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**CRIMINAL:
YOUNG OFFENDERS**

1 Dealing with Young Offenders

The following guidelines may help if you are dealing with young people.

When a person appears before you, and looks as if they may be under 16 years, find out the age as the very first issue. The Police should know the person's age, as they will have been responsible for the investigation. If not, then you will need to check the young person's age and its implications. You should verify the age through birth records, or on a balance of probabilities after hearing expert medical evidence: *s17(3) Penal Code*.

Dealing with a Young Person Privately

If you can, deal with the young person a little more privately than you would for an adult.

- When the case is called, you do not need to close the whole Court. This may create an impression that you are trying the case secretly.
- It is best to announce that as the case to be called is a young person case, the public will be excluded from the hearing. It should be made clear though that anyone connected with the case, or is part of the Court process, is able to stay.

Assistance for the Young Person

Usually, it is not wise to take a plea without the young person's parent or guardian being present. This is because:

- they can give useful advice to young persons; and
- they usually have valuable information on the young person's position – whether they are attending school, getting into trouble with the police, and whether they are living at home.

It may be a good idea, when you have called the case, to ask the young person where his or her parents are.

If the young person is quite old, 15 or 16, and the charge is a simple theft, you may wish to deal with the case there and then. But often it is not as simple as that and offending is a sign that things are not well at home. Be careful about this.

It is best if a lawyer can be found to give advice and sometimes the case needs to be put off to allow this to happen.

What a young person should have, in view of age, and usually a poor understanding of the legal process, is the ability to talk to someone and to have someone speak on their behalf if this is what he or she wants.

This could be a parent, other relative, social worker or some other official. It is worth finding out if someone like this is available to represent the young person.

Remember that most criminal charges refer to offences that may be quite hard to understand, even in a young person's own language. Explaining the charge is more important than just reading it out.

Taking a plea is also quite a frightening experience, and technical words are used in recording the plea. However, what you need to really know is whether the young person agrees or not with the charge. Is it admitted? If it is, then that is sufficient to record a guilty plea.

Use of simple language is the best practice, in order to make the young person understand what is going on.

Guilty Plea

See paragraph 2 below.

Not Guilty Plea – Defended Hearing

If the young person says that they are not guilty, then the case will proceed as if they were an adult. In other words, a defended hearing will need to occur, for you to determine guilt or innocence.

However, consider asking what the young person has to say about why they believe they are not guilty. Sometimes they simply do not understand that what they have done amounts to a crime. An example might be a larceny where three young persons decide to steal some food, and one is given the task of being the lookout. Sometimes this person pleads not guilty, thinking that as they did not go inside, they have not actually committed the offence. But this may be wrong, as a matter of law.

Check why the young person has pleaded not guilty. Is it because they say the Police have charged the wrong person, or is it because they were somewhere else at the time, or is it because they did the crime, but did not intend to do it? Asking questions carefully may in fact resolve the whole case then and there.

You need to be very careful. Do not give legal advice, and do not ask questions in a formal fashion. The young person may think that the trial has already started.

Is the Defended Hearing a Normal One?

Be conscious that it may be the first time that the young person has ever been in a Court. Courts can be intimidating, especially for young persons.

The prosecutor should present their evidence in the usual fashion. But you may help a young person, if there is no lawyer to help, in asking some questions of witnesses.

When it is time for the defence to give evidence, go out of your way to use simple language, and make sure everyone else in Court uses simple language too. You may need to help the young person give their evidence, by asking some questions which gets their story out.

Be careful about what questions you ask though. You have to keep them simple and straightforward by saying things such as:

- tell me what happened?
- what happened next?
- why do you say that?

Police may ask questions in cross-examination, but you must make sure that they are reasonable questions, and that the young person understands. At times you may need to interrupt by checking with the young person if they do understand. One way to check if they understand is to ask them to say the question back differently.

2 Sentencing Young Offenders

You must have particular regard when sentencing young offenders because the greatest emphasis is put on rehabilitation of the offender rather than on punishment. Because of this unique situation, a number of provisions exist specifically for the handling of young offenders.

Before deciding how to deal with the convicted young offender, you should obtain any information related to his or her:

- 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 young offender.

2.1 Imprisonment

No person under 16 years may be sentenced to imprisonment unless no other method of punishment is appropriate: *s38(1) Penal Code*. If you do sentence a young offender to imprisonment, you must give your reasons for doing so: *s38(1) Penal Code*.

If imprisoned, the young offender must:

- serve his or her sentence in a special establishment; or
- if no such establishment exists, must be segregated from offenders over 16 years: *s38(2) Penal Code*;
- imprisonment of young offenders should be a last resort.

2.2 Liability of Parents and Guardians

Parents and guardians cannot be held liable for criminal offences committed by their children:
s19 Penal Code.