COPP 6.4 Offences and Charges

Youth Detention Centre

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| Principles In context of the [Guiding Principles for Corrections in Australia, 2018](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/ops-standards.aspx); Timely and independent reviews are undertaken in response to critical incidents.Detainees are informed of their rights and obligations upon admission to Banksia Hill Detention Centre.Staff model prosocial behaviour by treating all persons with decency, respect and fairness.Allegations of detainee misconduct are investigated and managed appropriately, promptly and fairly.Detainee discipline is lawful, proportionate and timely. Discipline decisions are based on evidence and are made without bias.Responses to non-compliance contribute to detainee accountability and maintain community safety. In context of the [Australian Human Rights Commission National Principles for Child Safe Organisations, 2019](https://childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf):  Risk management strategies focus on preventing, identifying and mitigating risks to children and young people.  In context of the [Australasian Juvenile Justice Administrators, Juvenile Justice Standards 2009](https://www.ayja.org.au/wp-content/uploads/2020/03/2009-AJJA-Juvenile-Justice-Standards-Part-1-and-2.pdf): Children, young people and families are provided with information about their rights and responsibilities in the Justice system.Custodial environments are safe and secure |

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# Scope

This Commissioner’s Operating Policy and Procedure (COPP) applies to all Youth Detention Centre (YDC) Custodial Officers and staff.

# Policy

The purpose of this document is to establish clear standards and procedures around the process for determining a detention offence and prosecuting a charge.

Detainees are provided information relating to detainee discipline as part of their orientation into the Detention Centre. (refer to [COPP 5.1 – Orientation](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)).

The management of detainee offences and charges is governed by a rigorous recording and reporting regime which provides transparency and accountability.

Detainee discipline shall incorporate the principles of natural justice and shall ensure the dignity of detainees is maintained at all times.

Charges shall be dealt with expeditiously, without undue adjournment or delay to conducting proceedings.

Charge proceedings shall be openly communicated to the detainee in a manner they understand, and the detainee is provided opportunities to ask questions. All communications with detainees should be embedded in such a way that language diversity is acknowledged and understood.

The detainee shall be offered the opportunity to have a support person at the hearing.

# Detention Offences

## Offences

### Detainees may be charged under the *Young Offenders Act 1994* with a detention offence[[1]](#footnote-1).

### A detainee commits a detention offence[[2]](#footnote-2) if they:

1. disobey a rule of the detention centre or an order of a person having authority to give the order
2. uses insulting or threatening language or behaves in an insulting or threatening manner
3. prefers a false or frivolous complaint
4. does any act or omission of insubordination or misconduct subversive of the order and good government of the detention centre; or
5. breaches a condition or restriction of any leave of absence from a detention centre
6. assaults a person
7. escapes or prepares or attempts to escape from lawful custody
8. is in possession of or under the influence of drugs not lawfully issued to the detainee or not taken as prescribed
9. is, without the permission of the Superintendent, in possession of glue containing toluene or another intoxicant
10. does not submit for the purpose of having a body sample taken when required under the *Young Offenders Act 1994*
11. refuses or fails to wear, when required under the *Young Offenders Act 1994* to do so, a device for the purpose of having a body sample taken or detecting the presence of a substance in the body of a detainee
12. is in possession of a weapon or a facsimile of a weapon
13. wilfully breaks, damages or destroys property
14. behaves in a disorderly or riotous manner[[3]](#footnote-3).

## Charges of a detention offence

### A recommendation to proceed with a charge of a detention offence alleged to have been committed by a detainee may be made by any Custodial Officer[[4]](#footnote-4).

### An incident report shall be completed, before the Custodial Officer ceases duty, in accordance with [COPP 8.1 – Incident Reporting](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx), detailing the nature and circumstances of the incident.

### The Custodial Officer initiating an incident report shall recommend a behaviour management option, as detailed in [COPP 6.1 – Behaviour Management](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx). The recommendation shall be endorsed through the Unit Manager and Senior Officer’s TOMS minutes.

### Should a detention offence charge be recommended, the relevant Assistant Superintendent shall endorse the charge, and this shall be documented in TOMS and forwarded to the Prosecutor for consideration.

### The Prosecutor shall review the evidence and should a charge be endorsed the Prosecutor shall record the recommendation in TOMS and immediately advise the Superintendent.

### In the event a charge is endorsed, the Prosecutor shall print the TOMS charge notification paperwork.

### In the event the Prosecutor does not support a charge, the Prosecutor shall confer with the Assistant Superintendent Security and recommend an alternative behaviour management option be applied, in accordance with [COPP 6.1 –Behaviour Management](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx).

### Where a charge of a detention offence is referred to a Visiting Justice (VJ) under s172 of the *Young Offenders Act 1994*, the VJ may decline to deal with the matter and direct the Superintendent to commence a prosecution[[5]](#footnote-5).

## Notifications

### In the event a charge is endorsed, the Superintendent shall ensure the detainee is issued the ‘Charge Against Detainee’ TOMS report, a minimum of 72 hours prior to the hearing.

### Custodial Officers completing the ‘Charge Against Detainee’ report shall ensure the report includes the following details:

1. the name of the detainee
2. the date, time and place of the alleged offence
3. the details of any person assaulted, or any property damaged or destroyed
4. a description of any injury or damage
5. a brief summary of the alleged circumstances of the offence[[6]](#footnote-6).

### The Superintendent shall ensure reasonable steps are taken to notify a responsible adult of the charge and hearing date and their right to be present at the hearing.

### The Detention Centre Charges - Unit Notification Form shall be forwarded to the relevant Unit Manager to complete and return to the Prosecutor. In the event a responsible adult cannot be identified, the Unit Manager may suggest to the detainee the attendance of a Custodial Officer or Unit Manager as a support person at the hearing.

## Criminal charge

### The Assistant Superintendent Security may refer any matter to the Western Australian (WA) Police Force.

### In the event of an assault against a detainee, staff member or visitor, irrespective of whether the victim of the assault wishes to proceed with a criminal charge against the alleged perpetrator, the Assistant Superintendent Security shall ensure the WA Police Force are contacted.

### In the event that a staff member is the victim of an alleged criminal offence, the victim of the offence is responsible for referring the matter to the WA Police Force. In the event that a criminal charge is not proceeded with, the staff member is to notify the Assistant Superintendent Security for consideration of a detention offence charge.

### A detainee shall not be subjected to a detention offence charge until it is determined that the detainee will not be charged with a criminal offence in accordance with section 3.4.

# Hearing of Charge and Determination of Penalties

## Superintendent to determine how to deal with the charge

### Where practicable, the Superintendent should confer with the detainee, a responsible adult or other persons deemed appropriate when considering how to deal with the proposed charge.

### After conferring, where practicable, the Superintendent, having regard to the nature of the alleged offence and the alleged circumstances, shall:

1. suspend further action with respect to the charge on the detainee’s undertaking to be of good behaviour for a stated period not exceeding 2 months;
2. direct the charge be withdrawn or that a further or different charge be laid;
3. hear and determine the charge; or
4. refer the charge to a visiting justice for hearing and determination[[7]](#footnote-7).

### Where a charge has been suspended for good behaviour, at the end of the suspension period the Superintendent is to withdraw the charge if the undertaking has been observed[[8]](#footnote-8)

## The hearing

### The Superintendent is to conduct proceedings expeditiously and without undue adjournment or delay.

### The Superintendent shall ensure that the detainee is asked their preference as to whether the Superintendent or a VJ conducts any hearing. The Superintendent shall ensure that where a detainee elects for a charge to be dealt with by a VJ, the matter is referred to a VJ.

### The Superintendent shall explain to the detainee the reasons for pursuing a detention centre charge.

### The Superintendent shall ensure the detainee understands the charge by providing opportunity for the detainee to ask questions.

### The Superintendent shall ensure every effort to provide and explain information to the detainee has been made in a manner which the detainee understands. A detainee is not to be represented by a legal practitioner in proceedings[[9]](#footnote-9).

### The Superintendent may permit a suitable person agreed to by the detainee to assist and represent the detainee at the hearing of the charge. The Superintendent shall determine whether a person is suitable[[10]](#footnote-10).

### The Superintendent shall ensure the hearing is conducted in the presence of the detainee charged and in accordance with the procedures detailed in legislation[[11]](#footnote-11).

### The Superintendent is not bound by the rules of evidence but may admit any evidence considered to be relevant to the charge and may decline to admit repetitious material.[[12]](#footnote-12)

## Penalties

### Where the charge is heard by the Superintendent and proven, the Superintendent shall select one of the following outcomes:

1. give the detainee a caution;
2. reprimand the detainee;
3. alter the earliest release day for the sentence the detainee is serving, or if more than one sentence is being served, the earliest release day for any of those sentences (for a period not exceeding 3 days later than it would otherwise have been);
4. cancel the detainee’s gratuities (for a period not exceeding 3 days);
5. confine the detainee to their sleeping quarters, or to a designated cell in accordance with [COPP 6.10 – Confinement](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx); or
6. by making orders under more than 1 of paragraphs (c), (d) and (e)[[13]](#footnote-13).

### The Superintendent shall determine whether to suspend an order, for a period not exceeding 2 months, on the detainees undertaking to be of good behaviour[[14]](#footnote-14). If the undertaking is observed, the order is to be of no further effect.

# Reporting and Record Keeping

* + 1. The Prosecutor shall ensure the following is complete

1. the hearing outcome is recorded on TOMS under the incident and charges module
2. the detainees Senior Officer/Unit Manager, Case Planning and Programs Unit (CPPU) and cashier are advised of any penalties imposed
3. copies of all paperwork along with copies of any consequences relating to release is forwarded to CPPU for filing/dissemination and copies of any restitution/fines is forwarded to the finance co-ordinator
4. the date, time, detainees name, charge and charge number, Prosecutors name and the outcome are added to the Punishment Book.

### The Superintendent shall ensure records are maintained of all formal actions undertaken to manage detention offences.

# Annexures

## Related COPPs and documents

* [COPP 5.1 – Orientation](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [COPP 6.1 – Behaviour Management](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [COPP 6.10 – Confinement](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)
* [COPP 8.1 – Incident Reporting](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/bhdc-copps.aspx)

## Definitions and acronyms

| Term | Definition |
| --- | --- |
| Commissioner’s Operational Policy and Procedures (COPP) | Operational Instruments that provide instructions to staff how the relevant legislative requirements are implemented. |
| Custodial Officer | An officer with custodial functions, appointed under section 11(1) of the *Young Offenders Act 1994*; or a person who is appointed under section 11(1a)(a) as a custodial officer. This includes but is not limited to Youth Custodial Officers, Unit Managers and Senior Officers. |
| Detainee | Any young person who is detained in a detention centre, or who is in the custody of a Detention Centre. The term detainee also describes a young person, who is alleged to be an offender or who is remanded in custody, prior to being dealt with by the Courts.  Means a person who is detained in a detention centre as defined in s.3 *Young Offenders Act 1994*. |
| Earliest Release Day | In relation to sentence of detention, means the earliest day on which the detainee can, in accordance with section 121 of the *Young Offenders Act 1994*, be released under a supervised release order from custody under the sentence. |
| Guiding Principles for Corrections in Australia, 2018 | The guidelines and the accompanying principles constitute outcomes or goals to be achieved, rather than a set of absolute standards or laws to be enforced. They represent a statement of intent that each Australian State and Territory can use to develop their own range of relevant legislative policy and performance standards to reflect best practice and community demands. |
| Officers and Employees of Particular Classes | The following descriptions of classes of officers and employees are prescribed for the purpose of s 11(1a)(b) of the *Young Offenders Act 1994*, in r 49(2) of the *Young Offender Regulations 1995*:  (a) Medical staff persons who have undergone medical, nursing or health training and hold qualifications indicating successful completion of that training.  (b) Teaching staff persons who provide recreation or sports supervision, teachers, vocational trainers and social trainers.  (c) Program support staff counsellors, program facilitators and librarians.  (d) Centre support staff cleaning staff, laundry staff, gardening staff, vehicle driving staff, maintenance staff and hairdressers. |
| Public Service Officer | An officer employed in the State Government Public Service, subject to Part 3 of the *Public Sector Management Act 1994* and includes such officers and other persons as are necessary to implement or administer this Act. |
| Senior Officer | A Custodial Officer who is substantive to this rank, or a Unit Manager, or Custodial Officer acting in the capacity of Senior Officer, appointed by the Chief Executive Officer with reference to s11 of the *Young Offenders Act 1994* |
| Staff | Any person or officer of the Department of Justice, Corrective Services, including a Public Service Officer, Youth Custodial Officer or an employee of a particular class; and any service provider who provides services to detainees at Banksia Hill Detention Centre. |
| Superintendent | In accordance with section 3 of the *Young Offenders Act 1994, ‘*The person in charge of a detention centre’. |
| Total Offender Management Solution (TOMS) | An electronic database used by the Department of Corrective Services to record and manage comprehensive information relating to prisoners and detainees. |
| Unit Manager | A Custodial Officer substantive to this rank or Custodial Officer acting in the capacity of Unit Manager, appointed by the Chief Executive Officer with reference to s11 of the *Young Offenders Act 1994*. |
| Youth Detention Centre | A gazetted detention centre declared by the Minister to be a detention centre to accommodate male and female, remanded or sentenced detainees. Refer to section 13 of *Young Offenders Act 1994.* |

## Related legislation

* *Public Sector Management Act 1994*
* *Young Offenders Act 1995*
* *Young Offenders Regulations 1995*

1. **Assurance**

It is expected that:

* The Detention Centre will undertake local compliance in accordance with the Operational [Compliance Manual](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/monitoring.aspx).
* The Women and Young People Branch, Head Office will undertake management oversight as required.
* Operational Compliance Branch will undertake checks in accordance with the [Operational Compliance Framework](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/monitoring.aspx).
* Independent oversight will be undertaken as required.

# Document version history

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| --- | --- | --- | --- | --- |
| Version no | Primary author(s) | Description of version | Date completed | Date effective |
| 1.0 | Operational Policy | Approved by the A/Director Operational Policy Compliance and Contracts | 22 January 2021 |  |
| 2.0 | Operational Policy  Memo Reference:  D23/940474  Content Manager Reference:  S23/99471 | Endorsed by the  A/Assistant Commissioner Women and Young People | 9 November 2023 | 18 December 2023 |
| Approved by the Deputy Commissioner Operational Support | 15 November 2023 |

1. s171 *Young Offenders Act 1994* [↑](#footnote-ref-1)
2. s170 *Young Offenders Act 1994* [↑](#footnote-ref-2)
3. s170 *Young Offenders Act 1994* [↑](#footnote-ref-3)
4. s171(1) *Young Offenders Act 1994* [↑](#footnote-ref-4)
5. *s175 Young Offenders Act 1994* [↑](#footnote-ref-5)
6. *r 37(1) Young Offenders Regulations 1995* [↑](#footnote-ref-6)
7. *s171(3) Young Offenders Act 1994* [↑](#footnote-ref-7)
8. *s 171(3)(a) Young Offenders Act 1994* [↑](#footnote-ref-8)
9. *s174(3) Young Offenders Act 1994* [↑](#footnote-ref-9)
10. *r 39 Young Offenders Regulations 1995* [↑](#footnote-ref-10)
11. *r40 Young Offenders Regulations 1995* [↑](#footnote-ref-11)
12. *s 174(2) Young Offenders Act 1994* [↑](#footnote-ref-12)
13. *s 173 Young Offenders Act 1994* [↑](#footnote-ref-13)
14. *s 173(4) Young Offenders Act 1994* [↑](#footnote-ref-14)