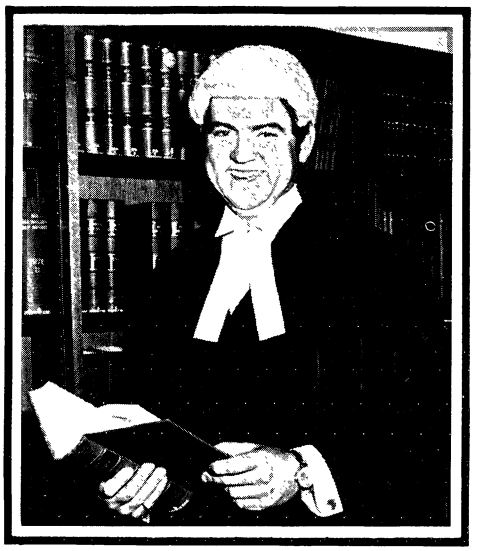

CONTEMPLATED CHANGES TO THE SOUTH AUSTRALIAN JUVENILE JUSTICE SYSTEM

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Before discussing proposed changes to any system it is necessary to have at least an idea of the basics of the system it is designed to replace and also the major reasons why change is considered necessary. For that reason I will endeavour to outline as briefly as possible those two preliminary areas before proceeding to the proposed changes to the South Australian Juvenile Justice System.

Section 3 of the Juvenile Courts Act 1971 — which I will after this refer to as the old Act — charges all courts and aid panels involved in its administration with a responsibility additional to that entrusted to "adult" courts. The philosophy section as it is referred to reads:

> "In any proceedings under this Act a juvenile court or a juvenile aid panel shall treat the interests of the child in respect of whom the proceedings are brought as the paramount consideration and, with the object of protecting or promoting those interests, shall in exercising the powers conferred by this Act adopt a course calculated to —
>
> (a) secure for the child such care, guidance and correction as will conduce to the welfare of the child and the public interest; and
>
> (b) conserve or promote, as far as may be possible, a satisfactory relationship between the child and other members of, or persons within, his family or domestic environment,
>
> and the child shall not be removed from the care of his parents or guardians except where his own welfare, or the public interest, cannot, in the opinion of a court, be adequately safeguarded otherwise than by such removal."

Considerable differences of opinion have been expressed at all levels and in all disciplines involved with juvenile offending as to exactly what those words mean. Those who have chosen to adopt the attitude that the court should be regarded as a toothless wonder can point to Section 3 and the fact that assessment of a child is mandatory before a committal order to a training centre and say the courts and therefore the community have lost control of the sentencing process and have become, by will of parliament, a mere rubber stamp to the recommendations of the Department for Community Welfare.

A similar belief about restricted court powers is widespread in the United Kingdom in respect of the 1969 Children and Young Persons Act. I refer you to the publication "Social Work Today", Vol. 9, No. 30, 4.4.78 and an article entitled "Social Work and the Law and Order" by Geoffrey Pearson, in which the author refers to an analysis of juvenile sentencing trends in the United Kingdom between 1969 and 1974 and concludes that far from becoming softer, juvenile justice has toughened appreciably since 1969. There has been an absolute decrease in the number of supervision orders made by courts and in the same time detention centre orders and committals for Borstal sentencing have increased by 158% and 67% respectively. The author concludes that the 1969 Act has backfired and that the complaints as he puts it by an apparently well orchestrated law and order lobby, that magistrates have had their hands tied by the legislation is in fact not true.

The judges and magistrates of the South Australian Juvenile Court have interpreted their Act and their role very differently from the critics and unlike the United Kingdom the numbers of children placed in secure care have been reduced considerably by this approach.

An assessment centre is defined in the Act as meaning,

> "a centre established under the Community Welfare Act for the examination of children, the evaluation of their personal circumstances and social background, and the assessment of the most appropriate treatment or rehabilitative correction or education for each child".

Comparing this provision with Section 3 of the old Act, it can be seen the assessment panel and the court are charged with similar responsibilities up to a point, however the court has the additional task of weighing the child's interest against the public interest before proceeding into a final determination of the matter before it.

Some local critics have fallen into the trap of interpreting "the interests of the child as being paramount" as a wrist binding restriction on the court rendering it powerless to do anything. The words "a pat on the head and a bag of lollies" are commonly used by those who have taken very little if any trouble to find out what actually goes on in the Juvenile Court before happily engaging in the popular community game of "isn't it awful — but what can the court do — the Act hasn't any teeth you know".

Those familiar with the way in which the court functions (and those are relatively few due to the closed court situation) appreciate the true position. Clearly in some cases the public interest cannot be safeguarded by leaving a child in the community and in other cases it can be seen to be in the child's interest that he be made to realise that serious offending will result in hurt to himself in the form of loss of liberty.

In recognition however of the principle, that it is of paramount importance the young person learns to operate satisfactorily in his or some other home environment rather than a placement in the artificial environment provided by *any* institutional placement, community based training programmes and other forms of support systems have been instituted which have resulted in a steady drop in the number of children placed in residential care, i.e. 1972/73—443, 1973/74—377, 1974/75—320, 1975/76—247, 1976/77—227, 1977/78—169.

The steady and continuous drop in the number of children in residential care, coupled together with other facts, e.g. The Nies Report (Report of the Community Welfare Advisory Committee for Youth Assessment and Training Centres in South Australia, July 1977 — a committee of which I was a member) has resulted in a decision to close two of the three remaining secure homes run by the Community Welfare Department. Brookway Park and Vaughan House have been closed or put to other purposes and greater community involvement in rehabilitative programmes is planned. The "I.N.C."* Scheme (involving an advancement on traditional fostering placement in that the substitute parents have received some training for their chosen task) and community work projects where children and the public alike can see some "repayment of the debt to society" expected by both.

A new philosophy section has been drafted to replace the one contained in the old Act, and reads as follows:

> "In any proceedings under this Act, any court, panel or other body or person, in the exercise of its or his powers in relation to the child the subject of the proceedings, shall seek to secure for the child such care, correction, control or guidance as will best lead to the proper development of his personality and to his development into a responsible and useful member of the community and, in so doing, shall consider the following factors —
>
> (a) the need to preserve and strengthen the relationship between the child and his parents and other members of his family;

*Intensive Neighbourhood Care.

(b) the desirability of leaving the child within his own home;
(c) the desirability of allowing the education or employment of the child to continue without interruption;
(d) where appropriate the need to ensure that the child is aware that he must bear responsibility for any action of his against the law;
(e) where appropriate, the need to protect the community, or any person, from the violent or other wrongful acts of the child."

It is hoped that the new wording will convey the original intent of the 1971 Act, namely recognition of the fact that children are not to be considered accountable for their actions to the same extent as adults and should be brought to a realisation of their responsibility towards the community without recourse to punishment following traditional sentencing principals and, where possible, by means other than their total removal from society.

Returning to the old Act, in South Australia we have two separate agencies for dealing with juveniles — Juvenile Courts and Juvenile Aid Panels. With a few exceptions a juvenile in this sense means a person between the age of 10 and 18 years. Juvenile Aid Panels have been described at length in my article published in the issue† of the Australian Crime Prevention Forum and therefore needs no further description.

A Juvenile Court may be comprised of a District Court Judge with a special commission to sit in the juvenile court, a special magistrate, a special justice or two Justices of the Peace although the powers of lay judicial officers are very restricted. In practically every case a court has at its disposal social background reports prepared by the professional social workers. It is only in remote rural areas that Justices of the Peace are sometimes called upon to exercise the jurisdiction.

As an experiment in a watered-down version of deversion procedures, a child under the age of 16 brought before a court under the Old Act is not charged with having committed an offence. The complaint against the child alleges that he or she is "in need of care and control" and is "supported" by one or more allegations that the child committed certain offences. Children brought to court on care and control complaints cannot be convicted of any offence. If the court finds such a child is in need of care and control it may (a) dismiss the complaint, (b) discharge upon a bond with or without provisions for supervision and attendance at a Youth Project Centre (an alternative to residential care day and weekend school as opposed to boarding school if you like) or the court may fix any other conditions it may think necessary or desirable. Alternatively the court may place the child under the care and control of the Minister for a period of not less than one year but not extending beyond his 18th birthday. This order may be made with or without an "ancillary" or detention order, of which I will say more later.

Leaving aside the younger offenders, children over 16 years of age are at present charged in the usual way, with an offence and upon a finding that the charge has been proved the Juvenile Court has a discretion as to whether a formal conviction will be recorded.

An order for conviction has in practice reserved for cases involving offenders in the upper age bracket who have committed repeated offences and who appear determined to lead a life of crime, in other words the recidivist.

When a court makes a finding of guilt against a child over the age of 16 years it may dispose of the case as follows:
(a) a dismissal;
(b) a fine not exceeding $100 or less if the fine prescribed for the offence is less;
(c) discharge upon recognizance in similar terms as provided for children under 16 years of age;
(d) placing the child under the care and control of the Minister of Community Welfare for not less than one year nor more than two years or a combination fine and bond.

A child cannot be placed under the care and control of the Minister without first being assessed. For both age groups, in addition to making such a care and control order, the court may make an ancillary order for a period of 21 days to an appropriate departmental home. This 21 day period is explained fully later in this article.

The maximum period of recognizance to be of good behaviour is two years. There are other powers in the Act which enable the court to make orders for compensation up to $2,000 and order for disqualification of driving licences against children.

DETENTION IN ADULT PRISON

Section 70 of the Act enables the court to recommend to the Minister for Community Welfare "that a child who has attained the age of 17 years and who has committed repeated serious offences to be held in a prison while he remains under the care and control of the Minister". Recommendations of this kind are only made when it is proved that the offender answers this criteria and when all efforts by the Juvenile Court, the Department for Community Welfare and every other person or agency involved have failed and appear likely to continue to fail and where there seems to be no point in continuing with the notion of further correctional training by the Department's homes and also when it appears likely to the court that detention in an adult prison may best serve to convince the offender that he should make a better effort towards avoiding re-offending.

Section 80 of the Community Welfare Act 1972-1979 also provides for transfer of children to prison from a departmental home in certain cases. The court's general approach in both cases is of course governed by Section 3 of the Act.

Additionally the court has its statutory and common law duty to protect the legal rights of the children who appear before it and to see that all trials and enquiries are conducted according to the law. Once the issue of guilt or neglect, etc. has been determined strictly in accordance with the rules of evidence applicable to the type of matter before it, the court's duty is to delve into all matters before it and investigate any background problems that may have contributed to the commission of the offence. Each case is judged on its own facts and circumstances and every effort is made to make the hearing as meaningful as possible for all concerned and to make at each stage of the proceedings, orders that will be conducive to the rehabilitation of the child and at the same time be in the public interest.

NEGLECTED AND UNCONTROLLED CHILDREN

Unlike earlier legislation, the terms "neglected and uncontrolled child" in the old Act are greatly restricted in meaning.

Section 58 of the Act provides that a child found to be neglected or uncontrolled is not to be regarded as having committed any offence; however the fact that the allegation is made on complaint, the same form of complaint used for children charged with an offence and the hearing is conducted summarily, tends to a blurring of the distinction between the two types of cases in the minds of many, leading to a reluctance on the part of many community welfare workers to take such matters to court.

Court appearances of children of the kind previously found to be uncontrolled and neglected have dropped considerably since the informal process provided by Sections 39 and 40 of the Community Welfare Act 1972 came into force. Which provides for the temporary care of a child for no longer than a three month period.

Battered or abandoned youngsters now constitute the main bulk of court appearances under this part of the Act.

TRUANCY CASES

The Education Act of 1972 altered the law relating to truancy. Previously all charges whether against children or adults were determined in the Juvenile Court. Now only charges of *habitual* truancy are heard, all other offences relating to guardians being determined in an adult court of summary jurisdiction. Adjournments with progress reports (prepared by the child's social worker), bonds and in the last resort (at least in theory) a care and control order with committal to a Community Welfare Department's school boys or school girls hostel or cottage may be ordered.

CRITICISMS OF THE PRESENT SYSTEM

The title Juvenile Courts Act was seen as being inappropriate for an Act which deals not only with Courts and Juvenile Aid Panels but with children who have committed no offence in the eyes of the law.

CARE AND CONTROL COMPLAINTS (UNDER 16)

The system of charging children who have allegedly broken the law with being in need of care and control lead to considerable confusion on all sides.

We have children —
(1) charged with being in need of care and control (Section 42) (under 16s);
(2) being placed under the care and control of the Minister (Section 42 and Section 43) that is, being made State children after offending has resulted in their being brought to court;
(3) being alleged to be "uncontrolled children" not because of law-breaking but for other reasons but being liable to be "placed under the care and control of the Minister" (Section 56) that is, becoming a State child.

Lawyers and those closely associated with the working of the courts have been known to express confusion in relation to those not dissimilar terms. Imagine then the task of trying to explain to alarmed parents and frightened children the fact that a child is charged with being "in need of care and control" does not necessarily mean the State is asking that child be made a State ward.

†The A.C.P.C. Forum, Vol. 1, No. 3, 1978.

The subtlety of the words "care and control" and the word "allegation" in lieu of "charge" cannot be understood by the majority of persons passing through the court. On the other hand parents and children alike know that the child is in court because he has committed an offence. It became obvious, that not-withstanding the good intentions of those responsible for the 1971 Act, children and their parents should understand why they were coming to court.

An equally important criticism of the 1971 Act is that the main object of the exercise for children under 16 years coming before the court, namely that they should only be found to be in need of care and control and not carry with them the record of having appeared before a court or a panel for that matter for a specific offence, failed to eventuate because records kept by the police, the Department of Community Welfare and the court all disclosed the offence or offences which actually brought the child into the system. Such records under the 1971 Act read e.g. C&C (found to be in need of care and control), break, enter and steal instead of the once bald fact that the child committed the offence.

At subsequent court appearances, either at juvenile or adult level, the prosecutor is permitted to reveal the offence alleged which has resulted in the care and control complaint being found proved, resulting in the earlier separating of the under 16s from other juvenile offenders becoming a meaningless exercise.

FINES

Under the 1971 Act children under 16 years of age cannot be fined, however, they are at liberty to leave school at 15 years. It therefore seemed appropriate that children in receipt of wages and being encouraged to accept adult responsibilities should be able to be fined if the court thought that the most appropriate means of engendering responsibility.

BONDS

Because the machinery provided for estreating a bond was somewhat cumbersome a practice arose of "taking into account a breach of bond" when a child appeared before a court on a subsequent offence. This was seen as being less than desirable, in that, although in every case a child was advised by the court he stood to lose a fixed amount of money if he did, or did not do certain things, when he next appeared before a court, in nearly every case this did not eventuate, resulting in a lack of confidence in the bond system on the part of police, social workers and community alike. The need to streamline the machinery enabling the breach of bond to be dealt with at the same time as any fresh offence, could be seen as an urgent one.

ANCILLARY ORDERS

Section 36 of the Juvenile Courts Act 1965-66, that is the Act that proceeded the 1971 Act, provided:

> "Where a child is committed to a reformative institution or placed under the control of the Minister, the order committing him to a reformative institution or placing him under the control of the Minister, shall if it does not in fact so provide, be deemed to provide, as the case may be, that the child shall be detained in such reformative institution or that the child shall remain under the control of the Minister, subject to the provisions of the Social Welfare Act until he attains the age of 18 years."

The court usually ordered that a child be detained "until 18 years of age". The Social Welfare Act, on the other hand, provided for the release of such children before that age and in practice the time spent in a home was less than that ordered by the court. Recognising that the court's order was really a holding order and that the period of time spent in the home was determined by the child's rate of progress, the 1971 Act limited the court's powers to an order for 21 days. This was seen as a holding order only, during which time the Community Welfare Department could devise a programme for the child, his release being conditional upon his response to that programme. In theory, under both systems, children could be kept in an institution until 18 years or until the order placing him under the care and control of the Minister expired. In practice, however, this does not and did not happen under either system.

As the average length of stay by a child committed to a State "home" (or secure care facility) as a result of an ancillary order is approximately 4½ months, little justification could be made out for mentioning a maximum period of 21 days in the court's order, when in fact the child's release date is controlled by a decision of a review board consisting of officers of the Department for Community Welfare.

OTHER CRITICISMS AND SUGGESTIONS FOR IMPROVEMENT

On 12th October 1976, a Royal Commission was established to enquire into, amongst other things, if any, and if so what, changes by legislation or otherwise where necessary or desirable for the proper implementation of the policy of the government as enacted in Section 3 of the Juvenile Courts Act. An enquiry into all of these matters subsequently took place and the report of the Royal Commissioner deals at length with the evidence received and the recommendations made. The second part of the Royal Commissioner's report which deals with the question of changes to the Act, consists of some 146 pages and for that reason I will not attempt to summarise the report in what is after all an introduction to a main theme, other than to say that he saw that it was of basic importance that a juvenile's rights be no less than his adult counterpart. If you have not already done so I recommend you read the report, because the criticisms and suggestions for change I have mentioned briefly, by no means cover the very wide area dealt with in that report. The reader will see that not only did the Royal Commissioner consider evidence obtained locally but enthusiastically supported the guidelines imposed by the American Supreme Court in Kent v. United States 383 U.S. 541 (1966) and in Re Gault 387 U.S. 1 (1967).

My own views are that some of the dangers mentioned in that report existed in theory rather than in practice and although certain parts of the Act could be interpreted as meaning a child's rights were less than his adult counterpart. However if the court properly applied the overriding principles in Section 3 of the Act, no lessening of the juvenile's rights should in fact take place. My own criticisms of the 1971 Act were made in a written submission to the Royal Commissioner and were also given in evidence before him. Apart from some matters I have already mentioned, I felt that we had a pretty good system for dealing with all but the "hard core" offenders. I had a personal dislike of the 21 day ancillary order because firstly it did not say what it meant and secondly because I believe any person sentenced to detention, be he adult or juvenile, is entitled to know at the outset the maximum period for which he will be in custody as a result of breaking the law.

Much of what I have said about the present system and its shortcomings can be criticised as generalisation and I have omitted to mention many other factors which were considered in drafting the new legislation. My discussion of the present system and its faults was not intended to be exhaustive but merely to provide some historical background before proceeding to the contemplated changes. Notwithstanding these criticisms it is important to remember that the 1971 Act was radically different in many respects to any other system. It should however be regarded as a serious and worthy social experiment which on most recent figures has resulted in a levelling-off of the increase in juvenile crime figures in South Australia. In this regard I refer you to the seven annual reports of the Administration of the 1971 Act, which are obtainable in the main libraries of the capital of each State in Australia and additionally in many public libraries overseas.

The new Act, with its new philosophy set out elsewhere in this paper, is to be called "The Children's Protection and Young Offenders Act". Juvenile Aid Panels are to be replaced by Children's Aid Panels. Juvenile Courts will be replaced by Children's Courts.

The Children's Court is to have two divisions — a Young Offenders Division to deal with offences and truancy cases and a Children's Protection Division or Civil Division. The Civil Division will have exclusive power to hear cases involving children in need of care instituted under Part III of the Act, applications made under the Guardianship of Infants Act currently heard by the Supreme Court and Local Court of Full Jurisdiction (District or County Courts) appeals against decisions of the Director-General made under the Community Welfare Act. Additionally it is planned the Children's Court handle adoption matters. The Children's Protection Division will sit as a Local or Civil Court, and the proceedings will be instituted by way of civil summons instead of complaint as is the present practice. It is hoped that the Criminal Court conotation can be finally shaken off in this fashion.

Where the Director-General of Community Welfare is of the opinion a child is in need of care by reason that:

(a) a guardian of the child has maltreated or neglected the child to the extent that the child has suffered, or is likely to suffer, physical or mental injury, or to the extent that his physical, mental or emotional development is in jeopardy;
(b) the guardians of the child are unable or unwilling to exercise adequate supervision and control over the child;
(c) the guardians of the child are unable to maintain the child; or
(d) the guardians of the child are dead, have abandoned the child, or cannot after reasonable enquiries be found.

The Director-General may apply to the Children's Court for a declaration that the child is in need of care.

I believe that the provision numbered (a) above provides a greater measure of protection for a child than has ever been possible before in that it enables the court to act before perhaps irrevocable harm has been done.

The child and each guardian of the child are to be parties to the suit and the court is to have the power to appoint counsel for the child to

represent his interests independent of his parents or guardians and the Director-General.

Upon finding that a child, the subject of an application under Part III of the Act, is in need of care within the meaning of the section, the court will make a declaration to that effect and —

(a) may place the child under the guardianship of the Minister for such period as the court thinks fit; or

(b) (i) place the child under the control of the Director-General in respect of such matters relating to the care or welfare of the child as the court specifies in the order, for such period of time as the court thinks fit;

(ii) direct he reside with a particular person; or

(iii) direct any guardian who is a party to the proceedings to take such steps to secure the proper care and control of the child as the court thinks fit.

These orders cannot extend beyond the child's 18th birthday.

Before placing a child under the guardianship of the Minister by way of "final order" the court must first have and consider a report from the assessment panel.

Alternatives, without proceeding to an order of the kind set out above but having made a finding that a child is in need of care, the court may adjourn the proceedings for up to three months and make a temporary order of the kind set out above. At the end of the adjournment period the court can upon the application of the child or any of the parties —

(a) declare the child to be no longer in need of care and discharge the order;

(b) vary the terms of any order;

(c) discharge any order and substitute any other order it is empowered to make in lieu, that is, of the kind already mentioned.

Any of the parties will be at liberty to apply for the matter to be reopened at any stage before the child turns 18 and in such a case the court again has power to exercise any of the options set out above.

A guardian failing to comply with an order of the court can be fined up to $500 in a court of summary jurisdiction.

The onus of proof in proceedings taken out in the Civil Division of the Act is proof on the balance of probabilities.

Where a child has been placed under the guardianship of the Minister by the court, the Director-General may:

(i) place the child with or permit the child to remain in the care of any guardian or relative;

(ii) place him with an approved foster parent;

(iii) place him in a "licenced" home and make directions for his care and keeping;

(iv) place him in a hospital; or

(v) make any other provisions as the circumstances require.

Progress of children under the guardianship of the Minister must be by law reviewed annually by the Department for Community Welfare, however the practice is for more frequent review than this.

All parties or agencies who have been involved with the child or his family will have the right to apply to be heard by the court during any hearing.

The right of appeal from this jurisdiction is to a single Judge of the Supreme Court.

PART 1V SCREENING PANELS AND CHILDREN'S AID PANELS

Screening Panels are to be established in a manner similar to Juvenile Aid Panels under the present legislation. All cases are initially to be referred to the Screening Panel except in the case of homicide and most traffic offences where the child is 16 years of age or over. The sole function of the Screening Panel is to decide if the case is to go before an Aid Panel or a Children's Court. The Screening Panels are to be constituted of a police officer and an officer of the Department for Community Welfare. The child will not appear before the Screening Panel. Screening Panels will have access to the police allegations and police or Department for Community Welfare records or reports (if any) concerning the child before making their decision. If the members cannot agree they must appear before a judge or magistrate of the Children's Court for a ruling to determine which course of action will be taken.

Members can sit on both Screening Panels and Children's Aid Panels and it is visualised that the same people will perform both functions. Panelists must be approved by the Attorney-General before appointment.

Before laying a complaint against a child for an offence, or forthwith upon his arrest for an offence and arrest being made under the specific powers contained in Division 3 of this part, the matter must be referred to the Screening Panel for consideration and certification as to whether the child will appear before a Children's Aid Panel or a Children's Court. * *

* * The Act is silent as to which course the screening panel should adopt if no offence is disclosed in the material placed before it. However it must be construed as meaning that the screening panel should refer the material back to the reporting authority for withdrawal in such a case.

Where the Screening Panel certifies the matter is to be heard by a Children's Aid Panel, no complaint shall be laid against the child in the case of a matter simply reported, and in the case of an arrest, the child shall forthwith be released from custody or discharged from police bail as the case may be.

If the Screening Panel certifies the matter go to court, a complaint is then laid and the child is brought before the court either in custody or as a result of police bail.

Under the present system, the under 16-year-olds who are arrested appear in court, and with some exceptions, those who are reported are dealt with by Aid Panels. The success or otherwise of the present system depends on police properly exercising the discretion to arrest. The Screening Panel will follow set criteria in deciding whether the child goes to an Aid Panel or the Court, and hopefully will divert all those children who do not need the types of restraint that a court can order.

CHILDREN'S AID PANELS

Provisions for Children's Aid Panels are similar to those now existing except that instead of dealing only with the under 16s offenders up to 18 years of age will now appear, on the certification of the Screening Panel. In addition, an Education Panel dealing with truants and consisting of the normal police/welfare components will be joined for the occasion by an officer of the Education Department.

As soon as the Screening Panel certifies a matter is to be heard before a Children's Aid Panel, the Aid Panel (the same two people) sets a time and date for the appearance and notifies the child of his need to attend. The notice will state the allegation made against the child and specify the offences allegedly committed. It will state if the child does not admit the offence he should notify the Panel, who will cause a complaint to be laid before the court (legal advice will be advocated in these cases).

The powers and duties of the Panel are similar to those contained in the existing Act, and the safeguard against a child being "found guilty" by a non-judicial body will lie in the fact that no appearance of any child before an Aid Panel may be alleged in any proceedings before a court other than a Children's Court, neither may such appearances be disclosed, except with the approval of the Attorney-General, by any body or person exercising any power under the Act in relation to the child.

Division 3 provides for the apprehension and remand of offenders. It provides the machinery for the arrest and holding of a child not released on police bail for a period not later than the next working day following the day of the arrest. If police bail is refused, the child or his guardian have the right to apply for bail before a Justice of the Peace the same as his adult counterpart.

The court's power to refuse court bail has been limited to potential absconders and to cases where it is necessary for the protection of the child or the protection of the general public or any person or property. At present a child may be refused bail "in his own interests" or "because he is in need of care and control", which provisions have been seen to be paternalistic and a lessening of the child's rights as opposed to an adult's rights.

TRIAL AND SENTENCING

Homicide will continue to be tried in the Supreme Court. The Offenders Division of the Children's Court will continue to hear and determine matters summarily that is without a preliminary enquiry and without a jury, however the child may elect to have his case heard in an adult court and upon being satisfied the child has received independent legal advice, the court must commit the child to the appropriate adult court for trial by jury if the child is convinced that a summary trial may disadvantage him in some way.

Section 47 of the new Act provides for the Attorney-General, by reason of the gravity of a particular offence, or the fact that the child has previously been found guilty of one or more serious offences, being able to apply to a Judge of the Supreme Court for an order that the child be tried in the appropriate "adult" court, rather than the Juvenile Court. Before any such trial takes place a preliminary examination must first be held in the Children's Court.

The range final orders and penalties available to the adult court have also been broadened as I will explain later.

The Children's Court, although proceeding summarily, is to have the power to record any alternative verdict that an "adult" court could have recorded.

The powers available to the Children's Court when sentencing after a finding of guilt, will, it is hoped, bring the court more into line with other jurisdictions and overcome criticisms previously levelled at its sentencing powers, particularly 21 day ancillary orders. Other modern sentencing tools will be available which will provide alternatives currently not available to other South Australian courts.

Where a charge other than truancy is found proved, the court may:

(a) upon convicting the child sentence him to detention in a training centre for not less than two months nor more than two years (after first receiving and considering an assessment report);

(b) with or without conviction release on a bond either simply to be of good behaviour, etc. or additionally —
  (i) subject to supervision,
  (ii) attendance at a Youth Project Centre,
  (iii) participating in a community based project or programme as required by the Director-General,
  (iv) directions as to place of residence or person with whom to reside,
  (v) attendance before the court at times specified in the recognizance for the purpose of reviewing progress or circumstances,
  and any other conditions considered necessary or desirable by the court;
  (The decision of the High Court of Australia in Griffiths v. R 15 ALR 1 and R v. Carngham 22 ALR 183 also means that progress reports of the kind ordered by the juvenile court for many years and utilized in most other States will still be optional, i.e. to postpone the making of a final order in order to give the child a better opportunity to mend his ways. However suspended sentences will undoubtedly reduce the incidence of progress reports as these exist at present.)

(c) the court may with or without conviction impose a fine not exceeding $500 or the maximum penalty prescribed by the Act creating the offence; or

(d) without conviction — discharge without penalty.

The Children's Court may not imprison for a criminal offence under any circumstances or order a fine or licence disqualification or make a compensation other than in accordance with the provisions of the Act, and the Criminal Injuries Compensation Act.

Bonds imposed by the Children's Court will be limited to two years and in the case of simple or minor indictable offences to $200.

The Children's Court may order both a fine and a bond in respect of a single offence where this is appropriate.

A sentence of detention may be suspended in the same way as for an adult.

All licence disqualifications will be made under the provisions of the Children's Protection and Young Offenders' Act only and the court will not be bound by any minimum or maximum periods of licence disqualification expressed in any other legislation. Partial disqualification will also be available where appropriate for those who would otherwise lose their jobs. The court may vary or discharge any order during the lifetime of such an order.

In the case of truancy a bond or a dismissal are the only sanctions allowed, however the Education Department and the Department for Community Welfare between them have established programmes for the diversion of truant children and special centres designed to cater for their particular needs have been set up. Devising a form of schooling which is palatable to the child, being seen as preferable to forcing attendance at a place where he is a misfit and is often both rejecting and rejected. Hopefully these matters will be solved without many referrals to court.

As mentioned before, all offences heard in the Children's Court will continue to be heard summarily, however, judges will hear group 1 and group 2 offences as defined in the Local and District Criminal Courts Act (the most serious offences) whenever practicable.

The powers of Justices of the Peace are limited to a fine not exceeding $100 and a simple good behaviour bond not exceeding one year's duration.

The powers of magistrates to fine and order detention are restricted to $300 and one year respectively. Magistrates have full access to the bond conditions already mentioned and both Justices and magistrates have the same powers as a judge in relation to licence disqualification.

A conviction must be recorded in cases involving specified crimes regarded as a serious per se, except when "special reasons" exist for not convicting the child.

In each case a court must look to the child's own means and ability to pay a fine and may reduce what might be seen as the "normal" penalty in appropriate cases.

Where a Justice or magistrate hearing a serious matter considers the limits to his jurisdiction mean the matter should be determined by a judge, he may refer to the Senior Judge for directions, and the matter may be referred to another member of the court for sentence.

Provisions for children convicted of murder remain unchanged, that is a preliminary hearing must be held in the Juvenile Court and the child is committed to the Supreme Court for trial if a case to answer is found to exist.

New penalty provisions have been drafted relating to children found guilty by the Supreme Court of homicide (other than murder) or found guilty by an "adult" court pursuant to the application of the Attorney-General that the child be tried as an adult.

The "adult" court may:
either deal with the child as an adult,
or make any order a Children's Court could have made,
or remand the child to the Children's Court for sentence.

A child sentenced as an adult and ordered imprisonment will serve his sentence in an adult prison, subject to the usual provisions of the Prisons Act, except he may be ordered to be held in a training centre for an initial period, not to run beyond his 18th birthday.

Where a child is committed for trial in an adult court at his own request and is found guilty, the judge of that court may sentence in the same manner as the Children's Court or return the child to the Children's Court for sentence.

The Children's Court is to have similar powers as presently exist to vary or discharge bonds and deal with breaches of recognizance, with an additional provision for the prosecution to make an oral application for estreatment of a bond where a child pleads guilty to a subsequent offence.

The Bill provides for the establishment of a Training Centre Review Board consisting of a judge of the Children's Court and four persons appointed by the Governor to consider the progress of all children detained in training centres. The Board may authorise the Director-General to grant a child periods of leave from a training centre. It may order the release of a child who has been sentenced to detention at any time subject to conditions that the child be under the supervision of an officer of the Department and obey the directions of that officer and any other conditions that the Board thinks fit. These conditions unless varied shall be binding upon the child for the unexpired period of his detention order. Where the Director-General considers a child has failed to observe any such condition he may apply to the Board for an order that the child be returned to the training centre for the unexpired period of his detention order.

A child who has obtained conditional release or his guardian or the Director-General upon the recommendation of the Training Centre Review Board may apply to the court that the child be discharged absolutely from his detention order. The Commissioner of Police will be advised of the making of any such application and may be represented and heard if he so desires.

The Training Centre Review Board will therefore act like a parole board. There can be no release of a child ordered detention except with the authority of the Board, and no absolute release except by order of the court.

GENERAL PROVISIONS

The Act provides that no social background or personal circumstance report be tendered to a court, before the court has found an offence proved against the child. If found not guilty the report is to be destroyed. A court can of course receive psychiatric or medical evidence in so far as it is relevant to the guilt or innocence of the child. It further provides that in determining sentence a court shall not take into account any evidence or report disputed by the child or any guardian of the child or the prosecutor unless deciding the matter has been proved beyond reasonable doubt by the hearing and considering of evidence. In the Offenders Division like the Civil Division, any person who has been counselling, advising or aiding the child, may apply to be heard by the court.

A child must still be assessed before being ordered to attend a Youth Project Centre.

An assessment panel in both jurisdictions —

"(a) shall investigate and report on the personal circumstances and social background of the child; and

(b) may make such recommendations as to the treatment, correction, or rehabilitation of the child as it thinks appropriate."

COMPENSATION

A Children's Court judge or magistrate or an adult court may order a child to pay compensation or make restitution if it is of the opinion that the making of such an order would contribute to the rehabilitation of the child. Amounts ordered payable are limited to $2,000. Before making an order the court must satisfy itself as to the amount of loss or damage occasioned by the offence and in the case of insufficient evidence may decline to make an order. The court must have regard to the means of the child and his own ability to pay any amount within the period of six months after the order is made. The child shall pay those monies to the Clerk of the Court for transmission to the victim. Any amount in arrears may be recovered by the person in whose favour the order was made, as a debt in a court of competent jurisdiction, in other words, periods of default will no longer be awarded. These powers may be exercised with or without conviction. In certain circumstances victims may be furnished with the names and addresses of offenders. The provisions of the Criminal Injuries Compensation Act applies to all children.

APPEALS AND RECONSIDERATIONS

Appeals from the Offenders Division will be heard by a single judge of the Supreme Court, except that group 1 or group 2 offences will go to the Full Court.

Provisions for reconsideration of penalty by the Children's Court remain but it must be clearly understood that the powers exist for the purpose of rectifying errors and reducing the severity of orders not increasing them.

MISCELLANEOUS

1. Changes of venue, e.g. transferring the matter to a court closest to the child's home will still continue.
2. Copies of reports received by the court are to be furnished to the child, any guardian who is a party to the proceedings or who is present in court and to the prosecutor, so that he is fully aware of the material the court is considering before sentencing.
3. Any of those persons or counsel for any of those persons will be permitted to cross-examine the makers of the report, etc.
4. Material in the opinion of the court prejudicial to the welfare of the child is exempt from this disclosure provision, however is pre-existing and rarely invoked if ever.

I have already mentioned that children may be independently represented in the Civil Division, and the court may make a similar order in the Offenders Division. The newly created South Australian Legal Services Commission will provide counsel on the request of the court.

The court is charged with explaining to the child the nature of the allegation against him, the elements of the offence and the legal implications of those allegations.

The Children's Court will still be a closed court in the Civil Division, however in the Young Offenders Division the following persons may be present:

(a) Members and officers of the court.
(b) Officers of the Department.
(c) Parties to the case before the court, their counsel and solicitors.
(d) The Prosecutor.
(e) The witnesses whilst giving evidence and whilst permitted by the court to remain in court.
(f) Any guardian of the child who is before the court.
(g) Bonafide representatives of the news media.
(h) Such other persons as the court specially authorises to be present.

The media is restricted to reporting a brief summary of the offence after a conviction has been recorded together with the result of any proceeding and unless otherwise ordered must not reveal the name, address or school, include any particulars or publish any picture or film calculated to lead to the identification of any child, either a defendant or a witness.

Offences will be disposed of summarily in the Magistrates Court and the penalty provided is a fine not exceeding $5,000.

In the space allowed I cannot hope to cover all the matters contained in what must be considered to be the first almost complete code of laws for children produced in this country. I have for example omitted any reference to the power to transfer to prison children who cannot be controlled in juvenile facilities or who make or cause disturbances in such places or the fact that the section dealing with time limit for the giving of reasons for judgement will not be proclaimed when the rest of the Act comes into force on 1st July 1979. However I hope that the major changes have been properly covered in this article.

The Juvenile Courts Act of 1971 can justly be regarded as a milestone in the field of juvenile justice and child protection. The Children's Protection and Young Offenders Bill 1979 is intended to bring about further improvements while retaining the successful reforms derived from the 1971 Act.

Systems devised by man are mostly less than perfect, and although the new Act cannot be expected to provide a magic cure for all our ills, the clarification of contentious issues which have affected the proper functioning of our court and new programs being devised for the training of young offenders in the community as well as in custody, lead me to expect the public, our youth included, will be better served in the area of juvenile justice than was previously possible.