murder
s. 280 (as read with s. 287)	Manslaughter
s. 283	Attempt to murder
s. 292	Disabling in order to commit indictable offence
s. 294	Acts intended to cause grievous bodily harm or to resist or prevent arrest
s. 296	Intentionally endangering safety of persons travelling by railway
s. 296A	Intentionally endangering safety of persons travelling by aircraft
s. 297	Grievous bodily harm
s. 298	Causing explosion likely to endanger life
s. 299	Attempting to cause explosion likely to endanger life

<i>Enactment</i>	<i>Description of offence</i>
s. 301	Wounding and similar acts
s. 317	Assault occasioning bodily harm
s. 317A (a)	Assault with intent to commit or facilitate a crime
s. 317A (b)	Assault with intent to do grievous bodily harm
s. 318	Serious assaults
s. 323	Indecent assault
s. 324	Aggravated indecent assault
s. 325	Sexual penetration without consent
s. 326	Aggravated sexual penetration without consent
s. 332	Kidnapping
s. 333	Deprivation of liberty
s. 378 (2)	Stealing a motor vehicle, aggravated by reckless or dangerous driving
s. 391 (as read with s. 393)	Robbery
s. 394	Assault with intent to commit robbery
s. 444	Criminal damage

**2. *Bush Fires Act 1954***

s. 3	Wilfully lighting a fire or causing a fire to be lit under such circumstances as to be likely to injure or damage a person or property
------	--

**3. *Road Traffic Act 1974***

s. 59	Dangerous driving causing death, injury, etc.
s. 59A	Dangerous driving causing bodily harm

*[Schedule 2 amended by No. 82 of 1994 s.13 (6).]*

**SCHEDULE 3**

[section 61]

**ADAPTATIONS FOR COMMUNITY WORK IN  
DEFAULT OF PAYMENT**

**References to “offender”**

1. A reference to “offender” is to be read as a reference to the person in respect of whom the order is made.

**Conditions**

2. The order cannot impose attendance conditions or supervision conditions.

**Duration of order**

3. The order remains in force until —

- (a) every condition imposed by it is fulfilled;
- (b) it is discharged or cancelled by the court; or
- (c) the obligation to make the payment in respect of which the order was made is otherwise satisfied.

**Powers of court in dealing with breach**

4. If the court decides to cancel the order, it can only make a detention order under section 65C in respect of the defaulter and issue a warrant of commitment accordingly.

**Effect of partially performing work ordered in default of payment**

5. (1) If the defaulter satisfactorily performs work under the order for a number of hours less than that required under the order, the amount required to be paid in full satisfaction of the obligation to make the payment is reduced by the percentage described in subclause (2).

(2) The percentage reduction is the percentage that the number of whole hours of work satisfactorily performed represents of the number of hours of work required by the order.

**Proof of identity**

6. (1) A person bringing proceedings for a failure to comply with the order may aver that the person against whom the proceedings are brought is the person in respect of whom the order was made.

(2) In proceedings in which an averment is made under subclause (1) the person against whom the proceedings are brought may be asked by the court whether the person became liable to make the payment in respect of which the order was made and whether the person defaulted in making the payment and, if the person admits any fact about which the court asks, no further proof of the fact admitted is required.

*[Schedule 3 amended by No. 92 of 1994 s.46.]*

SCHEDULE 4

[section 236]

MISCELLANEOUS AMENDMENTS TO OTHER ACTS

***Constitution Acts Amendment Act 1899***

Schedule V is amended in Part 3 by inserting in its appropriate alphabetical position the following item —

“  
The Supervised Release Review Board established under the *Young Offenders Act 1994*.  
”

***Freedom of Information Act 1992***

Schedule 2 is amended by inserting after the item relating to the Parole Board the following item —

“  
The Supervised Release Review Board.  
”

***Juries Act 1957***

The Second Schedule is amended in Part I, in item 2 —

- (a) by deleting the semicolon at the end of paragraph (m) and substituting a full-stop; and
- (b) by inserting after paragraph (m) the following paragraph —

“  
(n) Member of the Supervised Release Review Board under the *Young Offenders Act 1994*.  
”

***Spent Convictions Act 1988***

Schedule 3 is amended in the Table to clause 1 by inserting after item 1 the following item —

“  
1A. The Supervised Release Review Board Division 4 established under the *Young Offenders Act 1994*.  
”



## Young Offenders Act 1994

### NOTES

<sup>1</sup>. This reprint is a compilation as at 26 November 1996 of the *Young Offenders Act 1994* and includes the amendments effected by the other Acts referred to in the following Table<sup>1a, 1b, 1c</sup>.

**Table of Acts**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Young Offenders Act 1994</i>	104 of 1994	11 January 1995	13 March 1995 (see <i>Gazette</i> 10 March 1995 p.895)	
<i>Criminal Law Amendment Act 1994</i> , sections 13 (6) and 20	82 of 1994	23 December 1994	Section 13 (6): 20 January 1995 (see section 2 (3)); section 20: 13 March 1995 see section 2 (4) and <i>Gazette</i> 10 March 1995 p.895)	
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994</i> , Part 22	92 of 1994	23 December 1994	11 January 1995 (see section 2 (2))	
<i>Sentencing (Consequential Provisions) Act 1995</i> , Part 86	78 of 1995	16 January 1996	4 November 1996 (see section 2 and <i>Gazette</i> 25 October 1996 p.5632)	

<sup>1a</sup> As at the date of this reprint section 61 of the *Coroners Act 1996* (Act No. 2 of 1996) was not in operation. The relevant part of that section reads as follows —

“

17. *Young Offenders Act 1994* In section 180 (2) delete “enquire into the manner and cause of” and substitute “investigate”.

”.

*Young Offenders Act 1994*

<sup>1b</sup> As at the date of this reprint Part 6 of the *Criminal Law Amendment Act 1996* (Act No. 36 of 1996) was not in operation. That Part reads as follows —

“ **PART 6 — YOUNG OFFENDERS ACT 1994**

**Principal Act**

41. In this Part the *Young Offenders Act 1994* is referred to as the principal Act.

**Section 119 amended**

42. (1) Section 119 (1) of the principal Act is amended by deleting “for a prescribed offence”.

(2) After section 119 (1) of the principal Act the following subsection is inserted —

“ (1a) A direction under subsection (1) cannot be made unless —

(a) the offender has reached the age of 16 years when the sentence is imposed; and

(b) the offender consents to it. ”.

(3) Section 119 (2) of the principal Act is repealed and the following subsection is substituted —

“ (2) Unless the court sentencing the offender is the Supreme Court, the District Court, or the Children’s Court constituted by or so as to include a judge, a direction under subsection (1) may only be made if —

(a) the offence for which the term of detention is being imposed is an offence prescribed for the purposes of this paragraph; and

(b) the offender —

(i) has not been previously convicted of an offence prescribed for the purposes of this paragraph; and

(ii) has not previously served all or any of a sentence of imprisonment or detention. ”. ”.

## Young Offenders Act 1994

<sup>1c</sup> As at the date of this reprint section 94 (Part 22) of the *Mental Health (Consequential Provisions) Act 1996* (Act No. 69 of 1996) was not in operation. That section reads as follows —

“ **Section 179 amended**

**179.** Section 179 (1) of the *Young Offenders Act 1994* is amended —

- (a) by deleting the definition of “hospital”;
- (b) in the definition of “medical treatment” by deleting “treatment of a kind that is given in an approved hospital under the *Mental Health Act 1962*” and substituting the following —

“ psychiatric treatment as defined  
in section 3 of the *Mental Health  
Act 1996* ”. ”.