

**16:**

**JUVENILE OFFENDERS**



## 1 Introduction

The *juvenile Offenders Act* is an act which:

- sets out special provisions to deal with children and young people who are alleged to have committed offences other than homicide; and
- creates a separate Court in which Magistrates deal with juvenile offenders.

## 2 Who is a Juvenile?

The *JOA* deals with both children and young persons.

### **Child**

A person who is under 14 years.

### **Young person**

A person who is 14 years or more and under 18 years.

In this chapter, when the provisions are dealing with both ‘child’ and ‘young person’, they will be referred to as ‘juveniles’. When the provisions deal with only a child, the word ‘child’ will be used and when the provisions deal with young persons, the word ‘young person’ will be used.

## 3 A Separate Court

When hearing charges against juveniles, unless they are jointly charged with adults, a Magistrate shall:

- carry out the proceedings in a room or building separate from where proceedings are normally held and exclude the public; or
- carry out proceedings on a different day or at a different time than ordinary proceedings and exclude the public.

These proceedings will be referred to as the Juvenile Court.

All people not directly connected with the case must vacate the Courtroom, unless they have special leave of the Court. The only people who should be left are Court officers, parties to the case and their advocates, and any other person directly concerned with the case: *s4(4) JOA*.

### **3.1 The Media**

Bona fide representatives of any news agency or information service shall not be excluded from the Juvenile Court, except by special order of the Court.

Except with the permission of the Court, no person (whether they are media or someone else) shall publish:

- the name; and
- address; and
- school; and
- photograph; or
- anything likely to lead to the identification of the child or young person who is before the Juvenile Court: *s4(4)(b) JOA*.

Usually the media will be allowed to report on a case before the Juvenile Court, provided that they do not publish any of the items set out above.

Any person who acts in contravention of *s4(4)(b) JOA* is guilty of an offence and liable to:

- a fine of \$50; or
- imprisonment for three months; or
- both fine and imprisonment: *s4(4)(b) JOA*.

## **4 Pre-trial Matters**

### **4.1 Recognisance**

When a person who is apparently under the age of 18 years is apprehended, with or without a warrant, a Police inspector or officer in charge of the Police station shall release that person on a recognisance with or without sureties: *s5 JOA*.

The officer shall not release the juvenile on a recognisance if:

- the case concerns a grave crime; or
- it is necessary in the interests of the juvenile to remove him or her from association with any undesirable person; or
- the officer has reason to believe that the juvenile's release would defeat the ends of justice: *s5 JOA*.

When a juvenile is not released under *s5*, he or she will be detained in a place of detention until he or she can be brought before a Juvenile Court, unless the officer certifies that:

- it is not practicable to detain him or her; or
- he or she is so unruly or of depraved character that he or she cannot be safely detained; or
- by reason of his or her physical or mental health, it is not proper to detain him or her: *s. 6 JOA*.

## **4.2 Committing for Trial**

When the Court remands or commits a juvenile for trial and does not release him or her on bail, the Court shall **not** commit him or her to prison, but instead:

- commit the juvenile to custody in a place of detention; or
- commit the juvenile to the care or custody of any person named in the commitment: *s8(1) JOA*.

The juvenile will be committed for the period during which he or she is remanded or until he or she is delivered in due course of the law. At any time, the Court may vary the commitment: *s8(1) JOA*.

### **Committal of a young person**

The Court does not have an obligation to commit a young person if the Court certifies that:

- he or she is so unruly a character that he or she cannot be safely committed; or
- he or she is so of depraved a character that he or she is not a fit person to be so detained or cared for: *s8(1) JOA*.

If a commitment of a young person is made under *s8(1) JOA*, it can be revoked and the young person committed to prison only if:

- the young person is found to be of so unruly a character that he or she cannot be safely detained in such custody or cared for; or
- the young person is found to be of so depraved a character that he or she is not a fit person to be detained or cared for: *s8(2) JOA*.

## 5.1 Accepting a Plea

If you are satisfied that the juvenile understands the nature of the alleged offence, ask the juvenile whether he or she admits the offence, unless the offence is homicide.

If you are **not** satisfied that the juvenile understands the nature of the alleged offence, then hear the evidence of the witnesses in support of the complaint or information: *s9 JOA*, i.e. continue as if a “not guilty” plea has been entered.

Once the evidence-in-chief has been given, ask the juvenile, or the person speaking on his or her behalf, whether he or she wishes to:

- ask the witnesses any questions; or
- make a statement.

### Guilty plea

If the juvenile admits the offence, he or she will be asked if they wish to say anything that might mitigate their sentence or provide for anything that explains the circumstances of the offence.

### Not guilty plea

Go to a defended hearing.

## 5.2 Defended Hearing

See *s9 JOA*.

If the juvenile does not admit the offence, evidence will be given in support of the complaint or information.

You should ensure that everyone in the Courtroom uses simple language so that the juvenile will understand what is going on.

Once the evidence in support of the complaint or information has been given the juvenile, or his or her parents or guardians or advocate, will then be able to cross-examine any witnesses of the complainant’s. The juvenile may also make a statement instead of asking questions.

If it appears that a prima facie case is made out against the juvenile, he or she will be able to present evidence and witnesses in his or her defence, or make any statement he or she wishes to.

You may put questions to the juvenile, but only for the purposes of:

- assisting the juvenile in his or her defence; or
- clarifying anything in the juvenile’s statement.

Keep your question simple and straightforward, for example:

- What happened?
- What happened next?
- Why do you say that?

It is also your duty to put questions to witnesses when it is necessary and proper for determining what is in the best interests of the juvenile.

If you are satisfied that the offence is proved, ask the juvenile he or she wishes to say anything to explain the circumstances or to mitigate the penalty: *s9(7) JOA*.

Acquit or convict the juvenile.

#### Best Interests of the Juvenile

In criminal law, juvenile offenders are treated differently than adult offenders because of:

- their age;
- society's belief that juvenile offenders can be more easily rehabilitated; and
- the idea that they children and young people should be given be given a second chance to be productive members of society.

The difference between juvenile offenders and adult offenders should be reflected in the way juvenile offenders are treated by the Courts.

You **must** consider what is best for a juvenile offender, during the course of the trial and during sentencing. The "best interests" of adult offenders are never a consideration for the Court, except perhaps in sentencing.

## **6 Sentencing of Juvenile Offenders**

### **6.1 Pre-sentencing Matters**

Before deciding how to deal with the convicted juvenile, you should obtain any information related to the juvenile's:

- general conduct;
- home surroundings;
- school record; and/or
- medical history.

This information will help you deal with the case in the best interests of the juvenile.

You may direct a probation officer to prepare and submit the report.

Once the report is submitted, you may ask the juvenile any questions regarding the report.

You may also remand the juvenile on bail or place him or her in detention in order to:

- obtain information for the report; or
- obtain a special medical examination or observation; or
- consider how to deal with the case in the best interests of the juvenile.

If you decide that remand is necessary for inquiry or observation, make an entry in the Court register stating that:

- the charge is proved; and
- the juvenile has been remanded.

## **6.2 Sentencing Options**

Once you are satisfied that a juvenile is guilty, you may do one or more of the following:

- dismiss the case;
- discharge the juvenile offender on entering into a recognisance, with or without sureties;
- deal with the juvenile offender under the provisions of the *Probation of Offenders Act - Cap. 28*, which allows those convicted of an offence to be under the supervision of a probation officer for between 1 and 3 years;
- commit the juvenile offender to the care of a relative or other fit person;
- order the juvenile offender to pay a fine, damages, or costs but not include a default sentence of imprisonment;
- order the juvenile offender's parents or guardians to pay:
  - ≡ a fine, damages, or cost; and/or
  - ≡ give security for his or her good behaviour;
- direct release upon entering into a bond which states that the juvenile offender will appear and receive sentence when called upon;
- commit the juvenile offender to custody in a place of detention;
- where the juvenile offender is a young person, sentence him or her to imprisonment; and/or
- deal with the case in any other manner legally allowed: *s16 JOA*.



### 6.3 Diversion

Remember that all of us make mistakes, and probably we make more when we are young. To enter a conviction and formal sentence may mark out a young person as a criminal forever.

You may want to put the case off for a couple of months and give the juvenile an informal sentence such as:

- voluntary community work;
- giving money to a charity;
- giving money to the victim; or
- something similar.

In this way you avoid a formal sentence, and give the young person another chance.

If you choose an informal sentence, make sure that you give enough time for it to be carried out and then recall the case later to ensure the work has been done or the money paid.

If the work is not done, or the money not paid, you may give a formal sentence as set out in *s16 JOA* or give them more time.

If the work is done or the money paid, then you may indicate that the sentence is served and discharge the juvenile offender.

You may not feel that diversion is appropriate, if you have tried it previously with the young person and it has failed. They may have already been given this chance. Also, if the charge is quite serious, the Police may want a formal conviction and sentence.

### 6.4 Restorative Justice

Restorative justice is a response to crime that emphasises healing the wounds of victims, offenders and the community.

Restorative justice allows you to involve both the juvenile offender and the victim in the sentencing process.

By involving the victim and juvenile offender in the sentencing process, you provide:

- the victim with a chance to explain how the juvenile has harmed them; and
- the juvenile with a chance to:
  - ⇒ hear and see the damage and pain they have caused to the victim;
  - ⇒ take responsibility for their actions by having a say in their sentencing; and

- ⇒ change their behavior without the stigma of being a criminal for the rest of their life; and
- the possibility of reconciliation between the victim and the young offender.

Before applying a restorative justice approach to sentencing a juvenile offender, you should consider:

- the nature of the crime;
- how serious the crime is;
- whether the juvenile and victim are open to this approach; and
- whether the prosecution is in favour of this approach

## 6.5 Payment of Fines by Parents or Guardians

### Young Person

You **may** order that a fine, damages or costs be paid by a young person's parent or guardian instead of by the young person, unless you are satisfied that the parent or guardian:

- cannot be found; or
- has not conduced to the commission of the offence by neglecting to exercise due care of the young person: *s11(1) JOA*.

### Child

You **shall** order that a fine, damages or costs be paid by a child's parent or guardian instead of by the child, unless you are satisfied that the parent or guardian:

- cannot be found; or
- has not conduced to the commission of the offence by neglecting to exercise due care of the child: *s11(1) JOA*.

You may also order the parent or guardian of a juvenile who is charged with an offence to pay security for the juvenile's good behaviour: *s11(2) JOA*.

If you are satisfied that the charge against the juvenile is proved, you may make an order for the parent or guardian to pay fines, damages, costs or security for good behaviour, without convicting the juvenile: *s11(3) JOA*.

If the parents have been ordered to attend the hearing and have failed to do so, you may make an order to pay fines, damages, costs or security.

However, you may make no such order without giving the parent or guardian an opportunity to be heard: *s11(4) JOA*.

If a parent is ordered to pay a sum under *s11 JOA*, or there is a forfeiture of security, the amount may be recovered:

- in the manner provided by *s28 Penal Code*; and
- as if the order had been made on the conviction of the parent or guardian for the offence rather than the juvenile: *s11(5) JOA*.

A parent or guardian may appeal an order made under *s11 JOA* for the payment of fines, damages or costs, or security. To appeal, they must follow the procedure set out in *s45 MCA*.

## **6.6 Special Considerations Regarding Detention of Juveniles**

### **Children**

No child shall be sentenced to imprisonment or be committed to prison for default of a fine, damages or costs: *s12(1) JOA*.

You may order a child to be committed to custody in a place of detention, for not more than six months if:

- the child is convicted of an offence which would sentence an adult to imprisonment, or would sentence an adult to imprisonment for default of a fine; **and**
- the Court considers that no other method of punishment is suitable.

### **Young persons**

No young person shall be sentenced to imprisonment if he or she can suitably be dealt with any other way under *s16 JOA* (see list above): *s12(2) JOA*.

If a young person is sentenced to imprisonment, he or she shall not be allowed to associate with prisoners who are not juveniles, so far as it is practicable: *s12(3) JOA*.

## **6.7 Grave Crimes**

Notwithstanding anything else in the *JOA*, when a juvenile is convicted of a grave crime, the Court may sentence him or her to be detained for a period of time to be specified in the sentence: *s13 JOA*.

Notwithstanding anything in the *JOA* to the contrary, when such a sentence is passed, the juvenile shall be:

- liable to be detained in such place and on such conditions as the Minister may, in his or her discretion, direct; and
- deemed to be in legal custody: *s13 JOA*.

A grave crime is:

- murder;
- attempted murder;
- manslaughter;
- unlawful wounding;
- unlawful poisoning;
- causing grievous harm; or
- any crime the Minister may from time to time add to the schedule: *s2 & Schedule to the JOA*.

A person in detention for a grave crime may at any time be discharged by the Minister, on his or her discretion, or by license: *s14 JOA*.

## **6.8 Selecting a Place of Detention**

In selecting a place of detention for a juvenile, when there is more than one choice, you shall consider:

- whether the place is suitable for the reception of convicted or unconvicted persons;
- whether the place is suitable for a juvenile charged with a serious or minor offence;
- the religious persuasion of the juvenile;
- whether the juvenile is female or male; and
- that the person in charge of the place of detention has sufficient authority to be charge of such a place: *s17(3) JOA*.

The juvenile who is committed to custody in a place of detention shall be delivered to the person in charge of the place of detention.

Places of detention that are required for the purposes of the *JOA* shall be provided or appointed by the Minister.