



Sentence options – *Youth Justice Act 1992*

Section 149 of the *Youth Justice Act 1992* establishes that Act as the exclusive sentencing code for criminal court matters involving children.

The sentencing options available to the court are contained in Part 7, Division 4 of the Act.

Restorative justice order

Subject to section 175 of the Act, a young person guilty of an offence may be referred to a restorative justice order (RJO).

The court may only make an RJO if satisfied that a young person is suitable to participate in a restorative justice process in regard to:

- the nature of the offence
- the harm suffered by anyone because of the offence
- if the interests of the community and young person would be served by having the offence dealt with under an RJO.

An RJO can only be made in relation to an offence for which an adult would be liable to service a period of imprisonment.

A young person has 12 months to complete the RJO.

Purpose of the order

The purpose of an RJO is to allow a young person who has committed an offence, and other concerned people, to think about and deal with the offence in a way that benefits everyone involved.

Consequences of offending

The principle consequences for a young person are:

- facing their victim
- being held accountable for their offending by participating in a restorative justice process
- the potential for being breached and returned to court for not complying.

Opportunity for support and assistance

When a young person participates in a restorative justice process it can help them to:

- take accountability for their actions
- challenge their beliefs about the offence and its consequences
- do something meaningful to repair the harm done
- restore self-image.

The restorative justice process can help the victim to:

- talk about how they have been affected,
- have their say on how the offence should be dealt with
- get answers to questions
- potentially reduce fear of re-victimisation
- gain closure
- restore their dignity and feel empowered.

Probation order

Subject to section 175 of the Act, a young person found guilty before a Children's Court constituted by a magistrate may be sentenced to a maximum of 12 months probation.

A judge may sentence a young person to a maximum of:

- three years if guilty of a serious offence, as defined in section 8 of the Act
- two years for any other offence.

A probation order (PO) can only be made in relation to an offence for which an adult would be liable to serve a period of imprisonment.

Purpose

The purpose of a PO is to:

- have the young person participate in counselling and programs to address their offending behaviour

- allow a young person to participate in community and family life in a supervised and supported way
- provide a clear consequence for significant and/or repeated offending behaviour
- enable the young person to continue with employment/educational commitments and opportunities where appropriate.

Consequences for offending

The mandatory requirements of a PO are that the young person:

- reports to their youth justice officer as required
- receives visits as arranged
- refrains from further offending.

The principal consequences for a young person on a PO are:

- loss of leisure time that mandatory reporting entails
- the potential for being breached and returned to court for not complying.

The court may impose additional conditions directly related to the offence, subject to criteria specified in section 193 of the Act.

When administering a PO, a youth justice officer works with the young person and their family to look at the offending behaviour and identify the factors that contributed to it. They also look at the risk factors for recidivism.

The young person must then participate in interventions designed to address these factors, thereby reducing the likelihood of further offending. For example, a young person may be required to participate in:

- an anger management program
- a drug and alcohol program
- a victim empathy program.

A young person may also be assisted to obtain accommodation, seek employment, access educational programs, address family issues or register for government assistance.

Administration of a PO provides a young person with support and assistance necessary for them to integrate with their family and community.

Community service order

Subject to section 175 of the Act, a young person who is guilty of an offence and is at least 13-years-old may be sentenced to a minimum of 20 hours unpaid community service.

If the young person is not yet 15-years-old at the time of sentence, they may be ordered to a maximum of 100 hours unpaid community service.

If they are 15-years-old or older at the time of sentence, they may be ordered to a maximum of 200 hours unpaid community service.

The young person has 12 months to complete the community service ordered by the court. For orders less than 50 hours, the court may order it to be completed in less than 12 months.

A community service order (CSO) can only be made in relation to an offence for which an adult would be liable to serve a period of imprisonment.

Purpose

The purpose of a CSO program is to provide:

- a clear consequence for significant and/or repeated offending behaviour
- the opportunity to make positive and meaningful reparation to the community.

Consequence for offending

The principal consequences for the young person are:

- the requirement to perform work activities as directed
- the loss of leisure time while undertaking the work activities
- the potential for being breached and returned to court for not complying.

A young person on a CSO is matched with a community agency that will arrange work activities for them to perform. This matching takes into account a range of factors including:

- the nature and seriousness of the offence(s)
- the young person's skills, interests and aspirations
- agency availability
- age and cultural background.

Where appropriate, a youth worker may be assigned to the young person to ensure compliance with the CSO.

Opportunity for support and assistance

The young person's integration into their family and community is potentially helped by performing unpaid community service work.

This may result from:

- the perception that the work activity is a just and tangible consequence of the offending behaviour
- the opportunity to reconcile with the community
- the young person acquiring skills, knowledge and experience by performing work activities
- the young person's increased maturity and responsibility for organising their life in scheduling their work activities
- positive engagement with community representatives and the support provided by those supervising the activities.

Additional needs for support and assistance may be identified during the course of the order. In these circumstances, a young person has access to support services provided or arranged by Youth Justice.

Graffiti removal order

Subject to section 176A of the Act, a young person guilty of a graffiti offence (section 469 of the Criminal Code punishable under section 469, item 9; Willful damage by graffiti) who is at least 12-years-old at the time of the offence must be sentenced to perform unpaid graffiti removal service.

If the young person is not yet 13-years-old at the time of sentence, they may be ordered to perform a maximum of five hours unpaid graffiti removal services.

If they are between the ages of 13 and 15-years-old at the time of sentence, they may be ordered to perform a maximum of 10 hours unpaid graffiti removal service.

If they are 15-years-old or older at the time of sentence, they may be ordered to perform a maximum of 20 hours unpaid graffiti removal service.

The young person has 12 months to complete the graffiti removal service. The court may

also order for it to be completed in a period less than 12 months.

Purpose

The purpose of a graffiti removal order (GRO) program is to provide:

- a clear consequence for significant and/or repeated graffiti offending behaviour
- an opportunity to make positive and meaningful reparation to the community (through the performance of graffiti removal work activities).

Consequences for offending

The principal consequences for the young person are:

- the requirement to perform graffiti removal work activities as directed
- the loss of leisure time while undertaking the graffiti removal work activities
- the potential to be breached and returned to court for not complying.

A young person on a GRO is matched with an agency that will arrange graffiti removal work activities for the young person to perform. The matching takes into account factors including:

- the nature and seriousness of the offence
- the young person's skills, interests and aspirations
- agency availability
- age and cultural background.

Where appropriate, a youth worker may be assigned to the young person to ensure compliance with the GRO.

Opportunity for support and assistance

The young person's integration into their family and community is potentially helped by performing unpaid graffiti removal work.

This may result from:

- the perception that the work activity is a just and tangible consequence of the offending behaviour
- the opportunity to reconcile with the community
- the young person acquiring skills, knowledge and experience by performing work activities

- the young person's increased maturity and responsibility for organising their life in scheduling their work activities
- positive engagement with community representatives and the support provided by those supervising the activities
- the potential for positive affirmation for performing a valued and worthwhile graffiti removal service.

Additional needs for support and assistance may be identified during the course of the order. In these circumstances, a young person has access to support services provided or arranged by Youth Justice.

Intensive supervision order

Subject to section 175 of the Act a court may sentence a young person under 13-years-old to an intensive supervision order (ISO). An ISO can be imposed for up to six months.

Purpose

The purpose of an ISO program is to:

- provide a clear consequence for significant and/or repeated offending behaviour
- establish long-term support systems to reduce the likelihood of further offending
- allow a young person to participate in community and family life in a supervised and supported way
- address offending behaviour through participation in an ISO conference, counselling and programs
- enable the young person to continue with their educational commitments and opportunities.

Consequences for offending

The mandatory requirements of an ISO are that the young person:

- reports to their youth justice officer as required
- receives visits as arranged
- refrains from further offending.

The principal consequences for a young person on an ISO are:

- the loss of leisure time that mandatory reporting entails
- confronting issues contributing to their offending in an ISO conference

- the potential to be breached and returned to court for not complying.

The court may impose additional conditions directly related to the offence(s), subject to criteria specified in section 204 of the Act.

When administering an ISO, the youth justice officer works with the young person and their family to look at the young person's offending behaviour and identify the factors that contributed it. They also look at the risk factors for recidivism.

This involves holding an ISO conference with significant people in the young person's life.

The young person must then participate in activities agreed to at the conference. These activities are designed to reduce the likelihood of further offending. For example a young person may be required to participate in a remedial education program.

Assistance is also provided to address family issues that may directly, or indirectly, contribute to the offending behaviour.

Administration of an ISO provides a young person with support and assistance necessary for them to integrate with their family and community.

Conditional release order

Subject to section 175 of the Act, a court may sentence a young person to a conditional release order (CRO).

A CRO is a suspended detention order that requires that a young person guilty of an offence be involved in an intensive structured program for up to three months.

A CRO is intensive and highly intrusive.

If a young person is non-compliant, a court may revoke the CRO, and order that they be detained for the balance of the custodial period from the original detention order.

Purpose

The purpose of a CRO is to:

- provide an alternative option to detention
- provide a court with the power to immediately release a young person into the community, to participate in a structured program with strict conditions

- engage a young person in activities that help them to reintegrate into the community
- enable the young person to continue with employment/educational commitments and opportunities.

Consequence for offending

The mandatory requirements of a CRO are that the young person:

- participates in a program outlined in the presentence report
- complies with any other conditions imposed by the court
- refrains from further offending.

The principal consequences for the young person are:

- the requirement to perform or participate in all activities as directed
- the significant loss of leisure time while undertaking the activities
- the potential for the order to be revoked and be sent to detention for not complying.

The court may impose additional conditions that are directly related to the offence, subject to certain criteria specified in section 221 of the Act.

CRO programs have three components:

- educational, vocational and work activities
- re-integrative activities
- interventions to address offending.

The components are closely integrated. The emphasis placed on each component may vary depending on the young person's specific circumstances. All three components must be included in a program designed for a particular young person.

We will take into account if a young person is employed or attending full-time education.

Compulsory attendance and participation

It is compulsory for a young person to attend and participate in all activities of the CRO.

A CRO is intensive and highly intrusive.

CROs differ from other supervised non-custodial orders because involvement in support services is mandatory as it is deemed essential to reduce the likelihood of further offending.

A young person is generally required to participate in program activities for up to 32 hours per week.

Detention order

Pursuant to sections 175 and 176 of the Act a court may sentence a young person to a detention order (DO).

If a young person is sentenced to a DO they will be sent to a youth detention centre.

Purpose

The purpose of a DO is to:

- provide a clear consequence for significant and/or repeated offending behaviour
- to protect the community from further offending.

A DO includes:

- a period in secure custody
- a supported and supervised release period in the community.

During the custodial period the young person must engage in:

- interventions to address offending behaviour
- educational programs
- other programs and activities.

A young person under a DO must serve 70% of their sentence in a detention centre, unless the court directs otherwise. The remaining 30% of the DO is spent in the community on a supervised release order (SRO).

If the court considers it appropriate, it can order that 50% or more, but less than 70% of the order be served in detention.

Consequence for offending

The principal consequences for the young person sentenced to a DO are:

- the loss of liberty while serving a period in custody in a detention centre
- the loss of leisure time during the SRO period through compliance with regular reporting requirements and any other conditions
- the potential for cancellation of a SRO, for non-compliance with the SRO's requirements, and return to a detention

centre to serve all or part of the remainder of the DO.

When a young person is admitted to detention, we examine their offending behaviour to identify the factors that contributed to their offending as well as risk factors for recidivism.

The young person may then be required to participate in programs designed to address these identified factors and, in doing so, reduce the likelihood of further offending and prepare them for their eventual release.

Routines in detention are structured to provide some normality to the experience.

Education and vocational training programs are provided in each detention centre. All young people must participate.

Available research highlights that custodial sentences usually result in higher rates of recidivism. This is generally attributed to:

- hindering the learning of skills necessary for a young person to live in the community
- young people having opportunities to join criminal networks and learn offending skills
- the strain placed on family and community bonds when a young person is in detention.

Opportunity for support and assistance

When a young person is released from detention on an SRO the department can offer the young person support and assistance to:

- avoid further offending
- effectively reintegrate into their family and community.

Post detention services aim to:

- maximise opportunities for the young person to use appropriate services and support networks upon their release
- provide follow-up of any programs commenced while in detention
- minimise the likelihood of re-offending when the risk is highest.

Transfer from youth detention to adult prison

A young person becomes liable for transfer to an adult correctional facility and will be issued

a prison transfer direction by the department, if:

- they will turn 18 years of age while serving a period of detention, and are liable to serve a remaining period of six months or more in custody following their eighteenth birthday
- they are between 18 years and 18 years and six months of age when sentenced to a DO, and are liable to serve a remaining period of six months or more in custody.

A young person may apply for a temporary delay of the transfer to an adult correctional facility. They can make their application to a court on the day of sentence or when they receive their prison transfer direction from the department.

If a young person who has already turned 18 makes an application at the time of sentence that is refused, they will be transferred immediately.

If a young person is 18 years and six months old or older at the time of sentence, and receives a DO requiring them to serve actual custody, they will immediately go to an adult correctional facility. No application for temporary delay will apply.

Transfer from adult prison to youth detention

The *Youth Justice (Transitional) Regulation 2018* commenced on 12 February 2018. The Regulation aims to ensure that 17-year-olds currently involved in the adult justice system can be carefully transitioned to the youth justice system.

A transitional offence is any offence committed by a young person who was 17 years old as at 12 February 2018 and:

- that offence was subject to a court proceeding
- the young person was subject to a community based order or period of imprisonment prior to 12 February 2018
- they were charged with an offence before 12 February 2018 but have not yet had their offences finalised in court.

If the young person is remanded or sentenced for any transitional offence and is to be held in custody, they will be held in a corrective

services facility unless they are already held in a youth detention centre.

If a young person is 18-years-old at the time of sentence, on the day they would have been released from the DO, under section 227 of the Act, they will be released on parole under the *Corrective Services Act 2006*.

Combination orders

Where appropriate, and pursuant to sections 177 to 180B of the Act, it is possible for a court to make more than one order for one offence.

This capacity to impose a combination of orders such as probation and community service provides the opportunity for the court to impose a sentence that will achieve a range of objectives and varying degrees of intensity.