

Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

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Youth workers and their role in the criminal justice system

Supporting young people through the legal process

As a youth worker, there is no doubt that you will often come into contact with young people who have been involved with the criminal justice system. This may be through a client, or through the request of the police asking you to come down to the police station as a support person for a young person under arrest.

To be an effective youth worker, it is essential that you familiarise yourself with the rights of a young person in relation to the law and the police. It is important that you understand the role of a youth worker and the capacity in which you can be of assistance to the young person.

A youth worker's role can vary to include:

- talking to young people about crime, rights and responsibilities
- making young people aware of legal and support services
- supporting young people when dealing with police or the criminal justice system
- writing reports for young people.

Police and court processes can be complex and daunting for anyone, especially young people. Many young people feel confused and disempowered when dealing with the system and can often be afraid to speak, or reluctant to listen to figures of authority.

At all levels, youth workers have the capacity to play a very important role. This chapter explains the role of youth workers in the criminal justice system, and provides some suggestions about how a youth worker can support young people.

Talking to young people about crime

It is important for young people to have access to good legal advice and to understand the legal processes available to them. It is equally important for young people to be aware of their rights and responsibilities before they come into contact with the system.

This is an area where youth workers can make a difference. Talking to young people about crime and responsibility can often be quite difficult. Youth workers are trained and focused entirely on working with young people, and are in a good position to talk to young people about these issues.

There are a few problem areas that youth workers can speak to young people about:

Internet and mobile phones

With the increasing use of social networking sites such as Facebook, Twitter, Bebo, MySpace, MSN etc, young people are regularly placing themselves in situations where they can be charged with different forms of criminal activity without realising that they have done something wrong.

Young people do not often comprehend the repercussions of their actions on these sites. A post made by a young person on a social networking site may initially be meant as a joke, but can often be misinterpreted and perceived by the recipient as threatening or abusive. This then leaves the young person open to allegations of cyber-bullying or intimidation.

Young people need to understand that posts on social networking sites, uploaded photos and video clips, and emails, are in the public domain and the content can be used as evidence to bring about criminal charges against the young person who originally posted the content.

Young people can also land themselves in trouble through the use of their mobile phones. Young people frequently record socially unacceptable (or illegal) behaviour such as fights, drag racing, burn outs or sexual encounters and post the content on sites such as YouTube, or circulate the content amongst peers. This then provides public access to such content, and leaves the young person open to prosecution for serious offences.

It is essential that young people are educated about the safe use of the internet and mobile phones. The youth worker is in an exceptional position to get this message to the young person as they are not perceived as a person of authority, but rather a person they can trust and speak to.

Alcohol and other drugs

Youth workers are in a good position to have an open discussion with young people and guide them through resources about alcohol and other drugs.

It is an offence for a young person under 18 to possess or drink alcohol in public, unless they have a reasonable excuse or are under the supervision of a responsible adult. If caught, their alcohol may be confiscated and they may be fined.

Drinking alcohol underage does not only have legal consequences, but also affects cognitive functioning. Alcohol affects each person differently and impairs proper brain function. Young people may take more risks and engage in harmful activity while under the effects of drugs or alcohol. Offences like assaults and malicious damage are often linked to alcohol use.

It is also an offence to possess or supply illegal drugs. While possession is a minor offence, supply can be very serious and young people often don't understand what is considered to be supply.

If police believe the young person intended to supply the drugs to another person, then they will be in much more trouble than if the drugs were for personal use. Supply doesn't just mean selling. A young person who buys a few pills and shares them with friends is guilty of supply.

A young person can be charged with *deemed supply* (ie presumed to be supplying a drug) if they are caught with a particular quantity of drugs in their possession. This does not have to be a large quantity: for example, if a person is caught with more than 0.75 grams of ecstasy in their possession they can be charged with deemed supply, even if they had it for their own personal use. It is then up to the young person to prove that they were not intending to supply the drug.

Group offending

As every youth worker knows, young people often hang around in groups. In a group situation, it is easy for a young person to get involved in an offence even if this is not what they intended.

The legal concept of *joint criminal enterprise* means that, even if a person is not physically involved in a crime, they may still be guilty if they assisted in some way, or if they were present, ready and willing to assist.

For example, if a young person acts as a lookout while a mate breaks into a house, or stands by ready to help while their friends roll someone, they are just as guilty as the people who were physically involved.

Getting involved in a group fight or punch-up is also dangerous. A participant in a fight can be held responsible for injuries inflicted by their co-offenders. Apart from the usual assault-type offences, participants in group fights can be charged with serious offences such as riot or affray.

Even more scary, if a group of people plan to commit an offence (eg robbery) and something goes terribly wrong (eg someone is killed), the concept of *common purpose* means that everyone could be guilty of manslaughter or even murder.

The 'Burn' film and website, developed by Legal Aid NSW, is an excellent resource for helping young people to learn about the dangers of group offending (see *Resources* on page 419).

Driving

For young people, getting a driving licence is increasingly difficult, and the rules of the road are becoming more complicated.

It's easy to see why some young people might be tempted to drive without a licence or without paying proper attention to the rules and regulations. Many young people have no idea how serious the consequences can be, until it is too late and they find themselves suspended or disqualified from driving for a very long time.

Youth workers have an important role to play in helping young people understand traffic laws and the consequences of breaching them. You may also be able to help young people overcome barriers to getting a licence – eg referring them to a lawyer to help sort out their fines, or referring them to a program which can help them get their Ls and provide driving instruction.

For more information see *Driving: rules and traffic offences* chapter.

Fake IDs

Young people should also be aware of the dangers of using fake IDs (especially driving licences) to get into licensed venues. While many young people (and youth workers!) may think this is pretty trivial, the penalties for offences involving fake IDs are becoming increasingly tough.

Supporting a young person when dealing with security guards and police in public places

Many people in our community feel intimidated or uncomfortable with the way young people use public space – especially when young people hang out in groups outside shopping centres and train stations.

What some people often forget is that young people are also members of the community and need a free space where they can relax and socialise. For many young people who are homeless or don't have a stable environment at home, shopping centres, skate parks and other public spaces are the only 'safe' places for them to hang out with friends.

These spaces are increasingly regulated by private companies, security guards, local council, police and the use of security cameras.

Young people often feel they are targeted by security guards and police officers – especially if they are approached, asked to move on, or requested to show their bags.

Youth workers can help young people understand the powers of security guards and police on the streets and in public places. For more information on their powers, see

chapters on *Security guards: what powers do they really have?* and *Dealing with police on the street*.

You may also be able to teach young people skills for coping with security guards and police in public places. This will help young people control and possibly defuse a situation that may otherwise escalate and land them in trouble.

Street workers and outreach workers interact with young people in public spaces, and are often present when police question, search, direct and sometimes arrest young people. Police often act much more respectfully towards young people when they are aware that there is a youth worker present.

Here are some tips for dealing with police on the streets:

- if possible, get to know your local youth liaison officer (YLO), local area commander and other key police in your local area. Sometimes, it is helpful to be able to ‘name drop’ (eg ‘the local area commander is aware of our service and is very supportive’) to general duties police on the street
- where possible, position yourself with a young person to make it clear that you are their advocate and are on their side
- tell the police that you know the young person and reassure them that you are not there to make trouble
- advocate for the young person’s rights
- if the police want to search or question a young person, ask that the young person be given the opportunity to call the Legal Aid Hotline from your phone
- where possible, mediate between the young person and the police
- don’t get arrested yourself! If the police give you a direction and won’t listen to you, move away and observe from a distance
- subtly record the police officer’s name and/or badge number, car number plate etc, without escalating the situation
- remember, you can be an important role model for young people. You can help educate them how to communicate assertively with police in a respectful and constructive manner.

ASSISTING A YOUNG PERSON IN TROUBLE WITH POLICE ON THE STREETS

– **Leah Cruickshank**, Children’s Court Support Coordinator

Leaving work I was on my way to the train station when I noticed a young man sitting on the park bench, handcuffed, surrounded by three police officers. The young man looked uptight and was starting to become slightly vocal with the police. Other people

in the area or who were walking past were starting to gather and stare at the young person, which was clearly adding to his agitation.

I walked over to where the young person was and luckily I had a business card on me but had I not I would have done the same thing. I introduced myself to the police and provided them with my business card. I introduced myself to the young man and asked what appeared to be the problem. The police stated that the young person was under arrest. I said to the police 'I am just going to sit next to the young person and have a chat'. I don't think they were impressed but did not say anything.

I sat next to the young person and explained who I was and my role at my workplace. I explained to the young person that I noticed he was agitated and I was concerned. The young person went onto to say the police had arrested him for no reason and that they were dogs. I explained to the young person that whilst it's hard and embarrassing getting arrested, getting angry and abusive towards the police officers would only result in more charges (the *trifecta*).

After speaking with the young person, and listening to his story, he realised I was there to help and he calmed down. I was able to speak to the police on behalf of the young person. The officers said that they were going to take him down the station and it would be up to the custody manager whether he got bail or not. I explained to the young person what was going to happen, that he would be taken to the police station and formally charged and that the sergeant at the police station would decide if he got bail or not. I told the young person that he had the right to a support person and, being only 15, he was not allowed to waive that right.

I explained to the young person that his parents would need to be contacted. He asked me whether I would contact his mum if he gave me her number. I called the young person's mother in front of the police who were happy for me to call her as a means of calming the young person down. The young person's mother was extremely thankful for the call. I asked the young person whether he wanted me to attend the police station and wait with him until his mum arrived, but he said no, he would be OK.

I gave the young person one of my business cards and told him that when he finds out when he will be at court, that I would see him on the day at the court house as this was my place of work. In the meantime if he or his mother had any questions they could contact me at any time.

I made sure the young person knew he had to wait until his mum got to the station before he spoke formally with the police and that he was entitled to free legal advice. The police assured me they had the number for the Children's Legal Service Hotline. I also explained to the young person that when he came to court, I would be able to organise free legal representation on the day, so he didn't need to panic.

Once again before I left I reiterated to the young person to stay calm, and if he had any problems to get mum to call me straight away. I did receive a phone call from his mother approximately an hour and a half later and she was crying, saying that he had been refused bail and they were going to lock him up in jail. She didn't know what to do. I explained that I understand that she is upset but she needs to stay calm and that her son would be ok. I explained to her that her son would appear in

court the next day and that she should go home and come back to the court in the morning and that I would meet her there.

The next morning I met mum at the court. I was able to ensure that she spoke with her son's legal representative and a representative from the Department of Juvenile Justice. Later that morning, her son appeared before the magistrate who listened to what the lawyer had to say. The magistrate granted her son bail. Before they left the court house both the young person and his mother gave me a big cuddle and thanked me for my help. They felt it made such a big difference and would not have known what to do if I had not been there.

Supporting a young person at the police station

Sometimes the police may ask you to come to the police station to sit in on a police interview with a young person under 18, or you might be asked to be a support person for a young adult who is a *vulnerable person*.

As a youth worker, it is important to familiarise yourself with the rights of a young person during interviews and in police custody. Otherwise you may unwittingly help the police to get evidence to use against the person in court.

For more information about the law, see chapters on *At the police station* and *Police questioning*.

The right to a support person at the police station

Under 18s

Most youth workers would be familiar with section 13 of the *Children (Criminal Proceedings) Act 1987*, which requires an independent adult to be present when police are interviewing a person under 18.

The *Young Offenders Act 1997* imposes a similar requirement. For a young person to be given a police caution or referred to a youth justice conference, they must admit to the offence in the presence of an appropriate adult.

A person under 18 is also a vulnerable person according to the *Law Enforcement (Powers and Responsibilities) Act 2002* and is entitled to have a support person present during any *investigative procedure*, including questioning. A person under 18 cannot waive their right to a support person.

For more details, see *Your rights in police custody* on page 136 and *Police questioning* chapter.

Other vulnerable people

Normally, when adults are being interviewed by police, there is no requirement to have an independent person sitting in.

However, if the adult is a vulnerable person he or she has a right to have a support person present during any investigative procedure, including questioning.

Under the *Law Enforcement (Powers and Responsibilities) Act 2002*, a *vulnerable person* is someone who:

- is under 18, or
- is an Aboriginal or Torres Strait Islander, or
- is from a non-English speaking background, or
- has impaired intellectual, mental or physical functioning (eg a mental illness or disability).

A vulnerable person who is 18 or over may waive the right to a support person (choose not to have one). If the vulnerable person doesn't waive their right to a support person, or the police don't ask, failure to have a support person might mean police can't use a record of interview against the person in court.

Tasks for the advocate or support person in police interviews

So what should you do as a support person during a police interview?

Know the law

The first thing for you to understand is the young person's rights in police custody and in interviews. See *Your rights in police custody* on page 136, and *Police questioning* chapter.

Support people are more than just observers

A support person is not just an observer. You can assist and support the person being interviewed, observe whether the police conduct the interview fairly, and identify communication problems. The police custody manager must inform you of this role.

Police can exclude you from an interview if you unreasonably interfere with it, but if this happens the person can have another support person of their choice present. If the police ask you to leave the interview, or if you are unsure or unhappy with the way the interview is conducted, you should pass this information on to the person's lawyer.

You can be called to give evidence in court about the interview. This doesn't happen often, especially as more and more interviews are videotaped these days.

What you should do as a support person

Introduce yourself

Introduce yourself and explain your role to all police you deal with, and especially to the young person. Check that the young person is happy for you to be there (they may not realise that they have a choice).

Speak to the young person in private and explain their rights

Ask for five minutes alone with the young person before the interview. Police must allow you reasonable facilities and time to communicate in private.

Introduce yourself (if you don't know the person already) and explain your role. Ask the young person how they have been treated. While it is not your role to give legal advice, you can explain their basic rights, especially the right to silence. Check that the young person understands these rights, and ask if they want your help in exercising their rights.

If you don't get time alone, introduce yourself to the young person and explain their rights anyway, before any interview starts. If police have already started interviewing the person, ask them to suspend the interview.

Explain about legal advice

Explain to the young person that they should speak to a lawyer before they answer police questions. They have the right to ring a lawyer from the police station.

The Legal Aid Hotline for under 18s is a free, confidential phone service where lawyers advise young people on criminal matters (phone 1800 10 18 10, 9am-midnight weekdays and 24 hours on weekends and public holidays).

The Aboriginal Legal Service has a custody hotline. Although this number is not publicly available, the police have the number and must call it if they have an Aboriginal or Torres Strait Islander person in their custody.

Alternatively, the young person may contact a lawyer of their own choice.

As well as getting legal advice over the phone before being interviewed, everyone has the right to have a lawyer present in a police interview. For under 18s and other vulnerable people, the lawyer may fulfil the role of support person, or may be there in addition to a support person. Unfortunately, most free legal services don't have the resources to send lawyers to police stations, but there is no harm in asking.

For more information, see *Getting legal advice and assistance* chapter.

Help the young person exercise their rights

For under 18s and other vulnerable people, a support person is more than just an observer. Your role includes helping the young person to understand and exercise their rights.

This is particularly important where the young person wants to assert their right to silence. You should make it clear to the police that the young person does not wish to answer any questions.

Sometimes the police will ask the young person to sign the police officer's notebook, saying that they do not wish to be interviewed. You may be asked to sign as a witness. This is fine, as long as you and the young person are clear about what you are signing.

Sometimes the police will tell the young person that they have to go on ERISP (ERISP stands for Electronically Recorded Interview of Suspected Person. It is a police interview with a suspect, recorded on video and audio CD) to record their refusal to answer questions. Beware – this can be a trap! Once the tape starts rolling, some police officers will take advantage of the situation and start asking questions, hoping to get a response from the young person.

While police cannot force a person to be electronically recorded, they are sometimes pretty persistent and persuasive! It is sometimes easier for the young person to cooperate with the police and agree to go on ERISP to say they do not wish to answer questions. As a support person, you should make sure that the electronic interview goes no further than this. If the police start saying 'I just want to put these allegations to you, in fairness to you ...', you should politely but firmly remind them that the young person does not wish to answer any further questions.

Assist with understanding and communication

Help the young person to understand what the police say, if necessary. Point out any possible misunderstandings on either side. Ask for an interpreter if the person wants one or you believe they need one.

You may also be able to give the police important information that might influence the way they deal with the young person (eg they might not know that the person has a mental illness or intellectual disability).

Deal with any concerns

Advocate on the young person's behalf to the police about any concerns you have about the interview.

If you believe that the person cannot communicate or does not wish to answer questions, point this out to the police and suggest that they end the interview or take a break.

Make notes during and straight after the interview of any concerns you have.

Record of interview

Sometimes the police ask the support person to sign a written or typed statement or record of interview.

You don't have to, and there is usually no advantage to the person if you sign. If you are unsatisfied with the interview in any way, do not sign. If you are satisfied that

the interview was fair and the person was able to exercise their rights, you can sign it.

Assist the young person to get a copy of any written statement or audio CD.

Exchange information

Write down relevant information about the interview, including at least the young person's name, phone number and date of court appearance (if known).

Inform the young person about the lawyers and court support workers at court, and about how to get advice or assistance before the day of court. Give the young person phone numbers for legal advice, or organise an appointment for them.

You should avoid

- being rude or aggressive or treating the police or the young person with disrespect
- advising the young person whether to answer specific questions
- giving the young person legal advice
- annoying or frustrating the police to the point where they tell you to leave
- letting any personal feelings about the police, the young person or their alleged crime get in the way of advocating for and supporting the person.

Some other possibilities

- Encourage the police to use their options under the *Young Offenders Act* if the young person is under 18. Perhaps it can be dealt with by a warning, caution or conference (see *Young Offenders Act: warnings, cautions and conferences* chapter).
- Help the young person get legal advice about getting a caution or conference. The police cannot give the young person the option of a caution or conference unless the young person admits the offence, but the youth worker should urge the young person to get advice before they admit anything (see *Should the young person admit the offence in order to get a caution or conference?* on page 161).
- If police are commencing court proceedings, encourage them to use a 'no bail' court attendance notice, or to grant bail (see *How police deal with you for alleged offences* on page 147 and *Bail* on page 250).
- Help the young person to get a lawyer for court (see *Getting legal advice and assistance* chapter).
- Help the young person to complain about police actions if necessary (see *Complaints and cooperation: working to improve police practices* chapter).

- If the young person has other needs such as accommodation, income support or health needs, refer them to appropriate services.

Does the adult's presence help the young person?

Sometimes the only evidence the police have is what the young person tells them in the presence of the adult in a legally-obtained statement. Many adults encourage young people to immediately tell the whole truth to the police. The adult should advise the young person to say nothing until they have spoken to a lawyer.

Even where the police follow the law about having an adult present, a statement may not have been voluntary, or may have been obtained unfairly or illegally. The court has discretion to exclude such statements. For example, if the police made a threat or promise which persuaded the young person to make the statement, or if the young person didn't understand the police officer's questions because of language problems or intellectual disability, the court should not take the statement into account.

SITTING IN

– **David Crispe**, youth worker and ex-police officer

Somehow some plain clothes police tracked me down at the youth service and asked if I could come to the station and sit in on an interview with a juvenile. I went to the station and met one of the arresting police officers. I asked: 'Who is he and what have you got him for?' They told me the details.

The police then led me through to the detectives' office and into an interview room. In the room was Vik (the young person), another police officer, and a desk with a large square interview machine on it. The police introduced me to Vik and told him who I was. I was just plucking up the courage to ask for five minutes alone with Vik (which is his legal right) when both the police left the room for something. I told Vik that I was a youth worker and was not attached to the police in any way. I also said: 'Do you know that you don't have to answer any of the police questions if you don't want to?' When he said 'Yes', I reworded the question again just to make sure he knew.

I told him about the Legal Aid Hotline for under 18s which he could ring before the interview. He said that the police already told him about it and he didn't want to talk to a lawyer. I asked if he was sure ('Lawyers often point out things that the rest of us don't know about, that help with the case', I said). He was sure. I told him that after the police release him I could help him with any other issues he had if he wanted me to.

Vik was 17 and knew a lot about police procedures and court, so I just chatted with him. If he was not so experienced, I would have to work a lot harder to gain his trust as quickly as possible and explain what I needed to.

The police came back in the room and closed the door. They put three audio tapes and one video cassette in the ERISP machine.

The police began the interview. First, they rambled on with a whole lot of legal mumbo jumbo and introduced each person in the room. They asked me to say my name, spell my surname, and say which agency I was from. (Make sure that you actually speak and don't just nod if they ask you a question, so it is recorded on the audio tape.) Then the police asked Vik a number of questions about the alleged offence. This took about 30 minutes. When they finished their questions, a station sergeant came in and asked Vik a number of questions along the lines of Did the police threaten, intimidate, or promise you anything to make this statement?

After the interview, Vik got one audio tape, the arresting police got one, and the other one with the video was sealed for court. Then they said that I could either leave or wait in the foyer for Vik. I had another appointment to go to, so I gave Vik my name and number and said if he needed anything to give me a call.

This interview went really smoothly, nothing dodgy happened, and I didn't need to intervene. Believe me, they don't always run this smoothly. Be prepared, some cops are rude, and can give you and the young person a really hard time.

Supporting a young person when dealing with lawyers

Young people are often reluctant to contact legal services for help with legal problems. This may be because they are overwhelmed and stressed about their problem or because they don't know what services exist or where they should go.

Youth workers have an important role to play in helping young people deal with lawyers. Young people often have problems trusting lawyers and are reluctant to open up to them. It is helpful if the youth worker reassures the young person beforehand to facilitate a positive meeting with the lawyer. If the youth worker knows and trusts the lawyer, the young person is also more likely to place their trust in the lawyer.

Facilitating referrals to legal services

Youth workers can facilitate referrals to legal services by:

- identifying that the young person has a legal problem and needs legal advice
- clarifying the nature of their problem – this may sometimes involve making a few phone calls or inquiries
- finding an appropriate legal service – this may involve making a few phone calls and checking that they can assist. It helps if you have a good relationship with your local Legal Aid Office, Aboriginal Legal Service, Community Legal Centre or other legal service. See *Getting legal advice and assistance* chapter

- making the first call to set up an appointment or passing on the referral information to the young person and taking steps to ensure that they follow through
- taking the young person to the appointment with the lawyer and sometimes sitting in on the interview.

Assisting young people in interviews with lawyers

Your presence at the interview

Your presence at a young person's meeting with their lawyer can be very helpful. On the other hand, sometimes it is not appropriate for you to sit in. Here are a few things to consider:

Your client's wishes

Obviously, you should first establish whether the client wants you to be with them when they see their lawyer.

The lawyer's view

Explain your role in the young person's life to the lawyer at the start of the interview.

Sometimes the lawyer might not want you in the interview, regardless of the client's wishes. Don't assume that this makes them a bad lawyer – there are often good reasons for a lawyer to interview the client alone.

However, some lawyers may simply not realise the benefits of having a youth worker or support person present. If you suspect this is the case, explain that you understand the need for confidentiality, and that you will help, not hinder, clear communication between the client and lawyer. You might also help to speed up the interview. If necessary, point out politely that your client asked you to be present at the interview and that it is really the client's choice.

Confidentiality and legal professional privilege

Almost everything a client tells their lawyer is confidential. Lawyers are strictly bound by *legal professional privilege* and must maintain confidentiality, unless it would assist the client to commit (or continue committing) a crime.

Lawyers don't have to maintain confidentiality if the client has *waived* privilege, meaning the client has disclosed the information to other people so it is no longer confidential.

If it is necessary to have someone else in the interview to enable communication between the client and the lawyer (eg an interpreter), legal professional privilege is maintained. The other person is not allowed to reveal what was said in the interview, without the client's consent.

If the presence of a third person is not necessary for communication, it is arguable that privilege is waived by the presence of a third person in the interview. However, in many cases it could be said that a youth worker's presence is necessary to facilitate communication between the young person and their lawyer and, therefore, the conversation is privileged.

If you are unsure about privilege or confidentiality, talk to the lawyer before starting the interview.

If you do sit in on the interview, you should assume that you have a strict obligation of confidentiality. So regardless of your own workplace rules or what you would like to do, you can't pass on anything you hear in the interview to the police, the magistrate, family, other welfare workers or anyone else without the client's permission. However, there are a couple of exceptions:

- If you are a professional who works with children in the course of your professional or paid employment (eg, a youth worker), you are classified by law as a *mandatory reporter*. Section 27 of the *NSW Children and Young Persons (Care and Protection Act) 1998* requires you to notify the NSW Department of Human Services – Community Services (DoCS) if you have reasonable grounds to suspect that a child under 16 is *at risk of significant harm*. The threshold of reporting was raised from 'risk of harm' to 'risk of *significant harm*' as at 24 January 2010 after the introduction of the *Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009*. This legal obligation does not apply if you are a friend or relative providing support.
- If you are later subpoenaed to give evidence in court about what was said in the interview, you may be forced to disclose it. It is unlikely this would happen, but it is possible. If you are subpoenaed, get legal advice – you may be able to claim privilege and be excused from having to disclose the information.

Clients often don't know about their right to confidentiality, and so they might leave out important information. You and the lawyer must explain that anything the client says at the interview is confidential (subject to the exceptions outlined above).

If you are a potential witness

Sometimes you may be a potential witness in your client's case. For example, you may have witnessed the police searching and arresting your client who has been charged with the trifecta.

A youth worker who is potentially a witness can still help the client to access legal advice. However, you should not sit in on the meeting with the lawyer, at least not when the evidence is being discussed.

If you think you may be a potential witness, let the lawyer know. He or she will probably want to interview you separately.

Helping with communication

Lawyers vary greatly in their ability to engage with and communicate effectively with clients, especially with young people. So support workers should assess whether the needs of the client are being met in the interview.

While you should avoid speaking for the client, you can ask questions to clarify things, and you should encourage the client and lawyer to ask each other questions to avoid confusion and improve communication. Interpreting what the lawyer says is sometimes a major role for the support worker as even the best lawyers still use legal jargon from time to time.

Occasionally communication between the lawyer and client becomes frustrated, heated or stops altogether. If this happens, you may need to mediate or negotiate a solution.

Foreign language interpreting

If a young person is not fluent in English, you can help identify the need for an interpreter, and possibly help organise one, in advance of the meeting with the lawyer.

In some cases a family member, friend, or a youth worker who speaks the client's language may be able to act as interpreter. However, none of these people is an appropriate interpreter if they are a potential witness or if they would hamper the young person's ability to speak frankly. It is better to have an impartial, trained and qualified interpreter.

You or the lawyer should be able to arrange an interpreter through the Translating and Interpreting Service (TIS). If the client is being represented through Legal Aid or a Community Legal Centre, this service is usually free.

At court, an interpreter will be arranged for your client if necessary.

Young people with special needs

Often lawyers only have a short time to interview each client and they may not pick up that a person has a disability or mental illness, and so has special needs. They might also miss out on important information about the young person's background – a young person might leave out this information due to shyness, lack of time or because they don't think it is relevant.

This is where the youth worker's role is crucial. If you know that a person has special needs, you may wish to sit in on the interview with the lawyer, or provide the lawyer with relevant information or documents.

Supporting a young person at a youth justice conference

Role of the support person

There is no set role for a support person at a conference. One of the first things support people should do is to ask the victim or offender (whoever has invited them) why they want them to come along and what they are required to do at the conference. There are a number of roles for a support person to play, depending on the victim or offender, the support person's relationship with them, and the other people attending the conference.

Anyone appearing as a support person needs to be familiar with the *Young Offenders Act 1997*. Most of it is in plain English and Part 5 – *Youth justice conferences* is fairly short and easy to read.

An understanding of the young offender's rights and the victim's rights is important so that the support person can help the person prepare for the conference and to think about what could be part of the outcome plan.

At the conference, support people are asked by the convenor to introduce themselves in relation to the offence and the offender or victim. This is a good time for support people to declare their role in supporting the person. Not only will this be positive for the person, but it also means that the other people present understand who the support person is and why they are there.

The support person should also encourage the young person to get legal advice if any legal issue or uncertainty arises during or after the conference.

After the conference, you may be asked to monitor some or all aspects of the *outcome plan*. Your involvement can be of great assistance to the young person, but be aware that if the young person does not follow through with the outcome plan, you will be expected to notify the conference administrator at Juvenile Justice.

For more information see *Young Offenders Act: warnings, cautions and conferences* chapter.

SANDRA'S ACCIDENTAL CONFERENCE

– **Sandra**, youth worker, western Sydney

Our community centre was the location for a conference for a 12-year-old boy from a non-English speaking background whose family we had been working with. As the conference was to be held at our centre and I had ongoing contact with the boy's brothers, I asked to attend the conference as an observer to familiarise myself with the process. The convenor checked with all the people who would be there, and approved my attendance on that basis.

As the boy had only his 16-year-old brother (who was a great asset) with him, my role as observer turned into support person by default. The young person was accused of damaging school property (not his own school), had admitted to the offence and was willing to make use of the conferencing process rather than go to court.

My main role was to make sure that the young person understood what was said during the conference process and that he fully understood the conference outcome plan. Due to his age, his low English literacy level and that he was not accompanied by a parent or an interpreter, I felt that this young man was vulnerable in the conference process.

I was able to speak at any time during the conference to ensure the young man understood what was being said. Everyone at the conference had an opportunity to speak and the process was quick – approximately 30 minutes because everyone had a similar goal – to deal with the offence and move on. (Beats a long and boring day at court!)

The principal suggested a letter of apology. Then the principal and the others left the room while the young man, his brother, and myself constructed the conference outcome plan – the details of how he would do the letter. I was concerned that he may not have the skills to write even a simple letter, so I asked him if a letter was okay. He kept saying yes – basically I think he just wanted to get out of there.

So I offered him assistance from our centre in putting the letter together. I suspected that this would be essential to the success of the outcome plan due to his literacy level.

Overall the atmosphere during the conference was relaxed and respectful, and everyone had coffee and cake at the end!

Supporting a young person on bail

Young people (especially under 18s) facing court proceedings often have very strict bail conditions. These may include residential, reporting, non-association, place restriction and curfew conditions.

As a youth worker you can help ensure a young person understands, and is able to comply with, their bail conditions. If the young person is having trouble sticking to their conditions, or you think this might be a problem in the near future, you should help the young person to make a bail variation application. Being proactive about this will save a lot of hassles (including arrest and detention) later on.

If you are aware that a young person has breached their bail conditions, you have no obligation to notify the court or the police, unless you have previously given an undertaking (a promise) to notify the court in the event of a breach. If you are aware of a breach of bail, try to help the young person get their bail varied before they get arrested for the breach.

For more information about bail and how to get it varied, see *Bail* chapter.

Supporting a young person at court

Attending court can be a very intimidating experience, especially for a young person who is not familiar with the surroundings and processes of the court.

Youth workers can help by answering questions young people and their families may have, writing a reference or report, and by providing support to the young person at court.

Young people at court can range from feeling insecure and shy to being cocky and arrogant. Either way, most of them do not understand much about court, unless they have been through court several times before. The more you understand about court, the more assistance you can give your client. Although it is the responsibility of the court and the lawyer to explain things to young people, these people are often too busy, so the more you can explain, the better.

For more information about court processes, see *Going to court* and *Outcomes of court* chapters.

Role of support people in court

Support people can be very useful during court cases. Here are some pointers.

Entering and leaving the courtroom

When you enter and leave the courtroom, it is traditional to give a slight bow to the magistrate. Members of the public often don't know about this, and it helps if you make sure the young person knows about it, so they are seen to be showing respect to the court.

Seating

Usually there is a special seat for the defendant in the courtroom, either behind the lawyer or at the side of the room. The court officer will often direct the defendant to that seat.

Often the court officer directs you, the support person, to sit up the back in the family seating. However, you are more use to the defendant if you are close enough to speak to them during the court case. There is no rule stopping you from sitting next to the defendant (except if they are in custody). Often all it takes is the confidence to just walk up and sit next to your client. If anyone asks what you are doing, simply explain that you need to be next to your client for support.

The advantage of being near your client is that you can talk with them. There is no black and white rule that you mustn't talk in court, but make sure you don't distract anyone else (especially the magistrate!) so talk very softly. You can also talk to the lawyer if necessary. (The regular officials in court talk to each other all the time, often quite loudly!)

Talking with your client is very important so that you can, explain what is going on, answer their questions, and help them to instruct their lawyer on things that come up such as bail conditions or possible sentencing options.

Speaking to the magistrate

Normally, the support worker doesn't speak directly to the magistrate. In the Children's Court the magistrate might ask who you are when you come in. Just tell them your name, organisation and that your client asked you to come into the courtroom as a support.

If you wrote a reference or report for the magistrate, then occasionally they may ask you something about it. Sometimes a magistrate may ask a support worker something about bail or sentencing, especially if the magistrate thinks you might be able to help the client with these things.

If you want to say something to the magistrate, you should always discuss this with the client and their lawyer, preferably before you go into court.

In more serious cases, especially in the District or Supreme Court, you might be asked to get into the witness box and give evidence about your client's character, personal circumstances and so on.

References and court reports

What is a reference, court report or support letter?

There is a subtle difference between a *character reference*, a *court report*, and a *support letter*, although these terms are often used interchangeably.

A *character reference* is usually along the lines of 'she's a good person and wouldn't usually do this kind of thing'. However, a *court report* would typically be more detailed and written by a professional person (eg a youth worker or psychologist). A *support letter* would usually be less detailed than a court report and would often outline what you or your service is able to offer the young person.

There is another type of court report: an official background report from Juvenile Justice or a pre-sentence report from Probation and Parole (see *Background reports and pre-sentence reports* on page 340)

How are references and reports used?

Offenders and their lawyers use court reports and references to help get an appropriate sentence. Sentencing occurs after the person pleads guilty, or if the court finds them guilty. So when the magistrate or judge reads your report, the court has already decided that the person is guilty.

Another reason for a reference or report is to help someone get bail or to change their bail conditions.

How to write a court report

Youth workers will often need to write a court report. Below are some tips on writing an effective court report.

Find out the purpose of the report

Who is asking for the report and how will they use it? For example, is it for sentencing or is it to help a young person get bail?

Get some background information about what sort of issues it is useful for you to include, and check with the young person or their lawyer about anything that is inappropriate to include in the report.

Who else is writing a report?

Find out who else (if anyone) is writing a report and try to get some idea of its content. If it is for sentencing, there may be a background report prepared by Juvenile Justice or a pre-sentence report prepared by the adult Probation and Parole Service (see *Background reports and pre-sentence reports* on page 340).

Sometimes it helps if your report is consistent with other reports, but don't repeat everything. On the other hand, don't hesitate to say something different to the official report if you have greater knowledge of the person or a different perspective.

You can also put your knowledge and views about the person directly to the officer who is writing the background/pre-sentence report – get the client's permission, then ring up the JJO or probation officer and say that you can help them by providing relevant information.

How long should the report be?

This depends on the purpose of the report. For busy magistrates who have to read a lot of material, short and sweet is usually best. One or two pages is a good length.

However, a more detailed report may be necessary for serious matters, or if the young person has significant problems worthy of detailed comment. If your report is lengthy, use headings to make it easier for the magistrate or judge to read.

Who to address it to

Find out who to address the report to. You would usually address it to *The Presiding Magistrate* (at the Children's or Local Court), or to *The Presiding Judge* (at the District or Supreme Court).

Who are you?

Outline early on:

- who you are, including any relevant qualifications
- something about the service you work for

- how long you have been working with the young person and in what capacity.

Make it clear that you know why the person is in court

This is really important. Without this acknowledgment, the report will not have a lot of credibility. It shows that you have made your assessment of the young person in light of the current circumstances. Sometimes you may even be able to say that their behaviour in committing the crime is out of character.

Make it personal

Magistrates get pretty sick of seeing the same standard report again and again, with just the young person's name changed.

While it may be useful to work from a template – and while many young people's circumstances may be depressingly similar – make sure the report conveys a sense of your client as an individual.

Only talk about what you know

Try to limit yourself to things you have a personal knowledge of. Sometimes you have to rely on what the person has told you (eg about their family background). This is OK but don't try to pass it off as your first-hand knowledge.

Background information to put the offence in context

If you are preparing a report for possible sentencing, ideally it should include some information that provides some background or context to the offence.

This may include:

- family background
- education or employment history
- alcohol and other drug problems
- homelessness
- intellectual disability or mental illness
- community activities or sport.

Be sure to explain how these factors have contributed to the offence. Do not include large amounts of background information if it is not relevant – in some cases it may harm your client's case. If in doubt, discuss this with the young person's lawyer.

Rehabilitation and support

Although the magistrate or judge may be very sympathetic about a young person's difficult background, this will not be enough to ensure a good outcome. The court will want to see the young person taking steps towards rehabilitation, so as to reduce the likelihood of them reoffending.

Therefore it is helpful to include comments about:

- the young person's feelings of remorse or regret for what they did
- any steps they have taken or plans they have made to solve problems and change their lifestyle
- your future involvement with the young person – what you or your organisation can offer them and how this will assist with their rehabilitation.

Suggestions and recommendations

It is not your role to tell the judge or magistrate what to do. However, it is OK for you to suggest appropriate sentencing options, recommend suitable programs, and outline how you or your agency can help.

Be positive, but don't ignore the truth or make excuses

Of course you will want to emphasise the positive aspects about the young person, to help them get bail or a more lenient sentence.

But don't sound like you are making excuses or justifying the crime, and don't be afraid to raise negative points (especially if they are blatantly obvious).

If the report is for sentencing, don't say that the person denies doing the crime

At sentencing, the court has already found the young person guilty, so now isn't the time to say they didn't do it. This is called *traversing the plea* and can lead to lots of headaches at court.

If the young person is adamant about their innocence, you should make sure they get legal advice about appealing against the finding of guilt or withdrawing their guilty plea.

Practicalities

Put the report on your organisation's letterhead if you have one.

Remember to sign and date the report.

Give the report to the young person or to their lawyer. If you are handing it to them at court, it helps to provide two copies (one for the lawyer to keep and one for the prosecutor) along with the original.

If you are in court when the magistrate reads the report, be prepared to answer questions if they ask you anything (this only happens sometimes).

IF YOU DON'T FULFIL YOUR PROMISES ...

What if you tell the court that you intend to accommodate the person or provide them with some type of welfare service, and then you don't provide the service for some

reason? As long as you were honest about your intentions, you won't get in trouble with the court if this happens.

This is not the same as *going bail* or *surety* for someone. If you go bail, you can lose money if the person doesn't show up to court (see *Bail* chapter).

Supporting a young person after court

After court, a young person may have various obligations including:

- paying fines, court costs and victims compensation levies
- reporting to Juvenile Justice or Probation and Parole as part of a bond, probation or parole order
- doing community service hours
- other obligations such as the Sex Offender Register.

For more information about these obligations, see *Outcomes of court* chapter.

Just as you can help a client on bail to understand and stick to their conditions, you can help a client to understand and fulfil their obligations after their court case has been finalised. Sometimes this may involve referring the young person for legal advice, or putting them back in touch with the lawyer who represented them in court, to have these things explained to them.

If you or the young person think the outcome was a bit harsh, or are not sure, you also have a role to play in ensuring the young person gets legal advice about their appeal rights.

THE ETHICAL DILEMMAS OF LEGAL SUPPORT WORK: A GUIDE FOR YOUTH WORKERS

– by **Leora Hirsch**, **Vik Craig** and **Anh Nguyen** (youth workers)

As a youth worker, some of the young people you deal with may have legal problems. Part of your role may involve supporting them through a legal process. The following describes some situations where legal support work presents a range of ethical dilemmas, where workers may be forced to confront their personal and organisational ideologies.

Police interviews

Possibly our first foray into the criminal justice system is as an independent adult support person for a police interview. When a young person under 18 years old is interviewed by police, an adult must be present during the interview. Sometimes we are called because the young person has asked for us, other times it is because we are known to the local police through community networks.

Youth workers have spent much time debating the pros and cons of attending police interviews. Sometimes a young person feels more inclined to make a statement (sometimes incriminatory) because a worker is there. It is not always easy to let a young person know their rights in the presence of a couple of burly police officers. It is best to ask the police officers for five minutes alone with your client (the police must allow you reasonable facilities and time to communicate in private). Further to this, we risk jeopardising an already tenuous police-youth worker relationship if we 'subvert' the interview. For many of us, there is a real fear that if we don't attend the interview, they'll just get that old bloke from the charity up the road who won't tell the young person their rights. It is important to note that as youth workers, it is not our role to give legal advice, we can only provide young people with general legal information. If in doubt it is always best to help a young person get proper legal advice.

Another issue may arise with youth workers giving their mobile phone number to young people. This can result in late night phone calls to come to a police interview. As it's not uncommon for police interviews to happen between 7pm and 3am, instant decisions have to be made regarding after-hours work. On a personal level, you need to ask yourself whether you are willing to be on call in this way.

A youth worker should be familiar with the *Young Offenders Act*. Under the Act, if a young person under 18 admits guilt in front of an adult, they may, depending on the circumstances, get a caution or go to a youth conference instead of court. It is our responsibility to keep informed so we can then give young people accurate information about what happens with cautions and conferences. We should also urge them to get legal advice from the Legal Aid Hotline for under 18s before deciding whether to accept a caution or conference or not.

Police-youth worker relations

Often we encounter police who say that youth workers are encouraging bad behaviour in young people by advocating on their behalf. The best way to counter these attitudes is through engagement and dialogue with the police, and making sure that both the objectives and the role of your agency are clearly understood. It may be best to build this relationship with police behind closed doors. Youth advocates work to achieve a fair and just outcome for young people within the framework of the law. This does not mean that you condone criminality or law breaking. We are concerned with ensuring that young people get a fair go with the system and that their rights are respected, and that they are not targeted unfairly. If the laws are unfair, then it may be appropriate to advocate for systemic change.

Court support

Police are not the only ones who can be intimidating – some lawyers can be pretty pushy too. Sometimes there are good reasons for this but sometimes it's due to a lack of understanding on the lawyer's part. We should assure the lawyer that we are well informed of legal processes and keep the young person's interests in the foreground. If the young person clearly wants us to be present then we must insist on this regardless of the lawyer's wishes.

Legal Aid children's solicitors now work at Bidura, Parramatta and Campbelltown Children's Courts. The Legal Aid lawyers that we have dealt with are very good, and appreciate the involvement of youth workers in the court case.

However, it is important to be clear about our role as youth workers doing legal support work. It is not our place to give legal advice, particularly about a young person's plea. There is a huge role for youth workers to play within the legal system, without stepping on the lawyers' toes.

Possibly the least controversial step in court support work is referral for legal advice. The introduction in 1998 of the Legal Aid Hotline for under 18s means that we can now ensure that every under 18 year old gets advice before court, sometimes even while they are at the police station, or even on the street.

Court support work requires a basic youth work philosophy regarding the powerless position young people hold within our society; that some risk-taking is a natural and acceptable part of adolescence and that the marginalised young people we work with have few resources and options available to them. While this statement is not meant to condone offending, behaviour needs to be viewed within this context and it is a vital part of our role as youth workers to advocate on young people's behalf.

There are several levels of court support, all of which need the young person's consent before they can be performed.

The first is a written reference for the court. If you have a good relationship with a young person it is not difficult to write a little about their situation and about the positive aspects of your relationship with them.

The second level of involvement is attendance at a young person's court case. This may involve ensuring that the young person has transport to court, providing emotional support when they are likely to be anxious, making sure that they understand the process and what their lawyer is saying to them. It may also involve speaking to the court in support of the young person. As with a court reference, we should tell the magistrate about aspects of the young person's background that may impact on the case and about our involvement with the young person. This should be discussed with the young person and their lawyer first.

A worker should not perjure themselves (lie in court), but they should draw out as many positive aspects they can. A major problem can be that we are never sure how true our information is. A young person may tell you they've been working for a few weeks, and this information becomes part of your testimony, and only after court do you find out that the young person's job was a figment of their vivid imagination.

We must admit, on occasion, when supporting a young person who is up on a particularly heinous charge it can be difficult to find many positive things to say. Let's be realistic – sometimes a bit of emotional support is all that can be offered. We can also provide background information about the disadvantages that a young person has faced to help the magistrate be sympathetic to the young person.

Communicating with the young person's lawyer may provide information that is useful for the young person's case.

Repeat offenders

Most people, including some youth workers, are less interested in supporting repeat offenders. It is this group which is often the most difficult to reconcile our agencies, and ourselves, to work with. How do we justify to our management that we are going to court with that young person again ... on the sixth charge in so many weeks?

If you are assessing the value of your court support work, a whole new set of questions arise:

- Are we making court too easy for young people?
- Are we just rescuing, rather than empowering them?
- Does our continued support make them less accountable for their actions?
- Is there really anything positive we can contribute?
- Are we just offering a free ride?
- Can we honestly say we believe that the young offenders should remain in the community?

It is hard to draw the line between empowerment and hand-holding. If we continue to go to court and ask for the young person to be given another chance, are we taking away their autonomy? At what point in their development should the young person be expected to be wholly responsible for their actions?

On the other hand, if we take a rights perspective, then all defendants at court, however bad their record, have the right to support and assistance (just as the victim of crime does). Perhaps we just have to modify the level of support as appropriate.

To recommend or not to recommend detention?

As community based workers who are not mandated to produce court reports (unlike Department of Juvenile Justice staff), is there any place for us to recommend that the court lock up a young person? Philosophically, most youth workers tend to advocate against detention. However, there are some cases where our instinct may tell us otherwise.

For example, some youth workers from Barnardos watched a 15 year old with a substantial heroin habit get more and more out of control. She was charged with more and more serious offences. Her parents frequently phoned the service crying and begging them to ask the court to lock up the girl for her own good. The young person also developed a communicable disease which she was not managing. Gradually, the workers came to believe that detention could be a positive option for that young person. The particular worker's response was to refuse to speak to the court anymore. The worker felt that they could not betray the young person's trust. However, they were not prepared to lie when the magistrate asked for an opinion as to whether the young person should be locked up.

Parents

The example above raises an interesting question about working with parents. Involvement with families really depends on the nature of the program. For example if the major aim of your program is to integrate young people back into their families and communities, working with the parents as well as the young person is essential.

If however, you are working on a street work program, where the major aim is to build rapport with street-frequenting young people who are alienated from their families, contacting parents may not be the best option. It could damage your relationship with the young person by influencing your responses to them, and could also put you in a delicate position regarding client confidentiality.

Going bail

Should workers go bail for a young person? Many believe that a youth worker should not put up bail surety as it places too many pressures on all those involved.

A defendant's bail conditions may require another person to sign as a surety or 'acceptable person'. As a youth worker, your employment contract will usually not allow you to sign a client out on bail. If a client asks you to do this, the answer should be a polite 'no' with an explanation why.

Unless you sign as a surety or acceptable person, or give a personal undertaking to the court that you will do certain things, you have no obligations to ensure the young person complies with their bail conditions.

Often a young person's bail conditions will require them to reside at a certain place (eg a refuge). This does not involve a worker from the refuge signing a surety. The court usually won't impose this condition unless it is satisfied that the defendant can actually live at the particular place. If you have told your client that they can stay at your refuge, and bail conditions have been set accordingly, then you probably have a moral obligation to carry through with your promise. However, you have no legal obligation to keep accommodating the defendant or to ensure they comply with their bail conditions. If the defendant breaks the rules or whatever, you can kick them out. The legal obligation is upon the defendant and not upon you.

Rather than have the defendant bailed to live at a particular address, it is usually preferable to have them bailed to reside as approved by Juvenile Justice, DoCS or Probation and Parole. This means the defendant doesn't have to apply to the court for a bail variation every time they change address.

Reporting kids' crimes

Bail conditions that require the youth worker to supervise the young person are also problematic. They place us in the difficult position of having to choose whether or not to report the young person if they don't meet those conditions – particularly if the conditions require intensive supervision (eg daily). This is a decision that we must make. Sometimes the involvement of the youth worker can make the difference between a young person getting bail or not.

If a young person tells us they have breached their bail conditions. We prefer not to know this information and try to make it clear that they shouldn't tell us. However, we know this isn't always practicable.

We don't feel it is a youth worker's role to notify minor breaches (eg the young person wasn't home by 7pm) and we are certainly not required by law to do this. Breaching bail is not an offence. However, major offences pose another problem altogether. What do you do when a young person tells you they've committed an

armed hold-up or are dealing heroin? Sorry, we don't have an easy answer to this one. Each situation needs to be discussed on an individual basis.

Remember though, there is an offence called *concealing a serious offence* and if you do this, you are placing yourself outside the law (although get your own legal advice to see if the law applies to your situation). If a client has informed us that they committed a 'serious offence', confidentiality may provide us with a reasonable excuse not to disclose it. However, we have known workers to use the *Crime stoppers* telephone line when they want to give anonymous information to police.

What do I do if I think someone has breached their bail conditions?

Youth workers have no obligation to report someone to the police for breaching their bail conditions. The only exception is if you have given an undertaking (promise) to the court to notify the police in the event of a breach. These types of undertakings are sometimes given by drug rehabilitation programs, who will tell the police if the defendant leaves the program.

If you know someone is finding it difficult to comply with their bail conditions (for example, they are supposed to be living somewhere else, or they are supposed to keep out of Kings Cross but need to go there to get their methadone) you should help them to get legal advice so they can apply to vary the conditions.
