



COURT SUPPORT

This sheet is intended to provide general information only, not advice. If you have a particular legal problem you should contact a solicitor. The Youth Advocacy Centre does not accept responsibility for any action arising out of reliance on this information. This section was last updated June 2009. This legal information is relevant to Queensland, Australia.

Introduction

The court system is an extremely complex process, which has the capacity to create enormous power imbalances, particularly for young people. Section 72 of the *Juvenile Justice Act 1992* requires that the young person and their parent/guardian understands “the nature of the alleged offence, the courts procedures and the consequences of any order made”. The Act further identifies a number of steps that the court can undertake to ensure that the young person and their parent/guardian comprehend the court process. It outlines examples such as “directly explaining these matters in court to the young person and parent, having an appropriate person give an explanation and having an interpreter or another person communicate effectively with the young person or the parent”.

It is under Section 72 of the *Juvenile Justice Act 1992* that the court acknowledges young people are a vulnerable group and have special needs particularly throughout the court process. Under Section 73 it is evident that it is not entirely the courts responsibility to provide this explanation, but the responsibility is somewhat shared with the young person’s solicitor. The process of providing young people with a clear and precise explanation is highly dependent on the skills and expertise of the solicitor.

Role of Youth Worker

There is an increasing awareness that the legal and social welfare systems in our society are inter-related. As a youth worker many of the young people you come into contact with may be involved with the law at some stage. Alongside issues with the criminal justice system you will encounter young people who are experiencing problems associated with other social institutions such as income support, accommodation, education, drug and alcohol issues, family and other statutory institutions such as police and the Department of Communities. Therefore knowledge of legal rights in relation to young people is an integral component of a youth workers role.

As professionals who work with young people, it is important that you and the young person have a clear understanding of the role you are willing to undertake with them throughout the criminal justice process. Youth workers can play a vital role by effectively assisting and supporting young people in a number of ways. In practice this means ensuring elements of advocacy, information, self-determination, access and participation.

In order to support young people effectively through the criminal justice system, youth workers require sound general knowledge of the legal issues that affect young people, advocate for them where necessary and effectively explore legal options where appropriate. The legal knowledge that youth workers hold is thus extremely important if they are to provide accurate and adequate services and support to young people. Failure to identify legal elements for young people could lead to a denial of young people’s rights. It is also important to view youth offending in perspective and recognise that for young people it is a learning process that requires an appropriate response. If we expect young people to show respect for people, laws and processes then the logical way to start is by example - not fear or mistreatment. Youth workers can assist young people to do this by supporting young people in their interactions with key players such as police and solicitors.

A young person may come into contact with the law in a number of ways including:

- a) where it is alleged that a young person has committed an offence (Childrens Court matters);
- b) when young people are victims or a witness to an offence;
- c) when young people are subject to a custody or access dispute (Family Court matters);
- d) when young people are the subject of an application under the Child Protection Act; and
- e) when young people have difficulties relating to tenancy, school, employment, discrimination or other legal matters.

A common misperception that some people have is that when young people commit a crime “nothing ever happens and the courts cannot do anything”. Below is a comparison between the children’s and adults sentencing regime in Queensland. An examination of this table reveals that the two regimes are very similar.

Children	Adults
Juvenile Justice Act 1992	Penalties and Sentences Act 1992
Reprimand <i>s 175(1)(a)</i>	Absolute or Conditional Discharge s 19
Good Behaviour Bond <i>s 175(1)(b)</i>	Recognisances s 22-23
Fine <i>s 175(1)(c)</i>	Fine s 44-51
Probation Order: <ul style="list-style-type: none"> • Non serious offences <i>s 175(1)(d)</i> • Serious* offences <i>s 176.(1)(a)</i> 	Probation Order s 90-99
If a child is 13 years of age or more Community Service Order <i>s 175(1)(e)</i>	Community Service Order s 100-108
If a child is between 10 - 12 Intensive Supervision Order <i>s 175.(1)(f)</i>	Intensive Correction Order s 111.119
Conditional Release Order: <ul style="list-style-type: none"> • Non serious offences <i>s 175(3)</i> • Serious* offences <i>s 176(4)</i> 	Suspended Sentence s 143-151
Detention: <ul style="list-style-type: none"> • Non serious offences <i>s 175(1)(g)</i> • Serious* offences <i>s 176(1)(b)</i> 	Detention s 152.161
	Detention - Indefinite s 173-179

** Serious offence is an offence for which a person may be sentenced to life or one that if committed by an adult would make them liable to 14 years imprisonment or more.*

It is possible for a young person to be sentenced to detention for life under S. 176(3) *Juvenile Justice Act 1992*.

What is court support

On a systemic level court support involves the inclusion of young people in the court process, by encouraging an understanding of what is happening throughout this process. By having an understanding of the system, young people have an opportunity to learn. Court support not only aids a young person's understanding and inclusion in the court system, but is beneficial to a solicitor's effectiveness. Effective court support for instance, can assist the young person's solicitor in their work by supporting a young person and gaining information and greater insight into the situation, providing court reports and creating greater and broader options in the legal arena (for example, finding suitable accommodation for bail).

From an individual perspective, court support is about providing young people with access to information, referral, support and advocacy if appropriate. It provides young people with a voice in the court system and provides reassurance in a period of emotional vulnerability.

CHILDREN'S COURT MATTERS

Pre-Court

As a youth worker you may be the first person a young person communicates with in relation to having conflict with the law. You can effectively assist the young person by:

- Assisting the young person to seek legal advice from a solicitor prior to being interviewed by police and ensuring the young person has a solicitor for court. The young person should speak to a solicitor as soon as possible.
- Most courts operate a duty solicitor scheme which is provided by Legal Aid Queensland.

The youth worker can assist young people by referring them to a solicitor who has appropriate communication skills and an understanding of young people generally. If you are unsure that there are any solicitors in your area with these specific skills you could either contact Legal Aid Queensland or a Community Legal Centre. A Duty Lawyer is available at the court. Establishing a network of appropriate solicitors in your community is a strategy you may like to consider.

- Ensuring the young person knows where and when they are required to go to court and transporting them if necessary.
- **Explain the pre-court interview process** and the specific roles each person plays (eg. Court Services Officer, Solicitor, Police Prosecutor, Magistrate). Most importantly, ensure that the young person understands the advocacy role of the Duty Lawyer in this process.
- **Ensure the young person understands the instructions given** and the consequences of their instructions.
- **The Duty Lawyer at court will have a number of people to see and will have limited time to gather information.** They can either remand the matter in order for the young person to seek more thorough legal advice, or if the matter is straight forward, enter a plea of guilty. The Duty Lawyer at all times should act upon the young person's instructions.

After a young person has seen the Duty Lawyer, it is a good idea to check with them that they understand fully what will happen in court. You may need to assist the young person to ask the solicitor to explain the process again.

- **Assist the Duty Lawyer with background information in making submissions to court and with bail applications.** The youth worker can assist the young person and the solicitor in court by providing useful background information about the young person in relation to a plea of guilty or a remand where a bail application is made. This may

be especially useful in relation to assisting the young person with accessing accommodation to ensure bail is secured.

The young person's consent should be gained with respect to who the youth worker is going to provide the information to, and the level of detailed information the youth worker intends to give.

Court Support

The court process is often hurried and confusing. It can be beneficial for you to attend court if the young person gives permission for you to do so. It is essential that a youth worker presents well in court and treats the process with respect.

As a professional who is working with a young person involved in the criminal justice system, it is not safe to assume that the "right thing" will be done in all instances. Court support can be defined as an entity which responds to both individual and systemic issues as interrelated. It is about approaching young people's issues from a holistic perspective where needs and problems are often related to the offending behaviour.

On a systemic level, the inclusion of young people in the court process means encouraging an understanding of this process. Solicitors are not necessarily trained to effectively communicate with young people or have limited time designated to obtain instructions from the young person and your role can assist to simplify this communication process. One useful strategy is to ensure young people are encouraged to be included rather than excluded in this process.

On an individual level, court support is about providing young people with access to information, referral and advocacy if appropriate. Support can involve dealing with issues related to income, accommodation, transport, counselling, mediation and family work. Court support not only provides young people with a voice in the court system but also provides them with support and assistance in a period of emotional vulnerability.

Whilst at court, the youth worker can provide invaluable support and assistance to the young person, such as:

- **Assisting and supporting the young person during their court appearance.** It is imperative that you have the young person's permission, as the Childrens Court is a closed court. Supporting a young person in court can be beneficial especially if the young person has no other support networks in place. The magistrate or judge will also be able to see that the young person is receiving support and assistance. Therefore it is important that the youth worker treats the court with respect. If you have provided a character reference or court report for the young person, it is important that you have considered what you will say if asked questions by the magistrate or judge. Usually this information may be provided to the magistrate or judge via the young person's solicitor. If asked directly, the youth worker should speak clearly and concisely and address the magistrate as "Your Honour".
- **Writing a court report.** This is a practical way of assisting young people through the court process. Often solicitors, magistrates or judges do not fully understand a young person's individual circumstances. When a young person has been found guilty or has pleaded guilty and is being sentenced a brief report from a youth worker can positively influence the outcome.

These reports are **not** "Pre-Sentence" reports ordered under the *Juvenile Justice Act 1992*. Pre-sentence reports are those reports requested by the magistrate or judge and are prepared by the Department of Communities (DOC). The authors of Pre-Sentence reports do not advocate for the young person. The reports are simply a way of presenting information in the Department's possession to the court.

If you decide to undertake writing a court report for a young person it is important that you are clear about why you are doing the report and how it fits into your work. It is also important that you do not mislead the court and that you have knowledge of both the legal and social issues confronting the young person. Usually a court report written by a youth worker will be written in conjunction with the young person concerned and will contain a reflection of what he or she wants the court to know. This is a useful case strategy in ensuring that the young person is included in the court process and has an opportunity to “tell their story” to the court.

Any report prepared informally by the youth worker should be succinct. They should contain the youth workers qualifications and experience and the length of time and capacity in which they have known the young person. The report should provide information to the magistrate or judge about the individual circumstances that the young person was in at the time of the alleged offence, their present situation and any positive information about the young person that the youth worker thinks is relevant. It should also include an indication of any support or further work that will be undertaken with the young person.

If your report is submitted to a court, it is possible that the contents of the report could be challenged and you could be called to give evidence to verify or expand upon information contained in the report. It is desirable (if possible) to be present at court. If the report is challenged and you are not there, it may not be able to be used.

Any reports undertaken should be compiled with the full knowledge and permission of the young person concerned. The court report is a useful tool to use alongside the work of the solicitor. It is imperative that any court report written is done with the full knowledge of the solicitor representing the particular young person.

- **Providing Post Court Support**

The youth worker can assist by providing the young person with realistic follow up support and referral options a few days after court (this is especially important where there is no departmental involvement with the young person). This is a good opportunity for undertaking preventative work.

If the young person is on remand, the youth worker can provide post court support. This process can often be lengthy and confusing and young people may need a point of referral and support about the legal process and other non-legal issues.

It can also be important to explain the outcome of court appearance and to assist the young person to secure further legal representation (through a community legal centre or Legal Aid) and offer support.

It may also be important that a youth worker assist in post court support by liaising with the Department of Communities. For example, where the young person requires further support and assistance to complete an order.

COURT SUPPORT FOR VICTIMS

If a young person is the victim of an offence, it will usually be the police who will be prosecuting “the offender” and the young person may be required to be a police witness. This may involve the young person having to tell their story a number of times to the police and the court. This situation is often stressful for the young person particularly in relation to matters involving assault or abuse. It may also have other implications for the young person particularly if the offender is a family member.

Youth workers should assist the young person to obtain full information about this process in order for the young person to make informed decisions about their involvement in the court process.

As a youth worker who may support a young person in this process, it is imperative that you are clear about the role you can play. It is not unknown for defense counsel to subpoena support workers and their files. Often support workers are alleged to have “coached” young people to give evidence in a certain way. It is imperative that you and the young person you are working with have a clear expectation of the role you are undertaking in order for your role not to be compromised. The capacity to refer young people who are witnesses for specialist legal advice is essential. As a support worker at court, it is recommended that you do not know the specific details of the court case. This ensures that any support offered to the young person will not be jeopardising the court proceedings.

The provision of ongoing support to young people who are witnesses is essential. As youth workers you can support young people in this process by providing:

- **Emotional Support:**

A young person who is required to be a witness in court proceedings generally feels unsupported, frightened and confused. Preparing a young person as a witness for court (for example visiting a court room prior, exploring coping strategies for being in court) is an essential role the support worker plays. Other parties involved in the court proceedings (including the police prosecutor and judge) often overlook the important emotional needs of the young witness. Support workers are seen as non-threatening and informed friends who are not part of the court system. They can provide ongoing support and assistance by advocating and ensuring the young person’s emotional needs are considered before, during and after the court process.

- **Practical Court Support:**

The support worker, for example, can provide transport to and from the police station and court. They can liaise with the police and the prosecutor to ensure safeguards are organised and in place (for example a room where the young person can wait before giving evidence to minimise confusion upon arrival at court). If a young person is under 16 it is necessary to ask whether the young person will be able to give evidence via an audio-visual link-up or, if that technology is not available, what other safeguards will be used, such as a screen.

The support worker can also provide assistance in exploring possible options regarding other issues that the young person may be experiencing - for example, addressing health and accommodation needs. This can be especially important when the accused person has been granted bail. The support worker should provide an explanation of the court process in general and must ensure that the young person is kept well informed throughout the process.

- **Post-Court Support:**

Providing young people with avenues for ongoing support and counseling is also an essential element of the support role a youth worker can undertake. Often at the conclusion of court proceedings young people require follow-up support and assistance. This can be especially important if the alleged offender is found not guilty. Support workers can provide resources, strategies and information about how the young person can deal with the emotional turmoil associated with court proceedings.