



ANNO QUINTO

GEORGII VI REGIS.

A.D. 1941.

No. 13 of 1941.

An Act to provide for the establishment of special courts for the trial of children, to enact certain provisions relating to delinquent children, and for other purposes.

[Assented to 23rd October, 1941.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

- Short title. **1.** This Act may be cited as the " Juvenile Courts Act, 1941 ".
- Commencement of Act. **2.** This Act shall commence on a day to be fixed by the Governor by proclamation.
- Interpretation. **3.** In this Act, unless the context otherwise requires, or some other meaning is clearly intended—
- " board " means the Children's Welfare and Public Relief Board established under the Maintenance Act, 1926-1937 :
- " child " means boy or girl under the age of eighteen years ; and in the absence of positive evidence as to age means boy or girl apparently under the age of eighteen years :
- " juvenile court " means juvenile court as defined in section 4 of this Act :
- " court " means the Supreme Court or any Court of summary jurisdiction or any justices sitting to take the preliminary examination on an information for an indictable offence :

“detention” means detention in an institution :

“institution” means institution within the meaning of that term as used in the Maintenance Act, 1926-1937 :

“parent” includes father, mother, step-father, step-mother, and an adopting parent within the meaning of the Adoption of Children Act, 1925-1940.

“police district” means police district under the Police Act, 1936-1938.

Constitution and Jurisdiction of Children's Courts.

4. For the purposes of this Act any court of summary jurisdiction, if constituted either by a special magistrate or by two justices chosen from a panel of justices prepared under this Act, shall be a juvenile court.

Children's courts.
Cf. U.K. 23
Geo. 5 c. 12,
s. 45.

5. (1) The Attorney-General shall prepare for every police district a panel containing the names of justices who are in his opinion specially qualified to hear and determine proceedings against or in respect of children: Provided that if the Attorney-General thinks fit he may prepare one such panel for two or more police districts.

Panels of justices for children's courts.
Cf. U.K. 23
Geo. 5 c. 12,
Second schedule.

(2) The Attorney-General shall, from time to time, revise the panels of justices prepared under this section.

(3) The Attorney-General may give directions as to the mode of determining the order in which the justices whose names appear on a panel shall sit in court.

6. Subject as hereinafter provided the following proceedings, namely :—

Jurisdiction of children's courts.
Cf. U.K. 23
Geo. 5 c. 12,
s. 46.

(a) An information or complaint against a child :

(b) A complaint or application under Division I of Part IV of the Maintenance Act, 1926-1937 :

(c) A complaint under Part V. of the Education Act, 1915-1935 :

shall not be heard by any court of summary jurisdiction which is not a juvenile court: Provided that—

(a) where, in the course of any proceedings before a court of summary jurisdiction other than a juvenile court, it appears that the person to whom the proceedings relate is a child, nothing in this subsection shall be construed as preventing the court if it thinks fit to do so, from proceeding with the hearing and determination of those proceedings;

(b) no conviction order or adjudication of a court of summary jurisdiction shall be invalid by reason only of a contravention of this section.

(2) No direction, contained in this Act, that a complaint or information shall be heard by a juvenile court shall be construed as restricting the powers of any justice to issue any summons or warrant or to entertain any application for bail or an adjournment or a remand, and to hear such evidence as may be necessary for that purpose.

Constitution of courts.

7. If at any place where it is desired to hold a juvenile court there is a special magistrate who is competent and willing to act then such juvenile court shall be constituted of such special magistrate and not of two justices.

Proceedings in Juvenile Courts.

Place of sitting.

8. A juvenile court shall not sit in any building while any court which is not a juvenile court is sitting therein.

Change of venue.

9. (1) If it appears to a juvenile court that any complaint, information or other proceedings before the court can be more conveniently economically or fairly heard and determined by some other juvenile court, the first mentioned court may desist from further proceeding with the hearing. If the court so desists it shall by memorandum signed by the Special Magistrate or the justices constituting the court refer the case for hearing and determination by the said other juvenile court.

(2) Upon so referring a case, the juvenile court may suffer the defendant to go at large or remand him into custody or discharge him upon recognizance to appear before the court to which the case has been referred when summoned so to appear.

(3) The juvenile court to which a case has been referred under this section, or a justice, shall issue a summons for the appearance of the defendant before the said court at a time and place mentioned in the summons and the said court shall have jurisdiction to hear and determine the complaint, information, or other proceedings.

Any summons issued pursuant to this subsection shall for the purpose of any law prescribing the time within which a summons

must be served or issued, be deemed to have been issued and served at the respective times when the original summons in the case was issued and served.

10. (1) Where a child is charged with any offence or is for any other reason brought before a juvenile court, the court may order that his parent or guardian shall attend at the court before which the case is heard or determined during all the stages of the proceedings, unless sooner excused by the court.

Attendance
at court of
parent of child
charged with
offence.
U.K. 23 Geo. 5
c. 12, s. 34.

(2) The parent or guardian whose attendance shall be required under this section shall be the parent or guardian having the actual possession and control of the child: Provided that if that person is not the father, the attendance of the father may also be required.

(3) When the court makes an order under subsection (1) of this section, it may adjourn the hearing of the case.

(4) The court shall cause every such order to be served upon the parent or guardian therein named. Any person who, having been served with notice of an order under this section, fails to attend the court in compliance therewith, shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds.

(5) The attendance of the parent of a child shall not be ordered under this section in any case where the child was before the institution of the proceedings removed from the custody or charge of his parent by an order of a court.

11. (1) No person shall be present at any sitting of a juvenile court except—

- (a) members and officers of the court and officers of the board:
- (b) parties to the case before the court, their counsel, and solicitors:
- (c) witnesses whilst giving evidence and whilst permitted by the court to remain in court:
- (d) any parent or guardian of a child who is a party to the case before the court:
- (e) *bona fide* representatives of newspapers or news agencies:
- (f) such other persons as the court specially authorizes to be present.

Persons
present in
juvenile
court.

U.K. 23 Geo.
5 c. 12, s. 47
(2).

(2) A juvenile court may, in its discretion, order a child to retire from the court room while any evidence is being given concerning the neglect or destitute condition of that child.

Restriction on newspaper reports of proceedings of juvenile court.
U.K. 23 Geo.
5 c. 12, s. 49.

12. (1) Subject as hereinafter provided, no newspaper report of any proceedings in a juvenile court or of any proceedings in the Supreme Court on appeal from a juvenile court shall reveal the name, address, or school, or include any particulars calculated to lead to the identification of any child concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken, or as being a witness therein, nor shall any picture be published in any newspaper as being or including the picture of any child so concerned in any such proceedings as aforesaid: Provided that the court may in any case, if satisfied that it is in the interests of justice so to do, by order dispense with the requirements of this section to such extent as may be specified in the order.

(2) Any person who publishes any matter in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine of not more than fifty pounds.

Examination of child offenders.

13. (1) When a juvenile court has found that the offence or other matter alleged against a child is proved, the court may order the child to be examined by a physician, psychiatrist or psychologist directed by the court to conduct such examination.

(2) Before making an order in respect of a child the court may consider and act upon any report on the child prepared under subsection (1) of this section and any other report on the child's character, conduct, upbringing, environment, physical condition and past history, if such report is prepared by a person who has personally investigated those matters: Provided that before the order is made—

- (a) the contents of any such report shall be made known to the child or his parent, counsel, or solicitor if the child, parent, counsel or solicitor so requests:
- (b) the child or his parent, counsel, or solicitor shall if he so desires be given an opportunity of cross-examining the person who prepared the report, on the matters therein dealt with:
- (c) the court shall if so required by the child or his parent, counsel, or solicitor procure the attendance of the said person before the court for cross-examination.

(3) Pending the examination of a child or the procuring of any report upon him, the court or a justice may, from time to time, adjourn the case.

(4) For the purposes of enabling a child to be examined as mentioned in this section the court may order that the child be taken to an institution or other suitable place (not being a mental hospital, receiving home, prison or gaol) and that the child submit himself to such examination.

14. (1) Where any juvenile court, other than the Adelaide Juvenile Court, has found the offence or other matter alleged in an information or complaint against a child proved, and is of opinion that it is expedient to refer the case to the Adelaide Juvenile Court in order that the child may be examined and further dealt with by that Court, the first mentioned court may—

Reference of cases to Adelaide Juvenile Court.

- (a) refer the case to the Adelaide Juvenile Court and remand the child to the custody of the board or some other suitable custody ; and
- (b) transmit to the Adelaide Juvenile Court the information or complaint, together with the evidence, a statement of the finding by the court, and any other relevant documents.

(2) When a case is so referred the child shall be examined and reported on by one or more physicians, psychologists or psychiatrists nominated by the special magistrate of the Adelaide Juvenile Court.

(3) The Chairman of the board or an officer authorized by him shall, at a convenient time after the examination, bring the child before the Adelaide Juvenile Court and apply to that court to make an order with respect to the child.

(4) On such an application the Adelaide Juvenile Court shall consider the evidence taken by the court which heard the case, the finding of that court and the reports made upon the child under subsection (2) of this section and any other relevant matters, and may make any order in respect of the child which is authorized by law and which the court deems just.

15. Every juvenile court in making any order against a child shall have regard to the welfare of the child and the desirability of removing him from unsuitable surroundings and making proper provision for his education and training.

Principles to be observed in making orders against children.

General Provisions as to Children.

16. The Governor may make regulations—

- (a) for preventing a child while detained in a police station, or while being conveyed to or from any court, or while waiting before or after attendance in any court, from associating with an adult (not being a relative) who is charged with any offence ; and

Separation of children from adults.
U.K. 23 Geo. 5
c. 12, s. 31.

- (b) for ensuring that a girl (being a child) shall, while so detained, being conveyed, or waiting, be under the care of a woman.

Duty of court as to explaining charge, etc.

17. Where a child charged with an offence is not represented by counsel or solicitor, the court—

- (a) shall explain to him in simple language the nature of the allegations against him, including their legal implications, such as the intention to commit the offence, but no particular form of words shall be necessary ;
- (b) shall ask the child questions to elicit his version of the facts and may cross-examine any witnesses :

Provided that no order or adjudication of a court shall be invalid or defective on the ground only of failure to comply with this section.

Committal of children.

18. (1) When—

- (a) the hearing of any proceedings against a child is adjourned or a child is committed for trial or sentence, and the child is not released on bail ; or
- (b) a child has made default in compliance with any order or judgment of a court for which default he would, if he were an adult, be liable to be committed to prison,

the court or justice shall instead of committing the child to prison commit him to custody in an institution or other place of security (not being a prison) to be there detained for the period for which he is remanded or until he is thence delivered in due course of law : Provided that if the court or justice is of opinion that he is of so unruly a character that he cannot safely be so committed, or that he is of so depraved a character that he is not a fit person to be so detained the child may be committed to some other form of custody to be named in the order.

(2) A commitment under this section may be varied, or, in the case of a child who proves to be of so unruly a character that he cannot safely be detained in such custody or to be of so depraved a character that he is not a fit person to be so detained, revoked, by the court or justice by which or by whom the order was made ; and if it is revoked the child may be committed to some other form of custody to be named in the order.

19. Where a justice of the peace is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court of any child in respect of whom an offence is alleged to have been committed would involve serious danger to his life or health, the justice may take in writing the deposition of the child on oath, and shall thereupon sign the deposition and add thereto a statement of his reasons for taking it and of the day when and place where it was taken, and of the names of the persons (if any) present at the taking thereof.

Extension of power to take depositions of child.
U.K. 23 Geo. 5 c. 12, s. 42.

20. Where, in any proceedings in respect of an offence against a child the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to his life or health, or if the child is dead, any deposition of the child shall be admissible in evidence either for or against the accused person without further proof thereof if it purports to be signed by the justice by or before whom it purports to be taken: Provided that the deposition shall not be admissible in evidence against the accused person unless it is proved that reasonable notice of the intention to take the deposition has been served upon him and that he or his counsel or solicitor had, or might have had, if he had chosen to be present, an opportunity of cross-examining the child making the deposition.

Admission of deposition in evidence.
U.K. 23 Geo. 5 c. 12, s. 43.

21. (1) If a court, in the belief that any person brought before it is not under the age of eighteen years, sentences that person to imprisonment, and that person is at the time of the sentence under the age of eighteen years, that sentence shall not be invalid and the imprisonment thereunder shall be lawful but the following provisions shall apply.

Provision for cases where child is sentenced to imprisonment.

(2) The court by which the sentence was imposed or any court to which an appeal has been or could have been brought shall have power to reconsider and vary the sentence and for that purpose to give any direction and make any order which the court deems proper.

(3) The application for reconsideration may be made by the person sentenced or the Attorney-General or the Comptroller of Prisons.

22. (1) If a court, in the belief that any person brought before it is under the age of eighteen years, orders that person to be sent to and detained in an institution, or to be placed in the custody and under the control of the board, and such person

Provision for cases where person over eighteen is sent to institution.

is of or over the age of eighteen years, the order shall not be invalid and any action taken in accordance therewith shall be lawful, but the following provisions shall apply.

(2) The court by which the order was made or any court to which an appeal has been or could have been brought shall have power to reconsider and vary the order and for that purpose to give any direction and make any order which the Court thinks proper.

(3) The application for reconsideration may be made by the person against whom the order was made or by the Attorney-General or by or on behalf of the board.

Age of
criminal
responsibility.
U.K. 22 Geo.
5 c. 12, s. 50.

23. It shall be conclusively presumed that no child under the age of eight years can be guilty of an offence.

Punishment
of homicide.
U.K. 22 Geo.
5 c. 12, s. 53.

24. (1) Sentence of death shall not be pronounced on or recorded against a child, but in lieu thereof the court shall sentence him to be detained during the Governor's pleasure, and, if so sentenced, he shall be liable to be detained in such place and under such conditions as the Governor may direct.

(2) A person detained pursuant to the directions of the Governor under this section shall, while so detained, be deemed to be in legal custody.

(3) Any person so detained may, at any time, be discharged by the Governor on licence.

Such a licence may be in such form and may contain such conditions as the Governor directs, and may, at any time, be revoked or varied by the Governor.

(4) Where a licence has been revoked, the person to whom the licence related shall return to such place as the Governor directs, and if he fails to do so may be apprehended without warrant and taken to that place.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.