



Justice
and Community
Safety

Youth Justice Bill

Summary





Overview

The Bill creates a new standalone Youth Justice Act, a robust end-to-end framework that responds to the evolving landscape of youth offending in Victoria.

This will help to improve community safety, reduce offending and provide genuine opportunities for young people to turn their lives around.

Victoria has some of the lowest rates of youth offending in Australia.

Our focus on early intervention and preventing offending is outlined in the *Youth Justice Strategic Plan 2020–2030*, *Wirkara Kulpa* (Victoria’s Aboriginal Youth Justice Strategy), and the *Youth Justice Diversion Statement*.

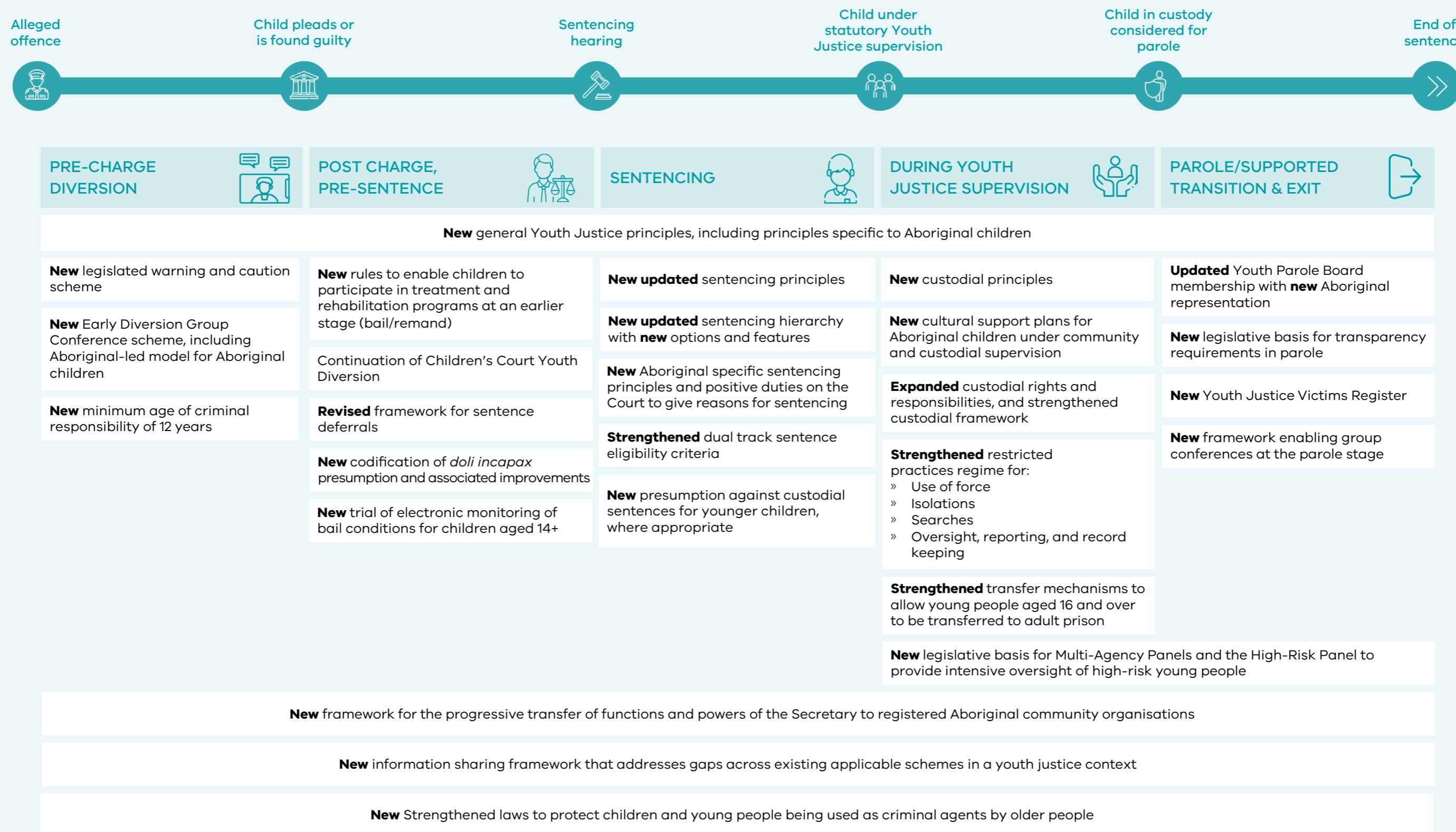
The Bill will provide strong and clear laws for Victoria’s Youth Justice system, acquitting key recommendations of the landmark *Youth Justice Review and Strategy* conducted by Penny Armytage and Professor James Ogloff AM.

This is about doing more of what works to keep the community safe.

Strong governing legislation for the whole Youth Justice system

Reforms introduced by the Bill span the Youth Justice continuum, from prevention, diversion, and early intervention through to sentencing, custodial facilities and transitioning children and young people from the system. This is about doing more of what is effective at each stage to keep the community safe.

The diagram below provides an overview of the reforms across each of the key stages:









Youth Justice principles

The Bill establishes clear guiding principles for the Youth Justice system, including principles specific to Aboriginal children and young people

The purposes of the guiding youth justice principles are to:

- » keep the community safe,
- » minimise and reduce offending by children and young people, and
- » support the rehabilitation and positive development of children and young people.

The guiding principles must be considered, to the fullest extent possible, any time a person or entity exercises a power, performs a function, decides, or takes any other action under the new Act.

THEME	PRINCIPLES
 Different status/ treatment	<p>Children and young people are to be:</p> <ul style="list-style-type: none"> » treated differently to adults because they are developmentally distinct, dependent on adults, tend to be vulnerable when dealing with persons of authority, and have a unique capacity for rehabilitation and positive development. » responded to as individuals in a way that addresses the causes of offending behaviour, promotes human rights and strengths, supports taking responsibility for actions, promotes agency and understanding, minimises stigma, retains connection to family and significant people, recognises vulnerabilities and victimhood, aims to resolve matters quickly.
 Crime Prevention, diversion, minimum intervention	<p>Responses to offending and alleged offending by children and young people should emphasise prevention, diversion and intervention appropriate to the circumstances, involving young people taking responsibility for and gaining insight into their behaviour.</p>
 Victims and restoration	<p>The rights of victims and importance of restoration are to be recognised by acknowledging the harm done by a child or young person and giving victims opportunities to participate in restoration processes.</p>
 Parents and families	<p>Parents, family and persons of significance in a young person's life are to be:</p> <ul style="list-style-type: none"> » recognised as having a shared responsibility to help the child or young person to rehabilitate, positively develop and not offend. » engaged to fulfil caring responsibilities and help the child or young person to rehabilitate, positively develop and not offend.
 Partnerships and collaboration	<p>Public service bodies, public entities, Victoria Police, non-government organisations and the community have a shared responsibility to work together to:</p> <ul style="list-style-type: none"> » support children and young people to rehabilitate, positively develop and not offend. » prevent children and young people from having contact with the youth justice system. » divert children and young people from the youth justice system, to the greatest extent possible.
 Aboriginal-specific	<p>The right of Aboriginal people to self-determination must be respected and upheld by:</p> <ul style="list-style-type: none"> » involving Aboriginal people in the design, development and implementation of policies, initiatives and strategies. » respecting cultural rights, cultural diversity and customary lore, Aboriginal knowledge and expertise. » creating equitable partnerships and transferring certain decision-making powers to Aboriginal communities. <p>The right to children and young people's self-determination must be supported by providing them opportunities to express their views and promoting their participation in decision-making processes.</p> <p>Aboriginal children and young people must be supported by recognising that:</p> <ul style="list-style-type: none"> » Aboriginal concepts of family include extended kinship relationships and family structures, and strong connections with family, kin, community, culture, Country and Elders are needed for Aboriginal children and young people to thrive. » Aboriginal children and young people should be dealt with in a way that upholds their cultural rights; and sustains their ties to family, kin, community, culture, Country and Elders.



Aboriginal specific elements

The Bill will introduce clear and practical steps to support Aboriginal self-determination and further reduce the over-representation of Aboriginal young people in the system, with culturally appropriate support, rehabilitation and diversion.

This recognises that self-determination and culturally appropriate approaches lead to better outcomes for young people and the community.

Specific measures for Aboriginal children and young people

The Bill includes principles and considerations specific to Aboriginal young people across the youth justice system through specific guiding principles, sentencing principles, custodial principles and rights.

The Bill continues the reform directions in the *Youth Justice Strategic Plan 2020-2030* and Victoria's first Aboriginal Youth Justice Strategy, *Wirkara Kulpa*.

The Aboriginal Justice Caucus has worked closely with the Victorian Government on the Bill and has been instrumental in shaping key aspects designed to improve outcomes for Aboriginal children and young people. The government will continue to work closely with the Aboriginal Justice Caucus as these reforms are implemented.

Statement of recognition

The Bill includes a statement of recognition in respect of Aboriginal children and young people, acknowledging that:

- » Aboriginal children and young people are over-represented in the youth justice system, particularly in custody.
- » Inequality, and structural and institutional racism, caused by colonisation and laws, policies and systems which explicitly excluded and harmed Aboriginal people and culture, have led to this over-representation and the continuation of systemic injustice.
- » This legislation, and the youth justice system generally, aims to address the factors that drive the over-representation of Aboriginal children and young people in the youth justice system, to ensure they are treated fairly and equitably in all aspects of the youth justice system.
- » This legislation recognises, respects and supports the distinct cultural rights of Aboriginal people and their right to self-determination.

Beyond aspirational principles, the Bill supports concrete action through:

- » a requirement for the Minister or Secretary to consult with representatives of the Aboriginal community on certain justice related issues.
- » a positive duty on the Secretary to seek to develop strategic partnerships with Aboriginal communities.
- » providing for the development of an Aboriginal-led Early Diversion Group Conferencing model.
- » a requirement that the Secretary offers an Aboriginal child or young person on a supervised order or in custody an opportunity to develop a cultural support plan.
- » embedding Aboriginal representation on the Youth Parole Board and establishing an Aboriginal division of the Board.

The Bill also provides the building blocks for a self-determined Aboriginal Youth Justice system in the future.

Sustained investment, cross portfolio delivery and targeted interventions are producing results:



72 per cent fewer Aboriginal children and young people under supervision (change in average daily rate 2017 to current), exceeding a key milestone in the Aboriginal Justice Agreement 4.



Victoria has the lowest rate of Aboriginal young people aged 10-17 years under Youth Justice supervision in Australia, with a 59 per cent decrease since 2018-19 (Report on Government Services and Australian Institute of Health and Welfare).



In 2022-23 Victoria had the second lowest rate of Aboriginal young people in detention (9.1 per 10,000), well below the national average (29.8 per 10,000).



Raising the age

New minimum age of criminal responsibility of 12 years

The Bill raises the minimum age of criminal responsibility from 10 to 12 years old, without exceptions, recognising that:

- » the younger a child is when they first enter the justice system, the more likely they are to become entrenched.
- » offending by 10 and 11-year-olds makes up a very small portion of child and youth offending – just 0.1 per cent of alleged offences recorded have been linked to alleged youth offenders aged 10 or 11.
- » of those very few 10 and 11-year olds charged with offending, only around 2 per cent are found guilty.

Support services will be available to help 10 and 11-year-olds and their families address the causes of problematic behaviours - because diverting young people from risky behaviour is the most effective way to keep them and the community safe.

The Bill also introduces complementary reforms to accompany raising of the minimum age that will keep the community safe.

These include:

- » new police powers to make sure that children aged 10 or 11 who still present a risk of serious harm to themselves or others can be transported somewhere safe.
- » closing loopholes to prevent individuals from exploiting children under the new minimum age to commit offences on their behalf.
- » changes to ensure victims have access to relevant information, supports and financial assistance, regardless of the age of the person who has caused the harm.

Loopholes will be closed to prevent those who seek to exploit children and encourage them to commit an offence, including lowering the age of prosecution for recruiting children into criminal activity from 21 to 18 years old.



Improving bail supervision for community safety

The Bill establishes a 2-year trial of electronic monitoring and more intensive bail supervision

While Victoria has one of the lowest rates of youth offending in Australia, there is a cohort of young people who are driving increases in youth offending and recidivism.

To help address this, the trial will enable courts to order young people who have been charged with serious offences to be subject to electronic monitoring as part of their bail conditions.

Courts will have the power to order the electronic monitoring of a young person aged 14-years and older in appropriate cases, following a suitability assessment by Youth Justice.

If non-compliance is detected such as breaching curfew, the electronic monitoring will alert authorities and, if appropriate, police will be able to apply to a court for bail to be revoked.

Electronic monitoring will be implemented alongside more intensive bail supervision, to help keep young people engaged in education, employment programs and other initiatives that address the underlying causes of offending.

The trial will improve community safety by providing intensive supervision and support to a cohort of young people who engage in persistent and serious offending.



Pre-charge diversion

For the majority of children and young people, particularly those engaged in first-time or lower-level offending, the most effective way to make the community safer is to divert them away from formal justice system contact and on to a better path.

The Bill introduces a tiered pre-charge diversion scheme that aims to prevent formal contact with the criminal justice system, wherever safe and appropriate.

These diversions help to reduce crime – in New South Wales after three years of legislated cautions, Aboriginal children were 50 per cent less likely to be taken to court.



New legislated warning and caution scheme

The Bill provides for police to issue:

- » youth warnings, which can be issued 'on the spot' with little formality for minor matters.
- » youth cautions, which are more formalised and involve greater levels of explanation and information provided to the young person.

There is a presumption that a child should be dealt with by warning or caution unless it is clearly inappropriate having regard to:

- » the seriousness of the alleged offending
- » nature and frequency of previous offending
- » relevant previous conduct, and
- » the harm caused to any victims.

Police must record reasons for why it was inappropriate to warn/caution a child if they are to commence a criminal proceeding.

New pre-charge Early Diversion Group Conference (EDGC) scheme

Group conferencing is a restorative justice process that may involve the child meeting with the victim or a victim representative and others. The purpose is to discuss the impact of their offending and develop a tangible plan to take responsibility and make amends for their actions.

The Bill introduces a new pre-charge EDGC model and requires police to refer a child to participate in an early diversion group conference under certain circumstances, where a warning or caution is not appropriate. EDGCs are about the child – together with their family, victims and professionals – finding solutions to the harm they have caused.

The Bill also requires the Secretary to develop a specific EDGC model for Aboriginal children in collaboration with Aboriginal community representatives.



Post-charge, pre-sentence

The Bill introduces several changes at the post-charge, pre-sentence stage, including:

- » New rules to enable children to participate in treatment and rehabilitation programs while on bail or remand, without prejudicing their trial to help tackle the root causes of anti-social behaviours.
- » Retaining Victoria’s successful court-ordered diversion program, the Children’s Court Youth Diversion (CCYD) scheme, with updates to its eligibility criteria to reduce barriers to participation.
- » Establishing a revised framework for sentencing deferrals, clarifying the circumstances under which a sentence can be deferred, providing an additional tool for courts to respond to individual cases, and requiring the court to explain to a young person how their behaviour during the deferral period could impact their sentence.

These changes will help redirect young people onto a better path earlier, and make the youth justice system safer.



The Bill improves the operation of the *doli incapax* presumption, which will continue to apply to children aged 12 and 13 who commit offences when the minimum age of criminal responsibility is raised to 12

Doli incapax is a long-standing and fundamental common law principle, which has been part of Australia's legal system since the 19th century, that a child under the age of 14 lacks the mental capacity to form criminal intent.

Currently, children under 14 cannot be held criminally responsible unless the prosecution proves beyond reasonable doubt that the child knew their conduct was seriously wrong in a moral sense.

The Bill:

- » establishes the *doli incapax* presumption in legislation to promote a consistent understanding of the presumption across the entire youth justice system and provide clarity about its elements. The presumption has also been codified in most jurisdictions nationally, and
- » ensures consideration of *doli incapax* at critical points when 12 or 13 year old children are charged and prosecuted for offences.

These changes will promote a more consistent understanding and application across the youth justice system and reduce unnecessary criminal justice system contact for children aged 12 and 13 who are not capable of forming criminal intent.



More than 9,000 diversions have been successfully completed since CCYD commenced in 2017



In 2022-23, 1,454 diversions were overseen by the CCYD service, with 98 per cent of diversion plans successfully completed



Sentencing

The Bill introduces a revised set of youth justice sentencing principles and a more purposeful sentencing framework with a clear legislated focus on rehabilitation and community safety.

New updated sentencing principles, including Aboriginal-specific sentencing principles

The Bill will introduce new sentencing principles that recognise the impact on any victim and provide opportunities to address harm through restorative justice measures. They will also recognise the need to protect the community from any reoffending by the child and they will expand the role of court monitoring to keep young people on track.

The sentencing framework maintains strong consequences for those that engage in serious, high-risk and repeat offending.



New sentencing hierarchy

The Bill creates a new sentencing hierarchy that provides more options for accountability and rehabilitation, with custody as the most severe outcome.

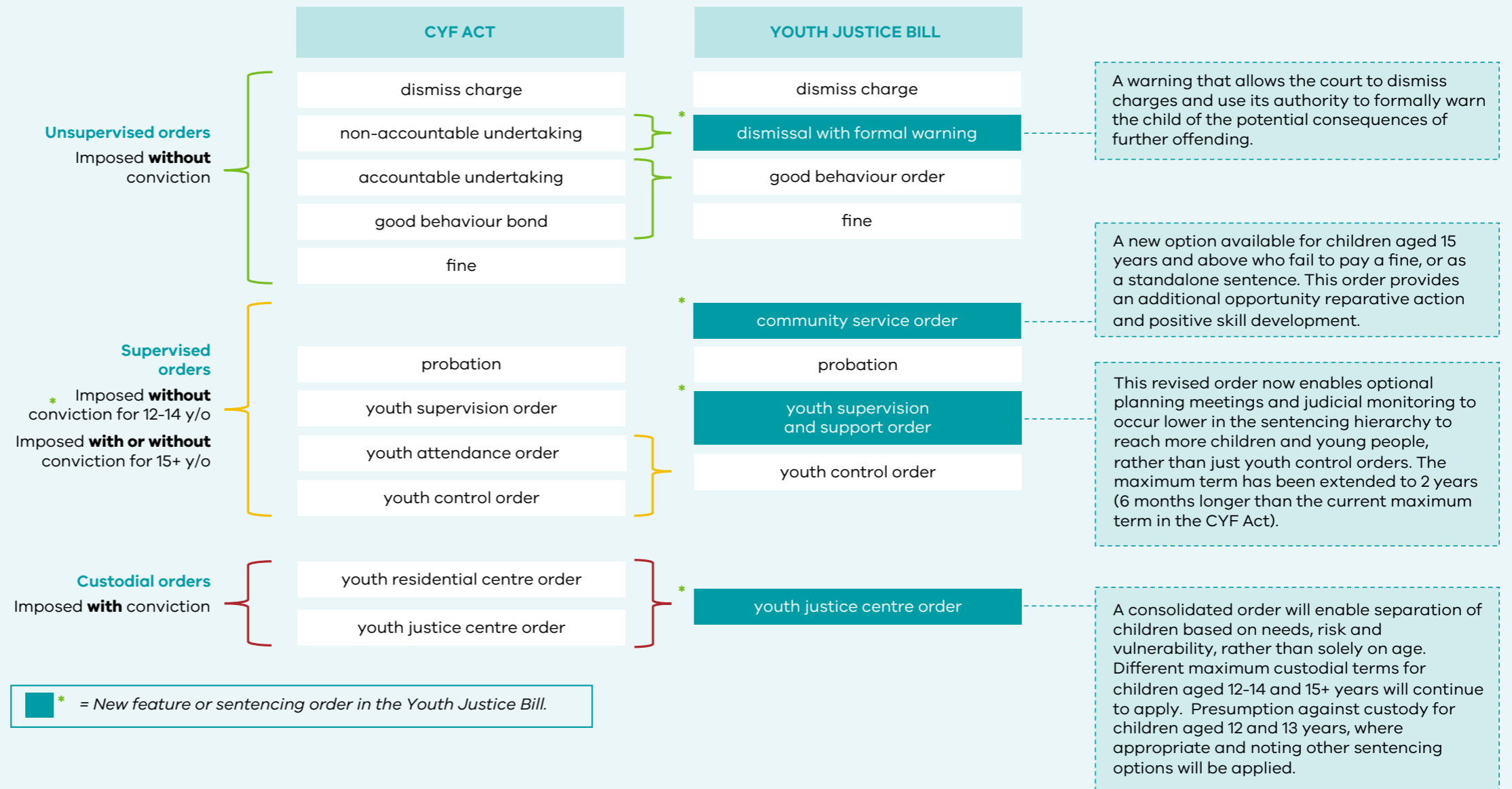
This will allow Courts to tailor sentences to each young person's individual risks and needs, in order to keep the community safe.

The new sentencing hierarchy includes:

- » a specific purpose for each sentencing order
- » early use of accountability measures, like judicial monitoring and planning meetings
- » tailored sentences with varying levels of restrictions.

The Bill introduces a more purposeful, graduated range of sentencing options compared to the existing Children, Youth and Families Act 2005.

The Youth Justice Bill introduces a revised range of clearly graduated sentencing options



Addressing over-represented cohorts

The Bill recognises that there are groups that are over-represented in the youth justice system, including those from culturally and linguistically diverse backgrounds and children involved with child protection.

To reduce over-representation, we need to understand the specific risk factors for these individual children and young people, such as:

- » the history and role of their families and communities, including childhood neglect and disadvantage
- » structural and systemic factors that may have contributed to their offending, including racism or discrimination or the effects of intergenerational trauma.

A key sentencing reform in the Bill allows for a child or young person appearing before a court to ask that the court hear from people who can speak to the unique and systemic background factors affecting them.

This will allow a court to make sentencing determinations based on more complete, holistic information about a child or young person.

Tightened dual track sentence eligibility criteria and transfer mechanisms

The 'dual-track' sentencing system allows adult courts to sentence young adults aged 18-21 to serve a custodial sentence in a Youth Justice centre rather than an adult prison if the young person has strong prospects for rehabilitation and would be particularly unsuited to the adult system.

The Bill tightens the dual track criteria to ensure courts consider whether that young adult is appropriate for a Youth Justice custodial environment, including whether the young adult poses a risk of harm to others or would be disruptive to the safety, security or stability of a youth justice centre.

It also establishes clear provisions to transfer young adults to prison when appropriate.

New presumption against custodial sentences for younger children

The Bill states that the court must not impose a custodial sentence on a child aged 12 or 13, unless they have committed certain serious or violent offences and they pose a serious risk to community safety.

The evidence shows that premature custodial responses can entrench harmful behaviour in young people. Instead, other sentencing options will be applied to ensure children and young people take responsibility for their actions and understand the impact of their offending.



During youth justice supervision

Oversight of high-risk young people

The Bill will establish the Multi-agency Panels and the High-Risk Panel in legislation, to ensure high-risk offenders are held to account.

This provides a robust and enduring model that will deliver intensive oversight - and ensures agencies and services are working together to address the root causes of harmful offending behaviour.

New custodial principles

The Bill introduces new principles to guide everyone who interacts with children and young people in custody.

The custodial principles relate to:

- » safety, stability and security
- » positive development
- » individual responses
- » children's and young people's voices
- » families and community
- » collaboration.

Expanded custodial rights and responsibilities

The Bill introduces expanded custodial rights and responsibilities for young people in custody.

Young people's custodial rights relate to:

- » safety, security and stability
- » positive development
- » mental and physical health
- » individual responses
- » family, community, cultural and religious connections
- » Aboriginal children and young people
- » being informed
- » children's and young people's voices
- » legal representation
- » external support.

The Bill also sets out that young people in custody have a responsibility to comply with custodial rules set by the Youth Justice Commissioner, which explain behavioural expectations.

Strengthened restricted practices regime

The Bill introduces a strengthened restricted practices framework that clarifies thresholds and strengthens the safeguards that apply to their use for the following:

- » use of force
- » isolations
- » searches
- » oversight, reporting, and record keeping.

The Bill provides a more comprehensive restricted practices framework that will better support staff to make accountable decisions and take decisive action in terms of use of force, isolations and searches.

In particular, the Bill:

- » makes clear that use of force, isolation and searches are measures of last resort to be used in strictly limited circumstances.
- » establishes an absolute prohibition of solitary confinement and the use of isolation as punishment, for discipline or as a generalised behaviour management strategy.

Strengthened regime for transfers between youth justice custody and adult prisons

The Bill:

- » strengthens the mechanism to transfer a young person aged 16 and over to adult prison where there has been threatening or seriously harmful conduct.
- » limits the ability of a person aged 18 and over to return to youth justice custody after they have engaged in serious violence in a custodial centre.
- » limits the 'bounce-back' of a young person to youth justice custody where the Youth Parole Board has previously decided to transfer them to prison, or there is a subsequent sentence to adult prison.



Parole/ supported transition and exit

The Bill modernises the composition of the Youth Parole Board

The Bill simplifies the Youth Parole Board's membership structure and supports more diversity of experience.

The Bill also establishes an Aboriginal division of the Youth Parole Board to consider parole matters for Aboriginal children.

The Bill requires that the Youth Parole Board clearly explains the purpose and effect of parole orders, breach consequences, and its decision-making criteria to young people, and reports on its decision-making processes in its annual report.

New Youth Justice Victims Register

The Bill supports victims by recognising impacts on them and making sure their voices are heard. The Bill also establishes a formal Youth Justice Register, including the following features:

- » Registered victims must be notified as soon as possible ahead of a young person being considered for parole.
- » Registered victims can give information to the Youth Parole Board, which they may consider when imposing parole conditions (but not the decision to grant parole).
- » Where appropriate, information can be shared with victims about the circumstances of any period of release from custody and any parole conditions relevant to the offence or the victim's safety.

New framework enabling group conferences at the parole stage

The Bill includes a new power enabling the Youth Parole Board to refer a young person to participate in a group conference.

This will provide additional opportunities for the development of insight, victim involvement and restoration of relationships and harm, especially where conferencing has not occurred at the pre-charge or pre-sentence stage.

Conferencing at the parole stage has the potential to further support a young person's reintegration into the community and successful completion of their sentence on parole.



Implementation

Together, the Bill's holistic reforms aim to balance responsibilities with rights, improve accountability, diversion and support mechanisms for young people to reduce youth offending and rehabilitate young people - because the evidence shows this is the best way to keep the community safe in the short term and the long term.

Following its passage, the Bill allows for the progressive implementation of key aspects of the Bill.



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