

[Act 2001 No 123]



New South Wales

# Children (Criminal Proceedings) Amendment (Adult Detainees) Bill 2001

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

### Overview of Bill

The object of this Bill is to ensure that, where a juvenile offender is sentenced to imprisonment for an indictable offence by an adult court, the offender must serve the sentence in a prison rather than with other juvenile offenders in a detention centre:

- (a) for that part of the sentence that is served after attaining the age of 21 years, or
- (b) for that part of the sentence that is served after attaining the age of 18 years if the offender has been convicted of a serious indictable offence, unless the sentencing court considers there are special circumstances justifying detention with other juvenile offenders in a detention centre.

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\* Amended in committee—see table at end of volume.

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Explanatory note

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Currently, the *Children (Criminal Proceedings) Act 1987* provides that a person who committed an indictable offence (generally, offences of a more serious nature) when a child and who is under 21 years of age when charged with the offence may be dealt with according to law (that is, as if the person were an adult). If the person committed a *serious children's indictable offence* (generally, an offence carrying a maximum penalty of imprisonment for 25 years or more), the person must be dealt with according to law. However, if the sentencing court imposes a term of imprisonment on a person who is under 21 years of age at the time of sentence, the court may order that the term be served in a detention centre, rather than in a prison. There are no restrictions on the court's discretion and an order can be made that has effect after the person attains the age of 21 years.

The Bill provides as follows:

- (a) A person who is guilty of a serious children's indictable offence and who is sentenced to a term of imprisonment must be transferred to a prison on attaining the age of 18 years to serve the term of imprisonment in a prison, unless the sentencing court determines that there are special circumstances justifying the detention of the person in a detention centre.
- (b) A person who is due to be transferred to a prison on attaining the age of 18 years because there were no special circumstances at the time of sentencing may later seek leave to apply to the sentencing court for an order preventing transfer to a prison on the grounds that there are special circumstances justifying the detention of the person in a detention centre.
- (c) If the term of imprisonment expires within 6 months after the person attains the age of 18 years, the person is not required to be transferred to a prison and may serve that remaining short period in a detention centre.
- (d) A person who is sentenced to serve a term of imprisonment in a detention centre must be transferred to a prison on attaining the age of 21 years to serve the remainder of the sentence.
- (e) If the term of imprisonment expires within 6 months after the person attains the age of 21 years, the person is not required to be transferred to a prison and may serve that remaining short period in a detention centre.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day to be appointed by proclamation.

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**Clause 3** is a formal provision giving effect to the amendments to the *Children (Criminal Proceedings) Act 1987* set out in Schedule 1.

**Schedule 1** contains amendments to the *Children's (Criminal Proceedings) Act 1987* described in the Overview.