

UNDER 18?
GOING TO COURT?

GET COURT

SMART!

Legal Aid
NEW SOUTH WALES



It's important to understand what can happen at court. This pocket book tells you how things work in the Children's Court, what you can expect and gives you tips on how to prepare for court.

This guide was written for the Children's Court and is only about the law for young people (under 18 years of age at the time of the offence).



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HOTLINE CARD AT THE BACK



What happens at the Children's Court

How do I get a lawyer?

Legal aid is automatically given to young people appearing in the Children's Court who have been charged with a criminal offence or where an apprehended violence order is being taken out against them. This means that young people do not have to pay any money for a lawyer from Legal Aid NSW to represent them.

Most children's courts have a Children's Court Assistance Scheme where you can find help to fill out the legal aid application form.

If you have been charged with a traffic offence, you may need to go to a local court instead of a children's court and you are not automatically entitled to be represented by a legal aid lawyer. You can ask a legal aid or duty lawyer more about this when you get to court.

You can also get advice on the Legal Aid NSW Youth Hotline. Call **1800 10 18 10**.

At Parramatta, Surry Hills, Campbelltown, Woy Woy, Wyong, Broadmeadow and Port Kembla Children's Court, a Children's Legal Service lawyer from Legal Aid NSW will be there to see you. The Children's Legal Service also appear on children's court list days at Nowra, Goulburn, Raymond Terrace, Cessnock, East Maitland and Singleton courts.

At other courts Legal Aid NSW pays for private lawyers or 'duty lawyers' to look after you. Aboriginal Legal Service lawyers are also available in many children's courts to represent Aboriginal and Torres Strait Islander young people.

Lawyers will start seeing people around 9am and will generally see people in the order that they arrive. It is better to turn up early but sometimes people who come after you may be seen and have their matters dealt with first.

There is a good reason for this, so don't get frustrated. If there is a particular reason why you need your matter dealt with early, like a job interview or a medical appointment, you should let your lawyer know.

What does the lawyer do?

Your lawyer is there to explain your case and what happens in court, listen to your side of the story, give you advice, answer your questions and represent you in court. Most things you tell your lawyer are confidential. That means they can't tell anyone else what you've said – even your family or carers – unless they get your permission. There are some exceptions to this, like if you tell your lawyer you are going to hurt someone when you leave court.

Your lawyer will give you advice about your options at court but you get the final say about what you want to do.

You have a right to silence

The police need to prove their case against you and you have a right to silence – you don't have to say anything to the police if you don't want to.

Anything you say to the police or anyone else (except a lawyer) may be used as proof against you, so it is important to speak to a lawyer before you talk about your case to anyone else.

What happens if I don't show up?

You have to turn up for court when your court attendance notice tells you to. Sometimes the court will issue a warrant for your arrest if you don't turn up. Or the court may find you guilty of the crime you have been charged with without you being there. If you can't get to court because you are sick, you should call the court and tell them. They may ask you to provide proof, like a medical certificate, which you should ask your doctor to fax to the court.

If you know that you won't be able to come to court, for example if you are in rehab or have an important exam, you should contact the court as soon as possible. If you have been to court for that matter before, you should also contact your lawyer and tell them why you can't come to court on that day.

Why does my case keep getting adjourned?

Having a case go through the court is sometimes a long process and it can be frustrating for you, the court and even your lawyer! There are normally good reasons why your matter can't be finished as quickly as you would like.

Your matter might get adjourned (put off until another date) a few times if:

- you plead not guilty
- your lawyer is asking the police to change the charges or the facts

- you plead guilty and Youth Justice NSW is preparing a background report or your lawyer is getting a report from a youth worker, counsellor or doctor.



Just remember that no one wants you to come to court more times than you have to.

Bail

What is bail?

Bail is an agreement between you and the police or the court that you will turn up to court and stick to certain conditions until your court matter is finished. Some examples of conditions are:

- having a curfew
- not being allowed to hang around with other people who the police think were involved in the crime you have been charged with.

Bail is not meant to be a punishment. It is supposed to make sure that you turn up to court when you are meant to and that you stay out of trouble in the meantime.

Can I change my bail conditions at court on the day?

Some bail conditions are easier to change than others.

For example, if you have moved and you need to change the address on your bail or if you need to change the police station you report to, you should be able to change those sorts of conditions on the day.

If you want to delete your curfew or change a condition that says you're not allowed to go near someone, you will usually have to give the police notice (time to think about whether they will agree with the change you are asking for). The police generally ask for two days notice. This means that these sorts of conditions can't usually be changed on the day you are at court unless you have contacted your lawyer **before** you come to court.

Remember, if someone has put money up on your bail, you can't change your bail conditions unless that person

1. also comes to court or
2. writes and signs a letter to say that they are OK with the changes.

The letter will need to be shown to the magistrate.

If you have a problem with your bail conditions you should tell your lawyer before you go into the court.

This includes telling your lawyer anything that makes your bail conditions hard to stick to for you, your family, carers or for work. The lawyer may not always be able to do anything about it on the day, but if you tell them, then they can either put in the paperwork for an application to

change your bail conditions or put the court and the police on notice for the next time you come to court.

What happens if I breach my bail?

If you breach any of the conditions of your bail, the police can arrest you. You may have to spend the night in custody (locked up) and come to court from the cells. The court may release you on the same bail conditions, give you a new bail with different conditions or refuse you bail.

If the court refuses you bail, you will have to stay in custody until your next court date. You can talk to your lawyer about making another bail application, or about applying for bail at the Supreme Court if you are going to be refused for a long time.

Remember, every time you breach your bail it gets harder to get bail the next time!

Apprehended violence orders

What is an apprehended violence order (AVO)?

An AVO is an order from the court saying that you can't do certain things (like assaulting or threatening your carer or breaking things in your house). These orders are made by the court to protect people from violence.

An AVO is not a criminal charge, but if you breach it, you can be charged with a serious crime and get locked up for up to two years.

Apprehended domestic violence orders (ADVOs) are orders about things that happen in your home or with your family, carers, girlfriend or boyfriend, even if you don't live with them.

Apprehended personal violence orders (APVOs) are about things that happen out of home, for example at school or with neighbours.

What if the person taking out the AVO doesn't want it anymore?

Most of the AVOs that come to court are taken out by the police for the protection of someone else like your mum or neighbour, so it's something that the police control. Even if the person in need of protection (PINOP) says they don't want the AVO anymore, the police can still ask the court for the order to be made.

What should I do about the AVO?

There are lots of different options in dealing with with AVO matters. Your lawyer will explain these to you.

The lawyer will suggest what they think is best but it is important to remember that you get to choose in the end, even if that choice is different to what the lawyer recommends.

Can I take out an AVO against the person taking the AVO out against me?

Yes, if you have been the victim of violence or intimidation, you should call the police. The police may then apply to the court for an AVO protecting you against the other person.

If the person in need of protection on the AVO is not being violent towards you but is harassing you and trying to get you to breach the AVO, try your best not to react in a way that means you are breaching the AVO.



Instead you should make notes of how and when they are contacting you and what your response was. If the harassment continues, you should call the police.

Be careful! You can be charged even if the person who is protected by the AVO is acting like there isn't an order in place any more.

For example, the order says you can't go to your ex-partner's house but they call you and ask you to come over anyway. If you do go to their house, you can still be charged with breaching the AVO. Even answering a text message can be a breach of an AVO.

Sentencing in the Children's Court

When you plead guilty or are found guilty of an offence at court, the court will then give you a penalty or punishment for that offence. There are different penalties that the court can give you.

Dismissal with a caution

The court may dismiss the charge or charges with a caution. There is no further punishment and no conviction will be recorded against you. You may get a caution if it is your first offence and it is not a very serious one.

Good behaviour bond

A bond is a promise you make to the court to be of good behaviour for a certain period of time. The court can also impose other conditions on the bond like accepting Youth Justice NSW supervision or that you must attend school.

You will have to sign some paperwork at the court registry to acknowledge the conditions of your bond.

If you commit any further offences during the bond, or don't stick to the conditions of the bond, you can be breached and you will have to come back to court to be re-sentenced for the original offence.

Fine

The Children's Court can give you a fine of up to \$1,100 per offence, depending on the offence.

The court has to think about whether a young person can afford to pay a fine before they use this penalty.

If you are not going to be able to pay the fine within 28 days, you should go to the court registry and ask for an extension or apply to pay by instalments.

Youth justice conference

This is a meeting that is organised by someone from Youth Justice NSW called a youth justice conference convenor. You will have to attend the meeting with your support person or support people, the convenor, someone from the police, and in many cases, the victim.

At the meeting, you will have to say sorry to the victim for what you have done. You then work out ways to make it up to the victim and the community. These are listed in an outcome plan. There can't be anything in the plan that you do not agree to.

Plans usually include:

- apology letters
- agreeing to go to counselling or
- a small amount of community work.

If the court approves the outcome plan and you successfully complete it, your charges will be dismissed and no conviction will be recorded against you.

'Griffiths remand' or deferral of sentencing

Sometimes the court will not want to sentence you on the day you appear in court but will instead give you some time (usually three to six months) to do certain things like finishing rehab, do a traffic offenders course or mediation with your family.



If you can prove that you can stay out of trouble and you do what you have told the court you are going to do, you will usually get a better sentence than if you had been sentenced straight away.

The magistrate can decide to keep you on bail until you get sentenced.

Probation

Probation is like a good behaviour bond except there is almost always a condition that you are supervised by Youth Justice NSW. You will be expected to work more closely with Youth Justice NSW and attend more regularly on probation than on a good behaviour bond. Probation is a more serious penalty than a good behaviour bond, which means that it will be more serious if you breach it.

Community service order (CSO)

A community Service Order is a very serious penalty and one the court will only look at if they are thinking about locking you up.

If the court makes a CSO, they will order that you have to do a certain amount of hours of community service.

Youth Justice NSW will tell you what sort of community service work or programs you have to do, which is usually:

- community work like cleaning up public areas or gardening, or
- counselling.

If you are under 16, the court can order up to 100 hours. If you are over 16, the court can order up to 250 hours.

If you do not turn up for your CSO or don't do all the hours you are meant to, there is a very good chance that you will get locked up.

Control order (locked up)

A control order is where you have to go to a youth justice centre to serve a sentence. This outcome is the very last option that the court will consider and is only used for very serious offences or if you have a long history of offending.

The longest that you can get locked up for at the Children's Court is two years for one offence or three years in total for multiple offences.

A magistrate can sometimes suspend a control order, which means that you can serve your sentence in the community and enter a bond. However, if you breach the suspended sentence by breaching the conditions of the bond or doing any new offences, you will almost always have to serve your sentence locked up.

Court costs

At sentencing you will need to pay a victims compensation levy for many crimes. Your lawyer can ask the court to waive these costs so you don't have to pay them.

If the magistrate says you have to pay them and you can't afford it, speak to the court registry and ask for an extension or apply to pay by instalments.

Can I appeal?

If you are not happy with the sentence that you have received from the Children's Court, you can appeal to the District Court and a judge will consider whether your sentence was too harsh. You can also appeal if the court found you guilty and you think the court's decision was wrong.

You should talk to your lawyer first if you are thinking about appealing and they will give you some advice about whether they think you should appeal or not.

If you are in custody, you should put your name down to see the visiting lawyer and you can talk to them about lodging an appeal.

You have to act quickly though. An appeal normally has to be lodged within 28 days of your sentence date.



Convictions and criminal records

If you have pleaded guilty to an offence or have been found guilty you may want to know if you have a criminal record.

This is a very complicated area of law. It's important to ask your lawyer to explain to you what the future effects will be for each outcome that you get at court.

What about the 'working with children check'?

When you apply for jobs (including volunteer jobs) working with children and young people, you need to get a 'working with children check'.

If you are charged with certain crimes (especially crimes involving child victims), these will appear in the check and may make it harder to get work with kids.

Your lawyer can explain more about this and whether you are affected.

Children's Court Assistance Scheme

Parramatta, Surry Hills, Campbelltown, Broadmeadow, Woy Woy, Wyong, and Port Kembla Children's Courts have a Children's Court Assistance Scheme (CCAS). The CCAS workers can assist the lawyers and the court but their main job is to help you while you are at court.

When you arrive at court, the CCAS workers will sign you in. They can help you fill out the legal aid forms and will normally let your lawyer know that you are there.

While you wait for your matter to be dealt with at court, CCAS workers can help you:

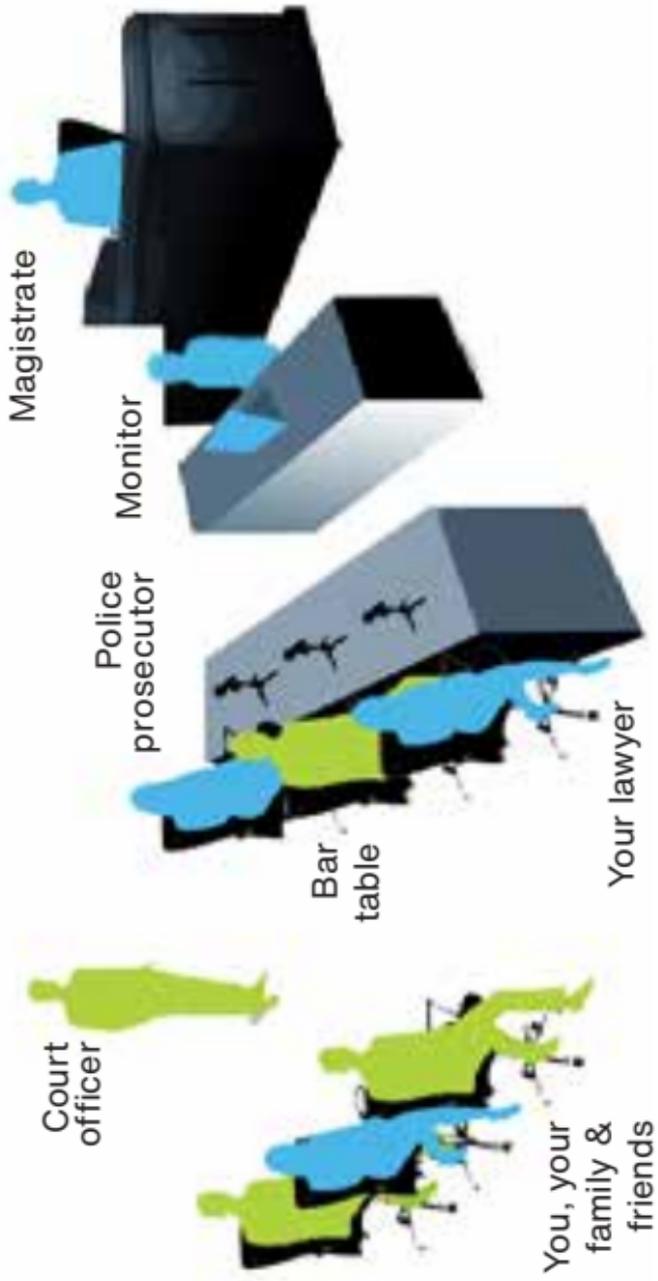
- find a place to live if you are homeless or 'couch surfing'
- get counselling or mediation if you have problems at home with your family
- find the right service if you have an alcohol or drug problem.

CCAS workers can't give you legal advice, like what you will get for your sentence or whether you should plead guilty or not guilty. But if you didn't understand what your lawyer told you, they can ask the lawyer to speak to you again and explain more clearly.

If you have to come to court by yourself or even if you just want some extra support, you can ask the CCAS worker to come into court with you.

Don't be afraid to ask the CCAS workers if you need help with something. That's why they are there.

Who's who in the Children's Court



CONTACTS

There are Children's Court Assistance Schemes providing services in the following NSW locations:

- Central Coast: Wyong, Woy Woy, Broadmeadow
- Illawarra: Port Kembla
- Macarthur: Campbelltown
- Western Sydney: Surry Hills and Parramatta

For more information, please call the relevant Children's Court Assistance Scheme Coordinator.

Illawarra Legal Centre (02) 4276 1939

Western Sydney Community
Legal Centre (02) 8833 0911

Macarthur Legal Centre (02) 4628 2042

Central Coast Community
Legal Centre *(for services at
Central Coast and Hunter)* (02) 4353 4988



Here's your Hotline Card

Make sure you carry it in your wallet. Ask to speak to a lawyer before you talk to police.

Call 1800 10 18 10.

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing, however it may change.

For more information contact the **Legal Aid Youth Hotline** on **1800 10 18 10** (9am to midnight weekdays, with a 24-hour service from Friday 9am to Sunday midnight).

LawAccess NSW

Anyone who has a legal problem in NSW can contact LawAccess NSW for legal help. Click on the Chat with us icon at www.legalaid.nsw.gov.au or call **1300 888 529** (Mon-Fri, 9am-5pm)



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If you need more help, contact 1800 10 18 10