

This brochure explains how the Children's Court decides what must happen to children who 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 sentencing, the Children's Court is guided by laws made by parliament, and by decisions made in other courts.

Who goes to the Children's Court?

Children appear in the Children's Court if the police believe they did a crime when they were aged between 10 and 17. In Victoria, children aged under 10 cannot be charged with a crime. If the case begins after a young person's 19th birthday, their case must be moved to an adult court.

What crimes can be heard in the Children's Court?

The Children's Court deals with most kinds of crime. But all cases involving death (such as murder or culpable driving) and sometimes other serious crimes (such as intentionally causing serious injury) will be handled in the higher courts (the County Court or the Supreme Court).

Who decides what crimes a child is charged with?

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

What is diversion?

The Court may decide that there will be a *diversion* instead of a sentence. The Court will decide this based on the child's background and the details of their crime. As part of the diversion, the child must take responsibility for their crime (agree that they did the crime), and they must do some things to develop their knowledge, skills and attitudes to avoid doing more crimes. A diversion plan might include things like:

- getting counselling
- doing a diversion activity (such as writing a letter to the victim to say sorry)
- following conditions (such as going to school).

If the child completes the activities and follows the conditions, the Court will discharge the case without finding the child guilty. The child will not get a criminal record for that crime.

Diversion is only given for less serious crimes. The child, the police prosecutor and the Court must agree to the diversion.

Who decides the sentence? When?

The Court will only decide the sentence after the child has been found guilty, or has pleaded guilty.

The prosecutor (usually a member of Victoria Police) and the child's 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, and whether to record a conviction.

The sentencing may happen on the same day that the child is found guilty, or it may be delayed for up to four months. Sentencing can be delayed if there is a group conference, a youth control order planning meeting or 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 *deferral period*, the Court may set conditions that the child 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 the child, the judge or magistrate will think about whether the child followed these conditions.

What is the Children's Koori Court?

The Children's Koori Court is for Aboriginal and Torres Strait Islander children who plead guilty to a crime and want to appear in Koori Court. Elders and Respected Persons will sit with the magistrate, and there will be a conversation. Koori Courts are held at Bairnsdale, Melbourne Circuit (Melbourne, Heidelberg and Dandenong), Geelong, Latrobe (Morwell), Shepparton, Swan Hill, Warrnambool Circuit (including Hamilton and Portland), and Mildura. 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 the crime.

Victims can make a Victim Impact Statement, which is a legal statement about how the crime affected them. A Victim Impact Statement should only be made *after* the person who did the crime has been found guilty. A Victim Impact Statement can be made in different ways: in writing, as a video or sound recording, or even as a drawing.

It is a good idea for victims to get help when making a Victim Impact Statement (for example, from the Victims Assistance Program). There are rules about what can go in a Victim Impact Statement. The Court can only consider the parts of a Victim Impact Statement that follow these rules.

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 requires the Court to make *rehabilitation* a priority. This means that the Court must look at why the child did the crime, and what sentence will stop them from getting into trouble again. To increase the chances of rehabilitation, the Court will think about things like:

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

The Court may also think about:

- making the child aware that they are responsible for their crime
- protecting people from crime.

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

When sentencing, the Court must think about details and facts such as:

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

What facts about the child will the Children's Court think about?

The Court must think about the child and their background, including:

- if the child pleaded guilty or not guilty to the crime
- if the child has done other crimes in the past and, if so, what sentences they were given
- the child's family relationships, and if they can stay at home
- if the child has been abused, or is a victim of family violence
- if the child goes to school or training
- if the child has a job
- how likely the child is to stop doing crimes
- if the child has any mental health issues, or an intellectual disability (if the child might have an intellectual disability, Disability Services must do an assessment)
- if the child has problems with drugs or alcohol.

What is a *pre-sentence report*?

A *pre-sentence report* sets out facts about the child and the crime. Youth Justice prepares the *pre-sentence report* after the child has been found guilty. The Court must ask for a *pre-sentence report* if detention (getting locked up) is a likely sentence, and the Court may ask for one if the child is going to be supported in the community by Youth Justice.

What is *group conferencing*?

After a child has been found guilty, they may be able to go to a group conference before they are sentenced. The child and the Court must agree to the group conference.

A group conference is a meeting that involves:

- the child (with their 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 the child understands the impact on the victim. A plan is agreed to reduce the risk of the child doing more crimes. A successful group conference will reduce the child's sentence.

What kind of sentences can the Children's Court give?

Sentences for children are different from sentences for adults. There are two main sentence types for children: sentences done while the child is living in the community, and sentences where the child is in detention (locked up).

Community sentences

Dismissal – this is the lightest sentence. The Court dismisses the charge, but records a finding of guilt.

Undertaking – the Court dismisses the charge, but records a finding of guilt. The child must promise to not do any more crime, and sometimes must also promise to do other things (like going to school) for the period of the undertaking (6 or 12 months). If the child breaks any of these promises, they may have to return to court.

Good behaviour bond – the child must promise to not do any more crime, and follow any conditions set by the Court. The Court decides the amount of the bond. If the child keeps these promises, the Court will dismiss the charges when the bond ends (for example, after 12 or 18 months), the child will not have to pay the bond, and no further action will be taken. If the child breaks any of these promises, they may have to return to court and pay the bond.

Fine – the child must pay some money at the Court. The highest possible fine is more for children who are over 15 than for children who are under 15.

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

Youth supervision order – this is like a probation order, but it has more supervision. Under this sentence, the child 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 as an alternative to a youth justice centre order (detention). Under a youth attendance order, the child will be supervised by a Youth Justice worker, and must follow strict reporting and attendance conditions. This sentence can also include conditions such as education, counselling, treatment, or unpaid community work. The child must not do any crime during the sentence. If the child does not follow the conditions, they may have to go into detention.

Youth control order – this is for children aged 10 to 18. This sentence 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. During the first half of the order, the child must come back to court at least once a month so the court can check the child's progress. During the last half of the order, the court will decide how often the child must come back to court for this purpose. If the child does not follow the conditions, they 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 a child aged under 15 at the time of sentencing. While in a youth residential centre, the child must go to education classes. The child might also do programs (like anger management courses) to improve their behaviour.

Youth justice centre order – this is detention (being locked up) in a youth justice centre. This sentence can only be given to a child or young person aged 15 to 20 at the time of sentencing. While in a youth justice centre, the child must go to education classes. The child might also have to do programs (like anger management courses) to improve their behaviour.

What is a *conviction*?

If a child has been found guilty of a crime, the Court will decide the sentence and whether to record a conviction. A conviction will go on the child's criminal record, and may have consequences for them getting a job or travelling overseas. The Court cannot record a conviction for a dismissal, an undertaking, or a good behaviour bond. A conviction may be recorded for a fine, probation, or youth supervision order. A conviction must be recorded for a youth attendance order, youth control order, or detention order. Victoria Police may release information on findings of guilt whether or not a conviction is recorded.

What is *cumulation and concurrency*?

If a child is sentenced to detention for more than one crime, the Court will decide whether they 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 a child behaves well in detention, they may be released on parole to serve some of their sentence in the community. The Youth Parole Board makes decisions about parole, not the Children's Court. While on parole, the child must follow any conditions that have been set, and be supervised by a Youth Justice worker. If the child does not follow the conditions, or if they do more crime while on parole, they may have to go back into detention.

Can a sentence be changed?

A sentence imposed by 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 the sentence that the Children's Court gave the child. This request can be made by the prosecutor, or by the child and their lawyer.

Where can I go for more information on sentencing?

You can find more information on our website at www.sentencingcouncil.vic.gov.au