

## Brochure for children and young people

This brochure explains how the Children's Court decides what must happen to you when you have been found guilty of breaking the law. What the Court decides is called the *sentence*, and the process of deciding the sentence is called *sentencing*. When you are sentenced, the Children's Court looks at laws made by parliament, and thinks about decisions made in other courts.

## Who goes to the Children's Court?

You will go to the Children's Court if the police think you did a crime after your 10th birthday but before you turned 18. In Victoria, police can't charge you with a crime if you are younger than 10. If your case begins after your 19th birthday, it must be moved to an adult court.

## What crimes can the Children's Court deal with?

The Children's Court can deal with most kinds of crime, but the Court can't deal with crimes involving death, like murder or culpable driving. These, and some other serious crimes, will be dealt with in a higher court (the County Court or the Supreme Court).

## Who decides what crimes you are charged with?

The police usually decide if you are charged with a crime. They will decide based on the evidence. Police may decide to give you a warning or a caution. Other government officials (like a ticket inspector) can charge you with less serious crimes (like being on a train without a valid ticket).

## What is diversion?

The Court may decide to give you a *diversion* instead of a sentence. The Court will decide this after looking at your background and the details of your crime. To get a diversion, you must take responsibility for your crime (agree that you did it), and you must do some things to develop your knowledge, skills and attitudes to avoid doing more crimes. A diversion plan might get you to do things like:

- talk to a counsellor
- do an activity (such as writing a letter to the victim to say sorry)
- follow conditions (such as going to school).

If you finish the activities and follow the conditions, the Court will *discharge* (finalise) your case without finding you guilty. You will not get a criminal record for your crime.

You can only get a diversion for less serious crimes. You, the police prosecutor and the Court must agree that you can get the diversion.

## Who decides the sentence? When?

Your sentence will only be decided after the Court has found you guilty, or you have pleaded guilty.

The prosecutor (usually a member of Victoria Police) and your lawyer will each tell the Court what they think are the important things in deciding the sentence. Then the judge or magistrate will decide what sentence to give you, and whether to record a conviction (keep a record of your crime).

Your sentencing may happen on the same day that you are found guilty, or it may be delayed for up to four months. Sentencing could be delayed because there is a group conference, because of a youth control order planning meeting, or because the Court needs time to get information (like a pre-sentence report).

## What is deferral of sentence?

Sometimes the Court will defer (delay) sentencing for some months. During this time, the Court may give you conditions that you must follow, like not doing any more crimes, being supervised by Youth Justice, going to the Children's Court Clinic, or going to school. When the Court finally sentences you, the judge or magistrate will think about whether you followed these conditions.

## What is the Children's Koori Court?

If you are of Aboriginal or Torres Strait Islander background and you plead guilty to a crime, you may choose to be sentenced in the Children's Koori Court. Elders and Respected Persons will sit with the magistrate, and there will be a conversation. The same sentencing laws apply in the Children's Koori Court as in the Children's Court.

## Do victims have a say?

When sentencing, the judge or magistrate must think about what happened to any victim of your crime.

Victims can make a Victim Impact Statement. This is a statement about how the crime affected them. A Victim Impact Statement can be made in different ways: in writing, as a video or sound recording, or even as a drawing.

## What does the Children's Court think about when sentencing?

The law on how children must be sentenced is in the *Children, Youth and Families Act 2005*. This law makes *rehabilitation* very important. This means that the Court must look at why you did the crime, and what sentence will stop you from getting into trouble again. To increase the chances of rehabilitation, the Court will think about things like:

- keeping you at home, and in a good relationship with your family
- keeping you in school, at training, or working at a job
- making sure the sentence suits you.

The Court may also think about:

- making you aware that you are responsible for your crime
- protecting people from crime.

## What facts about the crime will the Children's Court think about?

When sentencing, the Children's Court must think about things like:

- why you did the crime, and if you planned it
- if you did the crime alone, or with other people
- what your role in the crime was
- if you were pressured by other people to do the crime
- if you used a weapon (like a knife)
- what happened to any victim (like if anyone was hurt, or if property was damaged)
- how to protect the community from more crime.

## What facts about you will the Children's Court think about?

The Court must think about you and your background, including:

- if you pleaded guilty or not guilty to the crime
- if you have done other crimes in the past and, if so, what sentences you were given
- your family relationships, and if you can stay at home
- if you have been abused, or if you are a victim of family violence
- if you go to school or training
- if you have a job
- how likely you are to stop doing crimes
- if you have any mental health problems, or an intellectual disability (if you might have an intellectual disability, Disability Services must assess you)
- if you have problems with drugs or alcohol.

## What is a pre-sentence report?

A *pre-sentence report* has facts about you and your crime. Youth Justice prepares the pre-sentence report after you have been found guilty. The Court must ask for this report if your sentence is likely to be detention (getting locked up). The Court may ask for this report if you are going to be supported in the community by Youth Justice.

## What is group conferencing?

If you have been found guilty, you may be able to go to a group conference before you are sentenced. You and the Court must agree that you can go.

A group conference is a meeting that involves:

- you (with your lawyer, family and/or supporters)
- the police
- the convenor (the person who conducts the conference).

Sometimes a group conference may also include:

- the victim of the crime
- any other person that the convenor agrees can attend.

At the group conference, everyone talks about what happened, so you understand the impact on the victim. A plan is agreed to stop you doing more crimes. A successful group conference will reduce your sentence.

## What kind of sentence can the Children's Court give you?

Sentences for children are different from sentences for adults. There are two main sentence types for children: sentences you do while you live in the community, and sentences you do in detention (where you are locked up).

## Community sentences

**Dismissal** – this is the lightest sentence. The Court dismisses the charge, but records that you are guilty.

**Undertaking** – the Court dismisses the charge, but records that you are guilty. You must promise to not do any more crime, and sometimes you must promise to do other things (like go to school) for the time of the undertaking (6 or 12 months). If you break this promise, you may have to return to court.

**Good behaviour bond** – you must promise to not do any more crime, and to follow any conditions set by the Court. The Court decides the amount of the bond. If you keep these promises, the Court will dismiss the charges when the bond ends (for example after 12 or 18 months), you will not have to pay the bond, and the Court won't take any further action. If you break any of these promises, you may have to return to court and pay the bond.

**Fine** – you must pay some money at the Court. The highest possible fine will be more if you are over 15 than if you are under 15.

**Probation order** – you must be supervised by a Youth Justice worker, and not do any crime. Probation can include *special conditions*, such as going to see a counsellor, or attending a day program.

**Youth supervision order** – this is like a probation order, but it has more supervision. Under this sentence, you must follow the instructions of a Youth Justice worker, and not do any crime. Like probation, this sentence can include special conditions.

**Youth attendance order** – this is only for young people aged 15 to 20, and it is given instead of a youth justice centre order (detention). Under a youth attendance order, you will be supervised by a Youth Justice worker, and you must follow strict conditions such as education, counselling, treatment, or unpaid community service work. You must not do any crime during your sentence. If you do not follow the conditions, you may have to go into detention.

**Youth control order** – this is for children aged 10 to 18. It is served in the community and has strict conditions. Conditions could be going to school or work, getting health treatment or counselling,

staying at home at night, not using social media, or not being allowed to go to certain places. A youth control order can last up to 12 months. Your progress will be checked by the Court. During the first half of your order, you will need to come back to the Court every month for this purpose. During the second half of your order, the Court will decide how often you must come to court for this purpose. If you do not follow the conditions, you will go into detention, unless there are special reasons.

## Detention sentences

**Youth residential centre order** – this is detention (being locked up) in a youth residential centre. This sentence can only be given to you if you are under 15 when you are sentenced. While in a youth residential centre, you must go to education classes. You might also do programs (like anger management courses) to improve your behaviour.

**Youth justice centre order** – this is detention (being locked up) in a youth justice centre. This sentence can only be given to you if you are aged 15 to 20 when you are sentenced. While in a youth justice centre, you must go to education classes. You might also have to do programs (like anger management courses) to improve your behaviour.

## What is a conviction?

If you have been found guilty of a crime, the Court will decide the sentence and whether to record a conviction. A conviction will go on your criminal record. This may cause problems when you try to get a job or travel overseas. The Court cannot record a conviction for a dismissal, undertaking, or good behaviour bond. The Court may record a conviction for a fine, probation, or youth supervision order. The Court must record a conviction for a youth attendance order, youth control order, or detention order. Victoria Police may share information about you being found guilty, even if a conviction is not recorded.

## What is cumulation and concurrency?

Sometimes you can be sentenced to detention for more than one crime. When this happens, the Court will decide whether you do the sentences cumulatively (one after the other), concurrently (at the same time) or a bit of both (some of the sentences are done one after the other, and some are done at the same time).

## Can children get parole?

If you behave well in detention, you may be released on parole to serve some of your sentence in the community. While on parole, you must follow any conditions that have been set, and you will be supervised by a Youth Justice worker. The Youth Parole Board makes decisions about parole. If you do not follow the conditions, or if you do more crime while on parole, you may have to go back into detention.

## Can a sentence be changed?

A sentence given in the Children's Court can sometimes be changed. This process is called an *appeal*. An appeal is a request for a higher court to review (have another look at) your sentence. The request can come from the prosecutor, or from you and your lawyer.

## Where can I go for more information on sentencing?

You can find more information on our website at [www.sentencingcouncil.vic.gov.au](http://www.sentencingcouncil.vic.gov.au)