



**Children's Court
Victoria**

**PRACTICE DIRECTION
NO.4 OF 2020**

CRIMINAL DIVISION – COVID-19 – DIVERSION

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

PREAMBLE

- A. This Practice Direction introduces temporary measures necessitated by the COVID-19 pandemic.
- B. In order to ensure Diversion applications can continue to be heard during the COVID-19 pandemic, this Practice Direction introduces an alternative procedure for Diversion hearings consistent with the emergency health measures currently in place in Victoria.
- C. Pursuant to Division 3A of Part 5.2 of Chapter 5 of the *Children, Youth and Families Act 2005*, 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 in and complete a Diversion program.
- D. Pursuant to Section 420ZL of the *Criminal Procedure Act 2009*, the Court may decide any issue in a criminal proceeding, other than a prescribed issue, entirely on the basis of written submissions and without the appearance of the parties if the Court is satisfied it is in the interests of justice to do so.

- E. The Children’s Court of Victoria will commence Diversion hearings ‘on the papers’ pursuant to Section 420ZL of the *Criminal Procedure Act 2009* on 5 May 2020.

DIRECTIONS

1. This alternative procedure requires the consent of both the Prosecution and the child and it also requires the child to be legally represented.
2. To list a matter for a Diversion hearing ‘on the papers’ the following documents must be completed by the parties and filed by the Prosecution via email as a single package to the registry of the Children’s Court at which the matter is listed:
 - a. Form CD – Application for Diversion Hearing ‘on the papers’
 - b. Completed Diversion notice signed by legal representatives for the Prosecution and Defence
 - c. An agreed summary of the facts
 - d. Victim impact statements (if any)
 - e. Agreed criminal history (if any)
 - f. Copy of charge(s) with any agreed amendments upon which Diversion is sought
 - g. A list of charges to be withdrawn if the matter proceeds to Diversion
 - h. Any mitigatory materials sought to be relied upon by the Defence
 - i. Outline of Defence submissions in dot point format (if any)
 - j. Outline of Prosecution submissions in dot point format (if any)
 - k. Any other Prosecution materials
3. The Prosecution and Defence will be advised of the date for listing of the Diversion hearing before a judicial officer at least 7 days prior to the listed date to enable arrangements to be made to ensure that the child and the child’s legal representative are contactable on the listed date.
4. On the listed date the Diversion application will be considered by the judicial officer ‘on the papers’ and the Prosecution and Defence will be notified by email of the result of the Diversion hearing.

5. If the judicial officer considers that Diversion is appropriate, the hearing will be adjourned to enable the Children's Court Youth Diversion Service ['the CCYD'] to conduct an assessment and prepare a Diversion plan. The child must be available to be contacted for assessment by the CCYD. When completed the Diversion plan will be emailed to the Prosecution, the legal representative of the child and the Court. The CCYD will confirm in writing that the child consents to the plan.
6. If the child does not consent to the Diversion plan, the CCYD will advise the child's legal representative, the Prosecution and the Court by email as soon as practicable after being advised of that fact.
7. If the judicial officer considers that the plan is appropriate, the judicial officer will adjourn the matter to enable the child to complete the Diversion plan. The Prosecution and Defence will be notified by email of the adjourned date and that the plan has been approved by the Court.
8. On the adjourned date, if the judicial officer is satisfied that 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 attendance by any party.
9. In any other event, namely-
 - if the judicial officer considers that either Diversion or the Diversion plan are not appropriate to determine on the papers; or
 - if the judicial officer considers that the Diversion plan has not been satisfactorily completed; or
 - if the child does not consent to the Diversion plan-

the judicial officer will adjourn the case for mention and the legal representatives of the parties will be advised of the date by emailed hearing notice to enable further submissions to be made.

10. A copy of Form CD - Application for Diversion Hearing 'on the papers' is annexed to this Practice Direction.

This Practice Direction commences on 5 May 2020.

A handwritten signature in black ink, appearing to be 'Amanda Chambers', written over a horizontal line.

Judge Amanda Chambers
President
Children's Court of Victoria
4 May 2020

Form CD

APPLICATION FOR DIVERSION HEARING 'ON THE PAPERS'

In the Children's Court of
Victoria at [venue] _____ Court Ref: _____

Informant: _____

Prosecutor: _____

Phone Nr: _____ Email: _____

Child: _____

Phone Nr: _____ Email: _____

Legal Rep: Phone Nr: _____ Email: _____

CONSENTS & ACKNOWLEDGMENT

YES NO

Does the accused child consent to the Diversion hearing proceeding 'on the papers'?

Does the Prosecution consent to the Diversion hearing proceeding 'on the papers'?

Does the accused child acknowledge to the Court responsibility for the offences listed in Part A below?

A. Charges to proceed in Diversion hearing (copies to be attached):

B. Charges to be withdrawn (if any):

DOCUMENTS ATTACHED**YES NO**

Completed Diversion notice signed by legal representatives for the Prosecution and Defence	<input type="checkbox"/>	<input type="checkbox"/>
Agreed summary of the facts	<input type="checkbox"/>	<input type="checkbox"/>
Victim impact statements (if any)	<input type="checkbox"/>	<input type="checkbox"/>
Agreed criminal history (if any)	<input type="checkbox"/>	<input type="checkbox"/>
Copy of charge(s) with any agreed amendments upon which Diversion is sought	<input type="checkbox"/>	<input type="checkbox"/>
A list of charges to be withdrawn (if any) if the matter proceeds to Diversion	<input type="checkbox"/>	<input type="checkbox"/>
Any mitigatory materials sought to be relied upon by the Defence	<input type="checkbox"/>	<input type="checkbox"/>
Any outline of Defence submissions (dot point format)	<input type="checkbox"/>	<input type="checkbox"/>
Any outline of Prosecution submissions (dot point format)	<input type="checkbox"/>	<input type="checkbox"/>
Any other Prosecution materials	<input type="checkbox"/>	<input type="checkbox"/>

REQUEST FOR DIVERSION HEARING ON THE PAPERS

[Name and signature of child's legal representative]

DATE:

[Name and signature of Prosecutor]

DATE: