

Court Communication Policy

Youth Justice NSW (YJNSW) provides a range of reports to the court. Some of these reports are required by legislation and others are provided as a service to the court.

Essential Summary

Court reports aim to provide information to the court about the young person or an issue related to a young person's court matter. This can include information to assist a magistrate with sentencing or bail determinations, information regarding a youth justice conference referral, information relevant to a young person's breach of their order and information to assist the court to make a decision regarding parole.

Court reports can be subject to direct examination by prosecution, defence, magistrates and judges. YJNSW Community employees are not considered to be 'expert witnesses' within the legal context.

All court reports must be objective, unbiased and non-judgemental.

YJNSW provides reports at the request of the court. Any written material forwarded to a solicitor must only be done with the approval of the supervising Assistant Manager (Community).

YJNSW may also be asked to provide verbal information in court. While this information is not written and may not be pre-prepared due to the timing of the request, it is expected that YJNSW community employees will present verbal information following the principles within this policy.

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Ensure you have the latest version before using this document.

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1 Scope

This policy applies to all Youth Justice NSW (YJNSW) employees and Youth Justice Conference (YJC) employees (excluding convenors). This policy and associated procedures are intended for use in conjunction with other relevant operational policies and procedures.

2 Purpose

This policy focuses on YJNSW's commitment to providing factual, well written and informative reports to the court. It provides employees with an understanding of the varied requirements for court reports including the legislative and procedural frameworks within which they are prepared and provided.

Reports provided to the court are prepared according to the legislative, procedural requirements and principles set out in this document to promote consistent, evidence-based communication with the court that is accurate, efficient and relevant.

3 Principles

All court reports prepared by YJNSW employees must be prepared according to the following principles:

Offence-focused: Reports must draw together the factors of the offence, the young person, and their circumstances, as they are relevant to the offence. Reports must not contain irrelevant information.

Balanced: Reports must consider all viewpoints and information. Consider the young person's current situation, the factors surrounding their offending and information from all relevant sources.

Impartial: Reports must not be based solely on one perspective or any preconception but must be based on an analysis of information from a range of sources.

Timely: Reports must be prepared and submitted for approval by the date requested by the approving manager. Reports must be submitted to the court within the timeframes outlined in the procedure.

Verified and factually accurate: Information in reports must be accurate and corroborated by additional sources. The sources of information must be clearly identified. Reports are evidentiary documents, are subject to examination and, as such, must be based on substantiated fact.

Understandable: Reports must be succinct, well structured, logical, and free from slang and jargon. The contents and reasoning must be presented in a way that can be easily understood by the judiciary as well as young people and their families. All reports must use the relevant template on CIMS, adhere to the Court Report Writing Manual and follow the relevant procedure.

Non-directive: Reports must not give directives or recommendations in relation to how a young person should be sentenced, this is the role of the judiciary. Given the information gathered and presented, reports must provide a summary of the young person's eligibility and suitability to a variety of possible court outcomes.

Parole and YJC reports are the only exceptions to this rule as they legislatively require YJNSW to provide clear recommendations to the court.

Free from discriminatory language or stereotypes: Language within reports must not perpetuate stereotypes or contain discriminatory statements. Employees must be aware of the range of diversity issues and prepare reports that are culturally sensitive.

Reflective of professional and ethical standards: Reports are legal documents prepared on behalf of YJNSW and the content must be appropriate to the formality of the proceedings. All court reports must reflect the highest level of professionalism, integrity, and ethical conduct. All written content must be approved by a manager prior to being sent to the court.

Transparent: The content of reports should be discussed with the young person and their family prior to the court date. The content of reports should not be hidden from young people or be a surprise to them at their court appearance.

4 Report Types

4.1 Background Report

YJNSW prepares Background Reports to provide information to the court to assist magistrates and judges to select the most appropriate sentence. The court cannot impose a custodial sentence unless a Background Report has been submitted to the court.

A Background Report can only be prepared on the request of a magistrate or judge under section 25(1) and (2) of the Children (Criminal Proceedings) Act 1987.

Background reports must be informed by a client assessment as per the Case Management Policy and related procedure to provide consistent and accurate reports to the court.

Background Reports must outline eligibility and suitability for community-based interventions, including any proposed casework strategies and plans. Any relevant disability and mental health information about the young person must also be included.

Reference to the YLS/CMI-AA and the young person's score must not be included in the report

4.1.1 Update Report

If a *Background Report* has been requested in the last three months and a further report is requested by the court, YJNSW can make the decision to complete a shorter *Update Report* instead. The *Update Report* must address the new offence(s) and be submitted with the most recent full *Background Report*. The court can also request an *Update Report* at any time.

4.1.2 Nil Report

A Nil Report must only be completed instead of a Background Report when a full assessment for a Background Report is unable to be completed. Nil Reports must only be submitted in exceptional circumstances. A Nil Report should not be completed for a young person in custody.

4.2 Specific Purpose Report

The court may request a report regarding a specific issue. YJNSW may also need to communicate a specific issue to the court without a request from the court. In these instances, a *Specific Purpose Report* is to be completed.

A *Specific Purpose Report* does not fulfil the legislative requirement of a *Background Report* under the *Children's (Criminal Proceedings) Regulations 2016* for the purpose of sentencing.

The *Specific Purpose Report* can include a suitability assessment for a Community Service Order (CSO) or a Community Clean Up Order (CCUO) or can provide the court with detailed information regarding a specific query the Court has about a young person.

The *Specific Purpose Report* can also be used at any time to make a submission to the Children's Court parole authority concerning the release of a young person on parole.

4.3 Information to the Court – Bail

The *Information to the Court-Bail Report* provides the court with information relevant to a young person's bail application. This includes information about a young person's community ties, the proposed supports YJNSW or other services could provide the young person if bail was granted and any barriers the young person has to accessing bail.

The purpose of this report is to provide the court with impartial information so the court can make an informed bail decision. YJNSW does not directly advocate for a certain bail determination.

The court can request this information or YJNSW can choose to provide this to the court if it is considered necessary to assist the young person to access bail.

If the young person is already on bail supervision, YJNSW can provide the court with an update on the next court date or in section 28 bail matters.

4.4 Parole Reports

4.4.1 Parole Authorities

The relevant parole authority for all young people under YJNSW supervision is the Children's Court parole authority. The State Parole Authority will manage the young person's parole order if they have been transferred to Community Corrections NSW.

4.4.2 Parole Jurisdiction Report

The *Parole Jurisdiction Report* is provided to the Children's Court parole authority 60 days before a young person with a sentence over three years is eligible for parole (earliest release date). The report assists the parole authority to make a decision about the release of a young person on parole.

Parole Jurisdiction Report must contain a clear recommendation outlining whether a granting of parole is supported or not supported. The report must be completed following the parole case conference and should include information from the Centre Report for Consideration for Release on Parole and by the psychologist.

Supporting documentation must accompany the Parole Jurisdiction Report. This includes the Confidential Psychological Report, any specialist reports that may have been previously prepared, the original court order, the court comments at the time of sentencing (court transcripts), other current court orders and any additional information the Children's Court considers necessary.

4.4.3 Update Report for Parole Review Hearing

The *Update Report for Parole Review Hearing* template in CIMS is provided to the Children's Court parole authority when a consideration regarding a breach of parole is being made. It is only completed when requested by the Children's Court parole authority. These reports must contain a clear recommendation outlining whether a fresh granting of parole is supported or not supported.

An overview of the post release supervision must also be included, regardless of the recommendation of parole, including the address of the young person upon release from custody, proposed casework activities and any significant community support available to the young person on release. Refer to the *Court Report Writing Manual* for more information about what to include in the post-release case plan.

4.5 Breach Reports

4.5.1 Notification of Alleged Breach / Application to Revoke Report

The court is provided with a *Notification of Alleged Breach/Application to Revoke Report* when YJNSW considers the young person to be in breach of their supervised community order including parole, community service orders or community clean up orders. The court will then determine the outcome of the breach.

The process for considering breach or revocation action is outlined in the *Managing Non-Compliance and Breach Policy* and related procedure and provides the warning and breach considerations in responding to a young person's non-compliance and reoffending.

4.5.2 Breach of Bail Report

The Breach of Bail Report is not a court report; it is used only to notify the police when young people have failed to comply with their bail conditions while receiving bail supervision by YJNSW. The police will then determine if the bail conditions have been breached and commence breach of bail proceedings.

The Managing Non-Compliance and Breach Policy and its related procedure provide the warning process and bail variation considerations when responding to a young person's non-compliance with their bail conditions.

4.6 Youth Justice Conferencing communication with the court

YJNSW employees communicate to the court to meet the legislative requirements of Part 5 (Youth Justice Conferences) of the Young Offenders Act 1997.

YJNSW employees write to the court to:

- request approval of outcome plans or further adjournment
- recommend a referral be withdrawn
- inform the court of the completion or non-completion of outcome plans
- inform the court that a young person has withdrawn their consent and elects to have the matter dealt with in court or
- advise that an offence cannot be dealt with under the *Young Offenders Act 1997*.

A report, letter or notice should also be written when it is considered necessary to inform the court of any other circumstance regarding the young person's conference. Further information about writing to the court is contained within the *Youth Justice Conferencing Policy* and related procedure. All templates are located on CIMS.

5 Other communication with the Court

5.1 Verbal information presented to court

YJNSW employees may be requested by the court to provide verbal information about the young person and their current situation. Verbal reports can only be provided to the Children's Court to assist in finalising matters:

- if the young person has plead guilty to the offence/s
- the young person is eligible to be dealt with under the *Young Offenders Act 1997 (Section 8)* or
- for breaches of community-based orders, including bail supervision (excluding parole orders)

Verbal reports must not be provided to the Children's Court for:

- serious children's indictable offences
- sexual-based offences
- any offence committed while a young person is serving a Suspended Control Order
- any matter that is subject to the NSW Mental Health legislation (due to the mental health assessment suitability requirements)
- revocations and fresh determinations of parole

YJNSW employees can advise the court of a young person's community situation, including their community and cultural connections and support. Further information about providing verbal reports to the Children's Court is contained in the *Children's Court Verbal Report Guide* located in The Operations Manual (TOM) within the Resource section of the *Court Communication* page.

The court should be advised of the young person's eligibility and suitability for sentencing options, to assist in finalising matters, without making direct recommendations on how matters are to be dealt with by the court. All information verbally provided to the court must be added to CIMS as a 'legal matters' case note.

5.2 Giving evidence

Refer to the *Giving Evidence Policy* when requested or subpoenaed to provide evidence byway of a statement, affidavit or in person.

6 References

Legislation

Children (Criminal Proceedings) Act 1987
Children (Criminal Proceedings) Regulation 2016
Children (Detention Centres) Act 1987
Children (Detention Centres) Regulation 2015
Young Offenders Act 1997
Bail Act 2013

Policy

Parole Policy
Case Management Policy
Managing Non-Compliance and Breach Policy
Youth Justice Conferencing Policy
Giving Evidence Policy

Procedure

Court Report Procedure
Bail Support (Court Intake and Remand Intervention)
Bail Supervision Procedure
Community Service Order Procedure
Managing Non-Compliance and Breach Procedure
Case Management Procedure
Parole Procedure
Administration of Youth Justice Conference Procedure

Resources

Court Report Writing Manual
Children's Court Verbal Report Guide

7 Document Information

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8 Document History

Version	Date	Reason for Amendment
05	22/11/2021	Minor changes to renaming and updating of breach report templates in CIMS
04	03/09/2020	<ul style="list-style-type: none">Amendment to 5.1 regarding provision of verbal reports to the Children's Court after introduction of the Directorate initiated Children's Court Verbal Report GuideMinor amendments to reflect Machinery of Government changes from 2019Reference to <i>Giving Evidence Policy</i>
03	22/04/2018	Minor changes to policy made due to renaming and updating of breach report templates in CIMS
02	26/02/2018	Updated parole jurisdiction reports and specific purpose reports sections due to legislative changes to parole
01	2014	New amendment approved by Valda Ruis, Chief Executive