

Australian Capital Territory

Children and Young People (Records and Reporting) Policy and Procedures 2008 (No 1)

Notifiable instrument NI2008-388

made under the

Children and Young People Act 2008, Section 143 Youth detention policies and operating procedures

1 Name of instrument

This instrument is the *Children and Young People (Records and Reporting) Policy and Procedures 2008 (No 1)*.

2 Commencement

This instrument is to commence on 9 September 2008.

3 Policies and operating procedures

Under section 143 of the *Children and Young People Act 2008*, I make the attached Records and Reporting Policy and Procedures to facilitate the effective and efficient management of detention services for young detainees.

Martin Hehir
Chief Executive

8 September 2008

Records and Reporting Policy and Procedures

1. Introduction and Purpose

The Records and Reporting Policy and Procedures address requirements for the recording of information related to operations at a detention place, including statutory requirements to record information in registers and to report certain incidents affecting safety and security to higher administrative authorities and oversight persons and agencies.

2. Legal Authority and Obligations

- 2.1 The *Children and Young People Act 2008* is the primary source of authority for the operations of a detention place. The provisions of the *Children and Young People Act 2008* must be complied with at all times by staff exercising functions at a detention place. The following sections of the *Children and Young People Act 2008* are relevant to this policy and procedure: sections 165, 185, 193, 195, 222.
- 2.2 The policies and procedures provide specific directions to implement the provisions of the *Children and Young People Act 2008* and other relevant legislation, including the *Human Rights Act 2004*.
- 2.3 The following Territory and Commonwealth laws also apply to decisions and actions taken under this policy and procedure:
 - *Territory Records Act 2002*
 - *Public Sector Management Act 1994*
 - *Privacy Act 1988 (Cth)*
 - *Health Records (Privacy and Access) Act 1997*

3. Authorisations and Delegations

- 3.1 Staff members are responsible for ensuring that complete, accurate and contemporaneous records are maintained.
- 3.2 The Senior Manager, Operations Manager and Unit Managers must ensure that a register of segregation decisions is maintained and includes all the information listed in the Segregation Policy and Procedures.
- 3.3 The Senior Manager, Operations Manager and Unit Managers must ensure that a register of young detainees is maintained and includes all the information listed in section 185(2) of the *Children and Young People Act 2008*.
- 3.4 Youth detention officers must ensure that the details of each young detainee are entered in the register of young detainees on their admission to a detention place.
- 3.5 The Senior Manager, Operations Manager and Unit Managers must ensure that a register of searches and uses of force is maintained.

4. Definitions

All staff refers to youth detention officers, authorised persons, other Departmental staff providing services at or visiting a detention place in a work-related capacity and staff of ACT Government agencies providing services to young detainees at a detention place.

Commissioner, exercising functions under the *Human Rights Commission Act 2005*, refers to one of the three appointed Commissioners: the Human Rights and Discrimination Commissioner, the Health Services Commissioner and the Disability and Community Services and Children and Young People Commissioner. The functions of the Human Rights Commission include the resolution of complaints between users and providers of services for children and young people and to promote improvements for service provision.

Manager refers to the Senior Manager of a detention place during normal business hours, or in the event this person is unavailable, the Operations Manager of a detention place, or in the event this person is unavailable, a Unit Manager or in the event a Unit Manager is unavailable, the Programs and Services Manager. Outside normal business hours, this refers to the on-call manager.

Mandated reporter under the *Children and Young People Act 2008* includes staff at a detention place. The Act requires a staff member to report a reasonable belief that a young detainee who is under 18 years has experienced or is experiencing non-accidental physical injury or sexual abuse.

Nominated person, for an adult young detainee, is a person nominated by the young detainee at the time of admission to whom the Chief Executive can give notifications under the *Children and Young People Act 2008*. The details of the nominated person must be entered in the register of young detainees.

Official visitor is a person appointed by the Minister under the *Children and Young People Act 2008*. Official Visitors have the following functions:

- inspecting detention places, places outside of the detention place where detainees are, or have been, directed to work or participate in an activity, places of care and therapeutic protection places;
- reporting to the Minister and Chief Executive;
- receiving and considering complaints from young detainees and others on their behalf.

Ombudsman is the person appointed to the office of ACT Ombudsman created by the *Ombudsman Act 1989*. Under an arrangement between the ACT Government and the Australian Government the Commonwealth Ombudsman is also the ACT Ombudsman. The Act provides that the Ombudsman is to investigate the administrative actions of ACT Government departments and agencies.

Prohibited thing is a thing declared under section 148 of the *Children and Young People Act 2008* by the Chief Executive to be prohibited if the Chief Executive reasonably believes that the declaration is necessary or prudent to ensure security or good order at a detention place. The declaration of prohibited things is contained in the Search and Seizure Policy and Procedures.

Public Advocate means the person appointed under the *Public Advocate Act 2005*. The Public Advocate advocates for the best interests of children and young people. Young detainees are able to make complaints to, or seek assistance from the Public Advocate.

Register of searches and uses of force is a register that the Senior Manager, Operations Manager and Unit Managers are obliged to keep under section 195 of the *Children and Young People Act 2008*.

Register of segregation directions is a register that the Senior Manager, Operations Manager and Unit Managers are obliged to keep under section 222 of the *Children and Young People Act 2008*.

Register of young detainees is a register that the Senior Manager, Operations Manager and Unit Managers are obliged to keep under section 185 of the *Children and Young People Act 2008*.

Staff refers to youth detention officers and other authorised persons. An authorised person is a person who has been delegated a power under the *Children and Young People Act 2008* or another Territory law and is exercising a function under the criminal matters chapters of the *Children and Young People Act 2008*. The positions which have delegations as authorised persons for the policies and procedures are: Executive Director (A), Director (B), Senior Manager (C/3), Acting Senior Manager (C/4), Operations Manager (E/7), Programs and Services Manager (E/8), Unit Managers (F/7), Team Leaders (G/6), Youth Workers (I/4), Casual Youth Workers (J/3), Case Managers (F/8), Aboriginal Liaison Officer (G/5).

Youth detention officer is defined in section 96 of the *Children and Young People Act 2008* and means an authorised person to whom the Chief Executive has delegated functions of a youth detention officer under the criminal matters chapters. The positions which have delegations as youth detention officers for the policies and procedures are: Senior Manager (C/3), Acting Senior Manager (C/4), Operations Manager (E/7), Programs and Services Manager (E/8), Unit Managers (F/7), Team Leaders (G/6), Youth Workers (I/4), Casual Youth Workers (J/3).

5. Principles

Legislative Principles

5.1 The *Children and Young People Act 2008* sets out the principles that must be considered by all decision-makers making decisions under the Act and this policy.

Section 8, Best interests of children and young people paramount consideration

- (1) In making a decision under this Act in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration.
- (2) In making a decision under this Act otherwise than in relation to a particular child or young person, the decision-maker must consider the best interests of children and young people.

Section 9, Principles applying to Act

- (1) In making a decision under this Act in relation to a child or young person, a decision-maker must have regard to the following principles where relevant, except when it is, or would be, contrary to the best interests of a child or young person:
 - (a) the child's or young person's sense of racial, ethnic, religious, individual or cultural identity should be preserved and enhanced;
 - (b) the child's or young person's education, training or lawful employment should be encouraged and continued without unnecessary interruption;
 - (c) the child's or young person's age, maturity, developmental capacity, sex, background and other relevant characteristics should be considered;
 - (d) delay in decision-making processes under the Act should be avoided because delay is likely to prejudice the child's or young person's wellbeing.
- (2) A decision-maker exercising a function under this Act must, where practicable and appropriate, have qualifications, experience or skills suitable to apply the principles in subsection (1) in making decisions under the Act in relation to children and young people.

Section 10, Aboriginal and Torres Strait Islander children and young people principle

- In making a decision under this Act in relation to an Aboriginal or Torres Strait Islander child or young person, in addition to the matters in section 8 and section 9, the decision-maker must take into account the following:
- (a) the need for the child or young person to maintain a connection with the lifestyle, culture and traditions of the child's or young person's Aboriginal or Torres Strait Islander community;
 - (b) submissions about the child or young person made by or on behalf of any Aboriginal or Torres Strait Islander people or organisations identified by the chief executive as providing ongoing support services to the child or young person or the child's or young person's family;
 - (c) Aboriginal and Torres Strait Islander traditions and cultural values (including kinship rules) as identified by reference to the child's or young person's family and kinship relationships and the community with which the child or young person has the strongest affiliation.

Section 94, Youth justice principles

(1) For the criminal matters chapters, in deciding what is in the best interests of a child or young person, a decision-maker must consider each of the following matters that is relevant:

(a) if a child or young person does something that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;

(b) a child or young person should be dealt with in a way that acknowledges his or her needs and that will provide the opportunity to develop in socially responsible ways;

(c) a child or young person should be consulted about, and be given the opportunity to take part in making, decisions that affect the child or young person, to the maximum extent possible taking into consideration their age, maturity and developmental capacity;

(d) if practicable and appropriate, decisions about an Aboriginal and Torres Strait Islander child or young person should be made in a way that involves their community;

(e) if a child or young person is charged with an offence, he or she should have prompt access to legal assistance, and any legal proceeding relating to the offence should begin as soon as possible;

(f) a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary;

(g) children, young people and other young offenders should be dealt with in the criminal law system in a way consistent with their age, maturity and developmental capacity and have at least the same rights and protection before the law as would adults in similar circumstances;

(h) on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;

(i) it is a high priority that intervention with young offenders must promote their rehabilitation, and must be balanced with the rights of any victim of the young offender's offence and the interests of the community.

(2) The decision-maker may also consider any other relevant matter.

(3) The youth justice principles are intended to be interpreted consistently with relevant human rights instruments and jurisprudence.

Example

Convention on the Rights of the Child

(4) A reference in subsection (1) to a child or young person includes a reference to a person who is at least 18 years old but is being dealt with in relation to an offence committed, or alleged to have been committed, when he or she was under 18 years old.

6. Policy and Procedures

Records Generally

6.1 All records relating to the safety, security and management of young detainees at a detention place will be captured, identified and stored as a record in a manner that is consistent with the Department's Records

Management Program. Documents relating directly to a young detainee must be filed on their individual file(s).

- 6.2 Staff must ensure all records are protected from inappropriate disclosure.
- 6.3 Staff must only give or receive personal information with the informed consent of the person or when required or permitted by law.

Health Records

- 6.4 The confidentiality of each young detainee's health information must be maintained to preserve each young detainee's privacy. Staff must not disclose a young detainee's health information without the consent of the young detainee unless required by law to do so or allowed by law to do so and the disclosure is in the best interests of the young detainee.
- 6.5 In accordance with the Health and Wellbeing Policy and Procedures, a young detainee's health report and health schedule are to be placed on the young detainee's securely stored case management file. Access by a staff member to the young detainee's health report and health schedule must be authorised by the Manager.
- 6.6 In making a decision to provide a staff member with access to the young detainee's health report and health schedule, the Manager must balance the following considerations:
 - (a) the young detainee's privacy;
 - (b) the best interests of the young detainee and other young detainees;
 - (c) the Chief Executive's duty of care to the young detainee, including the need to ensure the young detainee's health needs and risks are appropriately responded to; and
 - (d) safety, security and good order at a detention place.

Recording Information in Registers and Inspection of Registers

- 6.7 The Senior Manager, Operations Manager and Unit Managers are required to keep the following registers at a detention place:
 - a) Register of young detainees;
 - b) Register of certain searches and uses of force;
 - c) Register of segregation directions.
- 6.8 Each register must include information prescribed by the *Children and Young People Act 2008* and the policies and procedures.
- 6.9 For more information in relation to the register of young detainees and the matters which it must address, refer to the Admission and Classification Policy and Procedures.
- 6.10 For more information in relation to the register of searches and uses of force and the matters which it must address, refer to the Search and Seizure Policy and Procedures and Use of Force Policy and Procedures.

- 6.11 For more information in relation to the register of segregation directions and the matters which it must address, refer to the Segregation Policy and Procedures.
- 6.12 The registers relating to searches and uses of force and segregation directions must be available for inspection by the following persons:
- a Judge;
 - a Magistrate;
 - an Official Visitor;
 - a Commissioner exercising functions under the *Human Rights Commission Act 2005*;
 - the Public Advocate; and
 - the Ombudsman.
- 6.13 The Public Advocate is required to inspect the register of searches and uses of force at least once every 3 months.
- 6.14 The Senior Manager must provide a quarterly summary report to the Director on information contained in the registers, reportable incidents and mandatory reports of threats to security under section 193 of the *Children and Young People Act 2008*.

Monitoring Records

- 6.15 Monitoring records must be stored as official records in accordance with the Department's Records Management Program.
- 6.16 The Manager may download visual or audio recordings for a number of purposes, including:
- (a) to review an incident or decision or to assist as an information source for the purpose of decision-making;
 - (b) to review actions undertaken by youth detention officers;
 - (c) to inform a response to an incident;
 - (d) to inform debriefing;
 - (e) to provide to police as evidence of a crime; and/or
 - (f) to conduct training.
- 6.17 If a monitoring record is to be used for the purpose of conducting training of youth detention officers, all reasonable attempts must be made to de-identify any young detainee that may be otherwise identified on the record.
- 6.18 On completion of any review of video or audio records, access to a record must be authorised by the Senior Manager, unless otherwise required by law.

General Reporting Requirements

- 6.19 The Senior Manager must ensure that the following reporting requirements are complied with:

- (a) As soon as practicable after the end of each month, a report is provided to the Chief Executive which summarises any incidents involving the use of force in relation to young detainees during the month;
- (b) As soon as practicable after a reportable incident outlined in schedule 1, the Manager must notify the Director of the incident and what response has been provided;
- (c) Staff are aware of their statutory responsibilities as mandated reporters under the *Children and Young People Act 2008* and that a report is made to Care and Protection Services if a staff member reasonably believes that a young detainee who is under 18 years has experienced or is experiencing sexual abuse or non-accidental physical injury by any person;
- (d) A quarterly summary report is provide to the Director on information contained in the registers, reportable incidents and mandatory reports of threats to security under section 193 of the *Children and Young People Act 2008*; and
- (e) ACT Insurance Authority incident forms are completed by staff and provided to the Director's office not later than 10 working days after the incident which requires reporting.

Mandatory Reporting of Threats to Security at Detention Place

6.20 Section 193 of the *Children and Young People Act 2008* requires adults who work at, or provide services at, a detention place (whether paid or unpaid) to report to the Chief Executive their suspicion that a young detainee or anyone else at a detention place poses a significant threat to security, including by concealing a prohibited or dangerous thing.

6.21 A member of all staff or another person required to make a report under 6.20 must immediately report the information to the Manager.

6.22 A youth detention officer who receives a report from a member of all staff or another person required to make a report under 6.20 must immediately report the information to the Manager.

6.23 The Manager is responsible for recording reports received and deciding what action to take, if any, in response to the report.

Mandatory and Voluntary Reporting of Abuse and Neglect

6.24 As a mandated reporter under the *Children and Young People Act 2008*, a staff member is required by law to make a report to Care and Protection Services if the staff member reasonably believes that a young detainee who is under 18 years has experienced or is experiencing sexual abuse or non-accidental physical injury by any person.

6.25 If a staff member forms a belief in accordance with 6.24, the staff member must immediately report the information to the Manager and report the information to Care and Protection Services Centralised Intake Service.

6.26 If a staff member suspects or believes that a young detainee who is under 18 years has experienced or is experiencing emotional abuse or neglect (for example, through the supervision of a contact visit with a family member), the staff member must report the information to the Manager. The staff member may also make a voluntary report to Care and Protection Services Centralised Intake Service.

Reportable Incidents

6.27 A reportable incident is an incident or event which:

- (a) significantly affects the security, operations or the routine of a detention place;
- (b) disrupts or threatens to disrupt the safety or good order of a detention place;
- (c) harms or threatens to harm the personal safety of any individual at a detention place including young detainees, youth detention officers, staff or visitors;
- (d) has the potential to attract media attention; and/or
- (e) involves drugs or violence.

6.28 There are two categories of Reportable Incidents and these are outlined in Schedule 1 to this Policy and Procedure.

6.29 A report must be made of all Schedule 1, Reportable Incidents, accurately documenting and recording the incident, where relevant including the young detainee's views and any medical opinions, the parties involved and all actions and decisions undertaken.

6.30 On receiving a report (Schedule 1, Reportable Incidents), the Manager must notify a parent or person with parental responsibility for the young detainee who is under 18 years or a nominated person for an adult young detainee of the report. If relevant, the Manager must also notify the following people:

- (a) carer, significant person and/or next of kin;
- (b) emergency services (Police, Fire Brigade or Ambulance);
- (c) any other services relevant in response to the incident; and/or
- (d) a detention place or the Court (e.g. vehicle breakdown).

6.31 The Manager must ensure where appropriate all staff, young detainees and visitors, who are witnesses to, or a party to, a reportable incident (either within or external to a detention place), provide, or acknowledge, a full report on their involvement in, or observations of the incident. The reports are required to be completed prior to the end of their shift unless otherwise authorised by the Manager.

6.32 On receiving a report (Schedule 1, Reportable Incident) the Manager is to consider the need to download the relevant audio and video records of the incident.

- 6.33 As soon as practicable after a reportable incident has occurred, and when it is safe to do so, youth detention officers must inform the Manager of the incident. All relevant details and background information are to be provided.
- 6.34 The Manager, as soon as practicable, must notify the Director of the incident and what response has been provided.
- 6.35 When a reportable incident such as an emergency situation, serious assault, serious health incident, escape or attempted escape, use of force or a death in custody occurs, the requirements stipulated in the relevant Policy and Procedures must be applied.

Reporting of Incidents to the ACT Insurance Authority (ACTIA)

- 6.36 In addition to reportable incidents, certain incidents occurring at a detention place or in relation to a young detainee lawfully absent from a detention place require the completion of an ACTIA report to ensure that the ACT Government is insured where a claim may be made against the Territory as a result of the incident.
- 6.37 The following incidents require reporting in these circumstances:
- An injury to a young detainee (however caused) requiring medical treatment at a detention place or at a health facility;
 - An injury to a visitor requiring medical treatment;
 - A motor vehicle accident involving a young detainee; or
 - A death of a young detainee.
- 6.38 The ACTIA report form must be completed by a staff member who witnesses the incident or receives information about the incident. The ACTIA report form must be forwarded to the Director's office as soon as practicable, but not later than 10 working days after the incident occurs.

7. Forms and Templates

Privacy Statement
Register of young detainees
Register of certain searches and uses of force
Register of segregation directions
ACTIA report form

8. Related Policies and Procedures

Policies and Procedures under the *Children and Young People Act 2008*

Health and Wellbeing Policy and Procedures
Safety and Security Policy and Procedures
Admission and Classification Policy and Procedures
Search and Seizure Policy and Procedures
Use of Force Policy and Procedures
Visits, Phone Calls and Correspondence Policy and Procedures
Segregation Policy and Procedures

DHCS policies and procedures

DHCS media guidelines

9. Further References

Dictionary for Policies and Procedures

Schedule 1 Reportable Incidents

Under this policy, a report must be created that provides a full accurate account of incidents under the following categories. Additional evidence to the incident, such video or audio records and/or witness statements may also be necessary.

Reportable Incidents are separated into categories:

Category 1 Reportable Incidents - all serious incidents where the Manager must notify the Director immediately.

Category 2 Reportable Incidents - all other incidents that do not require immediate notification of the Director. A Category 2 incident will require notification to the Director following the completion of the full report within 5 working days wherever possible.

The following table outlines Category 1 and Category 2 Reportable Incidents:

Category 1 Reportable Incidents	Category 2 Reportable Incidents
Death or attempted suicide	Assaults
Serious injury or health complaint	Threats against youth detention officers, or any other person
Escape or Attempted Escape	Use of force
Serious assault	Contagious diseases
Major breach to Detention place security	Minor breach of security
Direction for a body search	Significant disturbance of good order of a detention place
	Incidents involving contraband (including weapons, tools of escape, & illicit drugs)
	Motor vehicle accident
	Possession of a prohibited thing at a detention place by a youth detention officer or staff member
	Any other event which in the opinion of the Manager should be reported