

# YOUTH JUSTICE TRANSFERS

*This Commissioner's Requirement describes the authority and process for the transfer of prisoners to and from youth justice centres.*

## What

Victoria has a dual track system for offenders aged between 16 and 20 years of age. This system allows for the transfer of:

- ❖ a prisoner under 21 years of age from prisons to youth justice centres or a youth residential centre; and
- ❖ a person aged 16 years or more from youth justice centres to prisons.

## Why

Section 467 of the *Children, Youth and Families Act 2005* enables transfers from youth justice centres to prisons when a person has engaged in conduct that threatens the good order and safe operations of the youth justice centre and they cannot be properly controlled in a youth justice centre.

Sections 471 and 472 provides for persons to be transferred from prison to a youth justice centre or youth residential centre when it is considered appropriate in the interests of the person and a place is available.

## When

This process may occur at any time during a prisoner's term of imprisonment. In relation to transfers from prison to a youth justice centre or youth residential centre, the Sentence Management Branch and prison management should proactively monitor all young people in custody to determine whether a request should be made to the Adult Parole Board for transfer.

## Who

The Youth Parole Board has the authority to order the transfer of a person from a youth justice centre to prison.

The Adult Parole Board has the authority to order the transfer of a person from prison to a youth justice centre or youth residential centre.

The Sentence Management Branch and prison management are responsible for monitoring young people in custody to determine whether a request for transfer should be made and affecting any transfer once the Adult Parole Board has made an order.

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## Schedules

**Schedule PT3.1:** Information Sheet – Youth Justice Transfers

## Related Policy and Procedures

*Children, Youth and Families Act 2005*

*Charter of Human Rights and Responsibilities Act 2006*

SMM AC 2 - Sentence Management Panels

SMM AC 4 - Determining a Prisoners Placement

SMM AC 7 – Special Category Prisoners

SMM PM 2 – High Risk Management Advisory Panel

## 1. Guiding Principle

The dual track system began operating in Victoria in 1965. It allows adult courts the discretion to sentence some young offenders aged between 18 and 20 (both male and female) to the youth justice custodial system instead of the adult prison system. The system is based on the premise that not all young adults reach maturity at the same time and there is a need to protect the more vulnerable 18 to 20 year olds from exposure to the adult prison system. Conversely, there may be some young adult offenders (16 to 20 year olds) who would benefit from the rehabilitative programs and services available through the youth justice custodial system.

Staff, in carrying out their duties as described in this procedure, must comply with the provisions of the *Charter of Human Rights and Responsibilities Act 2006* ('the Charter'), ensuring that all prisoners are accorded appropriate human rights as defined by the Charter.

Section 38(1) of the Charter provides, '...it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.'

Charter rights may be limited, but only to the extent that the limitation is reasonable and demonstrably justified. In determining, what is reasonable staff must take into account the nature of the right, the purpose of the limitation and whether there is another way of addressing the requirement which is less restrictive on the prisoner's human rights.

While some rights will be restricted because a person is imprisoned, the fact that a person is deprived of liberty does not void all rights. The usual Charter tests for determining what is a reasonable limitation on rights will apply.

Prisoner under 18 years have additional rights, including those protected by the Charter and international law. This includes rights contained in the *Convention on the Rights of the Child*, and standards contained in *the Standard Minimum Rules for the Administration of Juvenile Justice, Rules for the Protection of Juveniles Deprived of Liberty* and *Standard Minimum Rules for the Treatment of Prisoners*.

The best interests of the child are the primary consideration, including when making placement, classification and management decisions about a prisoner under the age of 18.

## 2. Youth Justice Custodial Services

The Department of Human Services is responsible for the statutory supervision of young persons in the criminal justice system and manages the following youth custodial centres:

1.	Parkville Youth Residential Centre
2.	Melbourne Youth Justice Centre
3.	Malmsbury Youth Justice Centre

## 3. Transfer of Prisoners to Youth Justice

Sections 471 and 472 of the Children, Youth and Families Act authorises the Adult Parole Board to order the transfer of a prisoner under the age of 21 to a youth justice centre (s471) or youth residential centre (s472) if it is satisfied, after considering a report from the Secretary of the Department of Human Services that:

- ❖ the person is suitable for detention in a youth justice centre or youth residential centre; and
- ❖ a place is available.

### 3.1 Application Process

There is no formal application to request a transfer. If prison management or Sentence Management Branch staff believe that it is in the best interest of a person under the age of 21 to transfer to youth justice, they should forward the details including the reasons to the Manager, Sentence Management Unit Operations for consideration. On entry into the prison system, all sentenced prisoners under the age of 21 will be advised that they are able to write to the Adult Parole Board to request an assessment to transfer to Youth Justice. In addition, the Manager, Sentence Management Unit Operations will initiate a referral to the Adult Parole Board when advised by the Court that an assessment for suitability for a Youth Justice Transfer is recommended.

The details will then be forwarded to the Operations Manager, Adult Parole Board who arranges for the necessary assessment reports to be completed by the Department of Human Services. The matter will then be considered by the Adult Parole Board.

The Adult Parole Board may receive requests from outside agencies including family or legal representatives. The Operations Manager, Adult Parole Board will advise the Manager, Sentence Management Unit Operations of any application, including when the case is expected to be considered by the Adult Parole Board.

The Sentence Management Branch is responsible for advising the relevant prison management of any pending applications. Unless exceptional circumstances exist, the prisoner will remain in a metropolitan prison pending the outcome.

### 3.2 Transfer Process

Once the Adult Parole Board has made an order, it is the responsibility of the Sentence Management Branch to arrange the immediate transfer of the prisoner to the Youth Justice Custodial Service location, as advised by the Adult Parole Board secretariat. This includes:

- ❖ liaising with transport contractor to facilitate transfer
- ❖ authorising the transfer.

Prison Management are responsible for completing the instrument of transfer.

## 4. Transfer from a youth justice centre to prison

Section 467 of the Children, Youth and Families Act authorises the Youth Parole Board, on the application of the Secretary of the Department of Human Services, to order a person aged 16 years or more who is detained in a youth justice centre to be transferred to a prison. The person will then serve the unexpired portion of the period of their sentence as adult imprisonment.

In making this decision, the Youth Parole Board must consider:

- ❖ the antecedents and behaviour of the person
- ❖ the age and maturity of the person
- ❖ the report from the Secretary of the Department of Human Services.

The Youth Parole Board must be satisfied that the person

- ❖ has engaged in conduct that threatens the good order and safe operation of the youth justice centre
- ❖ cannot be properly controlled in a youth justice centre.

Section 468, enables a person aged 16 years or more to apply to the Youth Parole Board to transfer from a youth justice centre to prison.

Section 473, provides that the Youth Parole Board may transfer a person aged 16 years or more, who has been transferred from a prison to youth justice centre or youth residential centre, back to a prison.

From time to time, persons aged 16 or 17 may be transferred from a Youth Training Centre or receive an adult term of imprisonment. The Assistant Commissioner, Sentence Management Branch must be advised of any prisoners under the age of 18 entering the adult prison system. In these instances, the Manager, Sentence Management Unit Operation **must** advise the Principal Commissioner for Children and Young People and the Principal Practitioner, Department of Human Services. The Aboriginal Commissioner for Children and Young People **must** also be notified if the prisoner is aboriginal. In addition, the Young Offenders Transfer Review Group (YOTRG) will inform Victoria Legal Aid (or the young person's legal representative, if known) in the case of the young person being Aboriginal the Victorian Aboriginal Legal Service.

#### 4.1 Application Process

The applications are managed by the Youth Parole Board. The Secretary, Youth Parole Board will advise the Manager, Sentence Calculation and Warrant Administration and Manager, Sentence Management Unit Operations that a case will be considered by the Youth Parole Board. Once a decision to transfer is made, the Youth Parole Board will provide copies of relevant reports to the Manager, Sentence Management Unit Operations and the Adult Parole Board.

In considering a transfer of a prisoner under the age of 18, the Youth Parole Board will refer the details of the case to the Assistant Commissioner, Sentence Management Branch. Sentence Management Branch will provide the Youth Parole Board with formal advice of the potential classification options (including placement and management details) should the transfer proceed.

#### 4.2 Physical Transfer

The Department of Human Services is responsible for facilitating the transfer. Male prisoners are transferred to the Melbourne Assessment Prison and female prisoners to the Dame Phyllis Frost Centre.

The Assistant Commissioner, Sentence Management Branch **must** be advised of all prisoners transferring from youth justice custodial system into prison.

#### 4.3 Verification of Age

In cases where a transferee may present with more than one recorded date of birth, Corrections Victoria will rely on the date of birth as advised by the Department of Human Services unless a court order is received specifying otherwise.

#### 4.4 Management of Prisoners Transferred from Youth Justice

Transferees from Youth Justice are classified as 'Special Category' prisoners. Classification decisions regarding transferees under the age of 18 require Commissioner approval via the High Risk Management Advisory Panel (refer PM2 – High Risk Management Advisory Panel). The Assistant Commissioner, Sentence Management Branch **must** approve classification decisions regarding transferees 18 and over.

Following reception, a case conference will be convened including representatives from Youth Justice, CV Sentence Management Branch, the Disability, Youth and Aging Unit and relevant Prison staff to discuss the transition and detailed management of the prisoner. Agencies such as Child Protection, Commissioner for Aboriginal Children and Young People, Child Safety Commissioner and Disability Services, Department of Human Services will be involved in case-conferencing in instances where this is considered appropriate. Additionally for transferee's under the age of 18, Corrections Victoria, the Adult Parole Board and the Youth Parole Board, via the YOTRG, will meet monthly to review the management and placement of these prisoners, including any relevant management, security and rehabilitative matters, release planning and other case management or systems issues of mutual interest.

## Schedules

The following Schedules are attached:

**Schedule PT3.1:** Information Sheet – Youth Justice Transfers

# Information Sheet

Corrections Victoria

**Subject:**

**YOUTH JUSTICE TRANSFERS**

Victoria has a dual track system for offenders aged between 16 and 20 years of age. This system allows for the transfer of:

- A prisoner under 21 years of age from prisons to youth justice centres or a youth residential centre; and
- A person aged 16 years or more from youth justice centres to prisons.

The dual track system is based on the idea that not all young adults reach maturity at the same time and there is a need to protect the more vulnerable 18 to 20 year olds from exposure to the adult prison system. Also, that some young adult offenders would benefit from the rehabilitative programs and services available through the youth justice custodial system.

Sections 471 and 472 of the *Children, Youth and Families Act 2005* provides that if the Adult Parole Board considers it appropriate and in the interests of the person they may order the transfer of a person from prison to youth justice centre or youth residential centre if it is satisfied, after considering a report from the Secretary of the Department of Human Services that:

- The person is suitable for detention in a youth justice centre or youth residential centre; and
- A place is available.

Therefore, if you are under the age of 21 and sentenced to a term of imprisonment, you, your family or legal representative can request via the Adult Parole Board an assessment to transfer to Youth Justice. The Adult Parole Board will arrange for the Department of Human Services to complete an assessment and provide written advice to the Adult Parole Board regarding your suitability for transfer.

Please speak to you case manager or sentence management staff should you have any questions; alternatively you or your family can contact the Adult Parole Board.

Title your letter 'Request for Assessment for Transfer to Youth Justice'. Include your name, CRN and date of birth and reasons why you think it is in your best interests to transfer to a youth justice centre or youth residential centre and send it to the following address:

The Adult Parole Board  
4/444 Swanston Street  
Carlton VIC 3053  
DX 211768

Or email: [apb.enquiries@justice.vic.gov.au](mailto:apb.enquiries@justice.vic.gov.au)