

How Courts Sentence Young Offenders

Information about sentencing

This brochure is about sentencing in the Magistrates Court (Youth Justice Division). A sentence is the punishment someone receives for committing an offence, also known as breaking the law.

This brochure explains how the court decides what happens to a young person when they have been found guilty of breaking the law.

There is a lot of information in this brochure. It may help you to read this with another person, perhaps someone older.

Who goes to the Youth Justice Division?

A young person (10-17 years old) will go to the Youth Justice Division (YJD) if the police think they did something to break the law (committed an **offence**). In Tasmania, police can't charge a young person for breaking the law if they are younger than 10.

What offences can the YJD deal with?

The Youth Justice Division can deal with most things that break the law. But it can't deal with things involving death - like murder or manslaughter. There are also rules about some offences that must be dealt with in the Supreme Court. These rules still apply even if a person was under 18 when they broke the law.

Who decides what offences a young person is charged with?

The police usually decide if a person is charged with breaking the law. They will decide based on the evidence.

Unless the matter involves a serious offence, there are several things that the police can do other than send a young person to court:

- (1) Police may give them an **informal** caution. The police will keep a record of any informal caution.
- (2) Police may give them a **formal** caution. The police can require them to promise to do something as part of a formal caution, like pay money to the victim, say sorry or do some community work.
- (3) Police may refer them to a community conference. Or they may have to go to a community conference if they don't do what they promised as part of a formal caution. They may be told to promise to pay money to the victim. Or say sorry. Or do some community work. They may have to go to court if they don't do what they say they will do.

The young person may get these options if they take responsibility for breaking the law. This means that they agree they broke it.

Who decides the sentence in the YJD? When?

A magistrate will be in charge of the Court in the YJD.

The magistrate will decide a young person's sentence only if the magistrate has found them guilty. Or if they have pleaded guilty.

The prosecutor and the person's lawyer will each tell the magistrate what they think are the important things in deciding the sentence. Then the magistrate will decide what sentence to give the person, and whether to record a conviction.

The sentencing may happen on the same day that the person is found guilty, or it may be delayed. Sentencing could be delayed because the court decides to defer

sentence or because the Court needs time to get information (like a pre-sentence report).

What is deferral of sentence?

Sometimes the magistrate will defer (delay) sentencing for some months. During this time, the magistrate may give the person conditions that they must follow. Conditions like not breaking the law again, being supervised by Youth Justice, going to drug treatment or counselling or school. When the magistrate finally sentences the person, the magistrate will think about whether they followed these conditions.

Do victims have a say?

When sentencing, the magistrate must think about what happened to any victim of the offences. This happens in all cases.

Some victims are allowed to make a Victim Impact Statement. This is a formal statement about how the offence affected them.

What does the YJD think about when sentencing?

The law on how children/young people must be sentenced is in the *Youth Justice Act 1997*. This law says that *rehabilitation* is very important. This means that the magistrate must look at why the young person broke the law. They must look at what sentence might stop the young person from getting into trouble again.

To increase the chances of rehabilitation, the magistrate might think about things like:

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

The magistrate may also think about:

- making the person aware that they are responsible for breaking the law
- protecting people from law breakers.

What facts about the crime will the YJD think about?

When sentencing, the magistrate must think about things like:

- why the person broke the law, and if they planned it
- if they broke the law alone, or with other people
- what their role was when they broke the law
- if they were pressured by other people to break the law
- if they 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 law breakers.

What facts about you will the YJD think about?

The magistrate must think about the young person and their background, including:

- if they pleaded guilty or not guilty to breaking the law
- if they have broken the law in the past and, if so, what sentences they were given
- their family relationships, and if they can stay at home
- if they have been abused, or if they are a victim of family violence
- if they go to school or training
- if they have a job
- how likely they are to stop breaking the law
- if they have any mental health problems, or an intellectual disability
- if they have problems with drugs or alcohol.

What is a pre-sentence report?

A *pre-sentence report* talks about the young person and what they did. Youth Justice Services prepare the pre-sentence report after the person has been found guilty. The magistrate must ask for this report if the sentence is likely to be detention (getting locked up). The magistrate may ask for this report if the person is going to be supported in the community by Youth Justice Services.

What is a community conference?

If a young person has been found guilty, the magistrate may order them to go to a community conference instead of sentencing them.

A community conference is a meeting organised by a facilitator and may involve:

- the guilty person (with their lawyer, family and/or supporters)
- the victim
- the police
- a youth justice worker
- any other person that court says should attend.

At the community conference, everyone talks about what happened. This is so the person understands the impact on the victim. The person may agree to do certain things like pay money to the victim or say sorry to the victim or do community work. This may mean that they agree to go to school or to have counselling or get treatment for drugs and alcohol. A successful community conference is where they do everything that was agreed. This will mean that the charge is dismissed (at an end).

What kind of sentence can the YJD give a young person?

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

Community sentences

Dismissal – this is the lightest sentence. The magistrate dismisses the charge and no other sentence is recorded.

Reprimand – the magistrate dismisses the charge and reprimands the person.

Dismissal with undertaking to be of good behaviour – the magistrate dismisses the charge and the person makes a promise to the court to not break the law again. Sometimes they must promise to do other things (like go to school) for the time of the undertaking (6 months).

Release and adjourned undertaking – the person is released and the magistrate will delay sentencing for a certain time (this must be no more than 12 months). And they promise to do certain things (like go to school).

If they do everything that they have promised, then they will be discharged at the end of the order. This means that the case ends.

If they don't do everything they have promised, they may have to come back to court. Then the court may give them a different sentence.

Fine – the person must pay some money. The highest possible fine will be more if they are over 15 than if they are under 15. If the person is 17, the maximum fine is the same as that which could be given to an adult.

Probation order – the person must be supervised by a Youth Justice worker. They must not break the law. Probation can include *special conditions*. The conditions could be going to see a counsellor, or going to school, or attending an educational program. The Order may say that they can't drink alcohol or use drugs. They may have to live at a certain place and stay at home during certain hours.

Community service order – if the person is 13 or older and say it is OK for an order to be made, they may get a community service order. This means they will do unpaid community work. They may also have other conditions given to them by the court. These conditions could be attending school or other educational programs. They may also have conditions about drinking or using drugs. Or living at a certain place. Or not going out at certain times.

Detention sentences

Detention order – this is detention (being locked up) in a youth detention centre. This is Ashley Youth Detention Centre. A young person cannot be locked up for more than two years.

Suspended detention order – this is where the magistrate says the young person is to be detained (being locked up) in a youth detention centre *but then* suspends all or some of the detention time. There are conditions that the court will give the person if the detention order is suspended. They must not commit other offences where they could be sentenced to detention. They must go to programs such as educational programs, health or other programs that they are told to go to. They must report to their Youth Justice worker and do what they say. There are other conditions that the magistrate can give them as well.

What is a conviction?

If a young person has been found guilty of breaking the law, the magistrate will decide the sentence and whether to record a conviction. A conviction will go on their criminal record. This may cause problems when they try to get a job or travel overseas. The magistrate cannot record a conviction for a dismissal, reprimand, dismissal with undertaking to be of good behaviour or a release and adjourned undertaking. The magistrate may record a conviction for a fine, probation, community service order or a wholly suspended detention order. The magistrate must record a conviction for a detention order or a partly suspended detention order. Tasmania Police may share information about the person being found guilty, even if a conviction is not recorded.

Early release from detention

A young person must be released from detention to serve some of their sentence in the community. The date on which they are released is known as their 'earliest release date'. This is either the day on which they have spent 50% (half) of their time in detention or three months (whichever is longest).

While on supervised release, they must follow any conditions that have been set. They will be supervised by a Youth Justice worker. If they do not follow the conditions, or if they break the law while on supervised release, they may have to go back into detention.

Can a sentence be changed?

A sentence given in the Youth Justice Division 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) the sentence. The request can come from the prosecutor, or from the young person and their lawyer.

Further Information on sentencing

You can find more information about sentencing on our website at www.sentencingcouncil.tas.gov.au.

There is also information available at:

Legal Aid Commission of Tasmania:

<https://www.legalaid.tas.gov.au/factsheets/young-people-law-for-the-under-18s-fact-sheet/>

The Magistrates Court:

https://www.magistratescourt.tas.gov.au/going_to_court/young_offender

The Hobart Community Legal Service Inc:

<https://www.hobartlegal.org.au/handbook/crime-and-punishment/youth-justice/the-youth-justice-act-1997/>

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