

Bail Policy

Essential Summary

This policy outlines YJNSW's responsibilities regarding bail.

YJNSW provides remand intervention, supports young people to enter their bail conditions and supervises young people who are subject to bail.

This policy applies to YJNSW employees who work in YJNSW Community Offices, YJNSW Centres, YJNSW Bail Accommodation Support Service (BASS) and YJNSW Court Logistic, Classification and Placements (CLCP) Unit.

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1 Scope

This policy and the related procedure apply to all YJNSW community and centre employees and is informed by the *Bail Act 2013*.

2 Purpose

This policy provides a framework and direction for employees as they:

- work with young people, the court, police, the community, and other stakeholders to avoid unnecessary remands
- provide remand intervention services
- help young people meet the requirements of their bail undertaking
- supervise young people on bail

3 Definitions

Acceptable Person means a person identified as acceptable by the bail authority imposing the condition (e.g., the Children's Court) or the officer or court that is given the bail acknowledgement. See section 11.1.2 of this policy for further information.

Bail Authority means a police officer, an authorised justice, or a court. YJNSW employees are not a bail authority but can exercise some of the functions of a bail authority under s95 of the *Bail Act 2013*.

Bail support means short term voluntary assistance provided to young people who do not have a supervised order with Youth Justice. Bail support is not mandated by the court or Youth Justice.

Court intake is the process of assisting the Court to ensure that, where relevant, children and young people appearing before the Court have their immediate needs and any barriers to accessing bail identified.

Character Acknowledgement is an acknowledgement that a young person is a responsible person who is likely to comply with their bail acknowledgement. It must be made by an acceptable person, who knows the young person and must be completed on the *Character Acknowledgement* form.

Must indicates a mandatory action to be complied with.

Person on remand means an accused person who is waiting to attend court and has been refused bail or who is unable to meet bail conditions.

Pre-release requirement is a bail condition that must be met before the accused person can be released on bail.

Remand intervention is the assistance provided by YJNSW to ensure that a young person has access to bail, where applicable.

Responsible person is a young person who has been identified by an acceptable person as someone who is likely to follow the conditions of their bail.

Should indicates a recommended action to be complied with unless there are sound reasons for taking a different course of action.

Supervised bail means bail with the condition that the young person accept the supervision of YJNSW

Young person means all young people that YJNSW has a mandate to supervise or work with whether in community or custody.

Unacceptable risk refers to an unacceptable risk that the accused person, if released from custody will; (a) fail to appear at any proceedings for the offence, or (b) commit a serious offence, or (c) endanger the safety of victims, individual or the community, or (d) interfere with witness or evidence (s19(2) of the *Bail Act*

4 What is bail?

Bail is the authority for a person who has committed, or is alleged to have committed an offence, to be at liberty while their legal matter proceeds through the criminal justice system.

The bail application process starts when a person is arrested and charged with an offence. Police (and later the court) must decide whether the person should be released on bail into the community, with or without conditions, while their legal matter proceeds through the criminal justice system.

If police grant bail, the young person will be released with the expectation that they will attend court on their next court date.

If police refuse bail, the young person must attend the first available Children's Court within 24 hours for a magistrate to determine bail.

The court can only refuse bail if they are satisfied that there is an unacceptable risk that cannot be addressed through bail conditions.

Young people who are refused bail and remain in custody waiting for their court matters to be heard or sentenced, are classified as being on remand. They can apply for bail at any stage of the criminal proceedings.

Young people who are granted bail are given a bail undertaking, which may have conditions. All bail undertakings will require the young person to attend court on another day. A bail undertaking can also include pre-release conditions that must be met before the young person can leave custody (refer to section 11 of this policy), and conditions that they must abide by while they are in the community.

When determining bail, the court assesses four bail concerns, whether the young person will:

- fail to appear at any proceedings for the offence
- commit a serious offence
- endanger the safety of victims, individuals, or the community
- interfere with witnesses or evidence.

4.1 Youth Justice NSW and bail

YJNSW is responsible for:

- 1) holding young people in custody when they are denied bail.
- 2) taking them to court or facilitating an Audio-Visual Link (AVL) court session.
- 3) working with the young person, their carer, and other stakeholders to gather and provide information to the court in verbal and/or written reports.
- 4) helping young people meet their bail conditions, whether or not they are subject to bail supervision (see the [Bail Protocol](#) between YJNSW and the Children's Court).
- 5) upholding young peoples' rights, e.g., explaining the right to apply for bail, advocating for them and helping young people understand their bail conditions when released from custody or under YJNSW supervision and checking their understanding.
- 6) supervising young people in the community who have a condition to accept the supervision of YJNSW and have been found guilty or pleaded guilty to the offence. When there are multiple offences on a bail undertaking, a young person only needs to be found/have plead guilty to one

offence on their bail undertaking for YJNSW to supervise them.

- 7) informing police when a supervised young person breaches their bail conditions or when YJNSW reasonably believes they are going to breach their condition.
- 8) helping young people apply to vary their conditions (see the *Non-Compliance and Breach Policy*).

5 Child safety

YJNSW employees must take time and care to make sure that young people understand their rights and responsibilities regarding bail.

Young people who are applying for, or subject to, bail can be particularly vulnerable. They may:

- not understand the legal processes
- not have their usual support people around them and/ or
- be in the care of YJNSW or the police for the first time.

YJNSW is committed to keeping the safety and best interests of young people at the core of everything we do. This means that the opinions and ideas of young people, their families, carers, and communities are valued, and their rights explained and upheld.

The *Child Safety and Mandatory Reporting Policy* and procedure outlines how employees must respond to young people who are at risk at harm, as well as our responsibility to keep them safe.

6 Cultural responsiveness

Employees must consider young peoples' cultural needs, identity, and connections wherever possible. YJNSW must collaborate with the Children's Court, police, and Legal Aid to ensure that young people and their families understand the court proceedings.

Employees must use professional interpreters to communicate with young people and their families where necessary.

Young people and their families often have their first interaction with YJNSW when applying for bail. Custody and criminal justice processes are unfamiliar and intimidating for most people, often moreso for families where English is not their first language.

6.1 Aboriginal and Torres Strait Islander young people responsivity

Aboriginal young people are overrepresented in the criminal justice system. Criminal justice processes can disadvantage Aboriginal and Torres Strait Islander young people when their individual, and cultural needs are not considered.

Supporting Aboriginal and Torres Strait Islander young people in a culturally sensitive and respectful way is essential to providing an effective service. Employees must consult and collaborate with young people, their families, and communities, to ask and listen to how we can best support them.

Some practical steps that employees can take to support young people applying for bail include:

- supporting Aboriginal and Torres Strait Islander young people to have more than one address on their bail mandate, if they are going to receive care and support from people in different addresses
- considering the wider community and cultural supports that the young people have, or could access, when gathering information for the court
- asking young people and their families if they want to be referred to support organisations, particularly organisations that can help them meet the requirements of their bail.
- supporting young people to contact their solicitor, and where required, support them to vary bail conditions so that they can meet family or cultural responsibilities to avoid bail breaches.

7 Bail concerns on admission into custody

Young people who are bail refused by police may be held in YJNSW custody while they are waiting for their first court appearance. This may be at a court, or at a YJNSW centre if the young person is bail refused outside of court hours. Employees must identify whether there are any matters that will impact the young person's ability to participate in court.

YJNSW must ask NSW Police Force if a young person is intoxicated, displaying acute mental health issues, or is injured, before admitting them into custody. Police must provide a medical clearance before YJNSW will accept custody of a young person who has been injured or is under the influence of drugs or alcohol. A medical certificate, hospital discharge summary or a medical assessment by an Ambulance Officer is sufficient evidence of medical attention to meet custodial admission requirements.

At times, intoxication, mental health issues and injuries are made known after admission. All health matters must be referred to the Justice Health and Forensic Mental Health Network (JH&FMHN) Clinician for assessment.

7.1 Intoxication

Young people who are bail refused must be seen by a court within 24 hours so that the court can decide whether to grant bail. If YJNSW believe that the young person may be intoxicated on alcohol or another drug, they must inform the court. The court can defer making a bail decision for up to 24 hours if the young person is intoxicated.

7.2 Mental health concerns

If a young person appears to have a mental health issue when in custody, the employees must inform the young person's solicitor and the JH&FMHN, either at the court, or at the YJNSW centre. Available JH&FMHN employees will undertake an assessment that can be provided to the court. The young person must also be referred to the YJNSW psychologist for mental health support.

The court may decide to proceed with a bail application without an assessment from JH&FMHN, or before an assessment can be undertaken.

Operational Memorandum *Clarification of Orders Under s33 of the Mental Health (Forensic Provisions) Act 1990* from 30/10/2019 provides direction to custodial employees about how young people should be transported to a mental health hospital for an assessment.

Community employees must refer to the *Community Referral to Justice Health Procedure* for information about how to respond to mental health concerns for young people attending court.

7.3 Unwell/ injured

Any injury or illness must be referred to JH&FMHN employees immediately for assessment. The court must be advised of any injury or illness that may impact on the young person's ability to participate in the court process.

8 Remand intervention

The purpose of remand intervention is to provide information and support to young people, police, and the court to avoid young people being unnecessarily remanded in custody.

YJNSW will help a young person through the bail application process when:

- police refuse bail and a young person is waiting for their first court hearing
- a young person is remanded in custody after the initial court hearing.

8.1 Court intake

Court Intake is the process of assisting the court to ensure that young people appearing before the court have any barriers to bail identified. Community employees support the court by:

- providing relevant information about a young person to the court during a release application
- helping the court to identify a young person's community supports or plan how the young person can get community support on the day of the application.
- supporting the young person, their carer, solicitor, the court and/or police to ensure that bail conditions are realistic and achievable. e.g., asking the court to confirm that a young person's mother is suitable for a character acknowledgement, if local police have previously said that she is not.

Some courts have dedicated court intake caseworkers who provide information to the court in person, or through AVL. All YJNSW community offices must have a process in place for providing court intake support for young people from their catchment. This includes identifying and providing information regarding young people who are not subject to community supervision.

The Court Intake Caseworker must either email a summary of what occurred at court to the young person's local YJNSW community office or email the completed internal *Court Intake Form* (available on the Operations Manual). Any relevant bail or risk information must also be provided to the community office, YJNSW centre and transporting employees and case noted on CIMS.

The *Court Intake First Appearance Form* has been developed to provide information to the judiciary when a young person is arrested and brought before the court for a new matter, or when requested by a magistrate. The form must be provided to the YJNSW Intake team at the court, custodial caseworker, prosecution, and defence at the same time. The form is available on CIMS and must be used for all young people who have a CIMS account. Where a young person does not have a CIMS account, an editable Word version, which is available on the Operations Manual, must be used.

The *Court Intake First Appearance Form* should be completed by a young person's allocated caseworker whenever possible but can be completed by the community office duty caseworker or another community employee when required. Community Offices must have a process in place to ensure an employee from their office or a court intake caseworker will complete the form for unallocated young people from their area.

8.1.1 Gathering court intake information

Community offices must prioritise collaborating with court intake caseworkers and custody employees to gather information about existing clients and young people who are not subject to supervised orders. Community offices must aim to provide the relevant information to court intake caseworkers before court starts for the day.

The relevant community office must provide the following information to an intake caseworker (if the court has one):

- current supports (e.g., kin, counselling, disability funded supports, youth programs, YJNSW casework support programs)

- education or employment status
- legal: other known court orders or matters (excluding Youth Justice Conferences).
- if the young person has a YJNSW supervised order:
 - what the legal orders is
 - when the order ends
 - compliance with supervision
 - any breaches or revocations.
- accommodation:
 - any confirmed accommodation
 - whether a support person can attend court and transport them home
 - who will be supervising them at home?
 - involvement by the Department of Communities and Justice (DCJ) Child Protection and Permanency (DCJ CPP), including whether the young person is parental responsibility to the minister, and in a residential setting.
- any issues which may impact on the young person's ability to comply with bail conditions including disability, mental health, and substance abuse concerns.
- protective factors not already listed.

The above information may be gathered from CIMS case notes, legal history, and conversations with the young person, their carers, and other relevant stakeholders.

The information must be recorded as a *Legal Matters* case note on CIMS.

8.1.2 Cultural responsiveness and court intake

When gathering and providing information to the court, consider the young person's individual situation, and whether there are any cultural considerations that may impact their bail. In particular:

- Does the young person have a community that may be providing support and supervision?
- Does the young person move between, and receive care from, people at multiple addresses?
YJNSW may be able to advocate for the court to provide multiple addresses for the young person to live at on their bail undertaking
- Are there any family or cultural responsibilities that the court should know about when considering bail conditions?

8.2 Weekend bail court

On weekends and public holidays, young people who have been arrested by police in NSW are able to apply for bail through a weekend bail court AVL (see the *Audio-Visual Link Policy*) at each centre. All weekend bail court matters are heard through Parramatta Children's Court.

YJNSW provides a court intake service for weekend bail court matters. A YJNSW employee is rostered on to provide intervention to young people who are applying for bail on the weekend, or public holidays. The court intake employee is responsible for gathering information outlined in section 8.1.1 *Gathering court intake information* and providing this information to the court if required. This information can be gathered from existing records on CIMS, speaking with employees at the young person's Youth Justice Centre and by contacting the young person's carers.

Court intake employees must make sure that the Centre which is holding the young person is aware of the outcome of the court proceedings and the *Court Intake First Appearance Form* is emailed to the relevant YJNSW community office and to the Aboriginal Legal Services generic mailbox childrenscrim@alsnswact.org.au for all Aboriginal and Torres Strait Islander young people.

YJNSW must provide the young person's family with information about how they can engage in the weekend bail court process and provide the court registrar with their phone number if they would like to participate in the court hearing.

8.3 Recording remand intervention on CIMS

Remand intervention work must be recorded in the Remand Intervention screen on CIMS. Remand intervention includes actions taken by intake caseworkers, community and custody caseworkers, duty managers and youth officers. Any information to the court reports, time spent finding accommodation should be included.

Other court support processes such as transporting the young person, facilitating the AVL and entering young people into their bail agreements do not need to be recorded in the remand intervention screen. These tasks must be completed and recorded in line with the relevant policies and procedures (*Audio Visual Link (AVL) Policy, Movement Out - Court Attendance Procedure and Admissions and Discharge Procedure*).

8.4 Bail refused

YJNSW cannot release a young person who is refused bail until they have been granted bail or the arrest warrant has been finalised in another way.

If a young person is in police or YJNSW custody and has not yet had a bail decision heard by the court, they may request a bail review by a senior police officer and may be required to attend a police station. A bail review must not be carried out if it would delay the young person's attendance at court. It does not need to occur if the bail decision was originally reviewed by a senior police officer. If a young person requests a bail review, YJNSW must contact the arresting police station to confirm whether a bail review is required.

If a young person is not granted bail on their first appearance at court, they can apply for bail a second time (second release application) at the Children's Court. This can be lodged by their legal representative. The young person may make further bail applications if there is change in their circumstances, as defined in section 74 of the Bail Act 2013, this can include changes to:

- accommodation / family ties
- education
- employment
- health
- recreational situation
- financial situation
- the offences before the court (e.g., some offences being dropped or sentenced).

Employees should encourage young people to seek legal advice regarding whether they should submit a further release application when there is a change in circumstance.

YJNSW can provide the court with an *Information to the Court Regarding Bail Report*, to assist the court to determine whether it is appropriate to grant the young person bail.

8.5 Short term remand

The *Collaborative Case Management of Young People in Custody Manual* provides direction about how YJNSW caseworkers in the community and in custody identify who is leading the remand intervention and case management process when a young person is bail refused.

Community and custody employees must work together and communicate so that all case management, and remand intervention tasks are completed for young people applying for bail.

Caseworkers (community) are responsible for:

- providing information to intake caseworkers
- creating or updating the remand intervention on CIMS
- writing any *Information to the Court Regarding Bail Reports*
- providing information to the court intake team to allow for verbal background reports to occur
- taking the lead role in working with stakeholders to confirm appropriate accommodation
- helping young people meet their bail conditions
- working with custodial employees for case planning and exit planning
- attending court, when required by the court or their manager.

Caseworkers (custody) are responsible for:

- providing caseworkers (community) information for an *Information to the Court Regarding Bail Report*
- providing information to the court intake caseworkers and caseworkers (community)
- helping young people meet their bail conditions, including facilitating phone calls to accommodation providers
- case management update/handover with caseworkers (community) when young person exits custody onto a supervised community order
- helping young people enter their bail conditions, when they have returned to the centre after attending court

8.6 Bail & Accommodation Support Service (BASS)

The Bail & Accommodation Support Service (BASS) is an after-hours bail support service for young people operated by YJNSW in partnership with NSW Police. It seeks to address the unique barriers that young people face when accessing bail and therefore reduce instances of short-term remand. When a young person has been arrested and is in police custody, the BASS promotes alternatives to remand and provides support to young people to meet the accommodation condition of their bail undertaking. BASS funds external agencies to provide accommodation support and case management to at risk young people, delivering services which target the underlying factors contributing to offending.

The BASS also has capacity to provide support for YJNSW staff who are accessing or attempting to access homelessness support for young people involved with the justice system.

During business hours this support is provided by a BASS Service Coordinator who offer case coordination for young people in BASS placements with external providers. Where YJNSW caseworkers are unable to secure appropriate alternative accommodation for young people granted Section 28 Bail they may be referred for access to a BASS placement.

Support options include:

- 28 day funded accommodation placements (BASS has limited beds across the state)
- Strategic advice and support on navigating the homelessness service system
- Liaison with the broader DCJ (Helpline, CSC triage etc.).
- Engagement with family/kin/guardian to explore safe and suitable accommodation options.

9 Supreme court bail

Young people who have been refused bail by the Children's or District Court may be able to apply for bail at the Supreme Court. YJNSW caseworkers must make sure that young people they work with are aware of their right to apply for Supreme Court bail and encourage them to speak to their legal representatives about whether it is appropriate for them to apply.

When the Supreme Court plans to hear an application for bail, it will issue a warrant under s105 of the *Bail Act 2013* to the YJNSW centre where the young person is remanded. Centre employees must provide the warrant to the young person's community office, so that they are aware of the Supreme Court bail application.

Community offices must provide an *Information to the Court Regarding Bail Report* within three days of a matter being lodged at the Supreme Court, for any young person who is aged 10 to 13. Regional Directorate Offices will notify community offices when a 10 to 13 year old young person has lodged a Supreme Court matter.

The Area Manager must let the court and Regional Directorate Office know if the report:

- cannot be completed within the 3 day turnaround
- can be prepared sooner than the 3 day turnaround

Community offices should consider providing an *Information to the Court Regarding Bail Report* for any Supreme Court Bail application for young people aged over 13.

10 Bail on appeal

YJNSW does not supervise community orders which are being appealed (e.g., good behaviour bonds, probation orders). However, YJNSW will supervise the bail of an appealed control order if:

- it is being appealed based on the severity of the penalty and
- it has a supervision condition.

When a court sentences a young person to a control order and an appeal application or application of leave is lodged, the sentence is not automatically stayed until the young person is granted bail.

When a young person is sentenced, they should get advice from their solicitor regarding lodging an appeal.

11 Exiting custody on bail

When discharged from YJNSW custody in a centre or at court, the young person must be given a copy of their bail agreement and have the conditions explained to them in a way that they will understand.

If a young person is not able to meet their bail conditions, the YJNSW Centre holding the young person must inform the court within eight days using the *Notice by Custodian Concerning Person in Custody After Grant of Bail Form*.

YJNSW community and centre employees must work together to help a young person meet their conditions. The young person must be included in discussions about options and opportunities for them.

- YJNSW is ultimately responsible for ensuring arrangements are in place for young people to travel safely home from custody or court.
- It is preferable that a young person's primary carer provides this transport.
- Where a young person's carer cannot provide this transport, YJNSW community and custodial employees must work together, and with other agencies and service providers, to ensure transportation is available as soon as possible.

- At times this will include YJNSW transporting young people or providing practical support to young people to ensure they can get home safely. When this occurs, the Centre or Community Office that is best placed to provide the transport should do so without delay. If there is any ambiguity around which Centre or Community Office is best placed to provide a young person transport, this is to be promptly resolved between respective managers.

11.1 Pre-release requirements for bail

If bail with pre-release requirements have been set, the young person must remain in YJNSW custody until they are able to meet the requirements.

The four types of pre-release requirements that the court can set on a young person's bail include:

- passport surrender
- character acknowledgement
- security
- accommodation.

11.2 Passport surrender

The court can direct that a young person surrenders their passport before being released from custody. The passport must be surrendered to the court or police. YJNSW do not accept a surrendered passport.

11.3 Character acknowledgment

A character acknowledgement requires an 'acceptable person' who knows the young person to sign the *Acceptable Person Application Form and the Character Acknowledgement* form before the young person can be released from custody. By signing the form, the acceptable person says they believe the young person is a responsible person who is likely to obey their bail conditions. An acceptable person can sign the Acknowledgement at a court, a police station or a YJNSW centre.

Under S26(4) of the *Bail Act 2013*, the court can prescribe who an 'acceptable person' is. If the young person's bail acknowledgement does not define who an 'acceptable person' is, then whichever authority (e.g., police, the court or YJNSW) is accepting the character acknowledgement can. Employees must consider the following when identifying whether a person is an 'acceptable person':

- The intent of the court, if known. If the intent of the court is not known and it did not provide a direction on who is suitable also consider the following points:
- What is the person's relationship to the accused? (e.g., the young person's parent or carer should be considered suitable in most circumstances, even if there are criminal offences, but a co-accused may not).
- Has the acceptable person been charged or convicted of any criminal offences (taking into account the seriousness of the offence)?
- Does the acceptable person have any criminal charges outstanding (including court attendance notices)?

Under s28 of the *Bail Regulation 2014*, YJNSW must be confident of the acceptable person's address, and identity, to accept their character acknowledgement. Photo identification is the preferred way of confirming an address and identity, however it is not required by the regulation. Other ways to confirm the identity and address could include:

- using other forms of identification, including bills or a Medicare card etc

- speaking with police
- confirming with employees who have worked with the 'acceptable person'

When an 'acceptable person' is not able to attend the court or the YJNSW centre which is holding a young person, a distant character acknowledgement (or split bail) can be used. The acceptable person can attend another police station, court or YJNSW centre or community office to enter the character acknowledgement, which is then emailed to the holding centre and court. In a community office, only a YJNSW employee who is a Justice of the Peace can complete a distant character acknowledgement, and this should be done in consultation with the Duty Manager of the YJNSW centre which is holding the young person.

11.4 Security agreement

A young person, or another 'acceptable person' can be asked by the court to forfeit security (e.g. money, or something of value) if they fail to appear at court when required.

The court can ask for security to be

- a) deposited before bail is entered or
- b) not deposited but forfeited if the young person breaches the conditions set out by the court.

The Children's Court or police can accept deposited money, or security. YJNSW does not accept or hold security.

YJNSW can facilitate an agreement to forfeit without security, using the *Agreement Acceptable Person - Forfeiture Form* and the *Acceptable Person Bail Security Agreement Form*.

11.5 Accommodation conditions – Section 28 of the Bail Act

Under s28 of the *Bail Act 2013* the court can require YJNSW or the Department of Communities and Justice, Child Protection and Permanency Division (DCJ CPP) to find suitable arrangement for the accommodation of a young person before they can leave custody to enter their bail. The matter must be re-listed at court every two days and the relevant service must let the court know about any developments.

The court can only use an accommodation requirement for young people under 18 years old, or to allow a person (adult or young person) to enter a rehabilitation facility.

The resource *Leading agency delegations: Accommodation Pre-release Requirements*, which identifies which service is the lead agency, depending on the situation. YJNSW has a responsibility to help all young people in custody meet their bail conditions. Caseworkers (community), caseworkers (custody) and youth officers must work together to help a young person meet their bail condition, with the caseworker (community) taking lead responsibility for YJNSW's involvement.

See section 12.2 of this policy for more information about how YJNSW responds to conduct requirement's which direct a young person to reside at a specific address.

Refer to the *Child Safety and Mandatory Reporting Policy* for any child safety and mandatory reporting concerns.

11.6 What is a suitable arrangement?

The *Bail Act 2013* and *Bail Regulation 2014* do not identify what a suitable arrangement is for s28. All decisions that YJNSW makes must be in the best interest of the child and consider their views and preferences. YJNSW defines a suitable placement as accommodation where:

- the young person's basic needs will be met
- it is a safe environment (this can include taking steps to address risk and keep the young person safe)

- there is approval from the DCJ CPP, if the young person is under the parental responsibility of the Minister or has an open case plan
- and if the young person is under 16:
 - there is adult supervision
 - they have permission from their carer to reside there.

Wherever possible:

- the young person should agree to the placement,
- the young person should live with their family, carer, or kin

A suitable accommodation placement cannot be:

- a placement that the court has said the young person cannot live at as part of a legal order (including in an apprehended violence order or a non-association/ place restriction).
- a placement that would cause them to break another condition of their bail, or another legal order (e.g., a placement with a co-offender that the young person is not allowed to have contact with).

Department of Communities and Justice CPP and police may also be able to provide information about whether there is a risk to the young person if they reside at a particular address. This information can be shared informally, or formally through a 16a request. See the *Child Protection and Mandatory Reporting Policy*, and the resource *Information Exchange (Chapter 16a and s248)* for more information about information exchange under 16a.

The Assistant Manager (community) is responsible for approving s28 accommodation placements. However, if a suitable placement becomes available after hours or on the weekend, the Duty Manager (custody) can approve a placement. Community and custody employees must communicate and record in a CIMS 'Accommodation' case note what placements may or may not be suitable for a young person, so that informed after hours decisions can be made.

12 Community supervision of bail

YJNSW will only supervise young people on bail when they are directed to, as part of a bail condition and when the young person has entered a guilty plea or been found guilty. If the court requests bail supervision where the young person is not guilty of an offence, YJNSW must not supervise the order. The YJNSW community office must write to the YJNSW Operations Unit jioperationssupport@dcj.nsw.gov.au, who will follow up the matter with the relevant prosecuting authority.

YJNSW will supervise bail if there is at least one offence that the young person has been found guilty of on the legal mandate. However, offence focused intervention can only occur for the offences that the young person has been found or plead guilty to.

For young people who do not receive supervision, caseworkers may provide them and their support people information about other relevant support services that could assist them.

12.1 Bail Support

Where local office resourcing permits, caseworkers may also provide direct support to young people without mandated supervision, including assistance in understanding their bail conditions and coordinating linkages with further support services. Any support provided outside of mandated supervision must not be compliance-based and must be done cautiously to avoid the risk of net-widening. Contact made with young people in these circumstances must be case noted on CIMS.

Youth Justice is not required to offer Bail Support to a young person who is directed to engage in bail support by the court. As Bail Support is voluntary, the Court is not to be informed if a young person does not engage in bail support.

12.2 Bail supervision

An employee discharging a young person from custody when they are granted bail must explain the bail conditions to them. Employees must follow the *Admissions and Discharge Procedure*. If bail is supervised, then the YJNSW Caseworker (community) must also help the young person understand their conditions and their implications. Caseworkers (community) must follow the *Case Management Policy* and procedure.

Caseworkers must provide weekly supervision with a focus on assessment and community support for young people with supervised bail for up to four weeks. Caseworkers must follow the case management process outlined in the *Case Management Policy* when the young person is subject to a further period of supervised bail.

Caseworkers may consider suspending supervision if a young person has been assessed as having a low risk of re-offending, there are no Serious Children's Indictable Offences (SCIO) on the bail undertaking and there are no further criminogenic risks. Caseworkers must inform the court where supervision is suspended using the *Letter to Court Re Suspension of Bail Supervision Form*.

Reside as directed, or reside at a specific address

A bail condition 'reside as directed by Youth Justice', does not require Youth Justice to give a young person a direction about where they must live.

Youth Justice will only monitor a young person's compliance with a condition to 'reside as directed by Youth Justice', or to reside at a specific address provided by the court if:

- The young person has a condition that requires them to accept bail supervision from Youth Justice; and
- they have been found or plead guilty of an offence on the bail undertaking.

This does not limit our requirements as mandatory reporters, or our duty of care to keep the young people we work with safe.

12.3 Non-compliance

The *Managing Non-Compliance and Breach Policy* and procedure outline how and when police should be informed that a young person has breached their bail.

Young people may be arrested:

- for not complying with a condition of their bail, or
- if there is a reasonable ground for believing that the young person is about to breach a condition of their bail (e.g., they have bought a plane ticket and plan to leave the country), or
- for not residing at the address specified on their bail acknowledgement.

The *Managing Non-Compliance and Breach Policy* gives employees the discretion to provide warnings, take breach action or support the young person to attempt to vary their bail conditions.

Variation is particularly appropriate when:

- the young person cannot comply with their conditions (e.g., they are required to live at an address,

but must move out, or if they have a condition not to see a co-accused, who is their family member)

- there are cultural or family matters (e.g., a young person will engage in Sorry Business)
- the condition negatively impacts some of the young person's protective factors (e.g., the young person cannot attend school because of a condition not to catch public transport).

YJNSW supervises the young person's compliance with all their bail conditions, not just the conditions which specifically mention YJNSW supervision.

If YJNSW has directed a young person to live somewhere under s28 of the *Bail Act 2013* and there is no supervision condition, then YJNSW is not responsible for informing the police if the young person moves address.

When YJNSW is supervising a young person on another order, but not supervising the young person's bail they should still act if they believe that a young person is not complying with their bail conditions. Appropriate action could involve notifying the police of the breach or supporting the young person as they try to vary their conditions.

13 References

13.1 Legislation

Bail Act 2013

Bail Regulation 2014

13.2 Policies

Audio Visual Link (AVL) Court Policy

Case Management Policy

Child Safety and Mandatory Reporting Policy

Non-Compliance and Breach Policy

13.3 Procedures

Admission and Discharge Procedure

Bail Supervision Procedure

Case Management Procedure

Community Referral to Justice Health Procedure

Court Intake and Remand Intervention Procedure

Movement Out - Court Attendance Procedure

Managing Non-Compliance and Breach Procedure

13.4 Forms

Agreement Acceptable Person - Forfeiture Form

Acceptable Person Application Form Character Acknowledgement

Court intake form

Court Intake First Appearance Form

Letter to Court Re: Suspension of Bail Supervision Form

Letter to Court – Suspension of Bail Supervision.

Letter to Court – non supervision of not guilty plea

Notice by custodians concerning young person in custody

13.5 Resources

Bail Protocol Between the Children's Court and YJNSW (intranet)

Children's Court Verbal Report Guide

Collaborative Case Management of Young People in Custody Manual version 2

Leading agency delegations: Accommodation Pre-release Requirements Youth

Justice Bail Services Factsheet.

14 Document information

Title:	Bail Policy
Business Centre:	Operations Unit
Author:	Project Officer
Approver:	Director, Policy and Practice
Date of Effect:	14 December 2021
Next Review Date:	December 2026
File Reference:	
Key Words:	Bail, Bail Protocol, acceptable person. Court intake, character acknowledgement, remand intervention, admissions and discharge, responsible person, supervised bail, s28, weekend bail court, Bail Accommodation Support Service, BASS, Supreme Court Bail, Bail on appeal.

15 Document history

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