

Passed by both Houses



New South Wales

Juvenile Offenders Legislation Amendment Bill 2004

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2004*



New South Wales

Juvenile Offenders Legislation Amendment Bill 2004

Act No , 2004

An Act to amend the *Children (Criminal Proceedings) Act 1987*, the *Children (Detention Centres) Act 1987* and the *Crimes (Administration of Sentences) Act 1999* in relation to juvenile offenders; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Juvenile Offenders Legislation Amendment Act 2004*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Children (Criminal Proceedings) Act 1987 No 55

The *Children (Criminal Proceedings) Act 1987* is amended as set out in Schedule 1.

4 Amendment of Children (Detention Centres) Act 1987 No 57

The *Children (Detention Centres) Act 1987* is amended as set out in Schedule 2.

5 Amendment of Crimes (Administration of Sentences) Act 1999 No 93

The *Crimes (Administration of Sentences) Act 1999* is amended as set out in Schedule 3.

Schedule 1 Amendment of Children (Criminal Proceedings) Act 1987

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 19 Court may direct imprisonment to be served as a juvenile offender

Omit “in a detention centre” wherever occurring.

Insert instead “as a juvenile offender”.

[3] Section 19 (1)

Insert at the end of the subsection:

Note. The effect of such an order is that the person to whom the order relates will be committed to a detention centre (see subsection (6)). There he or she will be detained as specified in the order. In certain circumstances, he or she may subsequently be transferred to a juvenile correctional centre pursuant to an order under section 28 of the *Children (Detention Centres) Act 1987*.

[4] Section 19 (6)

Insert after section 19 (5):

- (6) The warrant of commitment that is issued under section 62 of the *Crimes (Sentencing Procedure) Act 1999* in relation to a sentence of imprisonment the subject of an order under this section:
- (a) must indicate that the sentence is the subject of such an order, and
 - (b) must specify how much of the sentence is to be served as a juvenile offender, and
 - (c) must, despite the provisions of that section, commit the person to whom it relates to a detention centre.

[5] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

Schedule 1 to the *Juvenile Offenders Legislation Amendment Act 2004*

[6] Schedule 2, Part 12

Insert after Part 11:

**Part 12 Provisions consequent on enactment of
Juvenile Offenders Legislation
Amendment Act 2004**

15 Section 19 orders

An order in force under section 19 (1), as in force immediately before its amendment by Schedule 1 [2] to the *Juvenile Offenders Legislation Amendment Act 2004*, is taken, on that commencement, to be an order under that section, as so amended.

16 Warrants of commitment

Section 19 (6), as inserted by Schedule 1 [4] to the *Juvenile Offenders Legislation Amendment Act 2004*, does not apply to a warrant of commitment issued before the commencement of that subsection.

Schedule 2 Amendment of Children (Detention Centres) Act 1987

(Section 4)

[1] Section 3 Definitions

Omit the definitions of *classified person*, *prison* and *prisoner* from section 3 (1).

[2] Section 3 (1)

Insert in alphabetical order:

correctional centre has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

inmate has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

juvenile correctional centre has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

juvenile inmate means an inmate who is under the age of 21 years.

older detainee means a detainee who is of or above the age of 16 years.

[3] Section 3 (1), definition of “detention order”

Omit “in a detention centre,” from paragraph (a) of the definition.

Insert instead “as a juvenile offender, and pursuant to which the court has committed the person to a detention centre, or”.

[4] Section 3 (1), definition of “detention order”

Omit paragraph (c) of the definition. Insert instead:

- (c) an order in force under section 10 of this Act whereby the Minister administering the *Crimes (Administration of Sentences) Act 1999* or the Commissioner of Corrective Services has directed the transfer of a juvenile inmate from a correctional centre or juvenile correctional centre, as the case may be, to a detention centre.

[5] Section 10

Omit the section. Insert instead:

10 Transfer of juvenile inmates from correctional centres to detention centres

- (1) The Minister administering the *Crimes (Administration of Sentences) Act 1999* may, by order in writing made with the consent of the Minister administering this Act, direct the transfer of a juvenile inmate from a correctional centre to a detention centre.
- (2) The Commissioner of Corrective Services may, by order in writing made with the consent of the Director-General, direct the transfer of a juvenile inmate from a juvenile correctional centre to a detention centre.
- (3) An order may not be made under subsection (2) in respect of a juvenile inmate unless he or she is an inmate pursuant to an order under section 28 whereby he or she has been transferred from a detention centre to a juvenile correctional centre.
- (4) When an inmate is transferred from a correctional centre to a detention centre pursuant to an order under this section:
 - (a) he or she ceases to be an inmate and becomes a person on remand or a person subject to control, as the case requires, and
 - (b) in the case of a person who becomes a person subject to control, the unexpired portion of the sentence or sentences of imprisonment to which he or she was subject when the order was made is taken to be the period for which he or she is required, under this Act, to be detained in a detention centre.

[6] Section 17 Private property

Omit “prison” wherever occurring in section 17 (2) (b).

Insert instead “correctional centre”.

[7] Section 24 Persons subject to control may be granted leave, discharged etc

Omit section 24 (2). Insert instead:

- (2) An order under subsection (1) (b) or (c) may not be made in relation to a person who is a person subject to control pursuant to an order in force under section 10 of this Act or section 19 (1) of the *Children (Criminal Proceedings) Act 1987*.

[8] Section 28

Omit the section. Insert instead:

28 Transfer of older detainees from detention centres to juvenile correctional centres

- (1) The Director-General may, by order in writing made with the consent of the Commissioner of Corrective Services, direct the transfer of an older detainee from a detention centre to a juvenile correctional centre.
- (2) An order may not be made under subsection (1) in respect of a detainee unless:
 - (a) he or she is a person on remand or a person subject to control by reason of an order in force under section 10, or
 - (b) he or she is a person on remand in relation to a serious children's indictable offence within the meaning of the *Children (Criminal Proceedings) Act 1987*, or
 - (c) he or she is a person subject to control by reason of an order in force under section 19 of the *Children (Criminal Proceedings) Act 1987*, or
 - (d) the Director-General is satisfied that the detainee's behaviour is or has been such as warrants the making of such an order.
- (3) When a detainee is transferred from a detention centre to a juvenile correctional centre pursuant to an order under this section:
 - (a) he or she ceases to be a detainee and becomes an inmate, and
 - (b) in the case of a detainee who, having been a person subject to control, becomes a convicted inmate within the meaning of the *Crimes (Administration of Sentences) Act 1999*, the period for which he or she was required, under this Act, to be detained in a detention centre when the order was made is taken to be the unexpired portion of a sentence of imprisonment to which he or she is subject.

[9] Section 28A Certain children may be remanded in correctional centres

Omit "prison" from section 28A (2). Insert instead "correctional centre".

[10] Section 28B Certain children etc may be committed to correctional centres

Omit "prison" from section 28B (2). Insert instead "a correctional centre".

[11] Section 28BA Certain persons to serve balance of detention order in correctional centre

Omit section 28BA (2). Insert instead:

- (2) When such a person is no longer required to serve his or her term of imprisonment in custody, the person must be kept in custody in a correctional centre:
 - (a) for the balance of any unexpired term of a detention order to which he or she is then subject, and
 - (b) for the remainder of any period of remand to which he or she is then subject or to which he or she becomes subject while in custody as referred to in paragraph (a).

[12] Section 28BA (4), (5) and (6)

Omit the subsections.

[13] Section 28E Consideration of suitability for detention centre

Omit “prison” from section 28E (1) (e). Insert instead “a correctional centre”.

[14] Section 28F Consent of Minister administering Crimes (Administration of Sentences) Act 1999 required

Omit “prison” from section 28F (1) wherever occurring.

Insert instead “a correctional centre”.

[15] Section 32 Termination of detention orders

Omit “prison” from section 32 (c) and (d) wherever occurring.

Insert instead “correctional centre”.

[16] Schedule 1 Savings and transitional provisions

Insert at the beginning of the Schedule:

Part 1 Preliminary

1A Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Juvenile Offenders Legislation Amendment Act 2004
- (2) Such a provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later day.

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- (3) To the extent to which such a provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

[17] Schedule 1

Omit the heading appearing before clause 1. Insert instead:

**Part 2 Provisions consequent on enactment of
Children (Detention Centres) Amendment
Act 1988**

[18] Schedule 2, Part 3

Insert after clause 2:

**Part 3 Provisions consequent on enactment of
Juvenile Offenders Legislation
Amendment Act 2004**

3 Definition

In this Part, *the 2004 amending Act* means the *Juvenile Offenders Legislation Amendment Act 2004*.

4 Section 10 transfer orders

The substitution of section 10 by Schedule 2 [5] to the 2004 amending Act does not affect any transfer made under that section before the section was substituted.

5 Section 28 transfer orders

The substitution of section 28 by Schedule 2 [8] to the 2004 amending Act does not affect any transfer made under that section before the section was substituted.

6 Section 28BA applications

The amendment of section 28BA by Schedule 2 [12] to the 2004 amending Act does not affect any application made before that

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Schedule 2 Amendment of Children (Detention Centres) Act 1987

amendment, and proceedings on such an application may be continued and completed, and any decision on such an application has effect, as if that amendment had not been made.

Schedule 3 Amendment of Crimes (Administration of Sentences) Act 1999

(Section 5)

[1] Section 3 Interpretation

Insert “, including any juvenile correctional centre or periodic detention centre” after “section 225” in paragraph (a) of the definition of *correctional centre* in section 3 (1).

[2] Section 3 (1)

Insert in alphabetical order:

juvenile correctional centre means any correctional centre declared to be a juvenile correctional centre by a proclamation in force under section 225A.

[3] Section 23 Transfers from one correctional centre to another

Insert at the end of the section:

- (2) In relation to an inmate who is under the age of 18 years, such an order may not be made on a ground referred to in subsection (1) (d), (e) or (f) so as to transfer the inmate from a juvenile correctional centre to a correctional centre that is not a juvenile correctional centre.

Note. Such an inmate may only be transferred to such a correctional centre in accordance with section 41C (2).

[4] Section 38 Absent inmates taken to be in custody

Insert “or 41C” after “section 23” in section 38 (1) (b).

[5] Part 2, Division 3A

Insert after Division 3 of Part 2:

Division 3A Juvenile inmates

41A Definitions

In this Division:

adult correctional centre means a correctional centre that is not a juvenile correctional centre.

juvenile inmate means an inmate who is under the age of 21 years.

section 28 juvenile inmate means a juvenile inmate who has been transferred to a juvenile correctional centre pursuant to an order under section 28 of the *Children (Detention Centres) Act 1987*.

41B Custody of section 28 juvenile inmates

Subject to this Act, a section 28 juvenile inmate is to be held in custody in a juvenile correctional centre.

41C Transfers to and from juvenile correctional centres

- (1) The Commissioner may order that a juvenile inmate be transferred from an adult correctional centre to a juvenile correctional centre for any reason specified in the order.
- (2) The Minister may order that a juvenile inmate be transferred from a juvenile correctional centre to an adult correctional centre if:
 - (a) the Commissioner, in the case of a juvenile inmate who is of or above the age of 18 years, or
 - (b) the Review Council, in the case of a juvenile inmate who is under the age of 18 years,
recommends to the Minister that the inmate should be transferred.
- (3) A recommendation for the transfer of a juvenile inmate from a juvenile correctional centre to an adult correctional centre may not be made unless the Commissioner or Review Council, as the case may be, is satisfied that:
 - (a) the inmate wishes to be transferred, or
 - (b) the inmate's behaviour is or has been such that he or she should be transferred, or
 - (c) it is in the inmate's best interests that he or she be transferred, or
 - (d) the association of the inmate with other juvenile inmates at the juvenile correctional centre constitutes, or is likely to constitute, a threat to:
 - (i) the personal safety of any other person, or
 - (ii) the security of the juvenile correctional centre, or
 - (iii) good order and discipline within the juvenile correctional centre.

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- (4) Subsection (2) does not limit the operation of section 23 (1) in relation to juvenile inmates who are of or above the age of 18 years.

Note. Section 23 (2) limits the operation of section 23 (1) in relation to juvenile inmates who are under the age of 18 years.

41D Procedure to be followed by Review Council as to transfer of juvenile inmate to adult correctional centre

- (1) On the application of the Commissioner, the Review Council is to conduct an inquiry for the purpose of deciding whether or not to recommend the transfer of a juvenile inmate from a juvenile correctional centre to an adult correctional centre, as referred to in section 41C (2) (b).
- (2) In conducting an inquiry under this section, the Review Council is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate.
- (3) The Review Council must cause notice of any hearing in relation to an inquiry under this section to be given to the Commissioner and to the juvenile inmate to whom the inquiry relates.
- (4) If the inmate so wishes, the Review Council must allow the juvenile inmate to be present, and to be heard, at the hearing.
- (5) The juvenile inmate may be represented by a legal practitioner chosen by the inmate or, if the Review Council so approves, by some other person chosen by the inmate.
- (6) The Commissioner may be represented by a legal practitioner or by some other person.
- (7) For the purposes of an inquiry under this section, the Review Council must co-opt a person who is:
- (a) a Children's Magistrate or former Children's Magistrate, or
 - (b) a legal practitioner of at least 7 years' standing who has experience as an advocate on behalf of children,
- unless such a person is already a member of the Review Council and is available for the inquiry.

- (8) A person who is co-opted to the Review Council under subsection (7):
- (a) may be co-opted:
 - (i) as a community member, if the Review Council, as constituted for the purposes of the inquiry, includes a judicial member, or
 - (ii) as a judicial member, if the Review Council, as constituted for the purposes of the inquiry, does not include some other judicial member, and
 - (b) is taken, for the purposes of the inquiry, to be a judicial member or community member, as the case may be, and has, in relation to the inquiry, all of the powers and immunities of such a member.
- (9) Division 2 of Part 9 applies to the conduct of an inquiry by the Review Council under this section.

[6] Section 72 Custody of inmates

Insert “or 41C” after “section 23” in section 72 (1).

[7] Section 197 Functions of Review Council

Insert after section 197 (2) (d):

- (d1) to make recommendations to the Minister with respect to the transfer of juvenile inmates from juvenile correctional centres to adult correctional centres under Division 3A of Part 2,

[8] Section 225A

Insert after section 225:

225A Juvenile correctional centres

- (1) The Governor may, by the proclamation by which any premises are declared to be a correctional centre or by a subsequent proclamation, declare the correctional centre to be a juvenile correctional centre for the purposes of this Act.
- (2) The Governor may, by the proclamation by which any correctional centre is declared to be a juvenile correctional centre or by a subsequent proclamation, give a name to the juvenile correctional centre.

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- (3) The Governor may, by proclamation, vary or revoke any proclamation under this section.