



**Children's Court
Victoria**

PRACTICE DIRECTION

No. 2 of 2021

1. This Practice Direction is issued pursuant to Section 592 of the *Children, Youth and Families Act 2005*.

OVERVIEW

2. All persons who attend court buildings in any circumstance must:
 - a) Register their attendance using the Service Victoria QR application or provide their contact details in writing;
 - b) Follow Chief Health officer directions; and
 - c) Follow any direction under the *Court Security Act 1980*.
3. There will be strict compliance with the Chief Health Officer guidelines: health and safety are the overarching listing considerations.
4. Where appropriate, the Online Children's Court (OCC) will continue to be used for the hearing of cases.

COMMENCEMENT

5. This Practice Direction applies to all Criminal Division proceedings filed with the Children's Court of Victoria (the Court), other than CAYPINS matters, with effect from:
 - a) **26 April 2021** in relation to paragraphs 17-19; &
 - b) **17 May 2021** in relation to the remaining paragraphs.
6. Paragraphs 10-49 are Directions that apply to all venues, state-wide, of the Court.
7. Paragraphs 50-54 are Directions that apply to the Court sitting at Melbourne.
8. Paragraphs 55-58 are Directions that apply to first remand hearings where the proper venue is either the Court sitting at Moorabbin or Sunshine.

9. The following Practice Directions are revoked:

- a) No 13 of 2020;
- b) No 12 of 2020;
- c) No 11 of 2020;
- d) No 5 of 2020;
- e) No 8 of 2018;
- f) No 7 of 2018; &
- g) No 2 of 2016.

ALL CHILDREN'S COURTS - STATEWIDE

FILING

10. All initiating documents, Court Reports and other relevant documentation must be filed electronically with the relevant Children's Court Registry (see [local court registry](#)).

MANAGEMENT OF CRIMINAL DIVISION PROCEEDINGS

11. Three (3) weeks prior to the next listed hearing, the Court will send a letter to the child directing that:

- a) On the return date they must attend Court;
- b) If represented to contact their legal representative and provide to them a copy of the letter from the Court;
- c) If not represented to contact:
 - (i) Victoria Legal Aid to obtain free legal advice by calling 9269 0108 from 9am to 5pm weekdays; or
 - (ii) Victorian Aboriginal Legal Service for legal advice and representation on 1800 064 865;
- d) If they attend Court without legal representation, the child will be referred to Victoria Legal Aid, duty lawyer service, for assistance; and if they
- e) Fail to attend a warrant may be issued for their arrest.

12. A Hearing Notice will be sent to the child for any adjournment post 17 May 2021.

13. If the child does not attend at the court at which the criminal case is listed (at the listed date and time) the presiding judicial officer may order that the matter be adjourned, or heard and determined in the accused's absence¹ or a warrant of apprehension may be issued.
14. Where a child is represented by a legal practitioner, the legal practitioner may arrange with the relevant Court for the matter to be listed for hearing via the OCC rather than at the physical court venue.
15. To list a matter in the OCC, contact should be made at first instance with the Registry at which the matter is listed (see [local court registry](#)) by email **not later than 3 clear working days** prior to the current listing date for the purpose of obtaining a hearing date and time via the OCC.
16. The Court will confirm with the legal practitioner whether the matter will proceed via the OCC and if so, the hearing time. It is preferable that the legal practitioner and the child be at the one location for the hearing.

FIRST REMAND HEARINGS

17. A child who is being held in custody is required to be brought physically before the Court², unless the Court directs otherwise³.
18. Where a child is physically brought before the Court, Prosecution and legal practitioners are required to appear physically before the Court.
19. Informants and other witnesses may appear before the Court remotely via the OCC, provided this does not cause delay or other interruption to Court business.

SECOND AND SUBSEQUENT REMAND HEARINGS

20. Following the first remand hearing, a case must not be adjourned for a further period longer than 21 clear days.⁴
21. If the child is remanded in custody, unless otherwise directed by the Court, the following timelines apply from the date of:
 - a) First remand to second mention – no longer than 21 days;
 - b) Second mention to either a plea of guilty or contest mention – no longer than 21 days;
 - c) Contest mention to plea of guilty – no longer than 21 days;
 - d) Contest mention to hearing, to the earliest date possible that can be accommodated by the Court.

¹ If the child is charged with a summary offence(s)

² S. 42O *Evidence (Miscellaneous Provisions) Act 1958* - Appearance before court of accused who is a child

³ S. 42P *Evidence (Miscellaneous Provisions) Act 1958* - Making of a direction for audio visual appearance by a child

⁴ S.12(5) *Bail Act 1977*

22. The following set out the processes by which the Court will consider whether the attendance of the child in person (physically or via the OCC) at Court is required or whether a “waiver” will be approved:

- a) The legal representative of the child must file a [Custody Attendance Form \(Form A\)](#) with the relevant registry of the Children’s Court no later than 3 working days prior to the further mention hearing;
- b) The legal representative will be notified no later than one clear business day of the mention of the Form A being filed as to whether the request has been approved or not;
- c) If the Court approves the request, the legal representative must arrange for the [Waiver Form \(Form B\)](#) to be signed by the child and filed with the Court no later than the working day prior to the further mention hearing; &
- d) If the Court does not approve a request for waiver the Court may direct that the child and or the legal representative appear.

BAIL APPLICATIONS

23. After the first remand hearing date all bail applications, unless otherwise ordered, should be listed in the OCC, with the accused appearing via audio visual link from a youth justice facility, by contacting the Court coordinator at the [proper venue](#) of the Court to obtain a hearing date and to otherwise make appropriate arrangements.
24. Unless urgent, an application for bail must be served on the informant and prosecution within 3 clear business days of the scheduled hearing by the child’s legal representative.

BAIL VARIATION(S)

25. Any application for a variation of bail conditions, whether opposed or unopposed may be heard at Court.
26. Bail variation hearings on the papers may occur pursuant to section 337A of the *Criminal Procedure Act 2009*.
27. An application for an unopposed variation of bail conditions may occur on the papers if all parties consent and the child is legally represented.
28. To list an unopposed application to vary bail 'on the papers' the following documents must be completed by the parties and filed by electronic communication as a single package to the relevant registry of the Children's Court at which the matter is listed:
 - a) [Form CV — Application for an Unopposed Bail Variation 'On the Papers'](#);
 - b) Copy of charge(s) with any agreed amendments;
 - c) Summary of alleged facts;
 - d) Agreed criminal history (if any);
 - e) An outline by the applicant of the reasons why variation is sought;
 - f) Consent (unopposed) to variation signed by or on behalf of the respondent;

- g) Supporting materials relied upon by the applicant and or respondent;
29. The parties will be advised of the date for listing of the application before a judicial officer.⁵ This will be a date that is at least 3 working days after the filing of the application unless the Court determines the application is urgent and the respondent consents to the application being treated as urgent.
30. On the listed date the judicial officer will hear and determine the application 'on the papers'.
31. The Court will provide the Prosecutor and the legal representative of the child with a certified extract of the judicial officer's decision by electronic communication on the day of the decision.
32. If the application for variation is granted, the child, within 7 days of the variation being ordered, is required to attend at a Children's Court registry to sign and enter the new undertaking of bail or to enter the new undertaking pursuant to s17A of the *Bail Act 1977*. The variation will have no effect until the undertaking is entered.
33. If the application for variation is not granted 'on the papers', the judicial officer will list the application for hearing. The parties will be notified of the hearing time and date by email.
34. In the event the child has been granted bail by a bail justice or the Court and within 24 hours after the grant of bail, the child is unable to meet the conditions of bail, an application to vary cannot occur on the papers.
35. Further, the on the paper's procedure cannot occur if there is a surety or a deposit of money on the current bail or if a surety or a deposit of money is sought on the varied bail.

SUMMARY CASE CONFERENCING

36. The Court directs the parties to conduct a summary case conference pursuant to section 54(3) of the *Criminal Procedure Act 2009* no later than 7 days prior to any mention date to avoid unnecessary adjournments.

DIVERSION HEARING(S) ON THE PAPERS

37. At any time before taking a formal plea from a child in a criminal proceeding for an offence, the Court may adjourn the proceeding to allow the child to participate and complete a diversion program.⁶
38. A young person may be assessed for diversion, or their matter be referred to diversion, at Court on the day of the hearing.

⁵ Includes either the President of the Children's Court, Magistrate or Children's Court Judicial Registrar

⁶ *Children, Youth and Families Act 2005*, Division 3A of Part 5.2 of Chapter 5

39. Diversion hearings on the papers may occur pursuant to section 337A of the *Criminal Procedure Act 2009*.
40. To list a matter for diversion the following documents must be completed and filed with the relevant registry at which the matter is listed, as a single package:
- a) [Form CD - Application for diversion hearing on the papers](#);
 - b) Completed diversion notice signed by the legal representative for the prosecution and the child;
 - c) Copy of charge(s) with agreed amendments (if any);
 - d) Agreed summary facts;
 - e) CCYD Assessment report and proposed diversion plan;
 - f) Criminal history (if any);
 - g) Victim impact statements (if any)
41. In addition, to the mandatory materials outlined in the previous paragraph (40), parties may include the following materials in the single package:
- a) Any mitigatory materials sought to be relied upon by the child;
 - b) Outline of defence submissions, in dot point form;
 - c) Outline of prosecution submissions, in dot point form.
42. The parties will be advised by the court of the date set for the diversion application to be considered by the judicial officer⁷ on the papers. No attendance is required on that date.
43. If the Court considers diversion is appropriate, the judicial officer will adjourn the proceeding for a period not exceeding four months⁸ to enable the child to participate in and complete the diversion plan.
44. The Court may adjourn the proceeding for a further period not exceeding 2 months if it considers it to be appropriate to enable completion of the diversion program.⁹ The total adjournment period for a diversion program must not exceed 6 months.¹⁰
45. The prosecution and the child's legal representative will be notified of the result of the diversion hearing by email.
46. On the adjourned date, if the judicial officer is satisfied the diversion plan has been satisfactorily completed, the child will be discharged without any finding of guilt on the charge(s) on which diversion was granted without the need for an attendance by any party.

⁷ Includes either the President of the Children's Court, Magistrate or Children's Court Judicial Registrar

⁸ S.356D(1) *Children, Youth and Families Act 2005*

⁹ S.356H(1) *Children, Youth and Families Act 2005*

¹⁰ S.356H(2) *Children, Youth and Families Act 2005*

47. If the judicial officer considers that:

- a) Either diversion or the diversion plan is not appropriate to be determined on the papers; or the
- b) Diversion program has not been satisfactorily completed

the judicial officer will adjourn the case and the proceedings will be listed for further hearing (mention).

48. The parties will receive notice of the further hearing date from the Court by way of a Hearing Notice. Subject to any direction by the Court, only the prosecution and the legal representative for the child will be required to attend the remote hearing for the purpose of making further submissions. The child's attendance at the remote hearing is not required, however the legal representative for the child must be able to contact the child by telephone during the hearing.

CHILDREN'S COURT CLINIC

49. The Children's Court Clinic will conduct assessments either in person, remotely by Telehealth or by other non-contact means, as appropriate.

CHILDREN'S COURT OF VICTORIA SITTING AT MELBOURNE

REMAND COURT

50. All matters filed at the Court at Melbourne where the child is remanded in custody will be listed in the Remand Court.¹¹

51. The legal representative for the child must advise the Court of any other outstanding matters, and whether they are part heard before a judicial officer.

52. If the child has any outstanding matter for mention, those matters will be abridged by the Court to join the remand hearing. Subject to a matter being part heard before another judicial officer, all matters will be case managed at the Court at Melbourne whilst listed for mention. Except for matters where the proper venue is either Moorabbin or Sunshine, to which paragraphs 55-58 apply, contest mentions and or hearings will be listed at the proper venue.

53. If the child is remanded in custody, unless otherwise directed by the Court, the following timelines apply from the date of:

- a) First remand to second mention – no longer than 21 days;
- b) Second mention to either a plea of guilty or contest mention – no longer than 21 days;
- c) Contest mention to plea of guilty – no longer than 21 days;
- d) Contest mention to hearing, to the earliest date possible that can be accommodated by the Court.

¹¹ Previously known as the Fast Track Remand Court sitting at Melbourne

54. Unless urgent, any application for bail must be served on the informant and prosecution within 3 clear business days of the scheduled hearing by the child's legal representative.

MOORABBIN AND SUNSHINE CUSTODY LISTINGS

55. Children who are arrested and held in custody on matters where either the Court sitting at Moorabbin or Sunshine are the proper venue, are to be remanded to appear in the Remand Court.

56. Where the Court sitting at Moorabbin is the proper venue, the Court sitting at Melbourne will maintain carriage of the matter until finalisation or the child is released from custody.

57. Where the Court sitting at Sunshine is the proper venue, the Court sitting at Melbourne will maintain carriage of the matter until finalisation apart from a matter being listed for hearing. In the circumstances of a hearing, the matter will be adjourned to the Court at Sunshine following a contest mention.

58. Subject to the discretion of the presiding Magistrate, if the child is bailed, the matter is to be listed for subsequent hearing at the proper venue.

This Practice Direction commences on 17 May 2021.



Judge Jack Vandersteen
President
Children's Court of Victoria

27 April 2021