

Young Offenders

(Chapter reviewed and updated 3 July 2019 [Bi-Annual Review])

Starting proceedings against children and young people

Before commencing criminal proceedings against a young person consider the provisions of the **Young Offenders Act 1997 (YOA)**. Where a young person is suspected of committing an offence covered by the **YOA** (see **s.8**), the young person is entitled to receive the least restrictive sanction (a warning, a caution, a youth justice conference). The provisions of the **YOA** do not apply to offences committed under the **Graffiti Control Act 2008**.

Where it is not appropriate to impose one of the sanctions you may commence proceedings in accordance with the **Children (Criminal Proceedings) Act 1987**. If you deem the matter not appropriate for a warning or caution you must refer the person to the Specialist Youth Officer (SYO) whether or not the person has admitted the offence. A referral to court or youth justice conference can only be made by the SYO.

A young person can potentially be dealt with under the **YOA** for a Table 1 Aggravated Break and Enter offence (that is, where the only circumstance of aggravation is that the offence was committed in company, and the serious indictable offence alleged is stealing or damaging property, and the value of that property does not exceed \$60,000). This is because break and enter offences are not specifically excluded by **s.8(2)** of the **YOA**.

However, **all other types of Aggravated Break and Enter offences** remain strictly indictable and cannot be dealt with under the **YOA**.

NB: A Specialist Youth Officer is a police officer appointed to this role by the Commissioner of Police for the purposes of making determinations under the **YOA**.

Warnings

Refer to the **Young Offenders Act, 1997** for your obligations.

Investigating officer

Remember, a **young offender** is entitled to a warning for summary offences unless:

- the offence is excluded by **s.8 YOA**,
- the offence involves violence, and
- you believe it is not in the interests of justice to give one.

When you give the warning, ensure the **young person** understands its purpose, nature and effect.

Recording warnings

When you give a warning, record the offence details on COPS, including:

- time, date and place of incident,
- name, age, gender of the young person, and whether they identify as Aboriginal and/or Torres Strait Islander.

Cautions

Refer to the **Young Offenders Act, 1997** for your obligations.

Do not caution a young person unless you have been authorised by the Commissioner to give cautions under the **YOA**.

If you, as an authorised officer, believe a respected member of the community should give a caution, necessary arrangements should be made for this to be done.

Investigating officer

If the young person has admitted an offence covered by the **YOA** (in accordance with **s10**) you may issue a formal caution. The young person must be eligible to receive a caution and must give consent.

To be eligible for a caution, the young person must admit to the offence.

If the young person has not admitted to the offence, consider offering a 'Protected Admission' as defined in the 'Protected Admissions Scheme'. The Standard Operating Procedures for the Protected Admission Scheme can be found on the following link:

Protected Admission Scheme SOPs

When deciding whether to caution a young person, consider the following criteria:

- the offence is one which is able to be dealt with by way of caution (**s.8 YOA**),
- the seriousness of the offence,
- the degree of violence involved in the offence,
- the harm caused to any victim,
- the number and nature of any offences committed by the young person and the number of times the young person has been dealt with under the **YOA**, and
- any other matters you think appropriate.

Limits to cautions

Under the YOA the number of occasions where a young person can be dealt with for an offence by way of caution is limited to three. Refer to **s.20(7) of the YOA** for details.

Notice of intention to caution

When you decide to caution a young person:

- record the full details of the young person and incident on COPS.
- generate a **notice of intention to caution**,
- Give the notice to the young person, explaining what it is and providing details about the offence and caution process. Refer to **s24** for details.

Right not to proceed with caution

If you decide it is not in the interests of justice for the young person to be cautioned:

- record full details of the young person and the incident on COPS
- refer the matter to the SYO, and
- Inform the young person that the matter will be referred to a SYO.

Specialist Youth Officer

Review all matters referred to you and make a determination on the most appropriate way to proceed. Remember to update COPS with your decision.

If you decide a caution is the most appropriate intervention and the young person agrees to it, proceed according to the section

on Cautions.

If you do not consider a caution sufficient or the young person does not agree to a caution, refer to a youth justice conference or court.

Youth justice conferences

The Youth Justice Conferencing Directorate of Juvenile Justice is responsible for conducting youth justice conferences in NSW.

Refer to the **Young Offenders Act, 1997** for your obligations.

Specialist Youth Officer

A young person may have a matter dealt with by a youth justice conference if:

- it is not appropriate to **caution**,
- the offence is one for which a youth justice conference may be held (**s.8 YOA**),
- the young person
 - admits the offence, (refer to the **Protected Admission Scheme SOPs**)
 - consents to the holding of the conference, and
 - is entitled to be dealt with by holding a conference

When deciding if a young person is entitled to be dealt with by way of a youth justice conference, the SYO must consider **s.37** of the **YOA**:

- in the interests of justice, it is more appropriate to deal with the matter by commencing proceedings against the child, and
- the onus is on you to justify your belief

When deciding whether to refer the young person to a youth justice conference, considerations for the interests of justice include:

- the seriousness of the offence,
- the degree of violence involved in the offence,
- the harm caused to any victim,
- the number and nature of any offences committed by the young person and the number of times the young person has been dealt with under the **YOA**, and
- any other matters you deem appropriate.

If you decide to refer the young person to a youth justice conference:

- explain your decision to the young person,
- tell the young person they are entitled to have the matter dealt with at court if they wish,
- complete a **conference referral form** for the young person and Juvenile Justice, printed from COPS (ensure the investigating police have included full details of the young person and incident, including the young person's carer/responsible person and victim's details),
- give the young person a youth justice conference referral notice, and
- send the conference referral form to the Juvenile Justice's appointed conference administrator for your PAC/PD.

If you decide to refer the young person to a youth justice conference, you are responsible for liaising with the conference administrator/convener about conferencing arrangements.

Investigating officer

If you are asked to attend a youth justice conference talk with the Youth Liaison Officer (YLO) at your PAC/PD for advice on your role at the conference.

If you have been notified that a conference has been discontinued (for example, at the request of the young person), start proceedings to bring the matter before court.

Arresting and interviewing young offenders

See: '**Custody**' for information on arresting and interviewing young offenders.

Also refer to the **Children (Criminal Proceedings) Act 1987**.

Custody of young people

See: '**Custody**'

Intoxicated children or young people

See: '**Intoxicated People**'

A child who is detained as an intoxicated person under Part 16 - **Law Enforcement (Powers and Responsibilities) Act 2002** (LEPRA) is to be taken to, and released into the care of, a responsible person who is willing to immediately take care of them.

A responsible person includes any person who is capable of taking care of the child, including:

- a) a friend or family member, or
- b) an official or member of staff of a government or non-government organisation or facility providing welfare or alcohol or other drug rehabilitation services.

Detaining a child at an authorised place of detention (such as a police station) is a **last resort**. The child may be detained in an authorised place of detention if:

- it is necessary to do so temporarily for the purpose of finding a responsible person willing to take care of the child,
- a responsible person cannot be found to take care of the child, or the child is not willing to be released into the care of a responsible person and it is impracticable to take the intoxicated person home, or
- the child is behaving or is likely to behave so violently that a responsible person would not be capable of taking care of and controlling the child.

A child who is detained in an authorised place of detention under **Part 16 of LEPRA** may be detained there by any detention officer, and:

- must be given a reasonable opportunity by the person in charge of that place to contact a responsible person,
- must, as far as is reasonably practicable, be kept separately from any person detained in connection with the commission or alleged commission of an offence,
- must not be detained in a cell unless it is necessary to do so or unless it is impracticable to detain the child elsewhere at that place,
- must be provided with necessary food, drink, bedding and blankets appropriate to the child needs, and
- must be released as soon as the child ceases to be an intoxicated person.

An intoxicated person who is apparently under the age of 18 years must, as far as is reasonably practicable, be kept separately from any person over that age detained at that place.

Always consider the need for medical treatment.

Record all steps taken to contact a responsible person. Also, **s.209 of LEPR**A requires a record, containing the particulars prescribed by **cl.52 of the Law Enforcement (Powers and Responsibilities) Regulations 2016**, to be made whenever a person is detained as an intoxicated person.

Your Choice

Your Choice is a NSW Police Force alcohol diversion program aimed at persons under the age of 18 years. Rather than pursuing formal legal processes for incidents involving intoxication and/or the illegal possession or consumption of alcohol, police can issue the young person with a referral to the **Your Choice** program.

The program seeks to challenge perceptions about underage drinking and excessive consumption of alcohol and to educate young people about the health, legal and social consequences of drinking. It also aims to enhance the capacity of parents/guardians to influence their child's behaviour and attitudes towards drinking.

To make a **Your Choice** referral:

1. Identify a minor committing a relevant offence (see below)
2. Confirm their identify and residential address
3. Record their details in your notebook
4. Advise the minor that:
 - a. they are being referred to the Your Choice program
 - b. their parents will be notified
5. Record the event on COPS under legal process - see eguide
6. The event/incident will disseminate to the YLO who will action the referral

For more information see **Your Choice SOPS**

For a list of applicable offences see:

Escorting young offenders

Juvenile Justice will assume responsibility for the guarding and transporting of young offenders from the NSW Police Force. However, this will not completely release police from these responsibilities.

To detention centres

Police Area Command/Police District Commander

In the Sydney, Newcastle, and Wollongong areas and those country stations close to detention centres, it is the responsibility of the PAC/PD Commander to arrange the escort of a young person offender from a station to a centre by road.

In country areas **less than** 250 kilometres from a detention centre, arrange road transport and escort.

For distances of **more than** 250 kilometres, the Commander, Logistics and Operational Support Unit coordinates the escort and transport. Give the Logistics and Operational Support Unit as much notice as possible. The can be contacted on Eaglenet: 73781.

In the metropolitan area, contact the Manager, Transport Unit, between 8.30am and 5.00pm.

At other times, contact the centre nearest the station before escorting the offender.

Juvenile Justice personnel are responsible for finding and taking the offender to alternative accommodation.

When you have young offenders in custody at a country station, which is not near a detention centre, contact the Transport Unit.

Detention centres to courts

When escorting young offenders from a detention centre to a court, the following documents must be provided before they can be transported:

- remand warrant, court order or charge sheet
- information sheet, and
- offender's possessions (if any) and property docket.

When escorting young offenders from a station to a centre, you will require:

- a remand/committal warrant or
- copy of the charge sheet,
- a transfer note, and
- property docket.

When a young offender, on fresh charges and refused or unable to find bail, is transferred from a station to a nearby centre during the night, place them before the next available children' court.

Outer metropolitan area

When a young person must be returned to a detention centre at the end of court proceedings (e.g.: when appearing by virtue of a s42 order), find out the likely time the matter will be finalised through the prosecutor. If there is no excessive delay, stay and return the young person to the centre.

If a considerable delay is likely, or the young person is appearing due to bail being refused or on remand, and there is no certainty they will be returned to the centre, do not stay with them if it causes overtime or other expenses.

After transferring the young person to local police, the Police Area Command/Police District Commander is responsible for providing a guard while they attend court.

Air travel to and from country areas

Commander, Transport Unit

If the distance **exceeds 250 kilometres**, coordinate the transfer of young people from:

- country stations to metropolitan or country detention centres, or
- between metropolitan stations or centres and country courts.

Take into account the cost effectiveness of the travelling arrangements, with the availability of air travel.

Supplying meals

When the young person is likely to be detained at a court or station during the lunch adjournment, inform, at the first opportunity, the senior police or prison officer of the cell complex that a meal will be needed.

Court issues

Required dress

Dress in plain clothes when attending a children's court.

Court action by citation notice, charge or summons

If court action is taken via a citation notice, charge or summons, enter details on COPS.

Warrants of commitment - young fine-defaulters

Do not execute warrants of commitment on young fine-defaulters unless immediate access to, and placement of them in, a detention centre has been guaranteed by the superintendent.

See: 'Warrants' - executing warrants on children.

Traffic penalty notices to children

You may issue penalty notices to children aged 16 and over for traffic and parking offences outlined in the Fixed Penalties Handbook. Before issuing, however, you must establish their identity and address.

Underage drinking

Powers

Police generally

Under ***s11 of the Summary Offences Act 1988***, you have the power to deal with underage drinking in public places, including the confiscation of liquor via the issue of cautions and penalty notices.

A young person may not be arrested for an offence of underage drinking in a public place except as may be necessary for the purposes of issuing a caution.

You may seize any liquor in the possession of a person in a public place, if you suspect on reasonable grounds, that the person:

- is under the age of 18 years,
- is not under the supervision of a responsible adult, and
- does not have a reasonable excuse for possessing the liquor.

Responsible adult

The words “responsible adult” are not defined under the Act. You are required to make a subjective analysis of all the facts at the time. An adult who is affected by alcohol is not a responsible adult.

Demanding name and place of abode

You may require a person, who you reasonably suspect has committed an offence under **s.11(1)** to:

- state his or her full name and residential address, and
- produce then, or at a police station within a reasonable time, documentary evidence that might reasonably be accepted as applying to the person and as proving that the person is at least 18 years of age.

It is an offence for the person to:

- refuse to state his or her full name and residential address, or
- state a false name or residential address, or
- without reasonable excuse, refuse or fail to produce evidence of age as described in the previous paragraph.

Confiscating liquor

CI.4 of the **Summary Offences Regulation 2010** requires you to give reasons to a child for confiscating the liquor. **CI.5** empowers you to dispose of confiscated liquor at the time of seizure if it is either:

- in a container which is unsealed or from which part of the contents have been removed, or
- likely soon to become, unfit for human consumption.

Do not dispose of any liquor which, in the circumstances, makes the disposal unreasonable or undesirable. As a general rule, keep bottles which can be sealed by a cork or screw top lid. Dispose of unsealed cans or bottles which cannot be sealed, at the time of seizure.

Ensure that any liquor disposed of does not remain or become available for consumption by any person.

When liquor is not disposed of at the time of seizure, inform the child of the following:

- the name of the police station where the liquor will be held
- that the liquor will be kept for at least 24 hours
- that a claim may be made for the return of the liquor at the police station.

Record the liquor as miscellaneous property in **EFIMS** and issue a receipt to the person from whom the liquor is seized. A receipt can be issued at the time of the seizure if required.

Returning confiscated liquor

Station officer

If a claim is made for the return of seized liquor it must be returned to the person from whom it was seized if:

- the person establishes s/he was at least 18 years old at the time of the seizure, or
- the person establishes s/he had a reasonable excuse for possessing the liquor, or
- the return of the liquor is justified in all the circumstance

You may refuse to return the liquor to a person under the age of 18 years if the person is not accompanied by a responsible adult.

Before seized liquor is returned satisfactory proof of entitlement to the liquor may be required including the production of the receipt issued for the seized liquor. Record the disposal details in **EFIMS**.

Disposal of seized liquor forfeited to the Crown

When it is no longer intended to keep seized liquor at a police station, dispose of it in the manner as for liquor forfeited to the Crown. Record the disposal details in **EFIMS**.

See: 'Exhibits' – Liquor Exhibits