Youth Justice

Your Guide to Cops and Court in NSW

4th Edition

Macquarie Legal Centre

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After court

If you miss court

Going to court can be inconvenient, or scary … but the consequences of *not* going to court can be even worse.

This is a summary of what could happen if you are the defendant and you fail to appear at court … and what to do about it. The law is complicated so this is a rough guide only. If you miss court, you should get advice from a lawyer as soon as possible.

If you are a witness not a defendant

If you have to attend court as a witness rather than a defendant, you will usually be given a *subpoena*.

If you ignore the subpoena and don't turn up, the court may issue a *warrant* to make you attend. This is more likely to happen if you are a very important witness or if it is a very serious charge.

For more information about witnesses and subpoenas see *Appearing in court as a witness* chapter.

Defendants – if you know in advance that you will miss court

If you are a defendant and you know in advance that you will miss court, do something about it – or things could get a lot worse. Sometimes you can get the court date changed (see *If you can't get to court* on page 275). If you can't change the date, you may still be able to fix things up afterwards (see below).

Get legal advice about your options as soon as possible (see *Getting legal advice and assistance* chapter).

What happens when defendants miss court

What happens when you fail to appear as the defendant depends on a few things. The most important of these are:

Which court?

- the Children's Court or the Local Court
- the District Court or Supreme Court.

See *Which court?* on page 266 for more.

What type of offence are you charged with?

Is it an offence which can be dealt with *summarily*? Or is it a more serious offence which goes to the District or Supreme Court (a *strictly indictable* offence)?

The distinction between these types of offences is complicated and you need to ask a lawyer which type of offence you are charged with (see *Which court?* on page 266).

What sort of document did the police use to send you to court?

- a no bail, field or future court attendance notice (CAN), or
- a bail CAN.

This is clearly marked on the piece of paper that the police give you. If you have lost your court papers, your lawyer, the court or the police officer who charged you can tell you what kind of document it is.

Failing to appear in the Local Court or the Children's Court

Offences which can be dealt with summarily

Deal with the case without you (ex parte)

If your offence is one which can be dealt with summarily (see *Which court?* on page 266 or ask your lawyer), the law allows the Local or Children's Court to deal with the case without you. This is called dealing with the matter *ex parte*.

The magistrate will read the police fact sheet. If the magistrate is satisfied that these facts are enough to find you guilty of the offence, they will find you guilty. If the magistrate doesn't think there is enough evidence, they will find you not guilty, but this happens very rarely (because they have only heard the police side of the story).

If the magistrate finds you guilty they can impose a fine, or dismiss the charge without any conviction or penalty, in your absence.

The magistrate cannot sentence you to a good behaviour bond, probation, community service order, suspended sentence, control order or any form of imprisonment in your absence. If the magistrate is considering one of these options, they will adjourn the case or issue a warrant to bring you to court for sentencing (see *Warrants* below).

Adjourn the case

Instead of dealing with your case straight away, the court might adjourn the case for a couple of weeks to give you another chance to turn up. This is more likely to happen in the Children's Court than in other courts. If this happens, the court sends you a notice telling you the new court date.

Issue a warrant for your arrest

Alternatively, the court can issue a warrant for your arrest.

Offences which are strictly indictable

If it is a *strictly indictable* offence, the Local Court or Children's Court can't deal with it without you.

If you fail to appear, the court will almost always issue a warrant for your arrest (see *Warrants* below). The court can instead adjourn the case, but the more serious the charge, the less likely it is to do this.

Failing to appear in the District or Supreme Court

The District and Supreme Courts don't have the power to deal with a case without you being present (except an appeal, which they may dismiss if you don't turn up).

If you fail to appear, the court will usually issue a warrant to bring you to court. The court may adjourn your case to give you another chance to turn up, but again, if it is a serious charge this is unlikely.

Failing to appear when you are on bail

If you are on bail (rather than a field, future or no bail CAN), failing to appear can cause some extra problems. As well as being dealt with *ex parte* or having a warrant issued, you could face the prospect of:

- *Another charge*: they might charge you with the additional offence of *failure to appear*.
- *Losing bail money*: a person who stands to lose their bail money gets a chance to go to court and *show cause* why they should not lose their money.
- *Problems getting bail in the future*.

See *Bail* on page 250.

Warrant

As mentioned, the court sometimes issues a warrant when you fail to appear. There are several types of warrants the court may issue. The two main types are:

- *first instance warrant* (which is issued before you have been found guilty), and
- *section 25(2) warrant* under the *Crimes (Sentencing Procedure) Act 1999* (which is issued after you have been found guilty or pleaded guilty).

For a non-lawyer, the difference in terminology is not that important – the practical effect is pretty much the same!

Once the court issues a warrant, it goes onto the police computer system. This means that any police officer can arrest you and take you to the nearest court (sometimes after spending a night in lock-up first). The court then decides how to deal with your case, including whether to let you out on bail.

What to do after you miss court

Many people who miss their court date assume that there is a warrant out for their arrest. They may freak out and go *on the run*. Sometimes this panic is unnecessary!

If you miss court, you should get legal advice as soon as possible. See *Contacts* on page 405. If you can't get advice immediately, as a first step anyway you can ring up the court and find out what actually happened. (Don't worry, the court won't ask where you are and send someone to arrest you!)

Fined?

If your case was in the Local Court or Children's Court, the court may have dealt with your case *ex parte* and fined you. If this happens, your options are to:

- accept the fine, and ask for more time to pay if necessary (see *Unpaid fines* chapter)
- apply to the court for an order to *annul* (undo) the conviction and fine (see *Applying to annul a conviction* on page 358)
- appeal to the District Court, either against the finding of guilt (*conviction appeal*) or just against the penalty (*severity appeal*). Talk to a lawyer about how to do this (see *Appeals* on page 359).

Case adjourned?

If the case was adjourned, you still have a chance to turn up and proceed with it.

Warrant?

Of course, the court might decide to issue a warrant but this doesn't necessarily mean that the warrant is actually on the police computer yet. The warrant system is slow, and it sometimes takes days for the warrant to find its way to the police computer system. So you might have a chance to go to the court and have your case relisted before the police have a chance to arrest you. It's a good idea to get a lawyer

to help with this. Before relisting the case, the court usually wants a good reason why you failed to appear.

If the warrant is already on the police system, generally the only way you can bring the case back to court is through the police. You can either wait till the police catch up with you, or go to the police station and hand yourself in. Either way, the warrant will be *executed*, meaning the police arrest you and put you in custody, and take you to court as soon as possible (the same day or the next morning). The court then decides whether to grant bail. You stand a much better chance of getting bail if you hand yourself in to the police.

A SMOOTH OPERATION

Kim was lying low because he had been found guilty of stealing a car and had not gone to court for the sentencing. It was his first offence. He was very scared. He could be arrested at any time on the warrant that the police had for him, but he really didn't want to go to detention. He was so worried that he was trying to put together a fake identity, thinking he might fade out of the clutches of the police.

But he wasn't happy with this idea. It didn't seem OK for some reason.

He talked it over with a youth worker. Together they figured that rather than living in fear it might be better to sort the court case out.

They did some research. At one Children's Court they said he could just walk in, see a Legal Aid lawyer and go into court. But only if the original case had been at that court. Kim's case had been at a different Children's Court. Unfortunately, at that other court they would only deal with his first instance warrant if the police brought him in, under arrest. So the first 'nice' court said they couldn't deal with Kim's case. He had to go to the other court. But to do this, *Kim was going to have to get arrested.* He didn't like this idea either.

It looked like a minefield. They needed a strategy otherwise Kim might come unstuck big time! First, Kim decided which day he would 'turn himself in'. They contacted the Legal Centre nearest to the court. The Legal Centre lawyer couldn't come to court, but she said that the Legal Aid lawyer at that court was a good lawyer. Next, Kim and the youth worker rang that Legal Aid lawyer, who agreed to see Kim before the court day. They got some legal advice and filled the lawyer in on the details of the case.

'It's good you're turning yourself in mate', said the lawyer, 'the magistrate is heaps more likely to give ya bail!'

Kim and the youth worker turned up at the police station nearest the Children's Court very early on the 'Big Day'. It was about 6.30 in the morning. The police arrested Kim, fingerprinted and charged him for the offence of *Fail to Appear*. This process took a while but the police still got him to court by 9.30. The youth worker was allowed to hang around with Kim except for the ride in the paddy wagon. Kim's parents were at the court to support him and the lawyer was there, ready to act. The court gave him bail and set a date for him to come back and be sentenced for the car stealing and for not turning up at court the first time.

The eventual outcome? Community service. Kim was really glad to get everything out of the way.

Applying to annul a conviction

If the Local Court or Children's Court has found you guilty in your absence, but you think you are not guilty, you can apply to have the conviction annulled (which basically means getting the finding of guilt undone so you can start again). You can also apply to have a fine annulled if you were fined in your absence.

This is covered by section 4 of the *Crimes (Appeals and Review) Act 2001* and is often called a *section 4 application*.

How to make an annulment application

You make the application by filling in a form at the court counter. On the application form you will have to say why you didn't make it to court, or give another good reason why you think the conviction and/or fine should be annulled. If possible, get a lawyer to help you with the application.

There is a fee involved but it can be postponed (meaning you don't have to pay until later and only if you lose) or waived (meaning you don't have to pay at all) due to financial hardship. If you are represented by Legal Aid or a Community Legal Centre, the court *must* postpone the fee.

Dealing with the annulment application in court

Your application will be heard by a magistrate, usually a few weeks after you lodge it. You will have to convince the magistrate that:

- you didn't know about the court date
- you couldn't get to court (or do anything about the matter) due to accident, illness, misadventure, or
- there is another just reason why the application should be granted (eg you may not have a good reason for not turning up at court, but you may have a very good defence to the charge).

If you're saying there was a good reason why you didn't come to court, some proof (eg a medical certificate) is helpful. 'I forgot' is not usually a sufficient reason – unless you have an intellectual disability, mental illness or (maybe) were homeless and lost your court papers.

If your annulment application is granted

If the court decides to annul your conviction, this means you can start again. See *Going to court* chapter for information about court procedure and deciding how to plead.

JASMINE

– **Steve Campbell**, ex-youth worker

Jasmine is 19 and has a serious mental illness. Most of the time, she is able to live independently and to stay out of trouble. Sometimes, though, she becomes psychotic and requires treatment.

One day, when Jasmine was having a psychotic episode, she was arrested for shoplifting. She was bailed to go to court 3 weeks later.

A few days later, Jasmine was scheduled in a psychiatric ward, where she remained for several weeks. She forgot about the court date.

After she came out of hospital and was feeling better, Jasmine contacted Ramesh, a lawyer. She told him that she knew she was supposed to go to court, but wasn't sure exactly when.

Ramesh made some inquiries and found out that Jasmine had been dealt with in her absence. She had been found guilty and fined $1000.

Ramesh suggested making an application to annul the conviction and fine, and to have the matter dealt with under the *Mental Health (Forensic Provisions) Act 1990*. Jasmine agreed that this was a good idea, and Ramesh went ahead.

After hearing from Ramesh and reading a report from a psychiatrist, the magistrate dismissed Jasmine's charge under section 32 of the *Mental Health (Forensic Provisions) Act 1990* on the condition that she continue to attend her local community mental health centre regularly.

(See *If you have an intellectual disability or a mental illness* on page 347 for more information about dismissing charges under the *Mental Health (Forensic Provisions) Act 1990*.)

Appeals

Appealing to the District Court

If you are unhappy with the result of your case in the Local Court or Children's Court, you can appeal to the District Court.

There are two types of appeal:

- *conviction appeal* (sometimes also known as *all-grounds appeal*): an appeal against being found guilty
- *severity appeal*: an appeal against your penalty (this also includes orders associated with sentence, such as licence disqualification and compensation orders).

Legal help

If you think the court dealt with you harshly or they made the wrong decision, you should talk to a lawyer about lodging an appeal. Legal Aid will pay for your appeal if you are under 18 or on a low income and they think that your case *has merit* (which means they think your case has a reasonable chance of winning).

Lodging your appeal

Lodge your appeal at the same Local Court or Children's Court which dealt with your case. The easiest way to do this is to go to the counter at the court and tell them you want to appeal. A lawyer can do this for you or you can do it. If you are in custody, you can lodge your appeal from inside a prison or detention centre.

The fee for making an appeal is currently $93 (more if it relates to more than one charge). You don't usually get this money back even if your appeal is successful. However, you can apply to be excused from paying it if you are under 18, or in custody or you can prove financial hardship. You will usually be able to avoid paying the fee if you are represented by a lawyer from Legal Aid or a Community Legal Centre.

You must lodge your appeal within 28 days (4 weeks) of the date your case ended. If you don't lodge your appeal within this time, you can still apply for leave (permission) to appeal, as long as you lodge it within 3 months. The court is more likely to grant you leave to appeal after the 28 days if you are a juvenile, or if you have a mental illness or an intellectual disability.

If you were convicted and sentenced in your absence, you must first apply to have your conviction and/or sentence annulled (see *If you miss court* on page 353).

What happens while you wait for the appeal?

If you lodge your appeal within 28 days, the penalty imposed by the Local Court or Children's Court is *stayed* (frozen) until the outcome of the appeal. If you were fined or given community service, you don't have to pay the fine or do the hours until your appeal is decided.

The exception is if you are in custody (or have been sentenced to periodic or home detention). You keep doing your time in custody until your appeal, unless you get *appeal bail*. You apply for appeal bail to the magistrate at the same Local or Children's Court that sentenced you. Strange as it may seem, the magistrate who just locked you up may let you out on bail until your appeal. If the magistrate refuses bail, you can apply to the Supreme Court for appeal bail.

At the District Court

When you lodge your appeal, the court gives you a date to go to the District Court. This date depends on the court, but it is usually about 3 or 4 weeks away (maybe sooner, if you are in custody).

If your appeal is a severity appeal (an appeal against the sentence only) and is not very complicated, it might be finalised on that day.

If it is a more complex severity appeal or a conviction appeal, it will be adjourned (put off) to another date.

Conviction appeals

A *conviction appeal* is usually decided on the same evidence presented at the Local Court or Children's Court. The judge has a transcript (a written record) of this evidence and a copy is available to you or your lawyer.

In conviction appeals, to avoid unnecessary trauma and waste of time, witnesses who already gave evidence in the Local Court or Children's Court don't have to give evidence at the District Court appeal, unless the court directs them to. The court can direct them to give evidence again, or allow you to bring new witnesses, if there are good reasons for doing so in the interests of justice.

You or your lawyer *make submissions* (put your view) about why the magistrate's decision was wrong and why you should be found not guilty. Unlike appeals to the Supreme Court or Criminal Court of Appeal, you don't have to prove that the magistrate made an *error of law*.

Severity appeals

A *severity appeal* is an appeal against the sentence you got in the Local or Children's Court. You are saying that you are guilty but the sentence is too harsh. You need to tell the District Court why you think the penalty is too harsh.

A severity appeal involves the judge considering the matter afresh and imposing whatever he or she believes is appropriate. There is no need for the judge to make a finding that the magistrate made an error of law.

In theory, the judge is supposed to determine the appeal on the basis of circumstances that existed at the time of the Local or Children's Court sentencing. However, many judges are happy to consider new evidence, especially if it sheds light on circumstances which existed at the time of the original sentence.

You can have new witnesses or reports to talk about your good character, your feelings of remorse, or your progress towards rehabilitation. You cannot have witnesses to talk about whether you did the crime.

A judge who is resentencing you is limited to the sentencing options that were available to the Local or Children's Court at the time.

If you have spent time in custody waiting for the outcome of the appeal, that time will count as part of any sentence imposed.

A word of warning: the judge may actually increase the sentence if he or she thinks the magistrate was too soft on you. However, there is a general rule of procedural fairness that requires the judge to warn you if they intend to do this. This is

known as *Parker warning* or *Parker direction*. You then have a chance to withdraw the appeal (unless leave to withdraw is denied, which is very rare).

WORK-OUT

The Aboriginal Legal Service represented a young Aboriginal man in an appeal against his sentence of 6 months' prison for a minor offence. The sentencing magistrate appeared to fail to take into account the many reports in favour of the young man and also seemed to fail to consider the recommendations of the Royal Commission into Black Deaths in Custody. On appeal the sentence was overturned and replaced with a community service order.

The judge's decision

After the judge listens to all the evidence and any submissions (opinions) that you, your lawyer or the prosecution lawyer make, the judge either:

- *dismisses* your appeal – you lose, or
- *allows* or *upholds* your appeal – you win.

If the judge dismisses your appeal, the original conviction (guilty verdict) and the sentence stay the same.

If the judge upholds your appeal, and it is a conviction appeal, the conviction is *quashed*, which means that you are found not guilty.

If it is a severity appeal, the judge *quashes* (cancels) the sentence and imposes a new one.

Failure to appear at appeal hearing

If no one appears for your case at the appeal hearing, the court may dismiss the appeal or may issue a warrant for your arrest.

The court will generally dismiss an appeal if the original sentence was non-custodial and you do not have to be taken back into custody to serve the sentence. However, if the sentence was a custodial one, and you are out on appeals bail, the court will need to issue a warrant to bring you back before the court so that the sentence can be confirmed and you can be returned to custody.

Withdrawing your appeal

If you wish to withdraw your appeal at any stage, you must ask the court for leave (permission) to do so. This leave is usually granted.

Crown appeals

The Crown (the police and/or the Director of Public Prosecutions (DPP)) may appeal to the District Court against a sentence only.

A Crown appeal to the District Court is often called an *inadequacy appeal.*

The time limit for a Crown appeal is 28 days. However, this time limit may be extended in a case where you had offered to assist the authorities (eg by giving evidence against a co-accused) and have received a lighter sentence as a result, but have not in fact provided such assistance. In this case, the DPP may appeal when it becomes apparent that you have not assisted, or are not going to assist as promised.

Just as you can have your sentence increased on a severity appeal, a judge hearing an inadequacy appeal may actually reduce the sentence.

If the Crown wishes to appeal against your conviction, this can only be done on a point of law (this means the Crown cannot dispute the facts, as decided by the magistrate or judge) to the Supreme Court.

PALMED OFF

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

I came into contact with a young woman with a heroin addiction who was at court facing a number of serious charges that were going to be set down for sentencing the following Wednesday. She had committed all the offences to support her heroin habit.

I was able to work with the young woman, her family, her lawyer and several other services to put together a case plan as an alternative to a control order (getting locked up), the likely outcome given the seriousness of the charges. The plan included: a hospitalised detox, a placement in the PALM rehab program and follow up support from my service's adolescent support worker.

Unfortunately the magistrate took the view that the young woman was responsible for the woes of society and the only way to keep the community safe and set an example to others who thought they could use their addiction as an excuse to commit crime was to lock her up. The young woman received a 12 month control order.

After the sentencing, the Legal Aid children's lawyer told us that the young woman could appeal the severity of the sentence in the District Court. She agreed to do this.

The appeal to the District Court, using the same case plan, was successful and the young woman was released on a bond with a condition that she live with her mother until a place became available in the PALM rehab program. There is always another way to get justice done!!

Bonds, probation and suspended sentences

Bonds, probation, supervision ... what does it all mean? If you get one of these orders, what do you have to do? And what happens if you don't?

What is a good behaviour bond?

A good behaviour bond (often just called a *bond*) is an order by the court that you be of good behaviour and obey any other conditions that the court puts on the bond.

Good behaviour bonds last for a set time.

- The Children's Court can give you a bond of up to 2 years.
- The Local Court or District Court can give you a bond of up to 5 years.

What sort of conditions do bonds have?

There are three conditions attached to every bond:

- You must appear in court if required, at any time during the bond period (usually only if you breach the bond).
- You must *be of good behaviour*. This means that you must not commit any more offences during the bond period.
- You must tell the court if you change address during the bond period.

Bonds can have lots of other conditions attached to them, for example:

- You must accept supervision from Juvenile Justice (if you are under 18) or Probation and Parole (if you're an adult).
- You must go to rehabilitation or counselling.

Courts are *not* allowed to impose conditions on the bond requiring you to:

- pay money, or
- do community service.

The court may impose a fine, costs or compensation separately to the bond, but failing to pay doesn't breach the bond.

What is Children's Court probation?

Probation is a Children's Court order that requires you to be of good behaviour and be supervised by the Department of Juvenile Justice. The court can also put other conditions on probation, just like they can with a bond.

A *probation order* is like a bond, but is a more serious penalty than a bond. A bond does not always include supervision but a probation order almost always does. Supervision on a probation order is usually more intensive than the supervision on a bond.

What is a suspended sentence?

A *suspended sentence* means the judge or magistrate gives you a sentence of imprisonment or detention but *suspends* it for a certain period of time. This means that you don't actually get locked up unless you commit another offence or breach the conditions imposed by the court.

A suspended sentence is basically a good behaviour bond with a prison sentence (for adults) or control order (for juveniles) hanging over it. Breach the bond and you do the time! A suspended sentence usually has conditions attached including supervision.

How a supervised bond, probation order or suspended sentence works

You are supervised by either:

- a juvenile justice officer (JJO) if you are under 18 when the bond is imposed or
- a probation and parole officer if you are over 18 (or about to turn 18) when the bond is imposed.

The officer assesses your needs and explains the conditions of the order and what can happen if you break the conditions.

The officer must also make sure that your rights are maintained and not abused during the term of the order. The officer should take into account your physical and psychological ability as well as your background.

The officer develops a case plan and interviews you several times throughout the order. The number of interviews varies, depending on the length of the order and the officer's opinion of your needs. For example, for a Children's Court probation order of up to 12 months, the minimum amount of contact between you and your supervising officer is two face-to-face interviews per month for at least 4 months. One of these two interviews per month is a home visit attended by your family or carer.

Often you have to keep in constant contact with your supervising officer and obey any reasonable directions they give you (eg about where to live, going to courses and so on).

Suspension of supervision

Your supervision can be terminated or *suspended* (stopped), while you are still on an order. This might happen if your probation officer or JJO thinks you are responding well to your order.

The decision to suspend supervision is usually made by the agency supervising you (the Department of Juvenile Justice or the Probation and Parole Service), not by the court. After reviewing your case plan your supervising officer can recommend to their manager that they suspend your supervision. Once they suspend your supervision, they can start it again at any time during the order.

Changing conditions of a bond or probation

If you are on a bond (including a suspended sentence) or probation imposed by the Children's Court, you may apply to change the conditions at any time (in much the same way as you would change bail conditions). For example, your bond may require you to attend school regularly, but you may want to leave school and get a job.

Unfortunately, you can't apply to vary adult bonds. The only way an adult bond can be varied is if breach action is taken.

Breach of a bond or probation

If you don't follow the conditions of your bond or probation, this is called a *breach*. The most common types of breaches are:

- committing another criminal offence during the bond
- not obeying the reasonable directions of your supervising officer.

Remember, it is a condition of your bond or probation that you tell the court if you change address.

If you have been found guilty of another offence, the court will usually *call you up* for breaching the bond. If your probation officer or JJO thinks you have *breached* your bond by not following their directions, they may give you a *call-up notice* to go back to court to deal with the breach. If you don't turn up to court, or the court doesn't know where to find you, the court will issue a warrant for your arrest.

At court you either admit or don't admit to the breach. If you don't admit the breach, your case goes to a hearing to decide whether you have breached the bond.

If the court decides that you breached the conditions of an ordinary bond or probation order without lawful excuse, it may:

- take no action on the breach (allow the bond to continue as before)
- allow the bond to continue but vary the conditions, or
- revoke the bond and sentence you again for the original offence.

If a court resentences you, it has the same sentencing options available as when it first gave you the order. The court can also order you to pay any surety attached to the bond.

Breach of suspended sentence

If you breach a *suspended sentence* the court *must* revoke the bond and impose the custodial sentence, unless:

- the breach was trivial (very minor), or
- there is a good reason to excuse the breach (eg there was an extremely stressful event in your life that caused you to reoffend).

Unfortunately, it doesn't matter whether you breach your suspended sentence near the beginning or near the end – if the court revokes the bond, you do the time in custody. If it's longer than 6 months, the court will split it up into a non-parole period and a period out on parole. If it's an adult suspended sentence, you may be eligible for periodic or home detention instead of full-time imprisonment.

Appeals

You can appeal against any court decision about a bond or probation. See *Appeals* on page 359 and talk to a lawyer about whether to appeal (see *Contacts* on page 405).

Community service orders

A *community service order* (CSO) is a court order, after the court has found you guilty, making you do a certain amount of hours of unpaid work. You normally do the work for a community organisation, charity, local council or hospital.

The State Debt Recovery Office (SDRO) can also give you a CSO for unpaid fines. These are different from CSOs imposed by a court and are not covered in this section (see *Unpaid fines* chapter).

When can you get a CSO?

The court can only give you a CSO if Juvenile Justice or Probation and Parole have written a report that says you are suitable for CSO and that work is available. If you are under 14, you don't get a CSO unless the court thinks you are mature enough.

A CSO is a last resort instead of locking you up, so the court can only give you a CSO if it was considering locking you up. Except, if you are found guilty of damaging or defacing property with spray paint (doing graffiti), the court can give you a CSO instead of a fine.

How many hours?

The number of hours ordered by the court depends on your age at the time you committed the offence, and the maximum penalty for that offence. If you were:

- under 16 when you did the crime, you can get up to 100 hours
- 16 or 17 when you did the crime, you can get up to 250 hours
- 18 or older when you did the crime, you can get up to 500 hours.

Doing the CSO

CSOs for children (under 18) are supervised by Juvenile Justice. CSOs for adults are supervised by the Probation and Parole Service.

At court, the court officer gives you a piece of paper (the order) which says where to go to talk to the supervising officer. If you are unsure, ring the court or your nearest Probation and Parole or Juvenile Justice office (see *Contacts* on page 413).

You might work on your own or in a group with a supervisor. Examples are:

- maintaining grounds and parks
- assisting in cleaning up a community group's facilities
- office duties
- removing graffiti from buildings.

The supervising officer cannot organise work that would mean taking a job away from a paid employee.

If you know an organisation that can provide work for a CSO, ask them to contact the local Juvenile Justice or Probation and Parole office.

Your obligations on a CSO

On a CSO, you must:

- work as the supervising officer directs
- do the work in a satisfactory manner
- follow directions of the supervisor while doing the work, and
- tell your supervising officer if you change address.

The supervising officer's responsibility to you

If you are a juvenile, your juvenile justice officer should take into account your ability and interests as well as your physical, psychological, behavioural, intellectual and cultural characteristics and avoid any conflict with your religious beliefs, and times of school and work.

If a supervisor tells you to do something that you are not capable of doing, you must tell the supervising officer as soon as you can.

If you are finding it difficult to do your CSO hours (eg due to health problems, work or family commitments) talk to your supervising officer about it! Don't just stop turning up – you will then risk being breached (see *What if you don't do the CSO properly (breach)?* below).

How long do you have to finish the CSO?

Children's Court

You have 12 months to complete the hours, from the date the court made the order. You or your juvenile justice officer can apply to the Director-General of Juvenile Justice for an extension of time if you need it. If the Director-General thinks it's in the interests of justice, taking into account circumstances which have changed since the court made the order, they can extend the order.

Other courts

You have 12 months to complete CSOs of up to 300 hours, or 18 months for CSOs over 300 hours.

A court can give you an extension of time if you or the supervising officer applies for one. The court will only grant an extension where circumstances have changed since you got the CSO and if it is in the interests of justice to extend the order.

Cancelling the CSO (revocation)

Either you or the supervising officer can apply to the court to have the order *revoked* (cancelled). When deciding whether to revoke the order the court looks at things that have happened since the CSO was made and whether it's in the interests of justice to revoke it (eg if you have had a car accident and are now in a wheelchair).

The court can choose to revoke the CSO and order nothing in its place or revoke it and resentence you for the original offence.

What if you don't do the CSO properly (breach)?

If you don't do the CSO properly, for example:

- you don't obey your supervisor's instructions
- you are aggressive to your supervisor, or
- you don't complete the CSO within the maximum period

then the supervising officer can *breach you* – they can send a notice to the court saying that you didn't complete the CSO properly.

If you breach a court CSO, you will have to go back to court (see below). Before this happens you can try to persuade the officer to give you another chance.

If they breach you, the court can issue a summons for you to appear at court, or (if they don't know where to find you to give you the summons) a warrant for your arrest.

If the court finds you guilty of the breach, it can do one of these things:

- revoke the CSO and resentence you for the original offence (sentence you as if you never got the CSO). Remember, a CSO is usually a direct alternative to being locked up, so if you breach your CSO there is a very good chance that the court will lock you up
- revoke the CSO and not order anything in its place
- take no further action and let you finish your CSO, or
- **under 18s only:** give you a fine, but you may still have to do the CSO hours and your hours may even be extended.

YOUTH/WELFARE WORKERS AND BREACHES

Before it gets to the point where a person is breached, welfare workers can have an effect on when, or if, this happens. If your organisation is supervising the CSO, the decision to tell Juvenile Justice or Probation and Parole about a person not completing work as directed may be up to you. Depending on the person's circumstances, problems or attitude, you may choose to be easy going with the client and give them another chance, or you may choose to be tough.

This is one point where welfare workers have some discretion in the legal system. However your credibility as a service may be on the line if you are not willing to report serious breaches.

Supervising officers from Juvenile Justice and Probation and Parole have some discretion in this area also. They differ in terms of how hard they are on clients. Some are incredibly lenient and forgiving. Some are less so.

Welfare workers can advocate for people who are under threat of a breach by asking for another chance, by explaining the person's situation or problems, or by helping the person in some other way to complete their hours.

Dealing with Juvenile Justice

As a youth worker or advocate, it is helpful to be familiar with the structure and services provided by Juvenile Justice (JJ). You may wish to make a complaint in relation to a specific issue. Or you may want to influence or change one of JJ's policies for the benefit of all young people.

This section will outline the role of JJ and its various services and give you some basic tips on how to influence or appeal their decisions.

Some definitions

Juvenile Justice (JJ or DJJ)

Until recently, the Department of Juvenile Justice was a separate State government department. Juvenile Justice is now part of the NSW Department of Human Services, but is still sometimes referred to by its old initials, DJJ. Juvenile Justice is responsible for:

- young people on remand or serving sentences in juvenile detention centres
- youth justice conferences
- young people on bonds, probation, suspended sentences, parole and community service orders, and
- (sometimes) young people on bail.

Juvenile Justice Centres (JJC)

The detention facilities which house young people on remand or serving custodial sentences (see *Juvenile detention centres* on page 374).

Juvenile Justice Community Services (JJCS)

Offices which are responsible for the support and supervision of young people under community-based orders including bonds, probation, parole and community service orders. They are also responsible for organising youth justice conferences.

Juvenile Justice Officers (JJO)

Employees of Juvenile Justice who provide supervision and support to young offenders on good behaviour bonds, probation, community service orders or completing a period of parole. They sometimes provide supervision for young people on bail and perform an intake role at the Children's Court.

Youth Justice Conference Administrators

Based at JJCS offices, conference administrators are responsible for ensuring that youth justice conferences run smoothly and that outcome plans are followed through.

Serious Young Offenders Review Panel

The Serious Young Offenders Review Panel advises the Chief Executive of Juvenile Justice on the classification of detainees and the granting of leave to serious violent offenders in detention.

Services provided by JJ

Community-based services

The department provides community-based services through its Juvenile Justice Community Services Offices. These services may include:

- advocacy and support for young people applying for bail or remanded in custody because of welfare issues such as homelessness
- assessments and background reports for young people found guilty of an offence
- supervising young people on community-based court orders such as community service orders and probation
- counselling young people to address their offending behaviour and develop coping skills
- assisting young people to access appropriate educational, vocational, recreational and counselling programs
- alcohol and other drug programs
- violent offender program, addressing mental health needs of violent offenders
- sex offender program.

Custodial services

Juvenile Justice provides custodial services through its Juvenile Justice Centres for young people remanded in custody prior to final court appearances or sentenced to detention by the courts. This may include the provision of case management, specialist counselling programs, vocational, recreational and educational programs.

Youth Justice Conferences

Juvenile Justice conferencing administrators to facilitate Youth Justice Conferences. Administrators are generally located in one of the JJCS offices. In accordance with the *Young Offenders Act 1997*, conference administrators receive and assess referrals from the police and the court, employ casual convenors to organise and run the conferences, report back on the outcome of the conference and follow up on the completion of the outcome plan (see *Youth justice conferences* page 231).

Youth Drug and Alcohol Court

Juvenile Justice provides administrative support for the Youth Drug and Alcohol Court (YDAC) program as well as assessment, supervision and counselling services for young people referred to the YDAC (see *Youth Drug and Alcohol Court* on page 312).

Getting information about JJ and its services

Ask at the local Juvenile Justice Community Services office for any information that you require. If they do not have what you need, ring head office in Sydney and request the information.

You may want their annual report, policy guidelines, detention centre manuals, or statistical information. Most of this information should be freely available, or can be downloaded from the JJ website. If it is not, you could discuss with your local Community Legal Centre or Legal Aid about how to make a request for information under the *Government Information (Public Access) Act 2009* (GIPA).

How to influence decisions

As a youth worker you are most likely deal with a young person's JJO. This is a relationship which involves teamwork and negotiation. Most of the time, this works well.

If however, you have problems with the way a particular JJO is handling a case, or you disagree with a decision that has been made, the JJO's word is not necessarily final.

You can contact someone else in the Department such as the JJO's manager or the Regional Director. If you are still unhappy you can work your way up the structure, through the Director of Operations, to the Chief Executive, and finally, the Minister.

It is also worthwhile putting in positive feedback about JJ workers.

Beyond Juvenile Justice, you can contact your local member of the NSW Parliament or you or your client can complain to the NSW Ombudsman (see *Contacts* on page 411). The Ombudsman is independent of government departments and has powers to investigate complaints regarding government departments.

If the young person is in detention, they or their support person can speak to the *official visitor* for that centre. The official visitor is independent of JJ. The visitor monitors the performance of the centre and attempts to resolve problems for detainees.

Juvenile detention centres

Who goes to juvenile detention centres?

Juvenile detention centres, officially called Juvenile Justice Centres, are managed by Juvenile Justice (JJ).

Juvenile Justice Centres house young people on remand as well as those serving control orders imposed by the Children's Court and those serving terms of imprisonment imposed by higher courts.

Although you can only go to a Juvenile Justice Centre for an offence committed when you were under 18, many inmates of Juvenile Justice Centres are aged over 18, and some are in their early 20s.

If you are under 21 and are sentenced to imprisonment (see *Outcomes in the District and Supreme Courts* on page 335), a court may order that all or part of the sentence be served in a Juvenile Justice Centre. However, if the offence is a serious children's indictable offence you will have to go to an adult prison after you turn 18 unless there are special circumstances. In other cases, you may be able to stay in 'juvie' until you are 21.

Which juvenile detention centre?

This will depend on the young person's age, sex and security classification. Sometimes the location of the young person's family is also taken into account. Security classifications are decided according to the seriousness of the offence, length of sentence, any previous escape attempts, etc.

Young women are usually at Juniperina Juvenile Justice Centre at Lidcombe. Other centres may hold young women for short periods while they await transfer to Juniperina.

Sydney-based young men on remand often go to Cobham Juvenile Justice Centre (at St Marys). There are also short-term remand centres at Emu Plains and Broken Hill.

Males serving control orders will usually go to Frank Baxter Juvenile Justice Centre, near Gosford, or a regional centre located at Dubbo, Wagga Wagga or Grafton. If they are under 16 they will usually be placed at Reiby Juvenile Justice Centre, at Airds near Campbelltown.

Males on very serious charges are held at Kariong Juvenile Correctional Centre, which is run by Corrective Services.

Visiting detainees

Parents

If your child is in a detention centre, Juvenile Justice should inform you about which days you can visit and how to arrange visits. If you have any concerns, talk to your child's caseworker (at the detention centre) or JJO (on the outside).

Juvenile Justice can provide help for you to visit your child (eg money for train/bus fares or accommodation). Don't forget you can also talk to your child by phone.

Youth workers and friends of the young person

Youth workers and friends of the young person need approval to visit. Technically, this approval comes from the manager of the detention centre, but some case workers have been delegated authority to grant this approval. Your first point of contact is the detainee's case worker or JJO.

You might have to send a letter to the detention centre before you go to visit, or take a letter with you, outlining who you are and why you should get approval to visit. Each detention centre has different processes, so make sure that you contact the case worker before you go to find out exactly what is required. If you are a worker, put the letter on your service letterhead.

Arranging a visit

Telephone the particular centre (see *Contacts* on page 413) and ask to speak with the case worker who looks after the young person's welfare and other needs. They will tell you how to get your visit approved or how to speak with the young person on the phone. The case worker can also advise you of a convenient time for your visit.

When you get there

When you arrive at the centre, follow the signs to admissions. In most centres you use an intercom to get in. They might ask your name and the purpose of your visit.

Proceed to Admissions and sign the visitors' book. You will have to provide identification (preferably photo ID). If you are a youth worker or social welfare worker, they might also ask for proof of employment by your service (an introduction on letterhead is fine).

You may also have to undergo a search with a metal detector, and to empty your pockets.

Detention centre rules

Most juvenile detention centres don't allow visitors to bring in mobile phones. Most centres provide visitors with a locker to store your belongings.

It is an offence to give anything to a young person without the approval of a staff member. This includes cigarettes and lighters, as well as the more obvious examples

of drugs and weapons. These rules are for the protection of the detainees and the workers. Even everyday objects such as pens can be turned into objects for self-harm or weapons.

Lawyers and Aboriginal Legal Service field officers can deliver some articles to detainees (eg legal papers).

It is also an offence to receive anything from a detainee without approval.

Detainees are not allowed to smoke in detention (even if they are over 18). For this reason, staff and visitors cannot smoke either.

Phone calls to the young person

If you want to phone a person in a detention centre you need to talk to the person's case worker to get approved contact status (unless you are a parent or lawyer) before you can talk to the young person. Your number will be placed on the *Arunta* system so the young person can call you.

If you want to send things to the young person

This is of course okay, as long as you are not sending contraband (illegal goods). Remember that all mail that the young person receives in detention is checked thoroughly by detention centre staff.

Legal services to help young people in detention

A lawyer from the Legal Aid Children's Legal Service visits every detention centre regularly. Field officers and lawyers from the Aboriginal Legal Services also visit children in detention. These people can help a young person with a bail application or an appeal.

If you have particular concerns about a young person in detention, you can speak to the lawyer who visits that detention centre (see *Contacts* on page 405).

Young adults in prison

Adult prisons are lonely, scary and often dangerous places, especially for young people. Contact from someone who cares can provide a cushion (however small) from the negative experiences associated with being in prison. Here are some tips for friends, relatives and youth workers who know someone in prison as well as for anyone about to go there.

Who goes to adult prisons?

- people on remand or sentenced for offences committed when 18 or older
- people serving terms of imprisonment for juvenile offences who are now over 18 (or, in rare cases, under 18 but pose a serious threat to the security of a Juvenile Justice Centre), and
- in rare cases, people 16 or over on remand for juvenile offences if they pose a serious threat to the security of a Juvenile Justice Centre.

Which correctional centre?

Comprehensive lists and descriptions of all the correctional centres in NSW are available on the NSW Corrective Services website (see *Contacts* on page 415).

Remand prisoners

Male prisoners on remand are often sent to the Metropolitan Remand and Reception Centre (MRRC) at Silverwater. Increasingly, males are being held on remand in other prisons including Parklea and Parramatta.

If they suffer from special problems they may be held on remand in a different correctional centre.

The NSW prison system has been overcrowded for some time, and it is common for prisoners to be held in cell complexes run by Corrective Services (eg at the Sydney Police Centre at Surry Hills). This applies to both remand and newly sentenced prisoners, and they are sometimes held for several days while awaiting a space in a prison. Facilities in these cell complexes are very limited: inmates can't have normal visits and phone calls, nor can they exercise or shower regularly.

Women on remand will usually be at Silverwater Women's Correctional Centre (also known as Mulawa) or sometimes at Dilwynia (Windsor) or Emu Plains.

Sentenced prisoners

Newly-sentenced male prisoners often start off at the MRRC and stay there for a few weeks until they are classified. Some male prisoners serve their whole term at the MRRC if it is a short sentence.

There are many prisons in NSW and, during their sentence, prisoners will usually be transferred from one prison to another, often several times. Young men aged under 25 will often serve at least part of their sentence at John Morony Correctional Centre at Windsor.

Female prisoners will generally serve sentences at Mulawa, Dilwynia or at Emu Plains.

To find out if (or where) someone is in custody

For details about anyone in an adult correctional centre in NSW, you can ring Sentence Administration (see *Contacts* on page 415). They will tell you if a person is in custody and, if so, which correctional centre.

Please note that they will not have information about last-minute transfers. Prisoners can be transferred from one jail to another at a moment's notice (Corrective Services doesn't provide notice for security reasons).

Sentence Administration does not have details of people who are in custody at police cells.

MIN numbers

Every prisoner is allocated a six digit Master Index Number (MIN) which stays with them for life. If you are inquiring about a person in custody, it is useful to be able to quote their MIN number.

Classification

All prisoners are classified into various categories in order to determine what level of security and developmental programs are appropriate.

Each male prisoner will be classified as:

- A1 or A2: maximum security (A1 requiring the highest level of security)
- B: medium security
- C1, C2 or C3: minimum security (C3 requiring the lowest level of security)
- E1 or E2: someone who has previously escaped (or attempted to escape) from lawful custody.

Each female prisoner will be classified as belonging to either category 1, 2, 3, 4 or 5 with category 5 prisoners requiring the maximum security available for female prisoners.

Prisoners will require the highest level security when they are thought to be:

- a danger to other people, or
- a threat to good order and security.

A prisoner can make a written application to the Commissioner of Corrective Services asking to change their classification.

Education and work

Depending on which correctional centre they are in, prisoners may be able to get employment within the prison. The pay is very low, but usually provides enough money for a few items at the weekly *buy-up* (see below).

Prisoners in the final stages of their sentences may be eligible for work release.

Educational programs, often in partnership with TAFE, are also available at many correctional centres.

Work and educational opportunities are not widely available to remand prisoners.

Prisoners with special needs

There are various programs and services for prisoners who are disadvantaged or have special needs. A few of these are outlined below.

Aboriginal prisoners

Corrective Services has an Aboriginal Support and Planning Unit (ASPU) which is responsible for developing programs for Aboriginal people in custody and in the community. The *Aboriginal and Torres Strait Islander Inmate Handbook*, available on the Corrective Services website, contains useful information about some of the available programs.

Prisoners with intellectual disabilities

Despite the significant number of prisoners with intellectual disabilities, facilities and programs for people with intellectual disabilities are very limited.

Corrective Services' Statewide Disability Services (SDS) is responsible for addressing the support needs of people with disabilities in the prison system. SDS runs *Additional Support Units* in Long Bay and Goulburn, which accommodate inmates with intellectual disabilities.

Prisoners with mental health problems

Increasingly, our prisons are becoming dumping grounds for people who would more appropriately be in the mental health system. For most prisoners, access to psychiatric and psychological treatment is limited due to lack of resources.

Prisoners are screened for health and suicide risk upon reception into custody. Those who are identified as being at risk have access to specialist units and teams such as Mental Health Screening Units and Acute Crisis Management Units.

Psychiatric services in prisons are provided by Justice Health, which is part of the NSW Department of Health.

Prisoners with substance abuse problems

Alcohol and other drug (AOD) workers and programs are available in prisons. However, as with psychology and psychiatry, demand usually outstrips supply.

AOD workers can sometimes arrange assessments for residential rehabilitation programs in the community, for inmates who are likely to be released on bail or parole.

Prisoners who are on methadone before they come into custody may continue to receive their methadone in custody.

The Compulsory Drug Treatment Correctional Centre at Parklea is a rehabilitation program for male offenders who have serious drug problems.

Prisoners with children

There is a Mothers and Babies Unit at Emu Plains Correctional Centre, where eligible women prisoners will be able to have their babies with them in custody.

In some prisons there are special visiting days (run by the community organisation Shine for Kids) where children have the opportunity to spend quality time with their imprisoned parents.

Discipline

If you are an inmate and it is alleged that you have committed a crime in prison you may be charged . Prisoners are expected to obey not only the general criminal law (like everybody else) but must also not commit any *prison offences*. *Prison offences* include doing things in prison such as:

- using insulting language
- attempting to bribe someone who works at the prison
- gambling
- getting (or giving) a tattoo
- smoking in a non-smoking area (or removing or altering a 'no smoking' sign)
- drinking alcohol, or
- taking drugs that weren't prescribed for you.

If you are charged, your case will be dealt with by a visiting justice, or for less serious offences, it can be dealt with by the general manager of the prison. If the offence you are charged with is considered serious enough it will be dealt with by the courts in the same way as a charge is dealt with outside of prison.

The kinds of outcomes you can expect to receive if you are dealt with by a visiting justice include:

- the charge being dismissed
- being reprimanded and cautioned
- being confined to your cell for up to 28 days (and have privileges withdrawn during this time) – this is often referred to as segregation or 'segro'
- suffering up to 56 days of loss of privileges, or

- having your sentence increased by 28 days.

The kinds of outcomes you can expect to receive if you are dealt with by the general manager include:

- the charge being dismissed
- being reprimanded and cautioned
- being confined to your cell for up to 3 days (and have privileges withdrawn during this time)
- suffering up to 28 days of loss of privileges, or
- the general manager may defer imposing a penalty on condition that you be of good behaviour for up to 2 months and, if you are of good behaviour, dismiss the charge after the end of that period.

Keeping in touch with a prisoner

Visits

Prisoners are allowed a certain number of contact visits (from family and friends) per week (up to three usually).

Different prisons have different days, times and procedures for visits. You will need to ring the individual prison to find out what the visiting hours are and whether you have to book a visit. Otherwise, the Corrective Services website contains information about visiting times for prisons.

Most prisons will not accept visits after 3pm (and if you enter before 3pm you will have to be out by 3.30pm) because they generally lock the prisoners down at about 3.30pm.

Visitors are now subjected to rigorous security checks which include being photographed, fingerprinted and searched. Most prisons also use biometric identification (iris scanning) technology. Make sure you bring photo ID. Visitors must leave all their personal belongings in a locker (and may only bring in coins for food and drink machines).

Corrective Services may ban a person from visiting at any time, for any reason. For example, visitors are often banned if they are suspected of carrying drugs into a correctional centre. A ban can last for a long time (eg 2 years or even longer). It is possible to ask the Commissioner to review the ban but, if this is refused, there are no appeal rights.

Legal and professional visits

These are not subject to the three visits per week limit. Lawyers may visit as often as they wish (within visiting hours). Youth workers may be able to come in as a professional visitor by arrangement.

Phone calls

Prisoners can make outgoing calls as long as they have a phone account with enough money on it. If they want to ring a certain person, they have to request the phone number to be put on the Arunta system – this can sometimes take up to a week. If prisoners need to make urgent phone calls to families or legal representatives, they can sometimes do this through a welfare officer.

You should be aware that most telephone calls made by inmates are monitored.

Prisoners cannot take incoming calls, but you can sometimes get messages to them by ringing the relevant welfare officer.

Mail

Friends and family can send mail, clothes, books etc to prisoners but these things are carefully screened and there is a restriction on the sort of things that can be sent in. Mail can take several days to reach prisoners – much longer if the prisoner is moved to another prison – and sometimes is opened by staff.

Prison finances

There are some things which prisoners are not allowed to receive from outside but must buy inside. These things include pens, paper and food. *Buy-ups* happen once a week and prisoners can buy food, tobacco, etc. Prisoners can also buy or rent items such as televisions.

Prisoners may earn money from jobs in prison or may receive money from family or other people.

A person who has been approved as a visitor can put money into a prisoner's account. This is usually done in person at a correctional centre or by sending a money order.

Parole

What is parole?

Parole is a period of conditional release following a sentence of imprisonment or a control order.

When you are on parole you are usually supervised by an officer from Juvenile Justice (under 18s) or Probation and Parole (over 18s).

If you breach your parole, you go back inside until your sentence is over or you are let out on parole again.

Non-parole periods

If your prison sentence or control order is for 6 months or less, it will be a *fixed term*. This means that, when you are released at the end of your sentence, you are not on parole.

For sentences of more than 6 months, the court must set a *non-parole period*. This is the amount of time you spend in custody before becoming eligible for parole.

The non-parole period is usually three quarters of the total sentence unless there are special circumstances why you should spend longer on parole. Special circumstances may include the fact that you are young, it is your first time in custody, and/or you need rehabilitation in the community.

For more information about sentencing see *Outcomes of court* chapter.

Getting parole – for sentences 3 years and under

If your total sentence is for 3 years or less, you will be automatically released at the end of your non-parole period (as long as you are not also locked up for something else).

Getting parole – for sentences over 3 years

If your total sentence is for more than 3 years, you won't automatically be released at the end of the non-parole period.

You will have to apply for parole to the State Parole Authority (if you are in an adult prison) or the Children's Court (if you are in a juvenile detention centre).

Adult offenders

At least 60 days before you become eligible for parole, the State Parole Authority will hold a private meeting in which they discuss whether you are appropriate for parole. In considering whether to grant parole the Parole Authority must:

- decide that your release is appropriate in the public interest
- decide that you will be able to adapt to normal community life once released
- consider any comments made by the court when you were first sentenced
- consider your prison and criminal records and any reports done while you have been in custody, and
- consider the effect your release may have on any victims of your crime.

If, after the private meeting, the State Parole Authority decides not to release you, it must set a date for a parole hearing which you can attend. You will be able to have legal representation, which will usually be provided by the Legal Aid Prisoners Legal

Service. The State Parole Authority will send you copies of any reports or documents it will use in considering your release.

If, after this hearing, the State Parole Authority still decides not to grant you parole, you will not be eligible for parole again for the next 12 months.

There is no right of appeal from this hearing, unless you believe that the State Parole Authority relied on false, misleading or irrelevant evidence (in this case you can apply to the Supreme Court asking them to direct the State Parole Authority to rehear your case).

Juvenile offenders

If a person has been serving their sentence (either a control order or a sentence of imprisonment) in a juvenile detention centre, the decision about parole is made by the Children's Court instead of the State Parole Authority. Legal representation is usually provided by the Legal Aid Children's Legal Service.

If you are released on parole

If you are *released on parole*, you will be supervised by Juvenile Justice or by Probation and Parole, depending on your age.

Parole is usually granted with conditions, which usually include being of good behaviour and accepting the supervision of Juvenile Justice or Probation and Parole. There might also be other conditions such as not using alcohol, regular urinalysis, or not associating with certain people.

What happens if you breach your parole?

If you breach your parole conditions, or are sentenced to imprisonment for another offence, the State Parole Authority or the Children's Court may:

- take no action
- send a warning letter
- send you a notice requiring you to attend a hearing (this is rare), or
- revoke your parole and issue a warrant for your arrest.

If your parole is revoked and you are taken back into custody, a hearing will be held, which you and your lawyer can attend, to reconsider the revocation of your parole. At this hearing the State Parole Authority or Children's Court can:

- reverse (cancel) the revocation, in which case you will be re-released on parole, or
- confirm the revocation, which means you stay in custody. If this happens you will usually not be eligible for parole for another 12 months.

Expiry of parole

Unless it is revoked, your parole order will expire when the full term of your sentence expires.

Convictions and criminal records

If you plead guilty or you are found guilty in court, you probably want to know:

- Have I got a *criminal record*?
- Will it stop me getting a job?
- Does my record get wiped later on?

These are not easy questions to answer. The conditions under which criminal records are created or destroyed differ depending on your age, your offence and various other things. It also depends on what you mean by *criminal record*.

A criminal record sometimes affects your chance of getting a job, some types of licences, and visas to visit a foreign country.

Police data is different from criminal records

It is important to distinguish between *police data* and *criminal records*. These are two entirely different things – don't confuse them.

Police data

Police keep data about many things, and they keep it forever, for example:

- people arrested and people questioned
- warrants
- people warned, cautioned, and sent to youth justice conferences
- people found guilty and not guilty in court
- people who are victims of crime, or witnesses.

Most of this data is kept on the Computerised Operational Policing System (COPS). Police use this data to investigate further crimes and to find suspects. In most cases, the police must not reveal this data to outsiders. Police themselves must only see this information on a *need to know* basis, that is, if they need to know it to do their job (though this is hard to enforce). Most of this information is not given out to other government departments.

Criminal records

Criminal records are different from police data. To get a criminal record, a court must record a conviction against you. (It is not enough to be guilty, as courts don't always record convictions against guilty people.) This is usually what a prospective employer will see if you agree to let them have access to your criminal record.

Criminal history

This is slightly different from criminal records. A *criminal history* contains information about all of your previous court matters, even if you were found not guilty, your matter was dismissed under the *Mental Health (Forensic Provisions) Act 1990* or you were guilty but no conviction was recorded.

Courts are usually allowed to see this when they are deciding whether to grant bail. They are allowed to see some (but not all) of this information when sentencing you for other offences, or dealing with a section 32 or 33 application. The court is not usually allowed to see any details of matters where you were found *not guilty*.

A *court alternatives history* shows your police cautions and/or youth justice conferences. The Children's Court is allowed to see this when deciding how to deal with you for an offence. Other courts, and the general public, are not allowed to see it.

When do you get a criminal record?

You will get a criminal record if a court records a *conviction* against you.

Police warnings, cautions and youth justice conferences

You don't get a conviction or a criminal record:

- if the police warn you or caution you, or
- if the police or the court sends your case to a youth justice conference (unless the court sends you to a conference as a sentencing option after a finding of guilt – in this case it is possible a conviction could be recorded).

Children's Court

- **Under 16**: If you are under 16, a Children's Court magistrate cannot record a conviction against you.
- **16 or over**: If you are 16 or over, a Children's Court magistrate can choose whether or not to record a conviction against you.

Children dealt with in superior courts

The judge may record a conviction, depending on the age of the child and the seriousness of the offence.

Adult courts

If you are being dealt with as an adult, the court always records a conviction unless they deal with you under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. Section 10 allows the court to dismiss the charge or give you a bond without recording a conviction (see *Outcomes in the Local Court* on page 331).

If you are a juvenile being dealt with in the Local Court for a traffic offence, the court can use either adult or children's sentencing options (see *Outcomes in the Local Court* on page 331). If the court uses adult sentencing options, a conviction will be recorded unless the magistrate decides to deal with you under section 10. If the court uses children's sentencing options, the magistrate can decide whether or not to record a conviction.

Can people see your criminal record?

You can get a copy of your own criminal record by contacting NSW Police and making an application under the *Government Information (Public Access) Act 2009* (GIPA). A lawyer or welfare worker can help you do this if you have problems.

Most employers and the general public cannot legally get a copy of your criminal record, unless you give them written permission to do so.

Your criminal record doesn't list any spent convictions or non-convictions. (If by mistake it does, ask the police or a lawyer to help you fix this.)

Does your criminal record ever disappear?

In some situations your criminal conviction is *spent* – it disappears.

If all your convictions are spent, then you no longer have a criminal record. But your past convictions (including the spent ones) can still be disclosed in some situations (see below).

What does it mean if your conviction is spent?

If you complete a period of crime-free behaviour after being convicted for most types of offences, the conviction can stop being part of your criminal record – this is called a *spent conviction*. For your conviction to become spent, you must not get any more convictions for:

- 3 years if you were convicted by the Children's Court
- 10 years if you were convicted by any other court.

Your conviction *cannot* become spent if you were convicted for:

- something for which you were sentenced to more than 6 months in prison, or
- any sexual offence (including obscene exposure).

If your conviction is spent, it means you can honestly tell most people (eg employers) that you don't have a criminal record. However, there are a few exceptions (see below).

Do you have to tell people about your spent convictions?

In general, you don't have to disclose your spent convictions, police cautions, youth justice conferences, or matters where no conviction was recorded, to anyone for any reason.

If someone asks you about your criminal convictions, you only have to mention any unspent convictions.

So, for example, if a prospective employer (except those below) asks about your convictions on a job application, you don't have to mention a spent conviction, a police caution, a youth justice conference or a matter where you were found guilty but no conviction recorded. The employer cannot sack you for dishonesty if they find out later about a spent conviction, a police caution or a youth justice conference.

It is an offence for someone to unlawfully disclose someone else's spent convictions. It is also an offence for someone to unlawfully get information or try to get information about them.

Certain jobs are different

You must disclose your spent convictions (and your police cautions and youth justice conferences, and any matters where the court found you guilty but didn't record a conviction) if you are asked to, when you apply for a job as a:

- judge, magistrate or justice of the peace (JP)
- police officer or prison officer
- teacher or teacher's aide
- child care worker or provider, or
- fire fighter (arson convictions only).

If you are not applying for any of these kinds of jobs, you do not have to tell the employer about your spent conviction or any non-convictions.

Working with Children Check

If you apply for a job working with children, for example:

- teacher
- child care worker
- youth worker

the *Working with Children Check* requires employers to check on any convictions or allegations against you relating to offences against children. This can include spent convictions, matters where no conviction was recorded, apprehended vio-

lence orders, and even matters where you were found not guilty. These things don't always stop you from being allowed to work with children – the decision is up to the employer (unless you have committed a serious offence against a child and are a *prohibited employee*).

Licences

You may be required to disclose your spent convictions (or non-convictions) if you apply for certain licences, including:

- security licence
- casino operator or casino employee licence
- tow truck operator licence or driver certificate
- firearms licence
- real estate licence.

Spent convictions and non-convictions in court

Police can tell a court about your spent convictions, or matters where the court found you guilty but didn't record a conviction.

Police can also tell a Children's Court, but not an adult court, about your past cautions and youth justice conferences (which will be on your *court alternatives history*).

Victims compensation restitution orders

What is a restitution order?

If you are guilty of a violent crime (eg malicious wounding or sexual assault) the victim might get compensation from the Victims Compensation Tribunal.

If the court finds you guilty of the crime, even if no conviction is recorded, then the tribunal tries to get the compensation money back from you. This demand for repayment is called a *restitution order*. You can get a restitution order many years after being dealt with in court for the crime. Compensation ranges from hundreds of dollars to $50,000, so you might end up owing the tribunal a lot of money.

If you are dealt with by a warning, caution or conference, under the *Young Offenders Act 1997*, you will not have to pay a restitution order (unless there has been a finding of guilt by the court and you were referred to a conference as a sentencing option).

Objecting to an order for restitution

If the tribunal decides they want you to pay restitution they will make a *provisional order for restitution* against you. If you disagree with this decision then you may lodge a *notice of objection* within 28 days of the provisional order being made. The matter will then be *set down* for hearing.

If you do not file a notice of objection within 28 days the tribunal may confirm the provisional order without you having a hearing (which means that you will get no say in the matter).

If you do not file the notice of objection in time, and the provisional order for restitution is confirmed, you may apply to have the order *set aside* (stopped until a hearing can be held and you can have your say).

Hearings to confirm or vary a provisional order for restitution

If you do file a notice of objection, the tribunal must conduct a hearing to decide whether the provisional order should be confirmed. The hearing will be in front of a magistrate from the Victims Compensation Tribunal.

You may be legally represented at a hearing. It is important that you try to get a lawyer to represent you, if possible, at the hearing (see *Getting legal advice and assistance* chapter).

At the hearing, the legal representative of the Victims Compensation Fund Corporation (the government) will give their side of the story first.

You will then have your turn to give evidence. This usually involves giving the tribunal a statement about your financial circumstances and maybe a report from a social worker or a psychiatrist. You or your lawyer can then make *submissions* about why the amount of restitution should be reduced.

Negotiating a settlement before the hearing

Before the hearing, it is common for a representative of the tribunal to try to *settle* the matter (make an agreement with you to pay a lesser amount). It is sometimes better for you if you *don't* settle – you can often get a better deal at the hearing. You should get legal advice before making any decisions.

When the amount of restitution will be reduced

The main reasons restitution orders are reduced (sometimes so that you don't have to pay anything) are because you:

- have very little money or assets, and
- are unlikely to get a well-paid job in the near future.

If there were co-offenders involved, you can sometimes have the amount of restitution reduced because you did not play a big role in the offence for which the victim originally got compensation.

Age can also play a role in whether or not restitution orders are reduced. In general, the younger you were at the time of the offence, the greater the tribunal's willingness to reduce the amount of restitution.

Appeal against an order for restitution

Once a restitution order has been confirmed by a hearing of the tribunal, you may lodge an appeal (to the Supreme Court) within one month.

How to pay restitution orders

Once an order for restitution has been confirmed, a *payment plan* is made. You will usually be allowed to make payments by instalments, instead of all at once.

If you do not comply with the payment plan the tribunal may take action to recover the debt. They can enforce it by sending it off to the State Debt Recovery Office, who can get a sheriff to repossess your property, take money from your wages and so on. However, they can't cancel your driver's licence, make you do community service or send you to prison like they can for fines.