

Placement in secure welfare services pursuant to a section 598 warrant

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This advice is endorsed by the: Assistant Director, Child Protection Policy, Practice and Planning.

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Introduction and purpose

This Advice provides information for child protection practitioners and managers about when a s. 598 warrant may be sought and executed to place a young person in a secure welfare service (SWS). Section 598 of the Children, Youth and Families Act 2005 (CYFA) allows for a magistrate in some circumstances, to issue a search warrant for the purpose of having the child taken into safe custody and transported directly to secure welfare.

This Advice should be read in conjunction with Advice number 1069, 'Secure welfare service (SWS)', and other advice as listed in Related content.

Legislation

Note: Use the Legislation link on toolbar to access full text versions of the legislation.

Any sections of an Act noted in this Advice are partial references only and should not be relied on. Practitioners should refer to the Act for full details.

Children, Youth and Families Act

Children, Youth and Families Act 2005 (CYFA)

- s. 10 Bests interests principles
- s. 11 Decision-making principles
- s. 12 Additional decision-making principles
- s. 598 Circumstances in which young person may be taken into safe custody

Charter of Human Rights and Responsibilities 2006

Charter of Human Rights and Responsibilities 2006

- s. 4 What is a public authority?
- s. 7 Human rights—what they are and when they may be limited
- s. 12 Freedom of movement
- s. 21 Right to liberty and security of person
- s. 22 Humane treatment when deprived of liberty
- s. 38 Conduct of public authorities

Standards and procedures

Criteria for admission to a secure welfare service

Detailed information regarding the criteria for admission to SWS is contained in Advice number 1458, 'Description of secure welfare services' – see Related content for a link.

What does a s. 598 warrant provide for?

A warrant obtained under s 598, CYFA, differs from warrants obtained under other sections of the CYFA, in that it applies to a young person who is 'absent' from placement or where there is a 'failure to comply' with a lawful direction of the placement of a young person.

Section 598 of the CYFA provides for a magistrate to issue a warrant to have a young person taken into safe custody if they are satisfied that:

- a) an undertaking entered into under s. 530(2) has not been complied with;
- b) a child is absent without lawful authority or excuse from a place in which the child had been placed under an interim accommodation order (IAO), a custody to third party order or a supervised custody or by the Secretary under s. 173 or from the lawful custody of a member of the police force or other person; or
- c) a child or a child's parent or the person who has the care of a child is refusing to comply with a lawful direction of the Secretary under s. 173 as to the placement of the young person

Following the execution of the s. 598 warrant, the police member executing the warrant is required to take the young person to the place specified in the warrant, or if no place is specified, to a place determined by the Secretary or in the absence of any such determination to any place referred to in s. 173.

Seeking a warrant under s 598 may be considered in situations where a young person, on the above-indicated orders, is absent from placement or refusing a direction for placement and where police will be required to actively intervene to ensure the security of the young person.

Use of s. 598 warrant to place in SWS

A search warrant is only to be used when it seems that the young person is at risk of significant harm and apprehension by police is the only viable option. It implies concern high enough to override the use of the less coercive approaches and assumes that police intervention will offer the young person a 'better' option than their current situation. It is appropriately used when it is likely that a young person is in a situation of significant harm and departmental intervention alone has not been or would not be effective in resolving this situation.

Less coercive approaches must always be attempted first. Prior to applying for a warrant to place a child in SWS consideration must be given to Victoria's Charter of Human Rights and Responsibilities (the Charter).

For example: Practitioners may consider seeking assistance from the secure welfare transport service (SWTS). The SWTS may provide assistance to metropolitan regions transferring young people on custody or guardianship to Secretary orders to the SWS where resources are available; the young person may be willing to be placed in SWS following discussion and negotiation.

Custody to the Secretary (CSO), guardianship to the Secretary (GSO) and long term guardianship to the Secretary orders

A young person subject to one of the above named orders may be administratively placed in SWS via a s. 598 warrant if the following criteria are met:

- young person is absent from placement without lawful authority or excuse
- refusing to comply with a lawful direction of placement pursuant to s. 173
- young person has been assessed to be at substantial and immediate risk of harm
- placement in a SWS cannot be achieved by any other means. For example, the whereabouts of the young person is unknown or the young person is exhibiting extreme aggressive behaviours.

Other orders

A young person subject to an interim accommodation order (IAO), custody to third party or supervised custody order cannot be placed administratively in secure welfare under any circumstances.

If a s. 598 warrant is executed in respect to a young person who is subject to an interim accommodation order, custody to third party order or supervised custody order, the young person must be taken before the Children's Court (or a bail justice if out of hours) and an IAO to secure welfare services may be sought.

Hence, if it is assessed that the young person in these circumstances requires a placement in secure welfare:

And the order is ...	Then the application is...
Interim accommodation order (IAO)	Breach IAO or new IAO (based on the facts) and seek an IAO to SWS
Custody to third party	Protection application (seek IAO to SWS)
Supervised custody order	Breach SCO (seek IAO to SWS)

Aboriginal clients

For specific Advice regarding the placement of Aboriginal young people in SWS, practitioners should read the Advice number 1458, 'Description of secure welfare services', and Advice number 1459, 'Placement in secure welfare services' – see Related content for links.

Informing parents

For young people on custody to Secretary orders and guardianship to Secretary orders, child protection practitioners should inform parents of SWS admissions as appropriate. For all children in other legal circumstances, parents are required to be served with the court application before the matter proceeds to court unless they cannot be located after reasonable attempts have been made.

Delegations

Approval by the team manager is to be gained before seeking a s 598 warrant.

Authority on the appropriate form created in CRIS from the child protection manager or above must be gained where the young person is to be placed in a secure welfare service.

The authority is required when a young person is subject to a custody to Secretary order, guardianship to Secretary order or long term guardianship to Secretary order, or a recommendation is to be made to the Children's Court for the young person to be placed in SWS subject to an IAO.

Considerations for good practice

Note: Use the Practice Resources link on the toolbar to access further Practice Guidance and Research.

Best endeavours must be made to avoid placing young people in SWS wherever possible, however if it is necessary to do so, then attempts should be made to place the young person in SWS without the use of a warrant.

Where a young person is exhibiting behaviours that may indicate the need for a placement in SWS, practitioners should consider community-based options that will prevent the need for this. For example, referral to the Intensive Case Management Service (ICMS), accessing regional brokerage for necessary services or one to one home-based care. Consideration must always be given to the Charter.

Contact for further procedural advice

- Supervisor
- Team Manager
- Regional Solicitor/Court Officer
- Child Protection Litigation Office (CPLO)

Related content and external links

Note: Advice, Protocols and Policy Documents directly related to this Advice are listed below. To access the full range of Protocols and Policy documents use the Protocol and Policy links on the Home Page.

Related Content:

1459 - Placement in secure welfare services

1357 - Missing persons reports

1358 - Children's Court search warrants

1069 - Secure welfare service (SWS)

1059 - Responding to Aboriginal children

1367 - Transport between court and secure welfare

External Links:

For this Advice, there are no specific external links.

Checklist of required standards

For this Advice, there are no required standards.