

Misbehaviour Policy

Essential Summary

This policy provides the framework for the inquiry process and consequences for young people's misbehaviour whilst in the custody of Youth Justice NSW (YJNSW).

This policy contains content covering:

- misbehaviour inquiry and decisions
- punishment approval levels
- approved punishments
- review of punishments
- misbehaviour referrals to children's court
- misbehaviours in another centre

The Misbehaviour Procedure must be read in conjunction with 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 Employees who work within a Youth Justice Centre (YJNSW Centre) or the Court Logistics Unit.

This policy covers the inquiry process for alleged misbehaviours by young people, and punishment considerations, options, review, and approvals.

Out of scope is how to respond to an event that may result in a misbehaviour or incident.

2 Purpose

The purpose of the policy is to:

- provide a framework and process for misbehaviour inquiries and decisions on punishments following a misbehaviour occurring.
- set out how officers of the Department are to carry out their work in order to assist the Secretary to discharge his or her functions under the *Children (Detention Centres) Act 1987 (NSW)*

3 Definitions

Inquiry officer means the employee who is responsible for managing the inquiry process as outlined in this policy.

Reporting officer means the employee who witnessed the young person's behaviour, made attempts to correct behaviour, and is responsible for reporting the behaviour to a senior officer. The inquiry officer must not be the reporting officer.

Unit supervisor means the employee who is in charge of the unit at the time, which includes a unit manager, assistant unit manager or shift supervisor.

4 What is misbehaviour?

Misbehaviour is defined in the *Children (Detention Centres) Regulation 2015* as any breach of the provisions in Schedule 1 by a young person. Schedule 1 lists the 34 misbehaviours which can be punished under legislation, and includes:

<ul style="list-style-type: none">• Refusal to work or participate in activities• Unauthorised telephone calls• Lying• Disobedience• Stealing• Bad language• Possession of unauthorised articles	<ul style="list-style-type: none">• Unauthorised use of equipment• Unauthorised entry to prohibited areas• Subversive behaviour• Harassment• Positive returns to tests for drugs or alcohol• Refusal to submit to searching	<ul style="list-style-type: none">• Damage to property• Mistreatment of animals• Insubordination• Inciting misbehaviour• Concealment for purposes of escape• Unauthorised medications	<ul style="list-style-type: none">• Attempted escapes• Indecency• Manufacture, possession or concealment of weapons• Threatening or intimidating behaviour• Detaining person against their will
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<ul style="list-style-type: none"> • Possession of offensive music • Tattooing and body piercing • Smoking 	<ul style="list-style-type: none"> • Fighting • Conditions of leave • Hindering drug detector dogs • Refusal to submit to tests for drugs or alcohol 	<ul style="list-style-type: none"> • Mobile phones, cameras and recording equipment 	<ul style="list-style-type: none"> • Lighting fires • Assault
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4.1 Continual misbehaviour issues

Employees may consider the following options when the young person displays continual misbehaviour issues:

- Detainee Risk Management Plan (*Detainee Risk Management Plan Procedure*)
- raising misbehaviour at Client Service Meeting (CSM)
- referral to psychologist
- referral to a specific behavioural program
- mediation or other alternative strategies

5 Misbehaviour inquiry and decision

Under section 21 of the *Children (Detention Centre) Act* a punishment may be imposed on a young person who is found guilty of misbehaviour.

An allegation that a young person is guilty of misbehaviour can be heard and determined by a Centre Manager, Assistant Manager, or Unit Supervisor.

5.1 Inquiry

The inquiry officer must conduct an inquiry as soon as practicable and within 24 hours after an allegation of misbehaviour is made. The inquiry officer is obligated by law to conduct an inquiry within this time frame stipulated by the Regulation unless the matter is adjourned. See 5.3 of this policy.

In instances where the inquiry officer witnessed the misbehaviour, another independent employee is also required to conduct or be included in the inquiry process.

The inquiry officer is responsible for ensuring transparency and due process is followed during the inquiry. This includes:

- advising the young person of the name of the person who made the allegation and the substance of the allegation
- providing the young person and the reporting officer with an opportunity to make a statement; to present their version of the event
- documenting all evidence put forward
- finalising the inquiry within the timeframe

A response or punishment to the alleged misbehaviour cannot be determined without conducting an inquiry into the alleged misbehaviour. The purpose of the inquiry is to:

- ensure the young person and reporting officer are provided with an opportunity to participate in every step of the process
- consider all evidence about the misbehaviour event and the young person's history of behaviour
- make a determination of guilty, not guilty or no determination
- determine a response that will assist the young person to address triggers for the behaviour
- demonstrate procedures have been followed through considering the evidence that supports the outcome of the inquiry.

If a young person refuses or fails to make a statement the Inquiry officer may deal with the inquiry in young person's absence.

5.2 Adjournment

The inquiry may be adjourned by the inquiry officer for any reason that seems to be sufficient, under clause 80.

YJNSW considers the following reasons to be sufficient:

- availability of the young person or reporting officer (required to participate)
- availability / access to information and evidence that will assist the inquiry and decision (e.g. witness statements, previous plans and case notes)
- availability of an interpreter where one is required for the young person or other participants in the inquiry
- the young person may require assistance writing his or her statement and either the young person or independent employee is not available within the time frame
- opportunity for the young person and reporting officer to think about the misbehaviour and prepare for the inquiry (e.g. If there was a high level of anxiety, anger or frustration during the misbehaviour, it is best for these parties to be settled before discussing the misbehaviour and determining an appropriate response).

5.3 Evidence

During the inquiry a range of evidence needs to be considered to:

- verify if the alleged misbehaviour occurred
- determine the most appropriate course of action in response to the young person's misbehaviour, this may include:
 - provide the young person with alternative strategies for improved behaviour; and/or (casework, DRMP)
 - punishment
- demonstrate that considering all evidence available has followed legislation and operational procedures. Some examples of the types of evidence that may be considered are:

- other reports, case notes, assessments, etc.
- young people or employee witness statements
- eye witness accounts
- case plans (current and previous)
- detainee risk management plans (current and previous)
- advice of specialist employee (centre psychologist or Justice Health nurse)
- previous misbehaviour reports/events & outcomes,
- surveillance records with required approval (e.g. CCTV)
- any other information and records considered relevant to the event or young person.

6 Misbehaviour punishments

6.1 Recommendation for punishment

Inquiry officers must ensure that reporting officers are provided an opportunity to recommend a punishment, based on their working knowledge of the young person. Whilst the inquiry officer will consider the employee's recommendation, when determining consequences, it does not necessarily mean that this will be the punishment outcome.

6.2 Responses to misbehaviour

Section 21(1) of the *Children (Detention Centres) Act 1987* details the punishments available and the limitations. However, it is not a requirement to use these provisions every time a young person misbehaves. There may be more effective ways to deal with the misbehaviour and to provide opportunities for the young person to learn alternative ways of behaving in similar circumstances.

Alternative behaviour intervention responses include:

- referral to counselling
- referral for mediation
- Detainee Risk Management Plan (for continual misbehaviour concerns)

6.3 Approved punishments and decision makers

Punishment options as outlined in section 21 of the Act

Category	Punishment	For a period	Decision-maker (includes all above roles)
Negative Punishments Negative	Restriction in participation in sports activities	Not exceeding 4 days	Shift Supervisor Assistant Unit Manager

<i>Punishments take away a desired item or activity after the behaviour happens.</i>			Unit Manager	
		Not exceeding 7 days	Centre Manager	
		Any period exceeding 7 days	Director, Custodial Operations	
	Exclusion from a place	Detainees under 16 years:		
		Not exceeding 3 hours	Shift Supervisor Assistant Unit Manager	
		Detainees 16 years of age and over:		
		Not exceeding 12 hours	Unit Manager	
	Restriction in participation from leisure activities	Not exceeding 4 days	Shift Supervisor Assistant Unit Manager Unit Manager	
		Not exceeding 7 days	Centre Manager	
		Any period exceeding 7 days	Director, Custodial Operations	
Positive Punishments <i>Positive punishments add a negative consequence after an undesired behaviour is emitted to decrease future responses.</i>	Caution	Not applicable	Assistant Unit Manager Shift Supervisor	
	Additional Duties, being duties of a constructive nature designed to promote the welfare of detainee	Not exceeding 7 days	Shift Supervisor Assistant Unit Manager	
	Confinement to a place When a punishment determination is made relating to confinement the appropriate delegated officer must approve confinement period	Detainees under 16 years:		
		Not exceeding 3 hours	Shift Supervisor Assistant Unit Manager	
		Not exceeding 6 hours	Assistant Manager Unit Manager	
		Not exceeding 12 hours	Centre Manager (only)	

		Detainees 16 years of age and over:	
		Not exceeding 12 hours	Shift Supervisor Assistant Unit Manager
		Not exceeding 18 hours	Assistant Manager Unit Manager
		Not exceeding 24 hours	Centre Manager (only)

Refer to section 7 of this policy for information regarding not subjecting a young person to consecutive punishments of confinement and also for the consideration of what constitutes the one 'event'.

6.4 Review of punishments

Punishments may be determined in accordance with *Children (Detention Centres) Act 1987*, section 21(1). Punishment must reflect the seriousness of the misbehaviour and be imposed after due consideration of the appropriateness and effectiveness in managing difficult behaviour (*Detainee Behaviour Intervention Framework*).

Reviews can be an effective tool when a young person is resistant to a punishment (at the time he or she is informed of the punishment decision).

Depending on the type and duration of the punishment, punishment decisions should be reviewed.

Reviewing a lengthy punishment will often assist in alleviating problematic or undesirable behaviour, therefore a review period must be recorded in CIMS and conducted at the recorded time.

6.5 Prohibited punishments

- Prohibited punishments of a young person are defined in section 22(1) of the *Children (Detention Centres) Act 1987* as a young person cannot be:
- struck, cuffed, shaken or subjected to any other form of physical violence,
- dosed with medicine or any other substance,
- compelled to hold himself or herself in a constrained or fatiguing position,
- deprived of food or drink,
- denied the right to read or write letters or to make or receive telephone calls (except during any period of punishment by exclusion from or confinement to place
- subjected to treatment of a kind that could reasonably be expected to be detrimental to his or her physical, psychological or emotional well-being,
- subjected to treatment of a kind that is cruel, inhuman or degrading

- segregated in contravention of section 19 of the *Children (Detention Centres) Act 1987* or
- subjected to treatment of a kind forbidden by the Children (Detention Centres) Regulations 2015
- A young person shall not, without reasonable excuse, be handcuffed or forcibly restrained.

A person who punishes a young person, or causes a young person to be punished, in a manner prohibited, is guilty of an offence and liable to a penalty not exceeding 10 penalty units or imprisonment for a period not exceeding 12 months, or both.

7 Confinement

Confinement is the highest tariff punishment for misbehaviour and other punishment options must be considered on each occasion before resorting to confinement. Confinement can be used as a punishment for misbehaviour, for a maximum period of 12 hours for young people who are under 16 years of age, and 24 hours for young people who are 16 years and over.

If confinement is imposed as a punishment, it must commence immediately after the misbehaviour inquiry has been completed.

While at times confinement periods will partially or fully overlap with sleep routines, confinement must not be 'scheduled' so as to intentionally increase the period of time a young person continuously spends in their room (i.e. sleep routine > confinement > sleep routine).

Careful consideration must be given as to issuing a further punishment of confinement if a young person misbehaves whilst in confinement. In circumstances such as this, the young person's ongoing misbehaviour infers that confinement is not an effective means of addressing their problematic behaviour and alternative strategies must be considered.

One 'event' with multiple misbehaviours must not result in multiple cumulative periods of confinement. Until the young person is settled in the confinement area, continued misbehaviour is to be classed as the original event and follow the original punishment determined.

If a young person has become fully settled, after the original event, and then further misbehaviour occurs, the unit supervisor may then consider a separate punishment for this event; however this, as stated above, must not incur multiple accumulative periods of confinement.

Young people in confinement must be actively engaged by employees conducting regular checks (provided they are awake). This provides an opportunity for purposeful human interaction and allows for the welfare of the young person to be adequately observed. If the young person appears to be asleep; supervising officers must observe the young person's welfare by other means, (e.g. have they moved position, do they appear to be breathing properly).

7.1 Confinement location

Confinement is to be served in a young person's own room unless there is specific reason this is not possible. If not possible, a young person may be confined to a specified confinement / observation room within the centre.

The Inquiry Officer must risk assess where a young person will be confined. The risk assessment must take into account:

- where the misbehaviour occurred
- where the young person is being informed of the punishment
- current alerts
- young person's demeanour and state of mind
- risk to the safety of the young person, employees and other young people
- self-harming concerns
- threats to damage property or actual damage has occurred
- proximity of young person's room to where the misbehaviour occurred
- threats to employees and other young people
- threats to the security of the centre

If there are specific reasons as to why a young person cannot be confined to their own room, the reason must be documented in the misbehaviour report.

8 Misbehaviour in another centre

Centre managers may transfer the responsibility to conduct an inquiry into a young person's misbehaviour to another centre. However the related misbehaviour staff report must be completed and forwarded to the receiving, for the inquiry to occur within policy requirements. If a young person is transferred to another centre prior to relevant reports being finalised, the receiving centre cannot complete an inquiry or apply a misbehaviour punishment.

If a young person is transferred between centres prior to the completion of all or part of the punishment, the Centre Manager may determine the punishment complete or refer the application of punishment to the receiving centre.

9 References

Legislation

Children (Detention Centres) Act 1987

Children (Detention Centres) Regulation 2015

Procedures

Misbehaviour Procedure

Policy

YJNSW Policy of Applying Powers and Responsibilities under the Children (Detention Centres) Act and Regulations.

10 Document information

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Business Centre:	Operations Unit
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11 Document history

Version	Date	Reason for Amendment
0.1	February 2018	New policy developed in line with the <i>Instrument of Delegation</i> .
0.2	1 July 2019	Legislative delegation changes due to Executive restructure.
0.3	23 August 2019	<i>Approved punishments and decision makers</i> table updated to reflect current delegation levels. Section 7 amended to reflect legislative requirements.
