



Tasmanian
Audit Office



**Report of the Auditor-General
No. 1 of 2024-25**

Alignment of the duration of custodial stays at Ashley Youth Detention Centre with related sentencing orders

6 August 2024

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The Auditor-General and Tasmanian Audit Office are established under the *Audit Act 2008* and *State Service Act 2000*, respectively. Our role is to provide assurance to Parliament and the Tasmanian community about the performance of public sector entities. We achieve this by auditing financial statements of public sector entities and by conducting audits, examinations and investigations on:

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- how public sector entities manage resources
- how public sector entities can improve their management practices and systems
- whether public sector entities comply with legislation and other requirements.

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2024
PARLIAMENT OF TASMANIA

Alignment of the duration of custodial stays at Ashley Youth Detention Centre

6 August 2024

Presented to both Houses of Parliament pursuant to
Section 30(1) of the *Audit Act 2008*

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Tasmanian Audit Office

GPO Box 851

Hobart

TASMANIA 7001

Phone: (03) 6173 0900

Email: admin@audit.tas.gov.au

Website: www.audit.tas.gov.au

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6 August 2024

President, Legislative Council
Speaker, House of Assembly
Parliament House
HOBART TAS 7000

Dear President, Speaker

Report of the Auditor-General No. 1 of 2024-25 – Alignment of the duration of custodial stays at Ashley Youth Detention Centre with related sentencing orders

This report has been prepared consequent to examinations conducted under section 23 of the *Audit Act 2008*. The objective of the audit was to express an opinion on whether the length of custodial stays at Ashley Youth Detention Centre are compliant with sentencing orders under the *Sentencing Act 1997* and the *Youth Justice Act 1997*.

Yours sincerely

Martin Thompson
Auditor-General

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Foreword

The Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (COI) Report made 191 recommendations directed across the Tasmanian State Service. Recommendation 12.26 stated 'the Auditor-General should undertake an audit of the length of custodial stays at Ashley Youth Detention Centre to determine whether they align with sentencing'. After conducting a preliminary assessment, it was determined that my Office would undertake a compliance audit.

My intent for this compliance audit was to provide assurance to Parliament about one narrow, but very important, issue raised by the COI: have young people been detained at Ashley Youth Detention Centre (AYDC) for the correct amount of time?

I trust that my recommendations will help inform the design of any future custodial information systems and/or youth justice facilities.

Finally, I sincerely thank the relevant staff from AYDC involved in this audit.

Martin Thompson
Auditor-General

6 August 2024

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Independent assurance report

This independent assurance report is addressed to the President of the Legislative Council and the Speaker of the House of Assembly. It relates to my compliance audit of custodial stays at Ashley Youth Detention Centre.

Audit objective

The objective of the audit was to express an opinion on whether the length of custodial stays undertaken at Ashley Youth Detention Centre (AYDC) are compliant with sentencing orders under the *Sentencing Act 1997* and *Youth Justice Act 1997*.

Audit scope

The audit examined whether the length of custodial stays undertaken at AYDC from 2014-2023 align with sentencing orders. This included an assessment of processes, roles, responsibilities, systems and record keeping.

The audit did not examine:

- the judicial process for arriving at a sentence for a young offender
- periods of detention, on remand, that have not resulted in a custodial sentencing order
- non-custodial sentences
- pastoral care of young people during their custodial stay
- the financial cost of detention.

Audit approach

The audit was conducted in accordance with the Australian Standard on Assurance Engagements ASAE 3100 *Compliance Engagements* issued by the Australian Auditing and Assurance Standards Board, for the purpose of expressing a reasonable assurance opinion.

The audit evaluated the following criterion:

1. Are the length of custodial stays at AYDC aligned with sentencing orders?

Responsibility of management

In the context of this audit, the Department for Education, Children and Young People (DECYP) is responsible for the strategic oversight and operation of AYDC.

Responsibility of the Auditor-General

My responsibility was to express a reasonable assurance conclusion on the compliance of custodial stays at AYDC with sentencing orders.

Independence and quality control

I have complied with the independence and other relevant ethical requirements relating to assurance engagements, Auditing Standard ASQM 1 – *Quality Management for Firms that Perform Audits or Reviews of Financial Reports and Other Financial Information, or Other Assurance or Related Services Engagements* in undertaking this audit.

Conclusion

It is my conclusion that custodial stays at Ashley Youth Detention Centre, as measured against the audit criterion were, in all material respects, compliant with sentencing orders.

Martin Thompson

Auditor-General

6 August 2024

Executive summary

Summary of findings

All 73 custodial stays corresponding to the 43 young people selected for review were compliant with sentencing orders. Sentencing orders clearly defined sentence duration and end date. The duration of the custodial stay, earliest release date and actual release date were clearly recorded. Amendments to sentencing duration were clearly calculated and documented. However, weaknesses in the governance and control framework were identified. These weaknesses included:

- outdated training materials and work instructions
- outdated or undocumented policies, procedures and guidelines
- an over reliance on staff as the key control
- inconsistent methods for recording the actual release date
- an over reliance on paper files and manual processes
- the current Youth Custodial Information System's limited ability to control who can access information and make changes
- the current Youth Custodial Information System's (YCIS) limited ability to track what changes are made and by whom.

Despite these weaknesses, we found that it was the staff who ensured that custodial stays were consistently compliant with sentencing orders.

Recommendations

We recommend that DECYP:

1. as matter of priority, updates policies, procedures and guidance that relate to the admission and release of young people
2. establish transparent and accessible controls for recording each actual release date of a young person from detention
3. removes or minimises the need for manual data entry and establishes appropriate access controls and audit logs in the system that replaces the current system
4. stores all sentencing orders electronically in an appropriate records management system
5. regularly monitors and reports publicly on the alignment of youth detention custodial stays with sentencing orders.

Submissions and comments received

In accordance with section 30(2) of the *Audit Act 2008* (Tas) (Audit Act), a copy of this Report was provided to the relevant Ministers, Entity Heads of the audited entities, and other persons who in our opinion had a special interest in the report, with a request for submissions or comments.

Submissions and comments that we receive are not subject to the audit nor the evidentiary standards required in reaching an audit conclusion. Responsibility for the accuracy, fairness and balance of these comments rests solely with those who provided the response.

Section 30(3) of the Audit Act requires that this Report include any submissions or comments made under section 30(2) or a fair summary of them. Submissions received are included below.

Response from the Attorney-General

I am writing to extend my congratulations and sincere thanks to you and your team at the Tasmanian Audit Office for the successful completion of the audit concerning the length of custodial stays at Ashley Youth Detention Centre.

This audit engaged in critical testing and examination to ensure that the custodial stays for young people in detention was in alignment with sentence orders, and completed an important recommendation in the Final Report of the *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings*.

I acknowledge the proposed recommendations put forward by the Tasmanian Audit Office and I want to assure you that my Department and I are committed to working collaboratively with our partners at the Department for Education, Children and Young People to implement these recommendations.

Our ongoing efforts will be focused on ensuring that the necessary changes are made to enhance compliance and better serve the needs of the youth in detention.

Thank you once again for your dedication and thorough work on this matter.

Hon Guy Barnett MP

Response from the Secretary of the Department for Education, Children and Young People

The Department for Education, Children and Young People (DECYP) is strongly committed to ensuring children and young people have bright lives and positive futures. Young people in custodial settings are some of the most vulnerable in our community and DECYP continues to action ongoing improvements at AYDC.

I am pleased to advise DECYP supports all five of the report recommendations in full and is already taking positive action to address these recommendations.

The report findings reflect the strong commitment of AYDC staff to ensure young people are detained at AYDC according to the provisions of their sentencing orders. DECYP maintains this commitment to place children and young people at the centre of all we do now and into the future.

Thank you again for the opportunity to review the compliance audit of custodial sentences at AYDC. I look forward to working with the Tasmanian Audit Office into the future, so that we can maintain our focus on continuous improvement.

Tim Bullard

Response from the Secretary of the Department of Justice

I would like to extend my thanks to you and your team at the Tasmanian Audit Office for the successful completion of the audit concerning the length of custodial stays at Ashley Youth Detention Centre.

This audit was crucial in determining whether the custodial stays align with sentencing, as recommended in the Final Report of the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

The Department of Justice does not have any additional submissions or comments to make. However, I would like to thank you for the opportunity to do so.

I acknowledge the proposed recommendations put forward by the Tasmanian Audit Office and confirm that the Department of Justice is committed to continuing to work collaboratively with our partners at the Department for Education, Children and Young People.

Ginna Webster

1. Introduction

Background

- 1.1 The Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings (COI) Report¹ made a recommendation directed to the Auditor-General:

Recommendation 12.26 stated 'the Auditor-General should undertake an audit of the length of custodial stays at Ashley Youth Detention Centre to determine whether they align with sentencing'.

- 1.2 The COI Report referred to a Tasmanian Government media release from 2016 that stated adult prisoners had been released from Risdon Prison on the incorrect date on 7 occasions. It stated this was due to 'administrative errors when dealing with and interpreting warrants issued by the Courts'. These errors were said to be 'the result of long-term process issues within the Justice system', 'a heavy reliance on paper-based forms used in Court operations' and the manual calculation of release dates by the Tasmania Prison Service.
- 1.3 The COI Report noted that in 2021, a media report indicated that, during the preceding 4 years, 9 prisoners had been released from Risdon Prison before or after their release dates.
- 1.4 Commissioners were concerned that, if adult prisoners were held for longer or shorter than their sentence, perhaps the same thing occurred for young people in detention at AYDC.
- 1.5 After conducting a preliminary assessment, the Auditor-General determined he would undertake a compliance audit examining whether custodial stays undertaken at AYDC were compliant with sentencing orders under the *Sentencing Act 1997* and the *Youth Justice Act 1997*.

The *Sentencing Act 1997*

- 1.6 Young people appearing before the Supreme Court who are charged with indictable offences (or at the discretion of the Judge for other offences) are sentenced under the *Sentencing Act 1997*. Under the *Sentencing Act 1997*, a young person is sentenced to 'prison' instead of 'detention' and they have an eligibility for parole date.

The *Youth Justice Act 1997*

- 1.7 The *Youth Justice Act 1997* (the Act) applies to young people aged 10 to 17 years' old at the time they commit an offence or are alleged to have committed an offence. The Act outlines the general principles of youth justice which are focused on rehabilitation, developing social responsibility and diverting the young person away from criminal

¹ <https://www.commissionofinquiry.tas.gov.au/report>.

behaviours. The Act outlines several sentencing options available to Magistrates and Judges to support these principles.

- 1.8 The last sentencing option available is a detention order. Specifically, the Act states that ‘detaining a youth in custody should only be used as a last resort and should only be for as short a time as is necessary’.

Earliest Release Date

- 1.9 The Act states that a young person can be detained for a maximum of 2 years for any offence or group of offences. When a young person is sentenced to a period of detention, the Magistrate or Judge must provide an earliest release date (ERD). An ERD ‘means the day immediately following the completion of 50% of the period of detention during which a youth is liable to be detained, or 3 months, whichever is the longer’. An ERD only applies for sentences longer than 3 months.
- 1.10 A young person released on their ERD is released under a Supervised Release Order (SRO) for the remainder of their sentence. A SRO is subject to conditions such as the young person not committing another offence and attending school.
- 1.11 Applying the principles of the Act in relation to ERD, a young person sentenced to 8 months detention would be released the day after serving 4 months (half the sentence because the sentence is greater than 3 months).

Magistrates Court, Supreme Court and sentencing orders

- 1.12 The vast majority of young people serving a custodial sentence at AYDC are sentenced in the Magistrates Court under the *Youth Justice Act 1997*. There is a dedicated Children’s Court within the Magistrates Court that is designed to accommodate the needs of young people. However, a young person that commits a serious (indictable) offence, could be sentenced in the Supreme Court under the *Sentencing Act 1997*. The *Sentencing Act 1997* is used to sentence adults who are found guilty of committing offences.
- 1.13 When a young person is sentenced under the *Sentencing Act 1997*, they serve a ‘prison sentence’ as opposed to a detention order. They do not have an earliest release date. They have an eligible for parole date, which is the earliest they can be released on parole (parole is not guaranteed). A young person serves their prison sentence at AYDC. If the young person turns 18 while serving a prison sentence at AYDC, the young person may be transferred to Risdon Prison to serve the remainder of their sentence.
- 1.14 When a Magistrate sentences a young person to detention, the Court produces a Warrant of Commitment for Sentence of Detention. This information is entered into the Criminal Registration, Information Management and Enquiry System. When a Judge sentences a young person to detention or prison in the Supreme Court, A Memorandum of Sentence is produced. This information is entered into the Criminal Case Management System. Our assessment was based on sighting these 2 documents and matching those against the sentence served by the young people. For simplicity, we use the generic term ‘sentencing orders’ throughout this report to refer to either

document. Sentencing orders are sent to AYDC via email following the sentencing of a young person in a court.

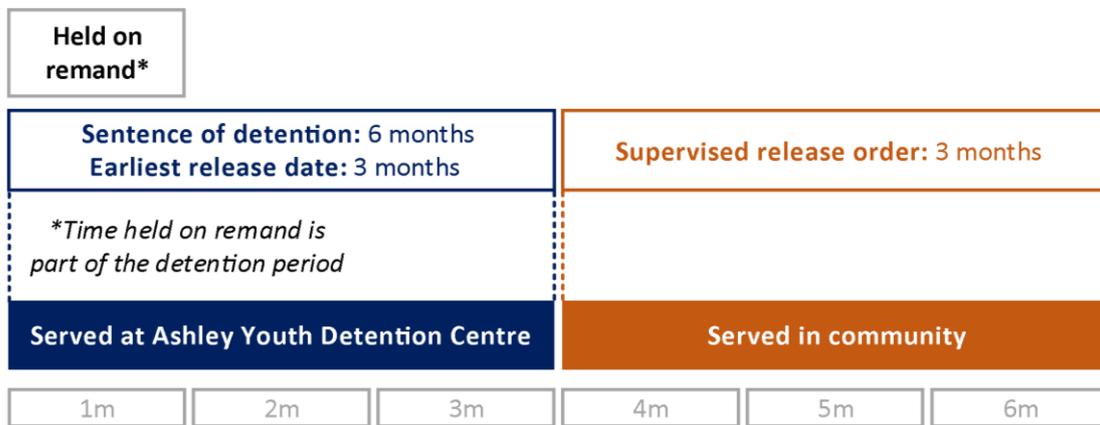
Critical information on a sentencing order

- 1.15 Sentencing orders made under the *Youth Justice Act 1997* clearly state the date a young person was sentenced, the duration of their sentence and, since 2016, must also state their ERD. This Act was amended in 2016 to require Magistrates and Judges to clearly state the ERD on sentencing orders. Prior to 2016, ERDs were calculated by AYDC admissions staff based on sentencing orders.
- 1.16 When a young person is sentenced to detention, they may be physically present in the courtroom, or they may appear via video conferencing from AYDC. If physically present in the courtroom, the young person is transported to AYDC as soon as possible that day.

Where are sentences served?

- 1.17 All young people sentenced to detention in Tasmania serve their sentence at AYDC. The centre is part of the Department for Education, Children and Young People (DECYP) and is located in Northern Tasmania. Custodial stays at AYDC are referred to as 'episodes'. An episode begins when a young person enters AYDC and ends when they leave. A young person may have multiple episodes due to various periods of remand and/or sentences of detention.
- 1.18 When a young person is denied bail and remanded into custody, they are detained at AYDC. The young person is held in a reception prison until security staff collect and drive them to AYDC. Once a young person is picked up by security personnel, Department of Justice responsibility ends and DECYP responsibility begins. The court produces a Warrant of Remand in Custody on Adjournment (Warrant) and sends it to AYDC. This Warrant instructs AYDC to detain the young person until their next court appearance. The date of their next appearance in Court is clearly stated on this Warrant.
- 1.19 A young person may have multiple episodes at AYDC on remand. Most young people detained at AYDC at any given time are on remand and not serving a sentence of detention. Typically, young people sentenced to detention are already being held at AYDC on remand. Magistrates and Judges must account for time already served on remand for the related matter, or matters, when sentencing a young person to detention.
- 1.20 For example, a young person has been held at AYDC on remand for 1 month when they are sentenced to 6 months detention. Their ERD calculation means they should serve 3 months of their 6-month detention order at AYDC. The young person has 2 more months left to serve in detention because they have already served 1 month on remand.

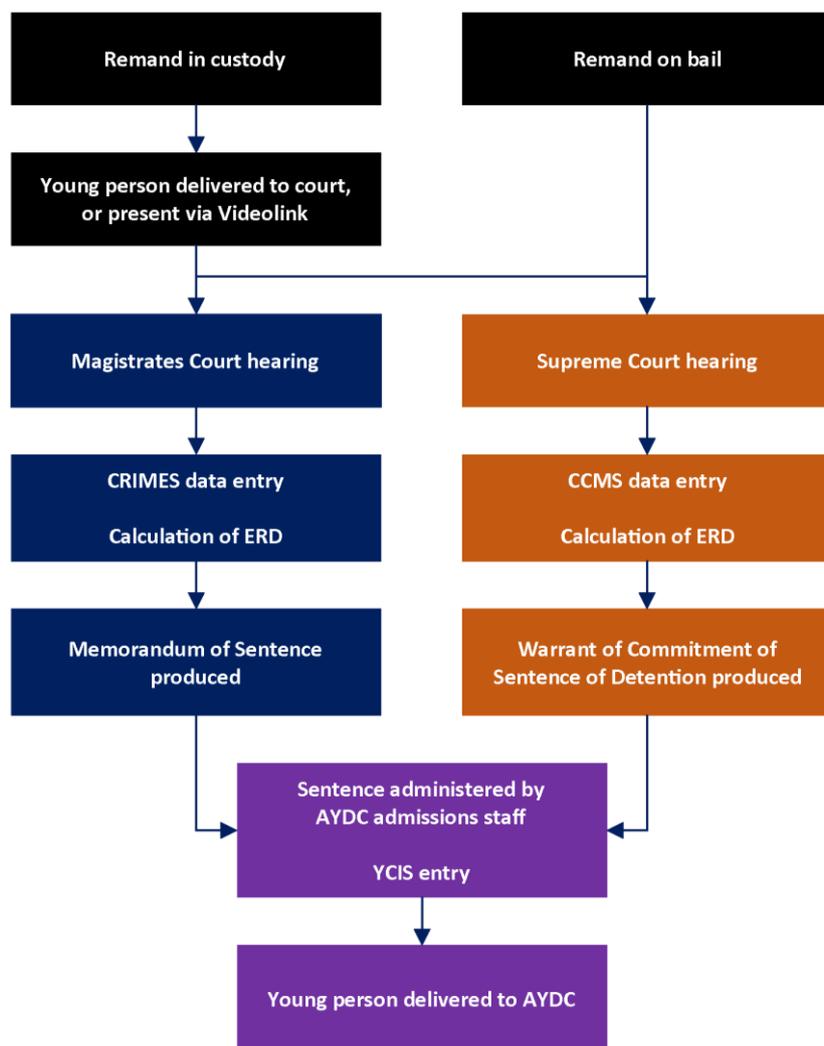
Figure 1: Example of a 6-month sentence of detention with an ERD after 3 months



Source: Tasmanian Audit Office based on the *Youth Justice Act 1997*.

1.21 Periods of remand were outside the scope of the audit except when periods of remand formed part of a sentence of detention.

Figure 2: The path to a custodial sentence at AYDC



Source: Tasmanian Audit Office based on the *Youth Justice Act 1997* and the *Sentencing Act 1997*.

2. Alignment of custodial stays at AYDC

Chapter summary

Sentencing in Tasmania's youth justice system can be complex. Magistrates and Judges must take many varied factors into account when sentencing a young person. A young person may be detained on a single matter, or on multiple matters. These matters when sentenced may, or may not, result in a specified sentence of detention. Sentences can be applied by the courts in different ways. There may also be sentences of detention previously suspended, or partially suspended, that are restored as a result of further offences committed by the young person.

These complexities posed a challenge to the audit team in accounting for each episode relating to the sentence of detention at AYDC. Assessing the duration of a young person's custodial stay required an understanding of all related events leading up to and including the episode of sentenced detention. This chapter discusses the compliance of these sampled custodial stays with sentencing orders while also highlighting the potential for complexity when ensuring the custodial stay aligns with sentencing orders.

How did we conduct this work?

We established a representative sample

- 2.1 We looked at the records of young people released from AYDC over 10 years from 1 January 2014 to 31 December 2023. This period covers the last 3 agencies that have overseen AYDC:
 - Department of Health and Human Services up to 2018
 - Department of Communities Tasmania 2018 to 2022
 - Department for Education, Children and Young People (DECYP) 2022 to present.
- 2.2 We considered 10 years to be a sufficient time period to provide reasonable assurance on the alignment of custodial sentences at AYDC.
- 2.3 A total of 105 young people served sentences of detention at AYDC from 2014 to 2023. Many served multiple sentences of detention. In order to perform the audit as efficiently and timely as possible, the Auditor-General elected to review a statistically valid sample of detainees. A randomised, statistically significant, sample of 43 young people was selected. This sample size provided a high degree of confidence that the total population of people and sentences were reflected in the results.
- 2.4 The randomly selected 43 young people represented 73 episodes or 'stays' at AYDC.
- 2.5 For every episode of detention within the sample, we reviewed the original sentencing order and compared it with the information stored in the Youth Custodial Information System and the actual release date of the young person.

How we tested the sample

2.6 For the sample tested, we assessed whether:

- controls were in place to pass appropriate information from the Department of Justice (Magistrates and Supreme Court) to the relevant agency responsible for youth detention in an accurate, timely and complete manner
- roles and responsibilities regarding admissions and release at AYDC were clearly defined and understood
- records (both system and paper-based) enabled timely, accurate and complete information flows for those managing custodial sentences.

2.7 We undertook this assessment through:

- on-site fieldwork at AYDC to test the established sample data. This compared custodial stays to sentencing orders
- interviewing staff members within the Magistrates Court, Supreme Court and AYDC
- for completeness, interviewing relevant staff from the Office of the Custodial Inspector, and the Commissioner for Children and Young People, on relevant matters within the scope of this audit.

Custodial stays at AYDC aligned with sentencing orders

2.8 We found that all 73 episodes corresponding to the 43 young people selected for review were compliant with sentencing orders. This provides reasonable assurance that no young person was held in AYDC longer, or shorter, than their sentence in the period from 2014 to 2023.

The sample

2.9 For the 43 young people over the sample period:

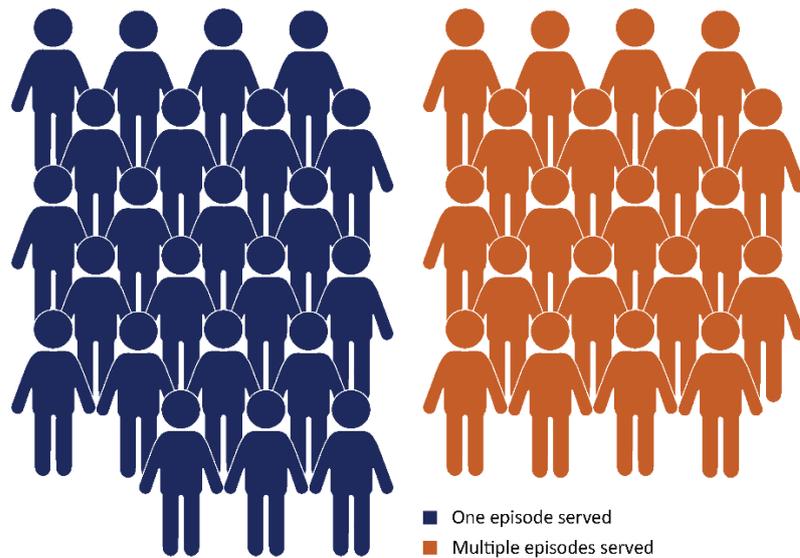
- the longest episode of sentenced detention was 550 days
- the average number of days spent on remand prior to sentencing was 67 days
- the average duration of sentenced detention was 146 days
- 20 young people served multiple episodes of sentenced detention.

Figure 3: Episode duration statistics from the sample period



Source: Tasmanian Audit Office based on sampled data from the Department for Education, Children and Young People.

Figure 4: One or multiple episodes served during the sample period



Source: Tasmanian Audit Office based on sampled data from the Department for Education, Children and Young People.

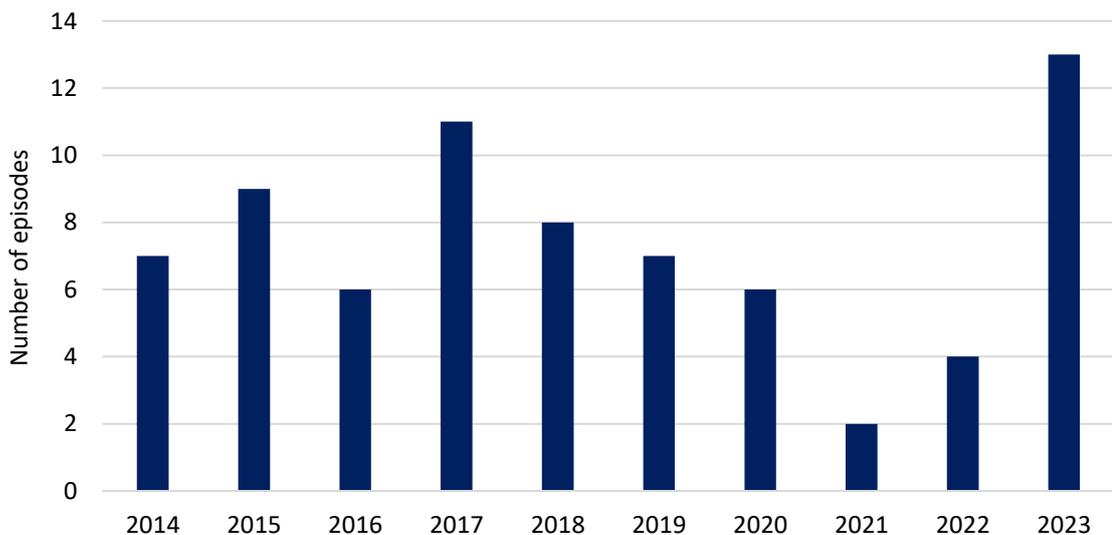
Complexity in sentence duration calculations

2.10 The *Youth Justice Act 1997* (the Act) was amended in 2016 to include Section 89A:

In making a detention order, the Court must calculate, and specify in the detention order, the earliest release date.

2.11 Prior to the amendment, calculating the earliest release date fell outside the courts process and was typically the responsibility of AYDC admissions staff. While this was often a complex undertaking, we found that all instances were calculated and applied correctly, throughout the 10-year period sampled.

Figure 5: Sampled episodes of detention by year



Source: Tasmanian Audit Office based on sampled data from the Department for Education, Children and Young People.

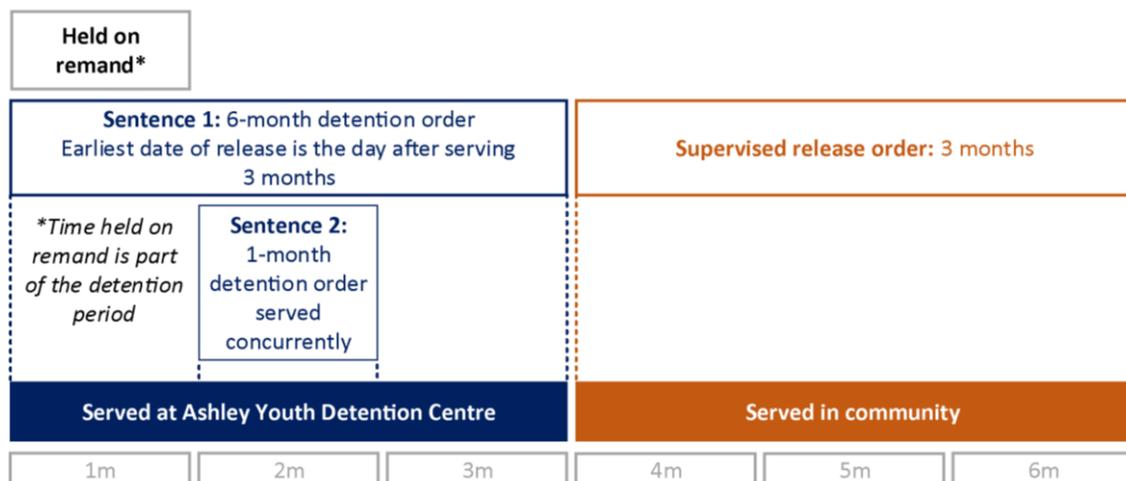
Multiple detention orders

2.12 Under Section 84 of the Act, detention orders are ordinarily concurrent:

If, at the time the Court makes a detention order against a youth for an offence, the youth is serving or has been sentenced to serve a period of detention for another offence, the period of detention under the detention order must be served concurrently with the other period of detention, unless other provision is made under section 85 or another Act.

We found 7 episodes in the sample that had multiple sentences of detention being served concurrently.

Figure 6: Concurrent sentencing example under the Act.



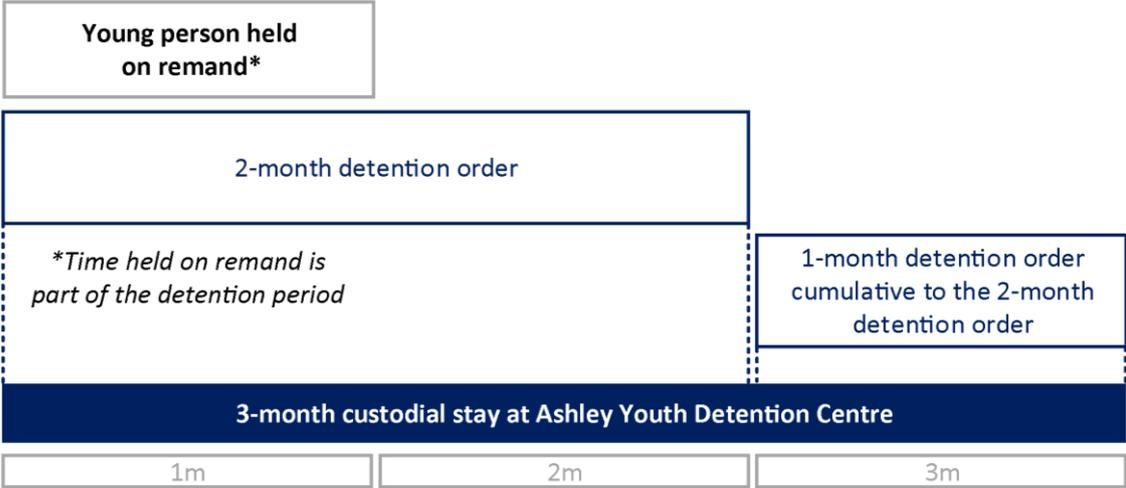
Source: Tasmanian Audit Office based on the *Youth Justice Act 1997*.

2.13 Under Section 85 (1) of the Act, the Court may order periods of detention to be cumulative:

If, at the time the Court makes a detention order against a youth for an offence, the youth is serving or has been sentenced to serve a period of detention for another offence, the Court may order the period of detention under the detention order to take effect on the earliest release date or next release date in respect of that other period of detention.

For 29 of the 73 episodes, the Court specified the sentenced periods of detention to be served cumulatively.

Figure 7: Cumulative sentencing example under the Act



Source: Tasmanian Audit Office based on the *Youth Justice Act 1997*.

2.14 For the remaining episodes sampled, a single sentence was served during the custodial stay for the young person.

Further complexities encountered

2.15 Through the course of our analysis, we identified instances of significant complexity that had a bearing on the duration of the custodial stay. These included, in some instances, multiple periods of remand served by the young person, that may or not have related to the sentenced matter. In accordance with the Section 89. (2) of the Act:

In making a detention order in relation to an offence or a group of offences (the **relevant detention order**), the Court must take into account any period during which the youth was held in custody on remand in relation to proceedings for, or arising from, that offence or group of offences unless that period has been taken into account by the Court, or another court, in relation to the making of another detention order or the imposition of a term of imprisonment under the *Sentencing Act 1997*.

2.16 We also observed at least one instance where the Solicitor-General's advice had been sought due to complexities arising from a young person being sentenced under both the *Youth Justice Act 1997* and *Sentencing Act 1997*.

2.17 In all instances we found the duration of custodial stays to be in alignment despite these complexities encountered, and managed, by AYDC.

3. Effectiveness of the governance and control framework in supporting alignment with sentencing orders

Chapter summary

We assessed the processes, roles, responsibilities, systems and record keeping within AYDC during the course of the audit. All 73 episodes corresponding to the 43 young people selected for review were compliant with sentencing orders. However, weaknesses in the governance and control framework were identified creating a risk of misalignment of custodial stays with sentencing orders. These weaknesses led to an over reliance on staff as the key control. Despite this risk, we found that custodial stays were consistently compliant with sentencing orders. This chapter discusses the detailed findings of the audit.

The sentencing orders clearly defined sentence duration and end date

- 3.1 The *Youth Justice Act 1997* was amended in 2016 making it a requirement for the Courts to specify the earliest release date (ERD) on sentencing orders. Prior to this amendment, AYDC admissions staff had to ensure an ERD was correctly calculated and recorded. This meant the potentially complex process of calculating the ERD in accordance with the relevant sentencing legislation was done by staff outside the court process.
- 3.2 All sentencing orders selected for review had clearly defined sentence duration and date of commencement. The ERD was clearly stated on all sampled sentencing orders from 2016 onwards.

The duration of the custodial stay, earliest release date and actual release date were clearly recorded

- 3.3 As part of the admissions process, staff at AYDC manually input information from sentencing orders into the Youth Custodial Information System (YCIS). Episode start date, date sentenced, duration of sentence, ERD and actual release date are recorded in YCIS.
- 3.4 Every new episode creates a new linked digital file in YCIS. YCIS contains all of the digital files relating to the young person being detained. We note that hardcopy files were also used to store information for each young person at AYDC.
- 3.5 The duration of the custodial stay, the ERD and actual release date were clearly recorded for all episodes reviewed in YCIS.
- 3.6 AYDC staff manually input information into YCIS based on the sentencing order provided by the Courts. YCIS automatically calculates the ERD and actual release date.

However, this automatic calculation cannot account for complexities that often occur in sentencing. There is a manual override feature in YCIS that allows the automatic calculation of the ERD to be overridden.

- 3.7 Due to the complexity of sentencing orders sampled, a manual override was required for 41 of the 73 episodes. This was necessary to ensure those detainees were released in line with corresponding sentencing orders.

Amendments to sentencing duration were clearly calculated and documented

- 3.8 We anticipated there may be changes to sentencing duration due to matters of the court or offences committed while in detention. However, there were no instances within the sample where sentence duration required amendment.

There was not an effective governance and control framework to administer custodial stays in accordance with sentencing orders

- 3.9 Training materials and work instructions at AYDC have not been kept up to date with current legislation. The Admissions Manual contained incomplete and out of date information. Policies, procedures and guidelines to support admissions and releases have not been kept up to date or were undocumented.
- 3.10 We found there were significant key-person dependencies within AYDC. Many years of corporate knowledge and expertise, that does not exist elsewhere, is concentrated on key people within AYDC. This creates a significant risk to the continued operation of AYDC core functions should a key person leave the organisation.
- 3.11 We expected to find a clear method for recording the actual release date of young people. We were told this was the physical Admissions/Discharge book. Upon examination, this book was incomplete, and we were unable to rely on it to confirm the actual release date for each episode. As a result, we sought other corroborating evidence for the actual date of release. This included a dated Exit Plan, Supervised Release Order, case notes and/or accommodation log. In all instances, the corroborating evidence confirmed the accuracy of the release date.
- 3.12 A total of 8 of the 73 episodes were found to have weak supporting evidence that required further investigation to ensure the accuracy of the release date. Of these 8, 3 were found to have been the result of administrative errors resulting in incorrect information being entered and stored on file. Ultimately, none of those 3 administrative errors resulted in a young person being released either early or late. For the remaining 5, there was only one piece of corroborating evidence available to indicate the actual date of release, which was the accommodation log in YCIS.
- 3.13 There was no established process for the electronic filing of sentencing orders. Printed sentencing orders are held in paper files and are not stored in a dedicated electronic

document management system by AYDC. We found some sentencing orders in YCIS but that was not consistent. DECYP has removed older physical files from AYDC and these have been progressively scanned into cloud-based storage.

- 3.14 YCIS is more than 20 years' old and is limited in its capability to read detail from and hold electronic copies of court legal documents. As a result, all relevant sentencing order details must be manually entered by Admissions Support staff. If the sentencing order needs to be checked for any reason during the young person's custodial stay, this must be sourced from the young person's hard file.
- 3.15 Manual processes are not always checked in detail. Reliance on manual data entry processes increases the risk of information being incorrectly recorded.
- 3.16 We understand YCIS is scheduled for replacement in 2024.

Appendix A – Frequently asked questions

Why did you decide to conduct this audit?

The Commission of Inquiry (COI) into the Tasmanian Government’s Responses to Child Sexual Abuse in Institutional Settings Report (2023) made a recommendation directed to the Auditor-General (Recommendation 12.26): ‘The Auditor-General should undertake an audit of the length of custodial stays at Ashley Youth Detention Centre to determine whether they align with sentencing’.

In 2021, a media report indicated that, in the preceding 4 years, 9 prisoners had been released from Risdon Prison before or after their release dates. Commissioners sought assurance that similar issues were not occurring at Ashley Youth Detention Centre (AYDC).

What period of time does the audit cover?

The audit looked at young people released from AYDC over 10 years from 1 January 2014 to 31 December 2023.

Why only 10 years?

It covers the last 3 agencies that have overseen AYDC:

- Department of Health and Human Services up to 2018
- Department of Communities Tasmania 2018 to 2022
- Department for Education Children and Young People (DECYP) 2022 to present.

10 years was considered to be a sufficient time period to provide reasonable assurance on the alignment of custodial sentences at AYDC.

Did you look at every young person sentenced to AYDC during that 10-year period? Why not?

A total of 105 young people served sentences of detention at AYDC from 2014 to 2023. Many served multiple sentences of detention. In order to respond to Recommendation 12.26 in a timely manner, the Auditor-General elected to review a statistically valid sample of detainees. A randomised, statistically significant, sample of 43 young people was selected.

There were no specific reported instances of error in custodial stay duration and no previous audit coverage of youth custodial stay duration. The Expected Error Rate was expected to be low. We have therefore based the generation of the sample size on an Expected Error Rate of 5%. This sample size provides a high degree of confidence that the total population of people and sentences are reflected in the results.

The randomly selected 43 young people represent 73 episodes or ‘stays’ at AYDC.

Only 105 young people over 10 years seems like a low number, how do you account for that?

The *Youth Justice Act 1997* is designed to divert and rehabilitate young people. The Act provides many sentencing options to achieve these aims. Sentencing young people to detention is the last resort. Many young people in the youth justice system never get sentenced to a period of detention.

Did the audit look at the number of Aboriginal and Torres Strait Islander detainees?

No. The sample of 43 young people was randomly selected and did not stratify the composition of detainees, such as, their aboriginal identity, gender, age or where they lived prior to detention.

What is a custodial sentence?

A custodial sentence refers to when a Magistrate or Judge sentences a young person to a period of detention at AYDC.

What is an episode?

AYDC refers to custodial stays as episodes. An episode begins when a young person walks through the door at AYDC and ends when they leave. A young person may have many episodes due to multiple periods of remand and/or multiple sentences of detention.

Does the audit cover young people detained at AYDC on remand?

The audit covers periods of remand where the remand forms part of a sentence of detention.

Most young people sentenced to detention at AYDC are in detention on remand at the time of their sentencing. A young person may have several episodes of remand before being sentenced to detention. Under section 89 (2) of the *Youth Justice Act 1997*, when sentencing a young person to a period of detention, the 'Court must take into account any period during which the youth was held in custody on remand...'

For example, a Magistrate sentences a young person to 2 months detention, but the young person has been held in detention on remand for the last month. The Magistrate considers the time on remand as 'time served' meaning the young person only has to serve another month in detention (bringing total time at AYDC to 2 months).

The audit did not look at episodes of remand that do not form part of a sentence of detention.

A young person may have multiple episodes of remand but never sentenced to a period of detention. These periods of remand were outside the scope of the audit.

Were young people held at AYDC longer than their sentence?

This was the primary question the audit was designed to answer. We found that none of the 43 young people in our sample were held in AYDC longer, or shorter, than their sentence.

This provides reasonable assurance that no young person was held in AYDC longer, or shorter, than their sentence from 2014 to 2023.

How do you know young people were released on time?

Every young person at AYDC has a Warrant of Remand in Custody on Adjournment, a Warrant of Commitment for Sentence of Detention, and/or a Memorandum of Sentence (MoS). The Warrant or MoS provides the legal authority to detain a young person. The Warrant clearly states the date a young person was sentenced, the duration of their sentence and, since 2016, must also state their earliest release date. For every episode of detention within the sample, the audit team reviewed the original Warrant and compared it with the information stored in AYDC's information system and the actual release date of the young person.

What is an earliest release date and is it different from the actual release date?

Earliest release date (ERD) means the day immediately following the completion of 50% of the period of detention during which a youth is liable to be detained, or 3 months, whichever is the longer (*Youth Justice Act 1997*). A young person released on their ERD is released under a Supervised Release Order (SRO) for the remainder of their sentence. A SRO is subject to conditions such as the young person not committing another offence and attending school.

For example, a young person sentenced to 28 days detention will be released after serving 28 days (the full sentence because the sentence is less than 3 months). A young person sentenced to 8 months detention will be released from AYDC after serving 4 months (half the sentence because the sentence is greater than 3 months).

A young person should always be released on their ERD. Therefore, the ERD is the actual release date. However, a young person can be held at AYDC past their ERD if the courts issue a Warrant instructing AYDC to keep the young person in custody. Only the court can do this.

Did the audit look at detention centre offences and how they impact sentence duration?

Detention centre offences are defined in the *Youth Justice Act 1997* and include a range of things from disobeying rules and instructions through to destruction of property and assault. In dealing with detention centre offences, the Act prescribes 4 options available to the Secretary of the relevant Government Department (currently, the Department for Education, Children and Young People). One of these options is to 'order that the earliest release date or next release date be changed to a date which is not more than 3 days later'.

While the audit did not perform any specific analysis of detention centre offences, it should be noted that none of the sampled episodes of detention had their release date modified by the Secretary for detention centre offences.

Did the audit look at how delays in the youth justice system affect sentence duration?

The audit did not look at the effectiveness of the courts system or the youth justice system more broadly.

How long can a young person be held in detention on remand?

The *Youth Justice Act 1997* states that a period of detention must not exceed 2 years. The audit did not examine the frequency or use of remand by the courts.

Can a young person be held in detention on remand and not subsequently receive a sentence of detention?

A young person may be held in detention on remand and ultimately receive a non-custodial sentence. The audit did not examine periods of remand that did not form part of a sentence of detention.

What about young people sentenced in the Supreme Court?

The vast majority of young people detained at AYDC are sentenced in the Magistrates Court under the *Youth Justice Act 1997*. However, a young person that commits a serious (indictable) offence, is usually sentenced in the Supreme Court under the *Sentencing Act 1997*.

When a young person is sentenced under the *Sentencing Act 1997*, they serve a ‘prison sentence’ instead of a detention order. They do not have an earliest release date. They have an eligible for parole date, which is the earliest they can be released on parole (parole is not guaranteed). A young person serves their prison sentence at AYDC. If the young person turns 18 while serving a prison sentence at AYDC, the young person may be transferred to Risdon Prison to serve the remainder of their sentence.

How long were young people detained in isolation?

The manner in which young people are detained at AYDC was outside the scope of the audit.

Did the audit look at the effect of escapes from AYDC on sentence duration?

When a detainee escapes but is returned to custody within the same day, this does not affect their sentence duration. However, when a detainee escapes for a day or more, this is not considered time serving their sentence and their sentence duration is extended by the number of days the detainee was on escape.

Under the legislation, a day begins at 12:00 am and ends at 11:59 pm. So, if a young person escapes at 10:30 pm and is not returned to custody until 12:30 am, they are considered to have escaped for a day. This day would then be added onto their sentence.

None of the 43 sampled young people had their sentence duration modified by an escape.

What are conditions like at AYDC?

The day-to-day business of AYDC and conditions at the centre for staff and detainees was outside the scope of the audit.

Acronyms and abbreviations

AYDC	Ashley Youth Detention Centre
COI	Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings
DECYP	Department for Education, Children and Young People
ERD	Earliest Release Date
MoS	Memorandum of Sentence
SRO	Supervised Release Order
Warrant	Warrant of Commitment for Sentence of Detention or a Warrant of Remand in Custody on Adjournment
YCIS	Youth Custodial Information System

Audit mandate and standards applied

Mandate

Section 23 of the *Audit Act 2008* states that:

- (1) The Auditor-General may at any time carry out an examination or investigation for one or more of the following purposes:
 - (a) examining the accounting and financial management information systems of the Treasurer, a State entity or a subsidiary of a State entity to determine their effectiveness in achieving or monitoring program results;
 - (b) investigating any matter relating to the accounts of the Treasurer, a State entity or a subsidiary of a State entity;
 - (c) investigating any matter relating to public money or other money, or to public property or other property;
 - (d) examining the compliance of a State entity or a subsidiary of a State entity with written laws or its own internal policies;
 - (e) examining the efficiency, effectiveness and economy of a State entity, a number of State entities, a part of a State entity or a subsidiary of a State entity;
 - (f) examining the efficiency, effectiveness and economy with which a related entity of a State entity performs functions –
 - (i) on behalf of the State entity; or
 - (ii) in partnership or jointly with the State entity; or
 - (iii) as the delegate or agent of the State entity;
 - (g) examining the performance and exercise of the Employer's functions and powers under the *State Service Act 2000*.
- (2) Any examination or investigation carried out by the Auditor-General under subsection (1) is to be carried out in accordance with the powers of this Act

Standards applied

Section 31 specifies that:

'The Auditor-General is to perform the audits required by this or any other Act in such a manner as the Auditor-General thinks fit having regard to -

- (a) the character and effectiveness of the internal control and internal audit of the relevant State entity or audited subsidiary of a State entity; and
- (b) the Australian Auditing and Assurance Standards.'

The auditing standards referred to are Australian Auditing Standards as issued by the Australian Auditing and Assurance Standards Board.



*Front cover image: Entrance to the Ashley Youth Detention Centre
Photo: Courtesy of the Department for Education, Children
and Young People*

Hobart Office

Phone (03) 6173 0900

Email admin@audit.tas.gov.au

Web www.audit.tas.gov.au

Address Level 2, 144 Macquarie Street
Hobart, 7000

Postal GPO Box 851, Hobart 7001

Launceston Office

Phone (03) 6173 0971

Address 4th Floor, Henty House
1 Civic Square, Launceston